

SOVEREIGNTY
SHARING
IN
FRAGILE
STATES

John D. Ciorciari



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Stanford, California

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Acknowledgments

The idea for this book began several years ago, when I was teaching a course on peacebuilding that focused on peacekeeping, postconflict reconstruction, and transitional justice. I had just written a book about the United Nations–backed Khmer Rouge tribunal in Cambodia, and in discussions with my colleagues and students at the University of Michigan’s Gerald R. Ford School of Public Policy, I began to see an important thread connecting hybrid justice to international policing and reconstruction. In each area, international actors increasingly were sharing sovereign authority with weak governments in the name of strengthening the rule of law—a vital and notoriously difficult task. I decided to pursue a systematic study of these sovereignty-sharing arrangements to determine when and how they can help.

I could not have conducted the study without the generous support I received as an Andrew Carnegie Fellow, and I am deeply indebted to the Carnegie Corporation of New York for its sponsorship of the project. I also have benefited from the insights and generosity of many friends and colleagues. I am particularly grateful to colleagues who participated in a workshop for the book in Ann Arbor. Richard Caplan, Pierre Englebert, Desha Girod, Steve Krasner, Melissa Lee, Aila Matanock, and Roland Paris shared their abundant expertise and many helpful comments. Numerous others have read parts of the book or discussed its themes and offered valued advice. These include Bob Axelrod, David Bosco, David Forsythe, Greg Fox, Charles Chernor Jalloh, Mark Kersten, Valerie Oosterveld, Steve Ratner, Brad Roth, Beth Van Schaack, Carrie Booth Walling, and Susan Waltz.

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Sovereignty Sharing in Fragile States

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Introduction

ON A HOT AFTERNOON IN MID-2019, a unit of United Nations police jumped into a white patrol vehicle with local officers from the Central African Republic, investigating a string of sectarian killings and the murder of a Catholic nun.¹ Their shared mission was to restore law and order in a beleaguered country that senior UN officials warned could fall prey to genocide. Several time zones away, at a UN-backed tribunal in Phnom Penh, foreign and Cambodian judges huddled to consider evidence related to a genocide that had already occurred.² In Guatemala City, UN-appointed investigators and colleagues in the attorney general's office carried out several raids as part of a string of anticorruption investigations reaching all the way to the president's office.³

In each case, national and international partners were sharing sovereignty. With government consent, external actors were working alongside domestic personnel, exercising authority normally reserved for state officials. These arrangements are remarkable in the postcolonial era, when state sovereignty norms have strong subscription in the Global South. Still, the United Nations and other international actors have pursued sovereignty-sharing arrangements in a growing number of instances to address governance gaps in fragile states—countries where domestic institutions are frail, public service provision is poor, and the rule of law is weak.

Sovereignty-sharing ventures represent a middle path between ordinary technical assistance and full-fledged international administration. Technical assistance to troubled governments is ubiquitous but often insufficient to address major governance failures, and imposing full international control is seldom feasible or desirable.

Sharing authority over core governance functions potentially offers a way to steer between those alternatives, marrying external intervention with local ownership and participation.⁴ Nevertheless, sovereignty sharing raises obvious normative concerns about deep external involvement in domestic affairs, the motives of intervening parties, and the propriety of their policy prescriptions. Sharing domestic authority also presents formidable practical challenges related to external actors' capacity and the fit between what they can offer and what domestic partners need.

This book examines how and why sovereignty-sharing arrangements take shape, and the political factors that affect their design, performance, and perceived legitimacy. It discusses when these remarkable joint ventures may be justified and when they are likely to achieve their two consistently stated objectives: delivering effective stopgap services and advancing domestic institutional reform.

The central argument advanced is that the legitimacy and effectiveness of sovereignty-sharing arrangements depend largely on the strength of their political foundations. These joint ventures can perform well and earn public legitimacy when a sufficiently strong coalition of host state officials, international actors, and the local population shares compatible governance objectives. These conditions favor strong domestic consent, and enable the people entrusted with implementing the arrangement to carry out their tasks with the support or acquiescence of their political superiors and the constituencies they serve. This strengthens the normative case for a venture, boosts its effectiveness, and helps in its legitimation.

As this book will show, however, sovereignty sharing usually results more from grudging compromises than genuinely shared preferences. The interests of national elites and their international partners often diverge from one another or from those of the general public, particularly in regard to domestic institutional reform. In these circumstances, joint ventures rest on precarious political foundations, undermining their perceived legitimacy and effectiveness. They can sometimes deliver important stopgap services, but they generally struggle to advance deep-rooted domestic reform.

This book focuses on a crucial and challenging set of sovereignty-sharing ventures: those charged with promoting the rule of law in fragile states. The term "rule of law" refers here to the principle that both governments and private actors should be constrained by a well-defined and well-enforced set of laws that comply with international human rights standards.⁵ One reason for focusing on rule-of-law interventions is their substantive importance. They lie at the conceptual core of the state-building enterprise, and the goal of strengthening the rule of law is now central to most complex peacebuilding and development efforts in fragile states.⁶ A second reason for focusing on rule-of-law ventures is that they present hard cases for effective shared sovereignty. Partnerships aiming to advance the rule of law face a central

dilemma: they require cooperation from host state officials while simultaneously seeking to develop norms and institutions that constrain the power of those officials. Indeed, they typically challenge the very governance structures and practices that keep fragile state leaders in power. If sovereignty sharing can work in this difficult domain, it can help address crucial governance needs, and has bright prospects in less sensitive areas as well.

What Sovereignty Sharing Entails

Sovereignty sharing entails consensual arrangements in which governments allow international actors to work alongside domestic counterparts and to exercise authority normally reserved for state officials. It can occur via formal treaties, executive agreements, or informal accords. It does not affect a state's juridical status as sovereign, which is indivisible; only one political entity can be recognized as the ultimate authority over a given territory and population. At least in theory, states also retain the exclusionary rights associated with sovereign status—namely, the Westphalian right to be free of unwanted external interference.

What national governments do share are certain domestic governing authorities that sovereign status confers upon them within their territories. This “domestic sovereignty” is partly a descriptive concept, delineating the nature and extent of political authority within a state.⁷ It also refers to a normative entitlement allowing the sovereign to exercise that authority. John Jackson rightly argues that in its modern incarnation, sovereignty normally refers to “questions about the allocation of power,” particularly the appropriate locus of “government decision-making power” with respect to specific issues of public concern.⁸

The possibility of dividing this domestic political authority is readily apparent in democratic systems that feature separation of powers, federalism, and institutionalized popular constraints on government such as public referenda.⁹ States are legally entitled to contract, and exclusionary Westphalian rights do not deny them the ability to confer domestic authorities on external partners. As Alexander Cooley and Hendrik Spruyt argue, “sovereignty consists of a bundle of rights,” some of which can be apportioned to outsiders.¹⁰ Sharing domestic decision-making power does compromise a state's autonomy, which is the prime benefit of Westphalian sovereignty. However, a consensual transfer expresses the state's freedom of policy choice without forfeiting the state's juridical status or its entitlement to invoke the protections of Westphalian sovereignty.¹¹

Governments often delegate authority. European states have “pooled” some aspects of their domestic authority in the European Union,¹² for example, and governments that “dollarize” effectively outsource monetary policy to the US Federal Reserve. Many governments delegate power to bodies that enforce treaties on matters such as

trade, investment and human rights. Many also relinquish some sovereign control when they host foreign military forces and grant foreign partners selective jurisdiction over troops on the base.¹³

The sovereignty-sharing arrangements examined in this book differ from other forms of delegated authority, however, because they feature deep involvement of external actors within or directly alongside domestic authority structures. Hosting armed international police in a city neighborhood or placing foreign judges in local courts is quite different from the ways in which consolidated states typically delegate authority.

While governments of all kinds may delegate domestic authority, the intrusive form of sovereignty sharing described here typically occurs amid broader international peace operations and is concentrated in fragile states. These include war-torn, impoverished countries like South Sudan or Afghanistan, as well as countries like Guatemala or Haiti that suffer from severe institutional weakness, rampant crime, sectarian strife, and other problems rendering residents vulnerable to a range of human security threats. By most reasonable measures, at least a few dozen states merit the label “fragile.”¹⁴

The concept of state fragility has important normative implications. It connotes the absence of reasonably well-functioning Weberian institutions, and the implicit antidote is to build stronger formal rules and procedures, technical expertise, and the rule of law. The United Nations, the International Monetary Fund (IMF), the World Bank, and powerful states have all invoked the concept of state fragility as part of their justification for governance interventions.¹⁵ The external actors involved in sovereignty-sharing arrangements generally have advanced similar models for what constitutes “good governance.” They have promoted rules, systems, practices, and expertise associated with sound Weberian institutions and bearing Western democratic imprints. They thus comprise part of a broader set of practices that Roland Paris calls “liberal peacebuilding.”¹⁶ Sovereignty sharing is not a normatively neutral enterprise.

The most basic stated aims of sovereignty-sharing ventures are not controversial; some tenets of the rule of law are widely accepted. Officials should not steal wantonly from the public trough or murder civilians with impunity, for example. Police should try to stop crimes rather than commit them. Populations across diverse societies generally view violation of these tenets as governance failings. Nevertheless, external and domestic actors often differ on how best to fill these gaps, because either their interests or their normative values diverge. This is a major reason why shared sovereignty is so challenging to design and implement effectively.

Of course, the intrusiveness of the practice adds to its sensitivity. In ordinary aid programs, technical advisors generally are subject to terms of reference that confine them to building capacity and implementing specific measures in furtherance of

policies set by the state. If technical advisors stay within those mandates, they are seldom seen as infringing upon state sovereignty.¹⁷ The task of technical advisors is to help state officials govern effectively, not to govern themselves; though in practice, that distinction is more a matter of degree than kind.

Shared sovereignty also goes beyond aid conditionality. Lending bodies such as the IMF and World Bank are often accused of infringing on state sovereignty by forcing governments to swallow international policy prescriptions during hours of need.¹⁸ Aid conditions do constrain a state's exercise of sovereign authority, sometimes so tightly that external lenders and technical advisors effectively dictate a state's policy choices.¹⁹ Even in those cases, however, external actors do not wield the formal authority to govern. As William Brown argues, conditionality affects "policy autonomy but not the right to rule."²⁰ Shared sovereignty goes a step further, as host state leaders give external actors the express authority to make certain domestic governance decisions alongside state officials. Widespread resentment of donors' use of conditionality to exert *de facto* policy control makes it all the more striking that some governments have conferred *de jure* authority on outsiders as well.

Analysts sometimes describe sovereignty-sharing arrangements as contracting, outsourcing, or delegation agreements.²¹ These more anodyne labels capture the transfer of domestic authority and avoid the potential confusion and contestation that comes with invoking sovereignty by name. For similar reasons, "sovereignty sharing" is decidedly not a term of art among policy practitioners, who generally pay deference to Westphalian norms in rhetoric, if not in action. Steering clear of the "S word" is often wise diplomatically, but it downplays the contentiousness underlying delegation deals. This book's use of the term "sovereignty sharing" is intentionally provocative. It points to the deep normative debates that surround transfer of domestic authority, as well as the difficulty of reconciling a government's freedom to contract with the exclusionary Westphalian conception of sovereignty.

Sharing Sovereignty to Strengthen the Rule of Law

The contemporary practice of sharing sovereignty in fragile states emerged after the Cold War, as civil conflict raged in many parts of the Global South. The problems arising in weakly governed spaces led the United Nations and other international actors to focus on building what Michael Barnett calls "empirical sovereignty"—the capacity to govern.²² In particular, there was a growing consensus around the need to build stronger rule-of-law institutions to create the foundations for peace, economic growth, and democratic development.²³ Importantly, Western powers' predominance in the post-Cold War period enabled bold new initiatives to promote Weberian conceptions of the rule of law. Some of those initiatives involved shared sovereignty. In each case, sovereignty-sharing arrangements have had an explicit dual mandate: to

provide effective stopgap public services in the short run, while building domestic capacity and promoting rule-of-law reform needed for the long run.

Sharing the Gavel: Hybrid Criminal Courts

Among the most visible sovereignty-sharing arrangements have been hybrid criminal courts that blend national and international laws, procedures, and personnel to pursue justice for war crimes and other atrocities. The idea for hybrid courts emerged in the late 1990s as a compromise between external actors keen to pursue global justice, and fragile state governments keen to retain sovereign control. The fully international criminal tribunals for Rwanda and the former Yugoslavia were costly and slow, distant from survivor populations, and imposed by the UN Security Council. National courts were sometimes manifestly unable or unwilling to deliver credible trials. Mixed tribunals offered a middle ground—a potential way to marry international resources, technical expertise, and standards with local ownership and knowledge. The stated goals of these ventures included delivering effective justice and helping to strengthen local legal norms and institutions.

Beginning in 2000, a flurry of hybrid courts took shape. These included specialized national chambers as well as bodies created via treaties or the United Nations, possessing an international legal character. In Kosovo and East Timor (later renamed Timor-Leste when it gained independence in 2002), UN transitional administrators created mixed panels to patch gaping holes in local judicial systems. Although no recognized local sovereign existed to consent to their creation, these panels entailed shared domestic authority, as external and local actors worked side by side under national law within local court systems.²⁴

Soon afterward, three more substantial UN-backed hybrid courts took shape. In 2002 the United Nations partnered with the vulnerable postwar government of Ahmad Tejan Kabbah to form the Special Court for Sierra Leone to address wartime atrocities. In Cambodia, Prime Minister Hun Sen resisted UN leadership of trials against former Khmer Rouge officials, but assented in 2003 to a hybrid court with minority UN participation. A few years later in Lebanon, the government of Fouad Siniora invited a UN commission to investigate the assassination of former Prime Minister Rafiq Hariri. Siniora then requested UN help to forge a mixed tribunal, and when domestic discord prevented ratification of the deal, the UN Security Council created the hybrid Special Tribunal for Lebanon by a Chapter VII resolution.

Outside the UN umbrella, the government of Bosnia and Herzegovina and the Office of the High Representative created the hybrid War Crimes Chamber to handle lower-level cases as the International Criminal Tribunal for the former Yugoslavia wound down. In 2007 the European Union launched the EU Rule of Law Mission in Kosovo (EULEX), a complex mission to support rule-of-law development, in part

by having foreign judges and prosecutors serve alongside local counterparts within Kosovo's judicial system. A similar arrangement existed in Timor-Leste as that country moved from international administration to full independence.

In 2012 the government of Senegal partnered with the African Union to try former Chadian dictator Hissène Habré in the Extraordinary African Chambers, which featured both Senegalese and international judges. In 2015, Kosovo created Specialist Chambers within the local judicial system, staffed by international appointees in The Hague, to address certain crimes at the end of the Kosovo war in 1998 to 2000. The same year, the Central African Republic agreed to form a hybrid Special Criminal Court with the United Nations to address atrocities from its civil war. In recent years, international actors and local civil society groups have proposed hybrid courts for the Democratic Republic of the Congo, Libya, South Sudan, Sri Lanka, and Syria. While those governments have resisted, the concept of hybrid justice remains very much alive.

Sharing the Badge: Police Powers

In exceptional cases, governments also have shared sovereignty over law enforcement. During acute security crises or the phaseout of international administration, some have allowed foreign police or peacekeepers to exercise core police powers such as search and seizure, arrest, detention, and the use of force. Under the UN Transitional Authority in Cambodia (1991–93), UN civilian police had powers to “supervise or control” Cambodian police, help maintain public order, and eventually carry out arrests. A few years later, US and UN personnel exercised limited law enforcement powers as part of the multilateral intervention to restore law and order in Haiti after the restoration of the elected leader Jean-Bertrand Aristide and disbandment of the Haitian armed forces.

More extensive international police missions soon followed. During the “neo-trusteeships” in Kosovo and Timor-Leste, UN police assumed full authority for domestic law enforcement, and shared that authority during the process of handing powers to newly formed local police forces. In 2003, an embattled government in the Solomon Islands gave an Australian-led coalition broad executive policing powers, including the powers of detention and arrest, to stem an existential law-and-order crisis and to rebuild domestic institutions. In 2006, Timor-Leste faced a similar domestic security crisis and invited UN police to return with authority to help restore law and order. Since 2014, leaders of the Central African Republic have authorized UN police to carry out law enforcement functions to stem its ongoing domestic crisis under the rubric of “urgent temporary measures.”²⁵ EU police missions in Bosnia and Kosovo have included forms of monitoring and assistance that amount to elements of shared sovereignty.

In some complex peacekeeping missions—including those in Haiti, Liberia, Mali, Somalia, and South Sudan—governments also have allowed external actors to exercise limited law enforcement authority in furtherance of their civilian protection mandates.²⁶ Of course, states that authorize military interventions share sovereign defense powers as well. Within the realm of UN peacekeeping, one notable example is the creation of the Force Intervention Brigade in the Democratic Republic of the Congo—a military formation with an unusually muscular mandate to use force against armed rebel groups.²⁷ Other fragile cases have outsourced domestic security functions to private contractors such as Executive Outcomes, a mercenary group from South Africa. While the delegation of conventional military functions falls beyond the scope of this book, the transfer of limited police powers to peacekeepers for civilian protection purposes is a classic instance of sovereignty sharing in the rule-of-law domain.²⁸

Outsourcing to Curb Corruption

In other instances, governments have agreed to outsource sovereign functions to challenge official corruption and the impunity often associated with it. In a few cases they have invited external actors to help investigate state-linked crimes and corruption. The seminal experiment began in 2007 in Guatemala, where a surge of international pressure and public outrage over violent crime and corruption led the government to create the International Commission against Impunity in Guatemala (CICIG)—a UN-appointed international body nested within Guatemala's domestic judicial system and granted the authority to probe complex domestic crimes, including corruption. This was a stunning development, as it gave outsiders domestic powers to hold sitting officials to account—powers that few if any of CICIG's foreign sponsors would countenance at home.²⁹

Nearly a decade later, mass protests in Honduras demanded a similar commission to tackle graft. The Honduran government responded by partnering with the Organization of American States (OAS) and creating a weaker sibling to CICIG, a mixed commission with more limited domestic powers. Public protesters and civil society have pushed for CICIG-like bodies in Mexico, Panama, and El Salvador, which in 2019 inked an agreement with the OAS to establish the new International Commission against Impunity in El Salvador. Despite resistance in many regional capitals, and despite CICIG's closure in 2019, it remains very relevant as a model.

Governments also have outsourced other authorities to curb corruption. In Liberia, to stem runaway graft, external actors gained authority to cosign on certain official decisions in the Governance and Economic Management Assistance Program (GEMAP), launched in 2005. The hybrid Interim Haiti Recovery Commission was established in 2010 to monitor the use of a tidal wave of reconstruction assistance entering the country after a devastating earthquake. In the same year, the Afghan

government responded to donor frustration by creating a mixed anticorruption committee to monitor official misuse of funds. More recently, international donors have pressed ailing governments to clone GEMAP in places such as Somalia and the Central African Republic. In Mozambique and Angola, governments have outsourced customs collection to a private firm: deals resembling the delegation agreements with official outside actors discussed in this book.³⁰

These represent the major instances of sovereignty sharing to advance rule-of-law reform since the end of the Cold War. The universe of cases is therefore modest in size. It includes nine hybrid criminal courts, several ventures in which international police or peacekeepers have held domestic law enforcement powers, a handful of international or mixed commissions with authority to probe domestic crimes, and a few hybrid nonjudicial mechanisms giving outsiders financial controls to curb corruption.

The Argument in Brief

This book argues that the perceived legitimacy and effectiveness of sovereignty-sharing arrangements depend crucially on the nature of the political foundations of those arrangements. External actors generally lack intrinsic legitimacy; the notion of outsiders performing core domestic law-and-order functions clashes with conventional notions of state sovereignty, and raises obvious concerns about neoimperialism. State consent can mitigate normative concerns to some degree, but it seldom suffices, since fragile states usually have weak bargaining leverage vis-à-vis external partners. Humanitarian objectives are also necessary but insufficient to justify a sovereignty-sharing scheme, since international actors may not deliver the services local populations need. To earn legitimacy, sovereignty-sharing arrangements have to rely heavily on performance, delivering markedly better services than state institutions—particularly in the eyes of the host state population.

The performance of these joint ventures hinges largely on the nature of their political foundations. In the most favorable cases, domestic leaders and outsiders decide to share sovereignty to pursue a common interest in providing better governance services in line with public aspirations. External actors may seek to punish mass crimes, stem a security crisis with cross-border implications, or shore up a favored fragile state government, for example. Domestic leaders may aim to develop state institutions, win public support, or simply strengthen their positions in power. These aims need not be altruistic; what matters is that the parties share broadly compatible interests in performing functions that the public generally will appreciate.

Convergence in the preferences of domestic elites, their external partners, and the public enables relatively well-legitimated delegation agreements—such as treaties ratified by parliament—that provide relatively clear transfers of authority. Clear and

binding delegation deals are often conducive to effective collaboration in the field. Moreover, convergent aims can produce what Stephen Krasner calls a “self-enforcing equilibrium” in which both sides have a sustained interest in cooperation.³¹ Sound performance can earn public plaudits for both the external actors involved and the government, and can win the joint venture public and international support that protects it when resistant domestic elites try to clip its wings. Strong performance also elicits public cooperation, which in turn facilitates effective performance and wins further performance legitimacy in a “virtuous circle.”³²

Most sovereignty-sharing arrangements do not benefit from such supportive political conditions, however. Most reflect highly asymmetric bargains struck when fragile state governments have been deeply dependent on external support for regime security. State consent often is compromised, in the sense that it is driven more by crisis conditions or overwhelming international leverage than by enduring shared interests or a common vision for better governance.

Even when domestic and international partners share some goals, such as convicting rebel warlords or curbing violence in the capital, their interests and policy preferences seldom align neatly. External actors sometimes prioritize strategic aims that cut against the stated purposes of the joint venture or the needs of the state in question, and domestic leaders sometimes have little interest in governing well by Westphalian standards. In fragile states, even reform-minded leaders face incentives to practice “neopatrimonial” politics, enriching and protecting themselves and their copartisans against political rivals.³³ Domestic elites who embrace rule-of-law principles face what Christoph Zürcher et al. call “adoption costs,” as the rule of law may compromise other political objectives, including personal wealth and self-preservation.³⁴ For all of these reasons, many agreements to share sovereignty have rested on precarious political foundations.

Divergent preferences and domestic reluctance to cede control tend to produce ambiguous agreements that leave key rights and responsibilities vague.³⁵ The precise authority of external actors, the scope of the parties’ cooperation, and the duration of the venture are often ill-defined, particularly in regard to domestic institutional reform. This helps make the arrangements palatable to both sides, but leaves room for ownership gaps, confusion, and feuds between the partners. When they are not rooted in shared interests and clear and enforceable contracts, sovereignty-sharing ventures are prone to waver or fray during implementation.

Effective performance requires that both sides support the venture—or at least tolerate it. This is possible in pockets where preferences coincide, but where interests diverge, partners are apt to work at cross-purposes or to engage in politicized feuds that undermine an arrangement’s effectiveness and perceived legitimacy. Without host-state cooperation, in particular, even the most capable external actors struggle to deliver the effective services needed to win public and international support.

Overwhelming external and public pressure sometimes can help hold a reluctant government to the terms of the deal, but enforced equilibriums are highly unstable. Domestic leaders retain the sovereign right to withdraw consent, and that lever often becomes more usable over time, as the state regains its footing and external actors either turn their attention elsewhere or become too deeply invested in a joint venture to pull out. In such cases, domestic elites can exert considerable influence despite their material weakness. This dynamic makes domestic institutional reform a particularly arduous task, as few sovereignty-sharing ventures last long enough or attract enough buy-in from national officials to make much progress toward that objective. Indeed, profound and sustainable institutional reform may be too much to ask of relatively brief interventions in societies with deeply ingrained neopatrimonial practices.

A Road Map

The rest of this book elaborates on these claims. Chapter 1 discusses the normative rationales for sovereignty sharing and critiques of the practice, arguing that sovereignty-sharing arrangements normally must rely heavily on performance if they are to be justified. Chapter 2 then examines how a venture's political foundation tends to affect its design and performance, and therefore also its perceived legitimacy.

The remaining chapters examine sovereignty sharing in practice through detailed case studies of the most prominent and well-resourced ventures to date. These include the three major UN-backed hybrid criminal courts in Sierra Leone, Cambodia, and Lebanon; the joint policing mission at the heart of the UN mission in Timor-Leste; the UN commission to combat impunity in Guatemala; and the uniquely expansive economic governance program in Liberia. I select these cases for a few reasons. First, ventures that enjoy ample resources and strong international support present the toughest available tests for my arguments about the challenges of sharing sovereignty. Second, these diverse cases demonstrate the relevance of my theoretical framework to a broad array of interventions across the globe and across policy domains. Third, these are the ventures most often consulted as potential models, which makes them particularly important to understand.

To present accurate and nuanced accounts of the cases in question, I rely on more than 150 semistructured elite interviews conducted in Cambodia, Lebanon, Liberia, Sierra Leone, Timor-Leste, Europe, the United States, and elsewhere from 2016 to 2019. These offer diverse perspectives from current and former host state officials, international civil servants, donor country representatives, and civil society leaders, helping to illustrate how sovereignty-sharing arrangements evolve and how they are perceived by multiple relevant audiences.

Careful case analyses offer the best available means to evaluate the perceived legitimacy and effectiveness of joint ventures—namely, the extent to which they

outperform state institutions initially and help to narrow the performance gap over time. Official mandates offer one important framework for grading implementation, but they are often vague, blending lofty aspirations with the genuine aims and expectations of the parties.³⁶ Quantifiable data, such as falling homicide rates or results of public approval polls, are often useful. Counterfactual analysis is always important, as sovereignty sharing occurs only when external actors expect alternative options to produce very poor outcomes. Stakeholder preferences also require consideration, as various parties' views of effective performance invariably differ on the basis of their own values and interests. Lastly, careful case analyses elucidate the drivers of performance, including the high-level political dynamics at the core of this book's argument, exogenous shocks, and the agency of individual implementing actors. Understanding the interplay between structure, agency, and contingency is essential for drawing sound theoretical and policy conclusions.

Cases such as those of the Special Court for Sierra Leone, CICIG in Guatemala, and GEMAP in Liberia show that sovereignty-sharing ventures can help deliver important public services while political equilibriums hold. However, all the cases demonstrate how challenging those equilibriums are to maintain and how difficult it is to translate shared sovereignty into sustainable domestic reform. This book concludes by considering the prospects for shared sovereignty in the future. Sovereignty sharing has a checkered track record and faces considerable resistance in an era of rising nationalism, as Westphalian norms are reasserted. Nevertheless, it continues to be practiced or considered in a growing number of struggling states. Given its profound normative implications, and the meager menu of alternatives available to fill dire governance gaps, the dynamics of shared sovereignty are well worth understanding.

PART 1

Legitimacy and Effectiveness

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Justifying Shared Sovereignty

SOVEREIGNTY SHARING is an extraordinary phenomenon. Arrangements that allow foreigners to carry out core domestic functions, such as patrolling city streets or issuing criminal verdicts, fly in the face of the conventional understanding of state sovereignty. They challenge the principle that domestic actors should hold such authority, which lies at the heart of the anticolonial agenda in the Global South. Sovereignty sharing therefore raises important normative concerns, and is bound to engender controversy. When can the practice be justified and regarded as legitimate?

This chapter begins by discussing the major rationales for sovereignty sharing. These include the dire governance needs in some fragile states, the dearth of appealing alternative options, and the potential for a productive marriage between international resources, expertise, and standards and national ownership and contextual knowledge. It then reviews key normative critiques leveled at deep external intervention into domestic governance affairs, including concerns about unequal power, inappropriate governance models, and problematic external practices. The chapter then examines three key determinants of whether a specific sovereignty-sharing arrangement is apt to be viewed as legitimate: the validity of state consent, the perceived motives of the intervening actors, and the expected or observed performance of the venture. It argues that while the first two factors can carry some of the weight of justification, the perceived legitimacy of a sovereignty-sharing venture usually hinges heavily on its performance.

Rationales for Sharing Sovereignty

The prime rationale for sharing sovereignty is to address governance failings and thereby mitigate real threats to human security, inside and beyond the host state.

Other options are often inadequate or unappealing, and sovereignty sharing offers at least the prospect of two contributions. First, international actors may be able to provide effective stopgap public services. Whether the host state suffers from rampant corruption, crime in the streets, or unchallenged impunity, external involvement can buttress domestic institutions that are unable or unwilling to meet their stated responsibilities. Second, international partners may be able to implant systems and to provide training and positive professional examples that strengthen domestic institutions.

Dire Governance Needs

The reasons to share sovereignty can be compelling. Threats to human security and welfare abound in states or territories where governments are unable or unwilling to uphold law and order and provide other basic public goods. Such failings leave local populations exposed to poverty, violence, and other ills. The international community has a legitimate interest and a responsibility to address governance gaps that contribute to conflict, humanitarian crises, refugee flows, terrorist and criminal activity, and other scourges.¹ International security and the need to protect local populations sometimes provide potent reasons for deep international engagement in troubled polities, as Gerald Helman and Steven Ratner argued in an influential article at the dawn of the post-Cold War era on “saving failed states.”²

Many of the most pressing governance needs in fragile states pertain to the rule of law. In countries emerging from war or grave misrule, addressing criminal impunity is a crucial aspect of the peacebuilding process. In many such states, conviction rates for violent crime are low, and courts suffer from a lack of independence and endemic corruption. The failure to hold perpetrators of mass atrocities accountable for their crimes undermines efforts to build trust between the public and the justice system, and weakens global human-rights norms. Impunity also can encourage further abuses, allow social wounds to fester, and thereby impede important aspects of reconciliation.³ Pursuing justice for mass crimes is both politically and technically challenging. When local courts are unable or unwilling to pursue accountability alone, there may be good cause for sharing sovereignty.

The same is true in the law enforcement arena, where the need for stopgap public security services and police reform is often readily apparent. In many fragile states, police are ill-equipped to uphold law and order, and are poorly incentivized to do so. They sometimes commit more crimes than they resolve. Domestic leaders often view control of the police as crucial to preserving their positions in power, and police sometimes function more as a praetorian guard than as public servants.⁴ In such contexts, the general population may have little protection from threats ranging from ordinary street crime to organized gang violence. Worse still, local police sometimes commit serious abuses themselves. Without effective law enforcement, criminal activity can

spread into general instability, threatening conflict or state collapse. Here, the logic for international intervention dovetails with the rationale for peacekeeping and peace enforcement operations: to protect civilians and avert threats to international peace and security.

Similar needs can motivate international forays into domestic criminal investigation, which is a crucial link in the rule-of-law chain—and often one of the weakest in fragile states.⁵ Weak investigation enables impunity and is a major reason why so many major crimes in fragile states go unpunished. For example, the murder conviction rate in the Northern Triangle of Central America was below 5 percent in 2011–13.⁶ Joint ventures in this area have aimed to augment domestic technical capacity and curb the political interference that so often plagues investigations into organized crime or government-linked offenses.

Many fragile states also suffer from failure to curb corruption. The abuse of public office for private gain has cancerous effects in many countries. In 2013, World Bank President Jim Yong Kim called corruption “public enemy no. 1” in the developing world.⁷ Studies have shown that corruption has strong adverse effects on most basic indicators of human welfare, ranging from material needs to social trust.⁸ It starves needy populations of productive investment, and creates incentives to capture the flag and cling to it by any means necessary. As Robert Rotberg argues, the conflict and government repression that plague many fragile states stem “more from avarice and the rewards of corruption than from ideological drivers.”⁹ Corruption is not just a matter of domestic discontent. It can present international security challenges by eliciting popular movements that destabilize governments.¹⁰ Outrage at corruption helped spark the Arab Spring, for example, and it has been a central motivator for mass demonstrations since 2019 in Bolivia, Chile, Egypt, Haiti, Iraq, Lebanon, Liberia, and elsewhere. Sovereignty-sharing ventures are one potential means of constraining domestic officials and limiting their scope for corruption.

Sovereignty-sharing ventures have had mandates to meet these needs by providing sound public services and helping host states build well-functioning Weberian institutions, liberal democratic norms, and the rule of law. To some degree, sovereignty-sharing arrangements thus represent part of the broader “liberal peacebuilding” project. At the same time, they constitute efforts to remedy one of the prime defects of liberal peacebuilding, expounded by Roland Paris: the failure to build domestic institutions strong enough to support democracy and economic liberalism.¹¹ To the extent that sovereignty-sharing arrangements buttress and strengthen domestic rule-of-law institutions, they can help to ensure that state officials are constrained by institutional checks, rules, and broader societal norms pertaining to human rights, principles of equity, and other protections. Although this model of “good governance” is subject to valid critiques (discussed below), it is rooted in widely recognized norms

of popular sovereignty, government accountability, and human rights—principles generally supported by the residents of fragile states.

Meager Alternative Options

Another reason to consider sovereignty sharing is the paucity of alternative options. Addressing governance failures in fragile states is a daunting challenge, and deficiencies in the rule of law are particularly hard to fill. Ordinary technical and financial assistance often does not suffice. Even where technical advisors impart useful skills, they can seldom rectify the malign incentives that discourage state authorities from prioritizing the public good over personal, familial, partisan, or sectarian gains. Grants and loans can help augment state capacity, but they often aggravate incentive problems by creating new rent-seeking opportunities and by contributing to government dependency on external donors, rather than on the population, for funding and accountability.¹²

International administration is seldom an attractive alternative. Imposing international command collides directly with the Westphalian conception of sovereignty and the associated principle of noninterference; and the path between neotrusteeship and outright imperialism can be slippery.¹³ As Michael Doyle reminds us, “flowery words and humanitarian intentions” also accompanied the conquests of Africa and Asia.¹⁴ Even where “neotrusteeship” is politically possible, it often carries prohibitive material costs. Moreover, international administration is no guarantee for stronger domestic governance;¹⁵ supplanting indigenous institutions may even delay or impede their growth. A brief wave of neotrusteeship began in 1999 when the United Nations established transitional administrations in Kosovo and East Timor, and continued in 2003 when the US government led the creation of the Coalition Provisional Authority in Iraq. However, there is little appetite at the UN Security Council, the White House, or elsewhere for international administration. Neotrusteeship is decidedly out of vogue and will likely remain so for the foreseeable future.

Even partial usurpation of a state’s domestic authority carries many of the same drawbacks. Such interventions are costly, as illustrated by the international criminal tribunals for the former Yugoslavia and Rwanda and the long-standing Chapter VII enforcement missions in places such as Darfur and the Democratic Republic of the Congo. Uninvited interventions can elicit resistance from state authorities, as the challenges faced by the International Criminal Court illustrate, and may not help build stronger domestic institutions.

In this context, sovereignty sharing has emerged as an alternative way to fill governance gaps in fragile states.¹⁶ In a seminal 2004 article, Stephen Krasner argued that it merits a place on the meager menu of policy options for addressing governance failures, because shared sovereignty enables a constructive form of “organized

hypocrisy”—it reconciles the need for external involvement with respect for sovereignty via the requirement of state consent.¹⁷ Sovereignty sharing thus offers more impactful engagement than ordinary technical assistance, but carries lower costs and raises fewer normative problems than coercive or full-fledged international administration. Importantly, an express aim of such arrangements is to empower the sovereign by helping to align the juridical and empirical elements of statehood, a challenge that Ashraf Ghani and Clare Lockhart refer to as “closing the sovereignty gap.”¹⁸

The normative argument for shared sovereignty dovetails with the rationale for a responsibility to protect (R2P). The R2P framework emerged as a means to shift international discourse away from the Westphalian conception of sovereignty as an exclusionary right, and toward a notion of sovereignty focused on the state’s responsibility to its citizens.¹⁹ According to the International Commission on Intervention and State Sovereignty, which played a seminal role in articulating the norm, those responsibilities begin with the state but extend to the international community, which bears obligations to help prevent grave humanitarian harm, to assist states in meeting their responsibilities, and (most controversially) to intervene in exceptional cases even without state consent.²⁰

Endorsement of R2P by UN member states at the 2005 World Summit and by the Security Council the following year have affirmed that while the grounds for intervention remain hotly contested, some aspects of the principle are broadly accepted: that states have responsibilities toward their citizens, that external actors have duties to help them meet those responsibilities, and that the Security Council can authorize intervention in certain cases of mass atrocities.²¹ Sovereignty-sharing arrangements rely on a similar normative rationale, but they subject international interventions to a requirement of state consent. They endeavor to address governance failures intrusively, but without confronting Westphalian sovereignty norms directly.

Potential Performance Advantages

Arguments in favor of shared sovereignty also point to potential performance advantages. To the extent that national and international partners share an interest in addressing governance problems, they can bring complementary assets to the table. External actors generally bring resources, technical prowess, and political weight. In the rule-of-law domain, each of these can be crucial. Resources to fund equipment and personnel are an obvious benefit of external involvement. Judges and lawyers need passable salaries, adequate office and courtroom facilities, and staff to conduct research, manage files, and otherwise administer effective justice. Police need cars that start, fuel in the tank, protective gear, and communications systems. Criminal investigators need equipment to collect and analyze evidence, and secure storerooms in which to keep it. Anticorruption offices need functioning computers to manage

spreadsheets. These elementary resource needs are in short supply in many fragile states, where government revenues are low and siphoning is common.

International technical expertise is often valued as well. This may include knowledge of relevant legal doctrines and procedures, methods of research and drafting, or skills in courtroom advocacy. It may include police tactics to manage crowd control or use a wiretap. It may entail knowledge of how to analyze a DNA sample or date forensic remains, or it may involve setting up an accounting system to monitor possible graft. In any of these scenarios, the direct involvement of external actors may boost the partners' capacity to provide rule-of-law services and facilitate on-the-job training.²²

External involvement also has political benefits. It can help domestic leaders spread the political costs of controversial decisions, such as painful but necessary economic reforms or sensitive criminal investigations or verdicts. Along similar lines, international involvement can provide a useful seal of approval for domestic elites keen to demonstrate that the venture has comported with global standards.²³

Domestic actors also have much to contribute. Host state leaders possess legitimating authority, and their involvement can foster a sense of local ownership conducive to building public confidence in the rule of law. Domestic actors also bring superior local knowledge—of language and cultural customs; of history and social geography; of laws, politics, and institutional norms; and of established professional practices. Without substantial assistance in these domains, even resource-rich, highly skilled external actors would likely flounder.

When the partners pull in a similar direction, sovereignty sharing can be effective in filling immediate shortfalls in local capacity. It can also help strengthen host state institutions when national and international personnel work side-by-side and have sufficient incentives to learn from one another. A joint venture that delivers reasonably strong services and credible reforms may also boost public confidence in state actors.

Fragile state leaders sometimes have embraced shared sovereignty to achieve ends that ailing state institutions could not achieve alone. They have done so via formal pacts or by agreeing to share authority during delicate periods of transition after international trusteeship. They also sometimes have shared sovereignty less formally during a crisis. A striking example occurred in 2010 after the earthquake that devastated Haiti. Hillary Clinton, serving as US secretary of state, obtained the consent of Haitian president René Préval to dispatch US military personnel to run the airport in Port-au-Prince to facilitate aid shipments. Clinton recalls that Préval told her, "I need you to be Haiti for Haiti, because right now we can't do it."²⁴

Concerns about and Critiques of the Practice

Despite the possible benefits of shared sovereignty, its dangers are also readily apparent. It involves the transfer of power in highly asymmetric relationships, the infusion

of norms and systems that may not be appropriate for local needs, and the injection of personnel who are not necessarily well equipped to perform in the host state environment and who generally are not subject to local accountability mechanisms.

Unequal Power and Self-Determination

First and most obviously, sovereignty sharing raises concerns about unequal power and the self-determination of fragile states, almost all of which have endured colonial rule and other forms of foreign domination. Although national leaders sometimes issue formal requests for sovereignty-sharing arrangements, proposals for shared sovereignty usually originate abroad. The US government often has led the push, with the United Kingdom, France, Australia, Canada, and Portugal playing key roles in some cases. Indeed, in almost every case to date, sovereignty-sharing ventures have been led by former colonial powers or other countries with deep ties to the host state. This reflects efforts by major states to guard their investments and maintain spheres of influence, but in some cases it also reflects a foreign government's sense of special responsibility—either because it contributed to the fragile state's predicament or because it has unique knowledge, experience, and connections. These are all reasons why the external actors most interested in sharing sovereignty may be precisely those with track records of imperial rule over the host state or hegemony in its regional environs.

Even if the intent of intervening countries is benign, power asymmetries raise concerns about paternalism.²⁵ Shared sovereignty in fragile states normally occurs within or alongside broader peacebuilding missions that are imbued with a liberal discourse prioritizing self-government. This reliance on a liberal justification undercuts the normative basis for entrusting external actors with domestic governance authority—the essence of what Dominik Zaum fittingly calls “the sovereignty paradox.”²⁶ In a highly asymmetric partnership, “shared” sovereignty may devolve in practice to a form of partial trusteeship and external control.²⁷ Roger Mac Ginty and Oliver Richmond argue that in such unequal relationships, “hybrid” governance is prone to become “a soft form of hegemony” in which “rhetorical claims of local ownership . . . tolerate difference as long as it does not change the overall model.”²⁸

Shared sovereignty is precisely the type of deep governance intervention that some critics deride as liberal imperialism—a “hegemonic, tyrannical project” and a new “*mission civilisatrice*”²⁹ that extends the “sovereign frontier” of mighty (mainly Western) governments at the expense of weaker countries.³⁰ External discharge of sovereign domestic authority is “inherently paternalistic,” argues Stefano Recchia, and it clashes with liberal norms of self-government.³¹ Richmond and Michael Pugh fault intervening parties for using technocratic governance programs to cement unequal power relations.³² David Chandler characterizes neotrusteeship and shared

sovereignty as elements of an “empire in denial,”³³ in which a notionally apolitical “institutionalist discourse of intervention and regulation” defies liberal norms by rationalizing the imposition of “mechanisms of control and ordering.”³⁴ Florian Kühn argues that Western-led liberal interveners have much in common with authoritarian members of the global “intervening class,” driven more by elite economic interests than by democratic principles.³⁵

The very concept of shared sovereignty is extremely sensitive in the Global South, where colonial and imperial legacies loom large. The concepts of state fragility and shared sovereignty also raise concerns about structural racism. In many postcolonial societies, the involvement of white Western officials in domestic governance is more than a problem of optics. It runs the risk of reinforcing racial stereotypes about who is fit to govern—a discourse that Branwyn Gruffydd Jones calls “a modern form of racialized international thought.”³⁶

Fearing unsolicited foreign intervention, national elites tend to cling to Westphalian norms and emphasize the indivisible aspects of sovereignty. Normalizing the practice of shared sovereignty could facilitate further intrusions—a widespread concern in the Global South, particularly as principles like R2P reframe sovereignty as more porous and duty-based than the rights-based Westphalian regime.³⁷ Even when fragile state governments agree expressly to share sovereign powers, consent comes in various shades of gray, inevitably affected by power inequalities. Despite their legal entitlement to Westphalian defenses, governments may feel compelled to accept undesired foreign intervention when they are deeply dependent on outsiders for survival. It is no coincidence that shared sovereignty usually has occurred in small states emerging from the rubble of conflict and chaos—including newly independent polities midwived by the international community such as Bosnia, Kosovo, and Timor-Leste. Therein lies an important paradox. The states with the greatest governance gaps and need for international support are often those least able to communicate genuine consent to share their sovereign powers.

Inappropriate Governance Models and Services

A second, closely related critique is that sovereignty-sharing ventures and other deep international interventions foist inappropriate governance models on fragile states. External actors unavoidably arrive with certain values about how to govern, and consistently have sought to transplant their favored norms, practices, and institutional structures into domestic systems. In general, they have adopted concepts of “good governance” derived heavily from the practices of advanced industrialized democracies.

Critics long have accused international interveners—and particularly powerful Western states—of using their leverage to force maladapted governance models on societies hard-pressed to resist. Theories of “structural power” point to an additional mechanism

whereby powerful states and institutions exercise influence: by shaping global normative discourse. Such theories suggest that prevailing norms about what constitutes “good governance” are so widely held, preached, and practiced that fragile state officials may perceive few alternative ways to try to govern and develop their own states.³⁸

Some analysts argue that the dominant governance model, with its emphasis on Weberian systems, is undesirable or simply unattainable in many fragile states, at least in the near term.³⁹ For example, Thomas Carothers and Francis Fukuyama contend that rule-of-law interventions wrongly assume that a gold standard for governance exists across societies and that intervening actors underestimate the importance of norms—as opposed to laws and formal rules—in driving reform.⁴⁰ International actors may have superior resources and technical expertise, but cannot necessarily discern which local institutional arrangements will best foster peace and development.⁴¹ Noah Feldman thus argues, in reference to interventions in Iraq and elsewhere, that a “high failure rate strongly supports the intuition that we do not know what we are doing.”⁴² As the vast literature decrying the “Washington Consensus” suggests, the development policies and models advanced by Western donors and international financial institutions do not always deliver the desired outcomes. Even the World Bank has advocated for “best-fit” institutions, as meeting Weberian rule-of-law standards is not always possible.⁴³

A further critique is that shared sovereignty may retard domestic institutional development if external actors provide a crutch, encourage a culture of dependency, and let local authorities shirk difficult decisions. Some argue that international interventions in Bosnia,⁴⁴ Timor-Leste,⁴⁵ and Afghanistan⁴⁶ have had this effect, sapping rather than enhancing the legitimacy of local institutions. A heavy international hand can also prevent necessary indigenous reconstruction processes from taking their course.⁴⁷ Moreover, as former British Prime Minister Tony Blair warns, internationally funded entities may “suck capacity into a parallel structure that stands apart from the rest of the system,” creating temporary “islands of excellence that do not strengthen (and in some cases actually undermine) the capacity of the government.”⁴⁸

Of course, external actors do not necessarily create islands of excellence. They bring their own performance shortcomings and may not fulfill the norms they espouse. They may not function well in places where they lack contextual knowledge, and some behave in a heavy-handed way that elicits local resentment, impairs cooperation, and magnifies concerns about neoimperialism. The dearth of accountability for external actors only exacerbates the sensitivity of sharing sovereignty.⁴⁹ This problem is most notorious in cases of sexual abuse by UN peacekeepers and other overseas military personnel, but it extends to other domains.⁵⁰ Outsiders’ lack of accountability to the people they help to govern creates a troubling tension between the principles that external actors espouse and the practices they follow.

Focusing on State Institutions

Still other critics argue that international interventions focus too heavily on buttressing central state institutions at the expense of other governance structures. This necessarily entails close collaboration with incumbent political leaders. Their priorities may not reflect those of the public at large, or they may use external assistance to privilege certain constituencies. This can reinforce lasting social divisions, which in many fragile states are even deeper root causes of poor governance than weak institutions.⁵¹ As Ricardo Soares de Oliveira and Harry Verhoeven argue, national governments can “tame interventions” by engaging external partners in a focus on state stabilization rather than democratic governance, and thus using foreign support simply to neutralize threats to the incumbent regime.⁵²

Even when central governments aim to strengthen public service provision, they sometimes have little writ over significant swathes of territory such as remote tribal regions or neglected urban slums, thus creating what Thomas Risse and others have called “areas of limited statehood.”⁵³ In fact, recent evidence suggests a weak historical association between empirical statehood (measured in administrative capacity and control over the use of force) and effective delivery of basic services such as security, health, education, and infrastructure.⁵⁴ The iconic example is Somalia, long regarded as the “graveyard” of state-building ventures, where locally rooted processes in Somaliland have delivered better results than costly foreign aid programs elsewhere in the country.⁵⁵ As many critics of liberal peacebuilding have contended, bottom-up local initiatives are sometimes more effective than externally led governance interventions channeled through a country’s capital.⁵⁶

Resulting Normative Dilemmas

In sum, shared sovereignty raises real normative concerns and is subject to potent critiques about unequal power, national and local self-determination, and the efficacy of external interventions. A central thread connecting these critiques is the charge that external actors tend to impose their will to the exclusion of local voices.⁵⁷ These concerns are valid. Legitimate debate exists around how to design governance institutions and practices that accord with local values and are realistic given country conditions. External actors sometimes do overreach, force-feeding policies and practices that are ill suited to the local environment.

Nevertheless, it would be too facile to dismiss shared sovereignty as a normative nonstarter. International efforts to counter impunity, limit grand corruption, or improve police respect for basic rights are often welcomed by populations weary of domestic official abuses. Advancing the basic tenets of the rule of law is not necessarily a Northern or Western imposition. National elite resistance to such interventions

often reveals more about the problems of fragile state governance than about the limited applicability of Weberian norms.

While external intervention poses clear hazards, seeking to defer to “local” prerogatives is often highly problematic as well. In political systems where rent seeking is the norm, and where elites privilege private gain over public goods, incumbent officials may have little interest in governing well, by either global or local normative standards. Their preferences are often poor proxies for the popular will. Village-level or provincial authorities are sometimes better partners, but bypassing central state authorities may leave national institutional defects untouched.

Working with civil society organizations has similar limitations. Such organizations offer important local voices but typically have diverse views, seldom represent the full range of stakeholders, and usually lack the power to bring about major governance change on their own. Bypassing the state has backfired manifestly in countries such as Haiti,⁵⁸ and withdrawing aid more generally to let fragile polities find their own footing is a very risky endeavor in states plagued by human rights and other abuses—even if previous external interventions have contributed to those woes.

External actors thus face a dilemma. Intruding too heavily into domestic affairs risks usurping local autonomy in the service of external interests and introducing misfit models and practices. Intervening too lightly leaves troubled polities exposed to continued dysfunction, and to domination by local elites with track records of poor governance. Like others engaged in the statebuilding and peacebuilding enterprises, international actors engaged in sovereignty-sharing ventures face a tall order: to introduce sufficient external checks to promote public welfare and the expression of popular sovereignty, while seeking to provide services and shape institutions in a manner that is realistic and consistent with local aspirations.⁵⁹

Three Factors in Legitimation

Given the many compelling concerns about international interventions in fragile states, sovereignty-sharing ventures require strong normative justifications. The contemporary practice of shared sovereignty has arisen in an era in which liberal norms of autonomy, consent, and self-determination are ascendant, external domination is deeply disfavored, and paternalism is eyed with great suspicion.⁶⁰ External actors clearly do not possess a general right to exercise domestic authority. To the contrary, that principle has been roundly rejected in the postcolonial era, and for good reason. Such a right would eviscerate the norms of Westphalian sovereignty and self-determination, and provide an open door to imperial reconquest and an international order in which might makes right. External actors’ assumption of domestic governing authority must be justified by specific circumstances and with reference both to normative criteria and social perceptions of its legitimacy.

At its core, legitimacy is about the right to rule.⁶¹ It can be asserted as a deontological claim, but it clearly has a sociological dimension as well, referring to a widely held belief in the right to rule.⁶² The latter is what David Lake describes as a “relational view of authority” in which legitimacy arises through an iterative process of public validation and acceptance.⁶³ As Zaum argues, the deontological and social dimensions of legitimacy are closely linked, as the practical effect of any asserted criteria depends upon social and political deliberation.⁶⁴ This book therefore focuses on perceived legitimacy, which can be distilled into two basic forms. Intrinsic legitimacy is derived from an actor’s identity, such as royal status, or the procedural “inputs” that gave rise to a governance arrangement, such as a democratic election or state consent. Performance legitimacy is based on observable “outputs” in the form of governance services delivered.⁶⁵

Legitimation is a complex process, given the multiple audiences observing and judging the intervention. These include donor states, their taxpayers, international organizations, host state officials, their domestic political opponents, and the general public in the area where the intervention occurs.⁶⁶ Those audiences are bound to respond differently to legitimacy claims, and no single justification is likely to satisfy all of them. Thomas Risse and Eric Stollenwerk thus emphasize that there is likely to be “no single source of legitimacy.”⁶⁷ The argument here is that for a sovereignty-sharing venture to be widely regarded as legitimate, its justification generally needs to rest on three legs: state consent, humanitarian objectives, and above all, performance.

State consent is a necessary legitimating factor, but alone it is not sufficient, since states often issue consent in times of desperation or dependency, and sovereigns do not always represent the popular will. Benign perceived objectives are also necessary but insufficient to justify shared sovereignty, given disagreement over the appropriate criteria for international intervention and problems of unequal power and paternalism. As a result, sovereignty-sharing ventures usually must be justified largely on the basis of their actual and expected performance, particularly in the eyes of the host state population.⁶⁸

Host State Consent

For an intervention to be regarded as a legitimate instance of shared sovereignty, it must be rooted in host state consent. Otherwise, sovereignty is not shared; it is simply appropriated, requiring a different set of normative and procedural justifications. For host state consent to be more than a box-checking exercise, and for it to contribute substantially to a joint venture’s perceived legitimacy, that consent must bear indicia of validity.

If domestic leaders issue free and informed consent, there is little doubt that sovereignty sharing is lawful. Delegation deals fall safely within the sovereign’s right

to contract. Valid state consent also vitiates concerns about the barest forms of neo-colonialism, especially if the state in question possesses the evident practical capacity to rescind the deal.⁶⁹ For some audiences, including fragile state officials and many governments in the Global South, state consent is likely to be a major factor in assessments of a joint venture's legitimacy. The state's imprimatur is likely to hold the greatest weight with diverse audiences when domestic officials are duly elected or have other strong claims to domestic governing legitimacy. Legislative or popular ratification in particular can add to a venture's "input legitimacy."⁷⁰

State consent is not always clearly valid, however. General principles of law and ethics dictate that consent by the weaker party to an intervention—be that intervention a medical procedure or a development policy scheme—must be given freely in advance and with adequate understanding of its nature, scope, and risks.⁷¹ In many cases, assent by fragile states cannot easily be characterized as free.⁷² Sovereignty-sharing ventures sometimes occur when weak governments are deeply dependent on external support to stay afloat financially or to manage crises, such as subduing riots or warding off rebels at the city gates. The creations of joint policing ventures in the Solomon Islands in 2003 and in the Central African Republic in 2014 are cases in point. In other instances, the governments of newborn states have shared domestic governing authority as they emerge from neotrusteeship and gradually assume full sovereign control, as in Bosnia, Kosovo, and Timor-Leste. Urgency sometimes also compels the parties to move quickly, introducing external actors before detailed agreements are forged, and thus jeopardizing the principle of prior informed consent. This dynamic occurred in Timor-Leste in 2006 and in Haiti in 2010.

In such circumstances, external actors have tremendous leverage to demand a share of domestic authority. Dependency or desperation may prompt domestic leaders to apportion powers they would otherwise guard jealously. The principle of free consent does not require that host state officials be wholly unconstrained in exercising their agency, but at some point constraints become so severe that they leave little scope for meaningful choice.⁷³ In such cases, host state consent does not offer a reliable stand-alone justification for shared sovereignty.

A second major problem with relying on state consent is that national leaders may not speak for large segments of their populations.⁷⁴ Representative governance is a challenge in any country, but this concern is particularly acute in fragile states. In a number of cases, sovereignty-sharing agreements have been inked with transitional government leaders who were selected largely by external peacebuilders, rather than with elected or domestically appointed government leaders. This was true in Cambodia in the early 1990s, in Liberia in 2005, in the Central African Republic in 2014, and in Bosnia, Kosovo, and Timor-Leste as they emerged from neotrusteeship. In other instances, sovereignty-sharing deals have been struck in states where civil

conflict and deep political cleavages separate leaders from much of the population. Examples include Afghanistan, Haiti, and Lebanon.

A further problem with relying on government consent to justify sovereignty sharing is that the boundaries of delegated authority are often blurry. In most cases, as will be discussed in chapter 2 of this book, sovereignty-sharing agreements have been ambiguous in important respects. This results from divergent preferences, as well as from an interest in reserving flexibility to address changing conditions.⁷⁵ When the specific scope of authority entrusted to external actors is unclear, it becomes difficult to judge when they are operating within or outside the parameters of state consent. This has proven a long-term challenge for peacekeeping missions, such as the UN missions in Cote d'Ivoire and the Democratic Republic of the Congo, where peacekeepers sometimes have wrestled with ambiguities in host state consent regarding the permissible use of force.⁷⁶

Benign Objectives

The perception that external actors have benign objectives is a second necessary but insufficient legitimating factor. If outsiders do not evince an intent to address the needs of the host state population, their involvement in domestic governance will certainly be rejected as illegitimate—and perhaps as a noxious form of neoimperialism. To some extent, they must be viewed as acting out of what Didier Fassin calls a “humanitarian reason,” the notion that international actors can and should act to help preserve human life and alleviate human suffering.⁷⁷ External actors need not be regarded as acting out of pure benevolence; it may suffice for them to be seen as pursuing win-win arrangements. What matters is that both external and domestic audiences perceive acute local needs and an effort by external actors to help address them.

This approach to justification relates to broader historical and contemporary debates over humanitarian intervention. Even relatively staunch advocates for liberal norms of nonintervention, such as John Stuart Mill and Michael Walzer, have argued that external actors sometimes may justly intrude to alleviate certain forms of suffering, such as grave human rights violations.⁷⁸ The principal contemporary embodiment of this principle is R2P, which provides a potential normative justification for humanitarian intervention when national authorities fail to address the basic needs of the populations they govern.

As UN Secretary-General Ban Ki-moon outlined in 2009, R2P rests on three pillars: the notions that states bear responsibilities to their populations, that the international community has an obligation to help, and that international intervention may be warranted in exceptional cases, even without state consent.⁷⁹ Sovereignty sharing can fit conceptually within the second pillar of R2P, providing assistance to a state to fulfill its obligations to its population. However, the

weaker the indicia of valid state consent, the more a joint venture requires a strong humanitarian justification.

In its watershed 2001 report on R2P, the International Commission on Intervention and State Sovereignty (ICISS) proposed a set of “just cause thresholds” to determine the legitimacy of an intervention, such as large-scale loss of life and ethnic cleansing, as well as “precautionary principles” such as intervening on the basis of right intentions and as a last resort.⁸⁰ One could imagine constructing a similar set of criteria to justify shared sovereignty. International agreement on such criteria is highly unlikely, however. The ICISS “just cause thresholds” received a very chilly response from the five permanent members of the UN Security Council, which feared a loss of discretion in when to authorize intervention, and the Canadian government backed off of plans to promote the adoption of criteria in the General Assembly, fearing that such an effort would backfire and undermine support for R2P.⁸¹

Normative contestation continues over the appropriateness of R2P’s third pillar, which many governments fear could become a thin end of the wedge for more frequent and expansive international interventions.⁸² The international consensus around R2P expressed in the World Summit Outcome document and in the 2006 UN Security Council resolution pertains only to cases of ongoing genocide, war crimes, ethnic cleansing, or crimes against humanity.⁸³ Moreover, while those official endorsements reified the principle of R2P, they simultaneously asserted the Security Council’s role as the appropriate arbiter of when intervention would be justified.

Substantive norms are clearly important in assessing the legitimacy of international interventions, but Sarah von Billerbeck and Birte Julia Gippert are right to assert that they offer a “less reliable basis” for legitimation than performance, because the normative terrain is so highly “fractured and contested” in this domain.⁸⁴ Indeed, it is difficult to imagine a set of agreed-upon criteria regarding the level or type of humanitarian need or failed governance that justifies sharing sovereignty when state consent is in doubt.

Where state consent exists, external actors need not assert a right to intervene to justify their involvement in domestic affairs. A less contentious claim is that humanitarian motives or identified humanitarian needs help to justify an invited intervention. *Ceteris paribus*, to the extent that external actors are able to convince others of their benign motives, a sovereignty-sharing arrangement is more apt to be regarded as legitimate.

Benign motives do not ensure legitimacy, however. Even when the host state consents, concerns about paternalism exist.⁸⁵ As Michael Barnett argues, “even the most basic ‘gift’ and heart-felt expression of care can also be entangled with forms of domination.”⁸⁶ Intervening actors generally have superior power, and may arrive with priorities very different than those of the populations they purport to help. Séverine Autesserre’s critique of “top-down” international peacebuilding has illustrated the

pervasiveness of this problem among well-intentioned international actors—not to mention those whose motives may be less benign.⁸⁷

Even those who are most wary of paternalism in international interventions do not regard it as categorically illegitimate. Religious grounds are still sometimes advanced, but more common are claims based on superior knowledge or expertise. This thread certainly runs through sovereignty-sharing ventures. Hybrid courts profess to bring international standards of justice to ailing local judicial systems, for example, and international police missions arrive with mandates to train local officers on “best practices.” These claims are subject to many of the critiques of international intervention reviewed earlier in this chapter. The international expertise asserted, explicitly or implicitly, as a way to justify paternalistic arrangements is not necessarily fit for purpose in fragile states.

Ultimately, as Barnett contends, interventions with a paternalistic character have to be grounded in an “ethic of consequentialism.”⁸⁸ Even in domains where perceived duties to intervene may appear strongest, legitimization processes rely to a substantial degree on consequentialist logic. For example, early advocacy for international criminal justice mechanisms tended to seek legitimization through arguments rooted in principles and duties, but as debates unfolded over possible trade-offs in other values such as peace and stability, legitimization strategies have leaned increasingly on consequentialist claims about the likely effects of trials on deterrence, peace, and rule-of-law development.⁸⁹ If external actors’ motives are benign but their services are poor, the needs of the local population will not be well addressed. Without real benefits in that regard, the normative argument for allowing external actors to exercise domestic authority is likely to be unpersuasive to most domestic audiences, and to many international observers as well.

Performance Legitimacy

In most cases, sovereignty-sharing ventures must rely heavily on performance for legitimization. Even when the host government consents and substantial humanitarian needs exist, the involvement of outsiders in core domestic governance functions is inherently suspect. Outsiders are not elected, and in most respects they are not subject to the same domestic channels of accountability as state officials—weak as those mechanisms may be. To be sure, the identity of the intervening parties does matter. For example, some audiences may perceive the United Nations and regional organizations as more legitimate than interested individual states, on the basis of their procedural features, membership composition, and consequent dilution of national interests.⁹⁰ Yet in a postcolonial context, external actors do not possess durable intrinsic legitimacy or a perceived right to rule based on their identities or perceived expertise.

State consent and humanitarian objectives can help boost performance. Strong input legitimacy reflects host state buy-in that augurs well for implementation, and

perceptions by the public and elites that the external actors have arrived to help meet acute local needs can facilitate cooperation, which supports sound performance. Still, if the external actors do not perform well in the eyes of the local population, few relevant audiences are likely to regard their involvement in domestic governance as justified.

In general, the best external actors can achieve is an initial “cushion of acceptance,” in which local audiences and skeptical international observers assent to the outsiders’ involvement, treat it as provisionally legitimate, and wait to see whether they will outperform domestic institutions.⁹¹ If they do not, any “initial legitimacy” they may enjoy on the basis of the host government’s invitation, the perceived character of the intervening actors, and expectations of their performance will wither.⁹² In addition, the host government can suffer legitimacy losses when a joint venture fails to deliver strong services—a problem Geoffrey Swenson observes in externally backed rule-of-law programs in tribal areas of Afghanistan.⁹³

For a sovereignty-sharing venture, improved services are the key to earning legitimacy. Studies have shown that effective service provision has helped legitimate external actors in Mali and Afghanistan, for example.⁹⁴ They can justify external actors’ assumption of authority and elicit the support and compliance of those who welcome the services—including host state officials, donor states, and above all the general public. Perceptions of a venture’s legitimacy thus can bolster its effectiveness in a positive feedback loop.⁹⁵

Using performance to legitimate a sovereignty-sharing venture is not at all straightforward given the multiple audiences involved. When domestic public opinion points clearly in one direction, popular assessment of a joint venture’s effectiveness arguably offers the single most compelling measure of justification. Strong public approval mitigates concerns about any defects in the validity of state consent. It also eases concerns about unequal power and paternalism, though it does not eliminate them.

The analysis becomes more complex when public attitudes are divided, or when the intervention has low salience to the general population. “Fragmented local audiences” present an obvious and substantial challenge to external actors seeking legitimacy in the host state population,⁹⁶ as Jeni Whalan has shown in analyses of peacekeeping operations in Cambodia and the Solomon Islands.⁹⁷ Actions welcomed by one set of local actors may be regarded as illegitimate by another, as Gippert finds in analyses of how the use of coercion affected local officials’ perceptions of the legitimacy of EU police missions in Bosnia and Kosovo.⁹⁸

Other forms of shared sovereignty, such as an intervention to strengthen public financial management, may not be as visible to the general public, thus resulting in a weak signal. To make matters more complex, different audiences are most relevant for different types of intervention. Businesses and foreign investors may have special relevance for sovereignty-sharing ventures focused on curbing corruption, for example, while victims’ groups may be crucial for the assessment of hybrid courts.

There is no direct, simple way to measure perceived legitimacy. Public surveys can help, and this book draws on existing surveys where they are available. Interviews with relevant audiences such as host state officials, foreign officials and staff, and local and international civil society leaders also furnish important insights. Further, it is possible to assess performance and to infer degrees of legitimation from the extent to which various actors cooperate with a venture and comply with its rules.

Ultimately, assessing legitimacy entails qualitative judgments about the audiences that matter most and the various gradations between outright acceptance and wholesale rejection. Although this presents empirical challenges, it is appropriate. In a normative environment that privileges individual rights and consent of the governed, the “right to rule” is neither static nor absolute. It is subject to ongoing interrogation and social deliberation, if not also to regular processes of democratic choice, and it can strengthen or weaken according to the quality of governance services provided.

Conclusion

Justifying sovereignty-sharing arrangements requires input and output legitimacy. Host state consent and benign apparent objectives are necessary, but are seldom if ever sufficient. Ultimately, perceived legitimacy must rest primarily on performance. The cases examined in this book demonstrate that sovereignty-sharing ventures have ranged widely in their perceived legitimacy and effectiveness. Interventions such as the Special Court for Sierra Leone and CICIG in Guatemala show that joint ventures grounded in treaties that provide strong input legitimacy can earn performance legitimation by delivering effective services. GEMAP in Liberia shows that even a venture with inauspicious beginnings can gain consent and earn public acceptance through performance. The UN Mission in Timor-Leste and the Extraordinary Chambers in the Courts of Cambodia offer more cautionary tales, demonstrating that initial state consent is no guarantee of a smooth partnership and strong performance legitimacy. The Special Tribunal for Lebanon illustrates most clearly the challenges of justifying shared sovereignty when a state is unable to issue robust consent and the population is divided on the merits of the venture.

The argument advanced here is that to justify sovereignty sharing, a joint venture must produce a positive interplay between performance and public legitimation. The extent to which an arrangement generates this positive feedback loop, in providing stopgap services or promoting reform, is a good measure of its success. The next chapter will examine the political factors that tend to determine the effectiveness of sovereignty-sharing ventures—and thus their perceived legitimacy.

How Political Foundations Affect Performance

SOVEREIGNTY-SHARING ARRANGEMENTS generally need to perform well to be justified. That performance hinges largely on the strength of their political foundations, which have profound effects on how joint ventures are designed and implemented. This chapter outlines the conditions for effective performance and the major challenges that sovereignty-sharing schemes encounter when national elites and their external partners do not see eye to eye, with one another or with the fragile state's residents whom the arrangement purports to serve.

Sovereignty-sharing ventures can perform effectively when the aims of domestic elites and their international partners align reasonably well. This can occur when rampant crime, corruption, and impunity undermine state stability and threaten a government that faces domestic political pressure to strengthen the rule of law. The same problems may motivate external actors to engage to advance global norms or to forestall conflict, humanitarian strife, and mass migration. When a sufficient coalition of domestic officials and external partners support a joint venture that offers services welcomed by the public, the arrangement can win public support and cooperation, earning performance legitimacy that helps sustain the partnership over time.

Sovereignty-sharing arrangements often do not enjoy such strong political foundations, however. Some governments have handed authority to outsiders reluctantly during periods of acute dependency, when their agreement is not a reliable indicator of shared underlying objectives. This is the problem of compromised consent. When the parties' base of shared interests is narrow or weak, they tend to forge ambiguous agreements—contracts that carry uncertain legal weight, leave important rights and

responsibilities vague, and lack firm dispute-resolution mechanisms. Ambiguous agreements help procure state consent and allow the parties flexibility, but they risk confusion, overlaps, and ownership gaps. The absence of clear legal duties also makes effective implementation all the more dependent on maintaining a political equilibrium in which domestic elites support or at least acquiesce in the aims of the venture.

Preserving that unstable equilibrium is a great challenge when domestic need for external support wanes, when international actors proceed down undesired paths, or when outsiders turn their attention elsewhere. Feuds between the partners are common, and their marriages often fizzle before they complete their mandates. As the ultimate locus of sovereign authority, the host government usually moves to reclaim control—sometimes for good cause, but often to thwart legitimate functions that the joint venture was created to perform. For all of these reasons, sovereignty-sharing ventures normally struggle to move beyond stopgap service provision to embed lasting domestic institutional reform.

The Conditions for Effective Performance

Sharing sovereign authority in fragile states is an inherently challenging proposition. Delivering governance services and promoting reforms in polities emerging from war or repressive rule are formidable tasks. Nevertheless, sovereignty sharing can be done effectively when the partners share broadly compatible goals, reach a reasonably clear understanding of the terms of the deal, and provide services generally welcomed by the public.

Compatible Objectives

The leaders of fragile states share sovereignty for a range of reasons, and these normally overlap significantly with the motives that lead international actors to intervene. Fragile state leaders may delegate sovereign powers to address threats of state collapse, civil war, or regime overthrow—dangers that lead them to regard retaining full sovereignty as more costly than delegating some domestic powers.¹ For example, the implosion of domestic security institutions and a breakdown in law and order led the government of the Solomon Islands to outsource security to an Australian-led coalition in 2003.² Acute vulnerability also exists outside of such punctuated crises, which explains why the fledgling governments of Kosovo and Timor-Leste shared sovereignty as they graduated from neotrusteeship to partial sovereign control.³ In each case, host state officials have leaned on foreign protectors and sought to keep vital arteries of international aid flowing.

Security concerns often provide the primary impetus for international involvement in sovereignty-sharing ventures as well. Sovereignty sharing offers a means by which external actors can try to address a range of potential security threats emanating from

fragile states, including transnational terrorism, organized crime, cross-border conflict, humanitarian calamity, and refugee flow. In 2008, US Secretary of State Condoleezza Rice captured this rationale for deep intervention: "As globalization strengthens some states, it exposes and exacerbates the failings of many others—those too weak or poorly governed to address challenges within their borders and prevent them from spilling out and destabilizing the international order. In this strategic environment, it is vital to our national security that states be willing and able to meet the full range of their sovereign responsibilities, both beyond their borders and within them."⁴ This reversed the stance against nation building that Rice and others had adopted before taking office,⁵ reflecting the fact that even reluctant state builders have been drawn into the practice.

Of course, security crises are not the only drivers for sovereignty-sharing schemes. Reformist leaders may seek to develop stronger rule-of-law institutions to benefit their populations and strengthen their own political positions if they derive popular support from their reformist credentials. Involving outsiders may help a government drive reforms, attract international aid, and satisfy domestic constituencies—such as civil society leaders and frustrated ordinary citizens—who expect external actors to help deliver better governance than local authorities alone.

Donors may share a strong interest in promoting the same reforms to help avoid instability, conflict, and humanitarian strife—or simply foregone economic opportunities and unpaid debts. They may aim to safeguard economic and strategic investment in a fragile state by fighting corruption and improving government transparency. They also may face domestic pressure to do something about a well-publicized crisis. All of these dynamics were apparent in Liberia when the reformist Ellen Johnson Sirleaf became president and endorsed an arrangement that gave external actors cosigning authority over key government decisions.

Of course, the motives driving shared sovereignty do not always revolve around reform. Domestic leaders may simply seek to bolster their positions in power, using a joint venture to gain international resources and imprimatur for partisan applications of the rule of law. External actors may wish to protect a new government, hoping that its policies will accord with their values and interests, and share an aim in weakening the government's domestic rivals. Critics of the Special Tribunal for Lebanon have alleged that it represents a partisan venture directed against Syria and Hezbollah, for example. Critics similarly faulted the Haitian government and the United Nations for using joint police operations to target antigovernment gangs while leaving progovernment armed groups alone.

At times, the interests driving cooperation may be quite distinct. International actors sometimes seek to advance global agendas such as expanding the writ of international criminal law, which helps explain why they have been willing to participate

in a number of hybrid courts despite the highly selective nature of the trials involved. Local leaders may view the same processes primarily as opportunities to score domestic political points. The Khmer Rouge tribunal is a fitting example.

Domestic and international partners do not necessarily need to agree on a broad array of governance goals to enable effective cooperation in a distinct area, though progress may naturally be limited if their preferences align only in small pockets. Host state officials also do not have to embrace external initiatives robustly to enable reasonably strong performance in some areas of stopgap service provision; sometimes it is enough to acquiesce and stand out of the way.

Convergent objectives do not ensure strong performance or public legitimacy. As was discussed in chapter 1, host state officials and their external partners may cooperate toward ends that generate resistance from powerful opposition groups or the public. Nevertheless, the compatibility of the goals of national elites and key external actors is a vital factor in setting the stage for sovereignty sharing. The better aligned the aims of the parties are, the better they can forge agreements with strong indicia of input legitimacy, and the better they can perform, winning strong public support and generating a positive feedback loop.

Credible Contracts

In many respects, the ideal way to share sovereignty is through a formal, binding, and detailed delegation agreement—a treaty whereby state authorities grant international actors revocable authority over certain sovereign functions. Treaties require ratification, which indicates reasonably broad domestic buy-in and boosts the likelihood of domestic cooperation.⁶

Formal delegation gives international actors the clearest possible legal and political basis for intervention. That may encourage key foreign states and multilateral bodies to invest more resources in the venture than they otherwise would, and it may help in recruiting well-trained personnel. Negotiating a detailed formal agreement and pursuing its ratification also can help force sensitive issues to the surface and facilitate a meeting of the minds—or at least a better understanding of points of friction. A clear, detailed contract helps set expectations as well, which can be very important in the field. External actors are more likely to carry out their responsibilities confidently when they rely on express authority, and they are less apt to overstep their bounds. Domestic counterparts are less likely to hesitate in performing their duties and to rely on an international crutch when lines of responsibility are clear.

Another advantage of a clear contract is that it provides a useful reference point when disagreements emerge down the line. It can be particularly helpful to weaker parties otherwise vulnerable to reinterpretation by the stronger side—which is sometimes the state, given its legal power to revoke consent and its practical capacity to

frustrate implementation. Further, detailed binding pacts help make the commitments on each side more credible by raising the likely costs of noncompliance.⁷ This is particularly true on the domestic side. Donors may be more likely to penalize a government that breaks a binding formal agreement than one that breaks an informal or nonbinding accord. Perhaps more importantly, the government may face domestic costs if it violates an arrangement blessed by the legislature.

As discussed below, ambiguity has benefits in flexibility and face-saving, but on balance clear and binding deals are likely to be more conducive to effective performance. It is no coincidence that the three sovereignty-sharing arrangements established to date via treaty instruments—the Special Court for Sierra Leone, the Regional Assistance Mission in the Solomon Islands, and the International Commission against Impunity in Guatemala—have been among the most effective by most reasonable measures of performance.

Supportive Political Equilibriums

The performance of a sovereignty-sharing arrangement depends heavily on the extent to which it enjoys a supportive political equilibrium. In an ideal case, external actors would support the venture by furnishing services appreciated by domestic elites and the general population, and host state officials would offer cooperation and be receptive to reform. At a minimum, a sovereignty-sharing scheme requires substantial external investment and host officials' acquiescence to keep the bargain intact and enable agents to carry out their tasks.

Stephen Krasner thus refers to the need for a "winning political coalition."⁸ Such a coalition must include key foreign governments and international agencies, as well as a critical mass of senior host state officials, who hold the power to delegate or withdraw authority and who constitute the primary implementing partners. At times, civil society and the general public play key supportive roles as well. The more inclusive the winning coalition is, the broader the political foundation for shared sovereignty, and the greater the likelihood that various stakeholders will facilitate performance and penalize violations by either party to the agreement. The architects of sovereignty-sharing arrangements can help insulate the venture by consulting extensively with local stakeholders during the design phase, and by implementing it in a manner sensitive to their values and interests.

When national and international partners support a sovereignty-sharing venture, it can deliver useful governance services. External actors bring resources and technical capacity while national partners can deliver complementary skills and expertise, such as superior knowledge of local languages, customs, laws, and politics. For example, international investigators may have sophisticated forensic techniques at their disposal but may need local partners to determine where to apply it. National officials may

have a sensible strategy for managing social unrest but may lack the trained personnel and equipment to execute it.

Outsiders also can help domestic officials bear the financial and political costs of initiatives that are necessary but unpopular with some segments of the population. Addressing problems such as corruption or organized crime can make powerful enemies, for instance. Shared sovereignty allows vulnerable domestic officials to share responsibility with international agents and to enjoy the implicit layer of foreign protection that comes with a close partnership. In certain cases, when opposition parties or large swathes of the public trust international actors, more than domestic incumbents, to be evenhanded, foreign involvement can also confer added legitimacy on actions that would be more subject to challenges of bias or incompetence if state officials were acting alone.

Broad political support for a sovereignty-sharing venture can translate into greater public cooperation. This is vital for the performance of functions such as policing and criminal investigation, which depend heavily on popular compliance with rules and provision of information. Of course, political support also bears upon perceptions of a venture, and may yield more forgiving treatment in the media and other opinion-shaping channels. This helps external and domestic actors to earn a reputation for effective performance, which in turn helps to legitimate the joint venture and elicit further cooperation. Cord Schmelzle and Eric Stollenwerk refer to this as a “virtuous circle” of governance.⁹

If a sovereignty-sharing mechanism performs well and earns broad domestic approval, it becomes harder for its opponents to unwind it. Civil society groups, the media, opposition figures, independent government actors, and the general public can help hold the host government to account. These constraints are likely to be strongest in democratic or quasidemocratic systems, particularly in the run-up to elections. The UN International Commission against Impunity in Guatemala (CICIG), to be discussed in chapter 7, has shown how domestic actors can help keep a sovereignty-sharing mechanism in place even when many incumbent officials resist the arrangement. In authoritarian political systems, too, leaders rely on supportive coalitions to govern, and may have incentives to share sovereignty to placate groups who might otherwise mobilize against them.

International partners also can help enforce the terms of the deal when host state officials resist rule-of-law interventions. As James Fearon and David Laitin have argued, the United Nations is often too diffuse an organization to play this role ably.¹⁰ A powerful foreign government, such as the United States, or a more focused multilateral institution, such as the International Monetary Fund, normally must take the lead to keep a sovereignty-sharing venture on track. External leverage is greatest in fragile states where one or more lead donors have clear stakes in the process but

can afford to walk away. In such cases, outside pressure can provide crucial political support that helps sovereignty-sharing arrangements carry out their tasks over time. Both CICIG and the Governance and Economic Management Assistance Program in Liberia, to be examined in chapter 8, are cases in point.

Reforming domestic institutions is also possible, at least temporarily while the political stars align. No sovereignty-sharing arrangement has had a whole-of-government reform mandate, but some have been able to strengthen key links on the chain. As Krasner and others have argued, a sovereignty-sharing arrangement can help to create an “island of excellence”—an institution that performs its functions much more effectively than others in the surrounding domestic system.¹¹ The governance practices developed on these islands can at least theoretically spread to other areas of the domestic system if external actors and local leaders commit to reforms that cut against the grain of neopatrimonial politics and advance the rule of law.

Other inputs obviously contribute to performance outcomes as well. These include individual agency, unforeseen contingencies, diverse operating environments, and the difficulty of the substantive tasks at hand.¹² Yet the political foundations of shared sovereignty are crucial because they tilt the playing field, sometimes steeply. A favorable equilibrium can make the implementation of assigned governance tasks relatively straightforward. High-level support translates into resources and personnel, and it lessens the likelihood that implementing actors will face major political obstruction. Just as importantly, senior domestic and international officials are more likely to push national and international personnel to try to overcome the significant barriers to on-the-job cooperation.

By contrast, discord between the parties can make effective performance tough or even impossible. The parties may work at cross-purposes, and cooperation on the ground may unravel. Without high-level political support, even the most dedicated and talented implementing agents are hard-pressed to fulfil their tasks. These challenges are the subject of the next section.

The Problem of Precarious Political Foundations

Sovereignty-sharing arrangements generally are advertised as partnerships to advance a shared vision for improving public services and building stronger domestic institutions. This frames the problem as a lack of domestic capacity to govern well, not a lack of will or an alternative vision of what “good governance” entails. For donors, this narrative helps legitimate the intervention and justify the provision of resources to a deeply troubled government. For national leaders, exaggerating shared goals and interests is a time-tested means to secure foreign aid and to espouse their commitment to reform. Statements of common purpose and vision invariably gloss over significant points of tension and discord.

In reality, shared sovereignty usually owes more to foreign distrust of domestic governance actors than to confidence in their commitment to good governance. External actors do not seek authority they expect domestic actors will exercise well—that is, in line with their own interests and standards of good governance and the rule of law. Although the interests of national and international partners must align to some extent for sovereignty sharing to occur, such ventures usually are not rooted in deep and durable common governance objectives.¹³ Most are created when host states are desperate for assistance to address security crises, or are built around relatively narrow areas of shared interest. In either case, this leaves joint ventures with unstable political foundations that render partnerships difficult to design and manage over time.

Divergent Aims between the Parties

As discussed in chapter 1, external actors often have valid arguments for championing services and reforms that follow international standards of “good governance,” even when those clash with established local practices. External actors also may be justified in prioritizing international goals such as the spread of criminal accountability norms, economic integration, or regional stability, even if these present certain risks to the fragile state in question.

Domestic actors may have sensible grounds for holding other priorities. The prospect of hasty or externally managed liberalization that benefits foreign firms and donors at the state’s expense is one risk.¹⁴ Measures that undermine stability are another. Even when the aim of a proposed intervention, such as delivering justice or reducing corruption, sounds unobjectionable, local elites may be justified in proceeding more cautiously than external actors would advise. The pursuit of justice may undermine amnesty agreements and jeopardize peace in some cases,¹⁵ for example, or curbing corruption can reduce the short-term scope for “purchasing the peace.”¹⁶

Fragile state leaders usually have compelling incentives to focus on their own vulnerability.¹⁷ The most pressing threats they face are usually domestic, and stark differences typically exist between those who hold power and those who relinquish it.¹⁸ As Pierre Englebert and Denis Tull argue, leaders in such systems tend to see postconflict reconstruction and related initiatives as “the continuation of war and political competition for resources by other means.”¹⁹ Rival domestic elites vie to “capture the flag” and thus the powers of the sovereign. Peaceful transitions of power cannot be taken for granted, as they are in mature industrialized democracies. An exit from power can have severe economic consequences for officials, their families, and their ethnic kin. Those who lose power often lose their freedom, if not their lives. As a consequence, even benign leaders are apt to put higher priority on domestic regime stability and self-preservation than their external partners will. This is often a source of divergent preferences underlying sovereignty-sharing arrangements.

There may be other grounds for disagreement as well. External actors may seek hegemony over weak states in their imagined spheres of influence, which may lead them to use a joint venture in a manner that fosters continued dependency rather than strong independent statehood. This charge has been brought against international administrators in Kosovo and Bosnia and Herzegovina, for example.²⁰ In that context, domestic resistance to international partners may amount to an effort for emancipation.²¹

Domestic officials may have more problematic aims as well. In many fragile states, the notion that empowered domestic elites are committed to pursuing a Weberian rule of law ranges from optimistic to naive. Most such states are relatively young, and were carved from colonial territories and given international legal sovereignty whether or not their leaders had meaningful social contracts with the people they governed. Most include populations without a strong common history of nationhood, and with ample experience of internecine conflict. Their domestic political structures carry trappings of democracy and Weberian bureaucracy, but typically veer greatly from that model in substance. Rather, as Englebert argues, governing elites often have been able to translate international sovereignty into “legal command,” enabling them to regulate behavior and appropriate resources.²²

In neopatrimonial systems, clientelism and political repression are key means by which incumbents solidify their positions. Laws and state institutions are regarded as instruments more for patronage and personal enrichment than for providing public goods.²³ The idea of sharing sovereign authority with outsiders to develop stronger rule-of-law institutions is anathema to the logic of neopatrimonial rule, putting elites’ wealth and security at risk.²⁴ Even reform-oriented leaders face a gravitational pull toward neopatrimonial practices in many fragile states, as they must compromise to some extent to maintain a domestic coalition that is sufficiently strong for governing. Embedded incentive structures are notoriously resistant to change, and domestic elites’ ability to cultivate power and authority usually hinges more on their ability to function within the prevailing domestic order than on their success in overturning it.²⁵ For local leaders, the preferred outcome is to maximize external assistance while minimizing loss of political control.

Compromised Consent

When host state officials and their external partners do not share proudly compatible aims, state consent to share sovereignty is bound to be compromised or qualified. It may be compromised in the sense that national leaders have agreed to delegate authority out of dependency or desperation. Even before the ink is dry, they may resent and resist sharing sovereignty, or differ on the scope or duration of the partnership. Alternatively, the same weakness that encourages a host government to outsource key

functions may prevent it from executing the transfer authoritatively—as in the case of a government unable to secure the approval of powerful opposing factions or the general public. This, too, is a recipe for performance problems.

State consent may also be qualified in the sense that it pertains only to a narrow range of desired activity. This is most problematic if the boundaries of consent are not clear from the outset and only become apparent during implementation. In the UN police mission in Timor-Leste, for example, domestic leaders consented to emergency stopgap service provision, but withheld consent needed to drive certain key reforms. In Cambodia, the Hun Sen government agreed to try some Khmer Rouge suspects, but has stonewalled cases against others. Compromised or qualified consent leaves partnerships highly susceptible to drift or gridlock.

Alignment with Public Preferences

Although the preferences of domestic and external partners often overlap, especially amid crises, priorities always diverge in important respects. Host government consent is apt to erode quickly if external actors veer in directions that put domestic elite interests at risk. Of course, the domestic and external architects of sovereignty-sharing arrangements are not unitary actors, and this compounds the challenge of setting a strong political foundation. On the international side, multilateral organizations and multistate coalitions have diverse interests and governance values. The same is true domestically, as the government officials who agree to share sovereignty do not necessarily share the interests of midlevel bureaucrats, opposition parties, the median voter, or even other senior executive officials. While each side requires leadership to forge an agreement, the public legitimacy and performance of sovereignty-sharing arrangements hinge partly on the extent to which diverse stakeholders are represented in the process.

Deals between domestic and international elites are sometimes possible precisely because neither side represents the interests of the full range of relevant stakeholders.²⁶ In fragile states, incumbents are apt to prioritize strengthening the domestic coalition that keeps them in power, and weakening foes to lock in political advantages before friendly external actors depart.²⁷ To the extent that they do so, they may view courts, police forces, and revenue-generating state-owned enterprises more as tools of political power than as means to serve the public at large. International actors are apt to prioritize bolstering domestic elites who share their preferences, because, as David Lake and Christopher Fariss argue, they seek “more capable states but also states that will enact policies they prefer.”²⁸ This leads to what Lake calls “the statebuilder’s dilemma”: the more external actors invest in a fragile state’s development, the more likely they are to demand loyalty from the government in exchange, which weakens the government’s domestic public legitimacy.²⁹

International actors tend to partner with host-state elites based on in-group identification rooted in common language, class, education, location in urban capitals, and

other factors.³⁰ In addition, since sovereignty sharing aims to buttress and strengthen state institutions, external actors are almost always perceived as aligning with the government. Close partnership with the empowered party, coalition, class, or ethnic group can generate opposition from rival groups—a problem that has plagued successive international ventures in Somalia.³¹

When the interests of international actors and friendly local elites diverge from prevailing public preferences, external intervention is apt to exacerbate noninclusive governance.³² It is also likely to invite stiff opposition as a neoimperial pact. Hezbollah's resistance to UN support for the Special Tribunal for Lebanon, championed by the US and French governments and a pro-Western domestic coalition, again provides an example.³³ A stable political foundation for shared sovereignty depends not only upon the degree of shared interests between the official signatories, but also on the venture's alignment with other stakeholders' priorities.

Ambiguous Agreements

The political foundations of sovereignty-sharing arrangements naturally affect their design. When the parties' preferences diverge, they tend to forge ambiguous agreements that offer flexibility but contribute to ownership problems, confusion, and political feuds as the agreement is implemented. Misaligned preferences between the parties or within the host government often undermine efforts to forge legally binding pacts. As a consequence, most sovereignty-sharing arrangements have been built on shakier contractual grounds, such as executive agreements or memoranda of understanding (MOUs). Alexander Cooley and Hendrik Spruyt have demonstrated that bargaining over sovereign rights often leads to "incomplete contracts" that do not define the distribution of rights precisely, and which remain subject to renegotiation. This occurs due to uncertainty about future events and the costs of negotiating and enforcing a more "complete" and permanent contract that stipulates all future contingencies.³⁴

Exigent circumstances sometimes give partners reasons to forge flexible agreements, but the rationale is also strategic. Executive agreements and MOUs leave both sides more room for subsequent maneuver and help the parties avoid firm commitments they may later regret. Host state officials may expect that their bargaining position will improve as the crisis prompting the intervention subsides. Thus, they may accept the terms they must during an hour of need, while leaving room to modify or terminate the deal later at an acceptable cost.³⁵ External actors also may prefer not to etch their commitments in stone, cognizant that priorities may change as conditions evolve. Dispute-resolution mechanisms are consistently weak, since one or both parties usually refuse to accept a binding form of adjudication. The backstop for resolving disputes is almost always negotiation between the parties.

Blurry Scope, Duration, and Commitment to Reform

Among the most sensitive aspects of any sovereignty-sharing arrangement are the scope of delegated authority, the duration of a venture, and its provisions for reform. In general, domestic governing elites have an interest in relinquishing only as much authority as necessary to satisfy the international partners whose help they need, protecting authority they deem crucial to maintaining political power and privileges.³⁶ For that reason, as Aila Matanock contends, host governments seldom agree to “full delegation deals” conferring unfettered authority to international actors over certain core state functions. Instead, they consent to “partial delegation deals” whereby international actors make decisions and execute sovereign functions alongside national counterparts.³⁷ These “partial” transfers of sovereign authority require day-to-day shared responsibility on the ground, and inevitably leave blurry lines regarding the roles of international and state actors—an important source of instability. As Matanock notes, partial delegation deals are apt to present particular challenges in accomplishing complex rule-of-law missions that depend on multiple parts of government.³⁸

Domestic governing elites sometimes seek to focus sovereignty-sharing ventures on problems emanating from their enemies rather than from their friends. They may try to design criminal investigations and trials to target political foes while insulating allies, for example, or try to confine an external security intervention to mopping up street violence instead of tackling grand official corruption. When external actors wish to tackle problems stemming from the government itself, vague contractual provisions may be the price to secure consent, enabling host state authorities to avoid unwanted commitments while leaving international partners space to press the issue when the contract is implemented. Even if external actors are complicit in supporting a partisan domestic agenda, ambiguity about the scope of a venture can help preserve plausible deniability.

Duration is also sensitive. Krasner argues that to prevent obstructive local actors from dragging their feet on reform and waiting for external actors to depart, the most effective sovereignty-sharing arrangements are likely to have no fixed end date.³⁹ However, as Paris argues, lengthy ventures could “come very close to colonial-type control” and could require protracted suppression of domestic political autonomy that is bound to generate resistance.⁴⁰ Domestic elites normally resist open-ended transfers, as the conditions that lead them to share sovereignty are often transient. Legitimizing elections pass, debt crises are resolved, or rebels sign a peace accord and lower their weapons. Domestic elites who expect conditions to settle are unlikely to agree to long-term transfers of authority, such as the power to adjudicate a defined set of criminal trials, unless they are clearly bounded in scope. Even when the scale of domestic governance needs might justify a lengthy stay—or at least one without a

pre-advertised expiration—domestic officials will seldom lock themselves into sharing sovereignty over a long term.

When the parties differ on the optimal duration of a joint venture, temporal provisions are apt to be vague. They may authorize a venture in temporal slices, requiring regular review and renewal of consent, or set domestic performance benchmarks after which full sovereignty reverts to the state. These contractual devices allow the parties to adjust if the arrangement does not perform to expectations, and they provide safeguards against the risk that external actors will overstay their welcome. However, requiring renewals and setting qualitative standards for exit can make the duration of shared sovereignty highly uncertain and subject to further rounds of bargaining. In such cases, sovereignty-sharing arrangements may expire too quickly to complete their tasks—particularly those related to the generational processes of capacity building and institutional reform.

Institutional reform is a third area in which divergent national and international preferences often lead to contractual ambiguity. International resources for capacity building are almost always welcome, but domestic elites are usually ambivalent about externally driven institutional reform. Outsiders may pursue reforms that serve their own interests rather than those of the host state, or may build systems that are unsustainable or poorly suited for the local environment. Moreover, in fragile states, dysfunctional institutions often serve elite interests. A well-oiled bureaucracy committed to executing stated policies and following rules to serve the public is anathema to the management of a patron-client system built around a fusion of public and private networks. Less regulated, less transparent institutions can be manipulated more easily.⁴¹

For these reasons, domestic leaders generally resist giving external actors broad authority to reshape local institutions. They may allow a foreign judge to issue convictions, or permit an external financial controller to cosign government checks, but refuse to let international officials hire and fire local staff and redesign domestic agencies. International partners also may be loath to press for strong authority to drive reform, either because they fear it will jeopardize national cooperation toward immediate priorities or because they are reluctant to commit too many resources to the lengthy process of reshaping local institutions. When these dynamics are present, contracts to share sovereignty will express the goal of reform while leaving unclear precisely how that aim will be achieved.

Benefits and Drawbacks of Ambiguity

Incompleteness and blurry lines have benefits. As Krasner argues, a certain amount of obfuscation is often necessary and desirable, because it allows policymakers to “engage in organized hypocrisy” by agreeing to compromise the state autonomy core to the Westphalian sovereignty norm.⁴² For example, Michael Lipson notes that in the domain of peacekeeping, ambiguous and sometimes contradictory language has

helped the United Nations maintain rhetorical support for “bedrock” principles such as consent and impartiality while also creating space for “robust peacekeeping” that may infringe upon sovereignty.⁴³ Even a very informal executive agreement or MOU can help to legitimate an intervention by communicating consent from national authorities.⁴⁴

Agreements that leave some rights and responsibilities unclear also provide room for adaptation as they try to implement complex arrangements on the ground.⁴⁵ In fragile states, conditions can change rapidly and dramatically, making contingencies difficult to foresee. The diplomat Alejandro Wolff, who represented the United States at the United Nations in 2005–6, when multiple sovereignty-sharing ventures were forged, notes that such arrangements are often obsolete almost immediately due to changing circumstances.⁴⁶ Ambiguities also provide some shock absorption, enabling the parties to save face by characterizing some forms of noncompliance as differences in interpretation.

The drawbacks of ambiguous agreements are also readily apparent, however. They allow the parties to sign a document or shake hands without working through contentious points and achieving a real meeting of the minds. Confusion can result as subordinates try to implement the arrangement without clear guidance on how they are meant to cooperate. International actors and their national counterparts may duplicate functions. Ownership gaps are another obvious risk when responsibilities are unclear, as each side may point to the other as being responsible for certain costly or undesired tasks. Without reasonably bright lines regarding rights and responsibilities, noncompliance is more difficult to identify and address.⁴⁷

The continuing strength of Westphalian norms makes negotiating over sovereign rights a delicate affair. As Paris notes, an “anti-colonialist ethic continues to predominate . . . and shapes the normative environment” in which peacebuilding interventions occur.⁴⁸ It is costly to be seen as prying sovereignty away from a weak state, as this limits international actors’ ability to impose detailed contracts, even on national partners that are highly dependent on external aid. Powerful states that subscribe to a more permeable view of sovereignty must be mindful of coalition partners and domestic audiences loath to intrude upon a vulnerable country. The path to an agreement is often ambiguity, which leaves the joint venture exposed to high risks of drift or deadlock during implementation.

Unstable Equilibriums

Both the political foundations of a sovereignty-sharing arrangement and its design affect its performance. Outside of areas in which the parties’ interests align, they are apt to pull in different directions. When they do, stopgap operations are apt to stall, as are efforts at reform. Host state officials usually can use their power to revoke

consent and their practical capacity to frustrate implementation to control or conclude joint ventures that they fear will undermine their interests. This largely explains why sovereignty-sharing arrangements can provide useful emergency services but have proven less conducive to implanting sustainable rule-of-law reforms.

Obstacles to Effective Service Provision

To perform well, sovereignty-sharing ventures generally need strong host government support and cooperation. The tasks assigned to external actors usually require substantial understanding of the local environment and an ability to communicate well with national counterparts. In most cases, relatively few external actors are fluent in the prevailing local language, and even fewer have been well versed in local laws, norms, and social customs.⁴⁹ What Séverine Auteserre describes as the “knowledge hierarchy” in peacebuilding efforts⁵⁰—a privileging of technical know-how over contextual knowledge—applies to relations both between local actors and outsiders and within the intervening international agencies. Language gaps and weak cultural knowledge may not be insurmountable when programming a new database or monitoring a state’s international frontier. They can be crippling, however, to external actors who share sovereign authority involving direct daily immersion in domestic institutions and with the local population. In these settings, external actors require close partnership with state officials to be effective.

External actors often earn their jobs more through technical skills and domain expertise than through in-depth knowledge of the country. Others get their jobs through patronage, since international posts with hazard pay can be lucrative, especially for citizens of low-income states. Sometimes, as in peacekeeping operations, entire units may be dispatched to a sovereignty-sharing venture to secure funds and score political points.⁵¹ There is no guarantee that the units sent are effective; and in countries not widely deemed to be strategic priorities, international missions may not have the luxury of applying high professional bars for participation. External actors also may have disincentives to do their jobs well—or simply disinterest. Some may be content to meet minimum standards. Others who are keen to keep their jobs and secure future contracts may downplay challenges in the field, write overly rosy performance reviews, and seek to avoid ruffling the feathers of international colleagues or domestic partners, even if doing so would advance the aims of the arrangement.⁵² In sum, the quality of external actors’ service is by no means assured, and weak performance can erode domestic support and cooperation.

Of course, the supply and demand for services are shaped by political considerations, not just technical needs. Domestic authorities may oppose or actively undermine a sovereignty-sharing arrangement that threatens their domestic control. National and international staff may work at cross-purposes, and conflicting messages

may undermine public confidence in the joint venture. Even if state authorities do not renege explicitly, their informational advantage and their command over domestic government agents enable them to end-run around the terms of agreement. Alternatively, they may simply drag their feet, “wait out” the international authorities, and unwind the legacy of the arrangement once external actors depart.⁵³

Barriers to Capacity Building and Reform

Building domestic capacity and reforming state institutions is often even more challenging than stopgap service provision. External actors often struggle to build state capacity, even when it is one of the national government’s prime interests in the arrangement. The equipment they provide is often too costly to maintain, difficult to use, or inappropriate for the host government’s needs. Training is also fraught with challenges. Rotation of international trainers, inconsistent or inapplicable lessons, losses in translation, and mismatches between the standards taught and the near-term capabilities of national authorities are all well-documented problems. In fact, sovereignty-sharing arrangements can backfire on capacity building if hybrid bodies hire local staff away from domestic public service and “suck out institutional capacity in the name of building it,” as Francis Fukuyama warns.⁵⁴ James Fearon and David Laitin add that, if an external intervention serves the interests of incumbent political leaders, they may underinvest in the indigenous capacity that would justify an earlier international exit.⁵⁵

External actors often have disincentives to invest heavily in capacity building as well. They arrive to fill governance gaps, and face pressure from donors and host state audiences to show results quickly.⁵⁶ Providing services themselves is usually more efficient than training domestic counterparts to perform the same tasks.⁵⁷ Individual external actors keen to secure new contracts and promotions need to show positive impact, which is often easier to demonstrate through service delivery than through on-the-job training of national colleagues. Susan Woodward thus argues that international actors tend to invest most in building their own ability to carry out governance functions.⁵⁸ When capacity building succeeds, the external actors may work themselves out of a job. Moreover, the methods and systems that international actors bring with them are not necessarily appropriate for the local environment. They may violate local norms of governance and justice,⁵⁹ for example, or require too much money and technical knowledge for national authorities to emulate.

Institutional reform is an even steeper uphill task. The Weberian governance practices and rule-of-law reforms that external actors promote usually aim, among other things, to loosen the executive’s grip on politics. This push for “best practices” often collides with fragile state leaders’ interest in holding onto power. Domestic incumbents often resist reforms that jeopardize their domestic control, personal security, or ability

to exploit public resources for private gain. When local elites are not committed to institutional reform, a sovereignty-sharing venture has little prospect of leaving strong, durable imprints on domestic governance.

Resistance to reform does not occur only at elite levels. Lower-ranking officials often have powerful incentives to pay lip service to the reform priorities advanced by their external partners while continuing to conform to local ways of doing business. Weberian bureaucratic practices do not put bread on the table of a civil servant with a meager state salary, and exercising judicial independence can sometimes sink the career of a judge aspiring to a higher office. Even reform-oriented domestic leaders backed by resource-rich foreign partners may struggle to implement the rule of law.

Of course, international partners are not always committed to the level of reform they espouse when cutting the red tape on a sovereignty-sharing arrangement. They may see a greater interest in cozying up to incumbent leaders and promoting domestic regime security. When external actors do endeavor to implement reforms, they often lack the ability to overcome domestic obstacles. They may have some reform-related powers, such as authority to vet domestic personnel and put new systems in place, but generally they cannot change the broader incentive structures in which national counterparts operate. Institutional reform is an inherently political process that external actors with technical backgrounds are not necessarily well equipped to lead.⁶⁰ International staff on relatively short contracts may also have little incentive to focus on long-term reforms, especially if domestic partners are resistant.

Even if a sovereignty-sharing venture succeeds in creating an island of excellence, its impact will be muted if domestic elites resist broader systemic change. Most domestic institutions function like links on a chain. A police officer arrests a suspect, a criminal investigator probes the details, a prosecutor brings charges, a judge issues verdicts, and a prison authority incarcerates offenders. Weakness in one link can offset gains in another. For example, the impact of the extended UN effort to strengthen the performance of the Haitian National Police was undermined by the absence of functioning courts and prisons to which criminal suspects and convicts could be sent.⁶¹ Islands of excellence may submerge if other parts of the local system remain dysfunctional or corrupt. These are crucial challenges, since a prime rationale for shared sovereignty is to compensate for deficient local institutions.

The Reassertion of Domestic Control

The greatest limiting factor on effective performance is often the will of incumbent domestic officials. Although sovereignty-sharing ventures often are created when host state leverage is weak, domestic leaders wield considerable clout during implementation by withholding cooperation or withdrawing consent. As Cooley and Spruyt argue, the party to a contract that holds “residual rights” over an asset

enjoys a distinct bargaining advantage.⁶² In matters concerning sovereignty, the residual rights holder is the state, thus giving national leaders a legal trump card: the entitlement to revoke consent.⁶³ External actors can apply pressure, such as threats to curtail aid, but efforts to force a fragile state to share sovereignty grate against Westphalian principles and the liberal norms of self-government used to justify international interventions. It is thus difficult for outsiders to resist domestic demands to hand back sovereignty.⁶⁴

The host government's leverage often improves over time. Crises may subside, or domestic leaders may solidify their positions in power by winning an election, coopting rivals, or developing a more secure handle on the state security apparatus. Foreign interest in the venture may recede when the problem prompting the intervention leaves the headlines or when emergencies pass and domestic authorities reassert control. Donor fatigue may set in, whether or not governance goals have been met.⁶⁵ Priorities may change in foreign capitals when new administrations take office without the same sense of ownership as their predecessors. In any of these scenarios, key external actors may be less willing to spend political capital enforcing the terms of the deal.

Alternatively, international actors may lose leverage when they become too deeply invested to pull out.⁶⁶ This is the essence of the theory of an "obsolescing bargain"⁶⁷—the idea that threats to withdraw assistance lose credibility to the extent that doing so would doom an international effort to failure.⁶⁸ This can help national elites capture or coopt a sovereignty-sharing arrangement largely to suit their own interests, as Michael Barnett and Christoph Zürcher have theorized.⁶⁹ A case in point was the Chad-Cameroon Pipeline Project, in which Chad agreed to extensive World Bank conditions and a hint of shared sovereignty, but managed to alter the deal once the pipeline was active.⁷⁰

A weak state also can exert leverage if external partners regard it as strategically indispensable or when the political costs of abandoning it are prohibitive. Even frail governments can be tough negotiators when they are confident that donors will not shut off the tap.⁷¹ Afghan authorities long have shrugged off certain American rule-of-law demands, for example, confident that the next round of US assistance would arrive. Indeed, sometimes it is precisely a fragile state's weakness and potential to collapse that gives it sway.

Domestic leaders can assert sovereign control in a variety of ways. They can seek to amend the terms of the deal by reinterpreting unsettled provisions, or by breaching the agreement to test international resolve. They can issue policy statements or simply change how they operate on the ground, refusing certain types of cooperation or international efforts to exert authority. These means of reclamation avoid protracted formal renegotiation, and allow the host government to revise the deal

unilaterally without terminating it—perhaps helping external actors save face and recede more gracefully.

National leaders' interest in exercising full authority is normal and often desirable. Indeed, the ideal outcome of a sovereignty-sharing arrangement is for a more competent and benign government to reassume control. Handbacks can be consensual and cooperative, based on evaluations of domestic institutions to ensure their readiness for full control.⁷² This can be part of what Richard Caplan calls a "phased exit" in which international actors relinquish sovereign power, but stay on in smaller numbers to provide technical support and training.⁷³ While a premature international exit can leave frail domestic institutions in its wake, too lengthy a period of shared sovereignty can alienate local stakeholders and thwart indigenous growth.⁷⁴ This has been a critique of the extended sovereignty-sharing engagements in Bosnia and Kosovo, where international actors have periodically shifted the goal posts to justify continued intervention. However, there exists an obvious risk that venal and repressive host state officials will wrest back sovereign power to serve ignoble ends. They may do so to defend the same deficient governance practices and institutions that originally prompted the intervention.

When domestic governing elites capture a sovereignty-sharing venture, external actors can find themselves stumbling toward the exit. Keen to justify an expiring intervention and claim success, they may adopt superficial benchmarks to justify returning authority to local officials, such as numbers of staff training courses completed rather than critical evaluations of state institutions.⁷⁵ This is a general challenge in state building,⁷⁶ but it has special importance in cases of shared sovereignty, given the depth of international involvement in key domestic governance functions. Often, such ventures end before they complete their mandates and before sustainable reforms are embedded to help state institutions carry out core sovereign functions well.

An Evolving Experiment

Sovereignty-sharing ventures are important experiments, individually and collectively. They have arisen not because sovereignty sharing is normatively appealing or uncomplicated, but because governance gaps pose serious threats to human security and political stability in many fragile states, and better options are not always in sight. Even a joint venture that encounters significant setbacks may outperform domestic institutions buttressed by ordinary technical assistance programs.

Sovereignty-sharing arrangements can make positive governance contributions when the political conditions are right, but as this chapter has explained, pitfalls abound. Implanting deep and sustainable reform is even more vexing: a goal that is seldom achieved and is not always realistic. Analysts and policy practitioners need

to understand the factors that make shared sovereignty more or less likely to deliver desired outcomes. These remarkable ventures are too few in number to enable a large- N statistical study, but are enough to conduct qualitative case comparisons, identify patterns and trends, and evaluate my arguments empirically. The rest of this book will show that the dynamics discussed in this chapter are evident across sovereignty-sharing ventures in diverse states and policy domains.

PART 2

Sovereignty Sharing in Practice

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Chapter 3

Partnering to Prosecute War Crimes

IN OCTOBER 2014, former Liberian President Charles Taylor arrived without fanfare at a gloomy pre-Victorian prison outside the northern English city of Durham. It was the latest stop for the first former head of state since Nuremberg to be convicted in an internationalized criminal process. The body responsible for his trial was the Special Court for Sierra Leone (SCSL), an unprecedented hybrid tribunal created by a treaty between a sovereign government and the United Nations. Taylor's conviction for abuses in the Sierra Leonean civil war showed the power of hybrid courts to mete out justice impossible to imagine in a domestic process.

At the same time, however, two other UN-backed hybrid courts were struggling. Cambodian and UN appointees locked horns over a set of contentious cases at the hybrid Khmer Rouge tribunal, while authorities in Beirut dragged their feet in helping the Special Tribunal for Lebanon pursue several Hezbollah suspects. Like other sovereignty-sharing ventures, hybrid courts have faced steep challenges to their performance and perceived legitimacy when they have rested on fragile political foundations.

This chapter begins with a brief discussion of the promise and challenges of hybrid justice. It then presents the first of three detailed case studies, focusing on the Special Court for Sierra Leone. More than any other hybrid court to date, the SCSL illustrates the potential of mixed tribunals to perform well and earn legitimation when a government issues reasonably strong consent, when the venture is grounded in a firm legal basis, and when a sufficient supportive coalition remains to enable the mixed body to carry out its functions. Yet even under those favorable conditions, it also demonstrates the difficulty of advancing domestic institutional reform through a limited, timebound hybrid judicial process.

The Promise and Pitfalls of Hybrid Criminal Courts

The idea for hybrid courts arose in the late 1990s. Although talks for a permanent International Criminal Court (ICC) progressed, the question remained of how to manage cases that preceded the ICC's temporal jurisdiction or otherwise would not be appropriate for a fully international court. By that point, the limitations of the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR) had become apparent. Both those fully international bodies had made important contributions to justice, but both were expensive and slow. Their locations in The Hague and Tanzania limited their contact with local survivors and their potential contributions to domestic capacity building and reform.¹ Moreover, as tribunals imposed by the UN Security Council, they lacked sovereign consent and were viewed in some quarters as vehicles for Western dispensation of victors' justice. There was little appetite for creating additional ad hoc international courts.² At the same time, global justice advocates disfavored domestic trials in fragile states that lacked the judicial capacity and independence to deliver credible justice for complex, high-profile, and politically charged atrocity crimes.

In 1999, US Senator John Kerry introduced the hybrid court concept to broker compromise between UN and Cambodian officials feuding over whether to try Khmer Rouge crimes in an international or domestic court. In that instance and others, the idea of a middle path gained traction as a way to advance justice without excessive costs or intrusion into sovereign affairs.³

Hybrid courts have the potential to marry international standards of justice with strong local ownership and participation. External actors can offer legal expertise, technology, and funding to pair with domestic actors' superior contextual and cultural knowledge, among other skills, and their access to local information networks. Hybrid courts situated near the locus delicti enjoy better access to evidence and witnesses, lowering the cost and time needed for investigations. Survivors can benefit more easily from the proceedings by attending court sessions or local outreach events, and national staff can communicate judicial work intelligibly in local languages. External involvement also can help confer credibility and legitimacy on proceedings where local courts have enjoyed little public trust. For all of these reasons, the hybrid model offered the possibility of proceedings that would outperform domestic trials and be perceived as more legitimate—all at a reasonable cost.⁴

Through close working contact between external and national actors, hybrid courts also may facilitate an exchange of knowledge and capacity building and serve as models for local judicial reform.⁵ They can thus help reform-oriented national actors embed helpful practices in state institutions.⁶ Strong local involvement also may communicate the government's commitment to address impunity and strengthen the rule of law, thus helping to repair the domestic social contract.⁷

Most mixed tribunals have struggled to deliver these payoffs, however, largely due to the weakness of their political foundations. As the scholar Pádraig McAuliffe argues, hybrid courts generally have not been “developed from reasoned application of such theories or a conscious process of experimentation,” but rather are “the result of forced compromises and haphazard bargains to fill pressing impunity gaps in emergency situations.”⁸ Stated differently, most have not been erected on a strong and stable base of shared preferences for how to pursue accountability.

Hybrid courts often have emerged when international actors have had enough interest and leverage to demand heavy external involvement, but insufficient funds or political support to mount fully international trials.⁹ This was the case in East Timor, where justice advocates pressed for an international process after the crisis of 1999, but weak political support within the United Nations instead spawned a grossly underfunded hybrid court.¹⁰ In Kosovo, UN administrators likewise established mixed panels by decree but invested them with meager resources.¹¹ The hybrid War Crimes Chamber (WCC) was created in Bosnia and Herzegovina (BiH), while BiH was a virtual foreign protectorate, to handle lower-level cases unaddressed by the ICTY and manage concerns about ethnic bias in local courts.¹² The Office of the High Representative in BiH, created in the 1995 Dayton Accords, which wielded extensive local governance authority, inked a 2003 deal with the ICTY to create the WCC. Formal Bosnian consent came only after the matter had already been decided.

In these and other cases, government consent has been highly qualified, either because local officials have had little say in the establishment of hybrid tribunals or because their agreement has been contingent on who will stand trial. In Cambodia, the sovereign government agreed to a hybrid court but later made clear that state consent was limited to certain targets of prosecution. In Lebanon, when domestic political divisions prevented the government from ratifying a deal to create a hybrid tribunal, the UN Security Council imposed such a court. The Kosovo Specialist Chambers and Special Criminal Court in the Central African Republic (CAR), the two most recent hybrid courts to be created, are ventures accepted by local governments deeply dependent on external support, which raises questions about the depth of domestic consent.

The agreements creating hybrid courts generally have had blurry jurisdictional bounds. To some extent, this is appropriate and necessary to uphold the principle of prosecutorial independence. For example, prosecutors have been authorized to try those bearing “greatest responsibility for serious violations” of enumerated laws during Sierra Leone’s civil war, as well as “senior leaders” and others “most responsible” for specified crimes during the Khmer Rouge era and for the Hariri assassination and some “connected” cases in Lebanon. The problem with ambiguous jurisdiction is that it can mask significant differences in the preferences of the parties, enabling local consent without a genuine meeting of the minds. Host governments are sometimes

willing or eager to see their political adversaries brought to book, but they are generally loath to favor expansive prosecution that could bring their allies to trial. International justice advocates tend to favor a wider prosecutorial net and to have different lists of friends and foes.

Where national and international priorities for prosecution have aligned, mixed courts have performed reasonably well, delivering markedly better criminal proceedings than beleaguered domestic courts. When priorities have diverged, hybrid courts have been paralyzed. This has been a major problem in Cambodia and Lebanon, and was a significant stumbling block in Sierra Leone. The Kosovo Specialist Chambers and the related Specialist Prosecutor's Office (SPO), created in 2016 to address crimes committed at the end of the Kosovo war, now face a similar challenge. In June 2020, the SPO announced that it had filed a ten-count indictment charging Kosovo President Hashim Thaci, politician Kadri Veseli, and others with war crimes and crimes against humanity, and accused them of "repeated efforts" to "obstruct and undermine the work" of the Specialist Chambers.¹³ Thaci has denied the charges,¹⁴ which are now subject to judicial confirmation, but the accusation against him raises doubts about domestic cooperation with the chambers.

Agreements for hybrid courts sometimes also have been ambiguous on who holds certain basic responsibilities, thus leading to confusion and sizable ownership gaps. This was most apparent at the Special Panels for Serious Crimes, established in 2000 by the UN Transitional Administration in East Timor as part of the Dili District Court. UN and local partners at the Special Panels could not even agree on who would secure the courthouse or pay to keep the lights on.¹⁵ Further factors impairing the performance of hybrid courts include the difficulty of blending civil and common-law elements, the challenge of blending international and local procedures, and the problem of working across multiple languages. The Special Panels in Dili epitomized these problems, as underfunded UN personnel and poorly trained Timorese partners struggled to integrate diverse legal principles across four languages: English, Bahasa, Portuguese, and Tetum.¹⁶

The Special Criminal Court in the CAR, created by a 2015 law to try crimes committed during the armed conflicts in the country since 2003, has encountered some similar problems. The parliament took three years to adopt rules of procedure and evidence to enable investigations, while weak domestic capacity and donor funding shortfalls have contributed to its very slow start.¹⁷ Many key positions remained vacant in summer 2020; and despite ongoing investigations, the court was not fully functional.¹⁸ Without stronger ownership and investment from both the United Nations and the CAR government, the Special Criminal Court has made little observable progress in delivering justice. Hybrid courts have had to focus primarily on managing complex cases blending different legal systems. Partly

for that reason, even the most effective mixed tribunals have been hard-pressed to move beyond modest capacity building to facilitate sustainable judicial reform. This has been a major limitation of the hybrid panels in Kosovo,¹⁹ as well as the Bosnian WCC, where international judges, lawyers, and administrators were meant to phase out after five years but have stayed much longer as concerns about ethnic bias linger.²⁰

Despite these challenges, hybrid courts sometimes have delivered effective justice and earned performance-based legitimacy when both national and international partners have engaged constructively. The Bosnian WCC generally has delivered sound judgments, prompting leading human rights groups to tout it as a “viable alternative to purely national trials,”²¹ and as a “promising model for hybrid tribunals in other countries.”²² Over time, perceptions that the WCC was performing well won it the approval of more than 70 percent of a public otherwise skeptical about judicial institutions and concerned about potential ethnic bias.²³ As part of the Bosnian domestic judicial system, the WCC has been relatively inexpensive, completing more than 230 cases by 2020 at an average cost much lower than that of the ICTY.²⁴

The first two cases at the Khmer Rouge tribunal, while far from flawless, were vast improvements upon Cambodian domestic criminal processes. In Senegal, the trial and conviction of former Chadian dictator Hissène Habré—handed down by Extraordinary African Chambers including a pair of African international judges—was widely regarded as satisfying due process.²⁵ Other hybrid courts have also shown the capacity to help address gaps in judicial services when given the requisite political backing and resources.

More than any other hybrid court to date, the Special Court for Sierra Leone embodies the positive potential of sovereignty-sharing ventures built on reasonably solid political foundations. The US and UK governments led an array of international actors keen to address impunity in Sierra Leone and advance international criminal justice. The national government, led by Ahmad Tejan Kabbah, sought accountability for atrocities committed by rebel forces, which were expected to be the main focus of the proceedings, and welcomed international involvement to fill dire domestic capacity deficits. Sierra Leone’s profound dependency on foreign aid also rendered the Kabbah administration highly receptive to donor initiatives.

The SCSL was established in 2002 as the only mixed court rooted in a treaty between a sovereign government and the United Nations—the firmest legal underpinning for hybrid justice. Its mandate was to try those bearing greatest responsibility for crimes committed during the latter stages of Sierra Leone’s brutal civil war. The contract creating the Special Court was not free of ambiguity. In particular, it left open the possibility that suspects other than rebels would face prosecution, a prospect that Kabbah and his team evidently did not consider and to which they did not expressly

consent. The ensuing indictment of a sitting cabinet member, Sam Hinga Norman, presented an early and serious challenge.

The Special Court faced other significant hurdles as well during its twelve years of operations. National and international personnel had to be fused into a single hybrid entity. Tensions had to be managed when Norman and other members of the pro-government Civil Defense Forces were tried and convicted. Finances had to be sustained. Complex trials had to be completed, including one against former Liberian head of state Charles Taylor.

Throughout that process, and even after Kabbah's 2007 electoral defeat and a change in government, a sufficient supportive equilibrium endured between the United Nations and domestic authorities. Strong Anglo-American and UN leverage was one reason; Sierra Leone was not a central strategic concern of the West, which could thus credibly threaten to cut assistance. Kabbah's commitment to the venture was another. With the benefit of favorable political conditions, many Special Court personnel could perform their tasks effectively, which helped win the venture public and elite support or acquiescence and protected it at crucial junctures. The Special Court delivered a series of credible verdicts, conducted effective outreach, and earned public support through performance. Nevertheless, it also showed the limited extent to which even a successful specialized hybrid court can affect ailing domestic legal systems.

A Rash of Impunity in Sierra Leone

The Special Court was a response to the widespread, shocking crimes committed during Sierra Leone's civil war. That war arose from a volatile mix of repressive elite rule, resource competition, ethnic tensions, and regional conflict in a country long plagued by impunity. Freetown was established as a settlement for freed slaves in 1787 and later became a British colony. In the late nineteenth century Britain extended its writ to the inland provinces, creating a protectorate. Anglophone Krio descendants of freed slaves were ascendant in Freetown, while ethnic Mende were predominant in the south, and ethnic Tembe and Limba in the north. After Sierra Leone became an independent state in 1961, its first president, Milton Margai, and then his brother Albert began building a patrimonial order around the formal institutions inherited from British rule. That process intensified dramatically under Siaka Stevens, who won an election in 1967, lost power in a coup, and seized control again in 1970. Autocratic and venal, Stevens used a mix of patronage and brute force to consolidate personal power. By the time he handed the reins to his successor Joseph Saidu Momoh, the economy and state institutions were in shambles.²⁶ Frustration mounted among the many Sierra Leoneans excluded from the spoils of the ruling class, especially in the country's impoverished provinces and among student radicals.²⁷

From the ranks of disaffected youths sprang a virulent resistance movement known as the Revolutionary United Front (RUF). Led by former army officer Foday Sankoh, the RUF began with a motley band of fewer than one hundred men. They ignited the civil war in 1991 by invading parts of southern and eastern Sierra Leone from neighboring Liberia, where they operated with the support of then rebel commander Charles Taylor. RUF forces committed a litany of abuses including murder, mutilation, rape, pillage, and use of child soldiers while ferreting diamonds from Sierra Leone's rich alluvial fields to Taylor in Liberia in exchange for weapons and other forms of support.²⁸ In 1992, a group of frustrated young soldiers led by Valentine Strasser turned away from the RUF and moved on Freetown, toppling the feeble Momoh government. They established a military council to govern the country, and shared sovereignty by hiring Executive Outcomes, a South African mercenary outfit, to weaken the RUF. The military government then entered talks with RUF leaders and eventually organized national elections.

Kabbah, a former UN civil servant, won the elections in early 1996. His Sierra Leone People's Party (SLPP) faced the momentous task of confronting RUF rebel forces with a weak and disloyal army while addressing the needs of hundreds of thousands of civilians displaced by the conflict. Fearful of both the RUF and the army, various communities had begun developing militias that enforced roadblocks, conducted patrols, and otherwise sought to protect local areas. The most numerous were so-called Kamajors of the Mende ethnic group who comprise much of the population in the south and east of Sierra Leone. Kamajors and allied militias soon coalesced into Civil Defence Forces (CDF) led by Sam Hinga Norman, who became Kabbah's deputy defense minister. The CDF were widely regarded as the government's *de facto* security force.

In November 1996, the government and the RUF signed a peace accord in Abidjan. The following year, a military group calling itself the Armed Forces Revolutionary Council (AFRC), led by a soldier named Johnny Paul Koroma, removed Kabbah in a coup. The following year, a Nigerian-led regional peacekeeping force known as the Economic Community of West African States Monitoring Group (ECOMOG) ousted the military junta and restored Kabbah, with support from the CDF. The CDF then helped defend Freetown against a ruthless wave of RUF and AFRC rebel attacks in January 1999. As the CDF shifted from defending villages to restoring and defending Kabbah's elected government, it engaged in major human rights violations of its own, as did ECOMOG forces, who soon drove the rebels out of Freetown.

By that point, the war had claimed more than fifty thousand civilian lives and left many others mutilated—often after choosing between “long sleeves” or “short sleeves,” as fighters chopped off their arms at the wrist or above the elbow. The US government led international pressure on Kabbah to pursue an accommodation with

the rebel leader Foday Sankoh to bring an end to the war. In July 1999 the parties signed the Lomé Peace Agreement, which put in place a fragile and noxious power-sharing deal in which Sankoh and other RUF leaders enjoyed impunity and took up some of the most senior roles in government. Sankoh became vice president and minister of natural resources, a lucrative post overseeing the country's diamond mines. The Lomé Agreement also included a blanket amnesty and pardon for combatants.²⁹ On instructions from New York, UN Special Representative Francis Okelo famously wrote a caveat on the copy he signed, indicating that the United Nations rejected the pardon and amnesty provisions with respect to international crimes; it was a harbinger of future prosecution.³⁰ The United Nations soon afterward dispatched a peacekeeping mission—the UN Mission in Sierra Leone (UNAMSIL)—to help maintain basic security and stability in the country.

The Road to a Special Court

The push for accountability emerged as rebel forces led by Sankoh violated the peace accord, leading the incumbent Kabbah government and its international partners to converge around the idea of establishing a hybrid court. The primary impetus came from Washington. In February 2000, David Scheffer, the US ambassador at large for war crimes issues, met with Solomon Berewa, Sierra Leone's attorney general and justice minister, who convinced him that "Sierra Leone had no capability to hold trials of the rebel leaders now or in the future."³¹ Scheffer believed that Sankoh should face a real threat of prosecution, as he was "spitting in our face, violating Lomé, and perpetuating war crimes" while remaining "the poster child for impunity."³²

Discussion of trials gained momentum in May 2000. As the last contingents of the Nigerian-led ECOMOG forces left Sierra Leone, RUF fighters attacked UN peacekeeping forces in the north of the country, killing four Kenyan soldiers and injuring others. RUF rebels took other blue-helmet soldiers hostage, including five hundred newly arrived Zambian UN peacekeepers, and officers from Britain, India, and New Zealand. Kabbah issued a statement, "directed at both our national and international constituencies," warning the RUF that it would be held legally accountable for any further violations of the Lomé accord.³³ Sierra Leone's Parliament called for RUF leaders to be brought to justice before an international tribunal.³⁴

As rebel fighters moved toward Freetown, Berewa alleged that Sankoh had been "planning to stage a very violent and bloody coup."³⁵ Hundreds of angry demonstrations marched against the RUF. When they reached Sankoh's home, RUF guards fired on the crowd, killing twenty-one and injuring dozens more as UN forces guarding his home withdrew. Dressed as a woman, Sankoh slipped away and went into hiding as public condemnation of the RUF rose.³⁶ International support for UNAMSIL strengthened, and the UK government launched Operation Palliser, punctuated by a landing of Royal

Marine commandos and the arrival of British warships and military aircraft offshore. The British intervention helped to avert a coup and save the ailing UN mission.

An angry mob soon captured and stripped Sankoh and nearly beat him to death before government soldiers saved him and took him into custody, in cooperation with British special forces. Kabbah announced that Sankoh would soon be put on trial.³⁷ Support for justice also waxed at UN headquarters, where Secretary-General Kofi Annan and UN Legal Counsel Hans Corell favored international involvement in prosecuting Sankoh.

An American Proposal and Kabbah's Request

The US government initially proposed a fully international court akin to the Rwanda tribunal. In a meeting in Freetown in early June, Kabbah and Berewa told visiting State Department official Pierre-Richard Prosper they preferred a tribunal created by the Security Council. A domestic process would be fraught with challenges, including the difficulty of holding fair trials and immense security threats that local police could not address adequately. Kabbah and Berewa suggested a mixed court including some Sierra Leonean nationals, starting its work in Freetown and moving elsewhere in West Africa if necessary.³⁸ Berewa said that the process would need to include elements of international law, but should also feature Sierra Leonean law and personnel; he offered himself as a potential co-prosecutor.³⁹

Scheffer and Prosper drafted a concept paper for a "special court" that would combine elements of domestic and international law, feature both Sierra Leonean and foreign personnel, and be funded by voluntary contributions from donor governments. Kabbah agreed to the basic outlines of the plan. Although his government relied heavily on British and American support, his prompt consent to the plan was not the product of an emergency or a stated donor threat to withdraw protection; it appears to have reflected his view that an internationally backed trial focused on the RUF would serve his government's interests.

On June 12, Kabbah wrote to ask the UN Security Council for help in establishing a special court to try RUF leaders for crimes against Sierra Leoneans and UN peacekeepers. Kabbah asserted that those atrocities concerned the entire international community, and that Sierra Leone lacked "the resources or expertise to conduct trials for such crimes."⁴⁰ Civil conflict had destroyed the country's judicial infrastructure, and domestic laws did not encompass the mass crimes in question. Kabbah asked the UN Security Council to use its Chapter VII authority to create a court with strong enforcement powers that could require other states to cooperate.⁴¹ However, he sought to root the process in Sierra Leone and attached an outline for a court that would "meet international standards" while administering "a blend of international and domestic Sierra Leonean law on Sierra Leonean soil."⁴²

Some observers saw Kabbah's request more as a response to American pressure than as his own initiative. Peter Penfold, then the British ambassador in Freetown, asserts that "Kabbah was 'persuaded' to write to Kofi Annan" by U.S. officials.⁴³ Funmi Olonisakin adds that it was "widely believed that the letter had been orchestrated by the United States," and rumors circulated that it was "drafted in the US ambassador's residence."⁴⁴ The resemblance between Kabbah's "suggested framework" and the US concept paper lent credence to the key role of US officials in shaping the proposal. Still, Kabbah stood behind his formal request.

As talks on a possible tribunal began, the most visible axis of disagreement was between the US and British governments. US officials drafted a Chapter VII resolution whereby the Security Council would create the tribunal, as Kabbah had requested. The UK government and others opposed a Chapter VII resolution, which would obligate the United Nations to fund the resulting tribunal. There was little appetite on the council to fund another costly ad hoc tribunal like those created for the former Yugoslavia and Rwanda. Some council members also feared that a new UN-backed court would dilute the diplomatic momentum needed to establish the ICC.

British officials instead proposed a Sierra Leonean domestic process supported by Commonwealth participation. UN officials including Ralph Zacklin, a British national, also pushed US officials to focus on buttressing Sierra Leonean courts rather than creating an international tribunal. In late July, after a senior UN legal officer visited Freetown to consult local officials and civil society groups, Annan reported to the Security Council that "a clear preference was expressed for a national court with a strong international component in all its organs . . . and for international assistance in funding, equipment and legal expertise."⁴⁵

As a compromise, US officials proposed creating the court by a treaty between Sierra Leone and the United Nations, which would avoid obligating UN members to pay for the court.⁴⁶ In August 2000, the Security Council issued Resolution 1315, which did not invoke Chapter VII but asked the secretary-general to pursue agreement on "an independent special court" with the Sierra Leonean government in view of the frailty of Sierra Leone's domestic judicial system.⁴⁷ There was strong agreement that domestic Sierra Leonean courts were ill-prepared for war crimes trials. Some feared that prosecution could tip the country back into civil war. International involvement was seen as a technical necessity and an important legitimating feature of the process in a postconflict country in which popular distrust of domestic institutions ran high. Notably, even the RUF indicated that it would support a court insulated against progovernment bias. Sierra Leonean officials pointed to heavy foreign roles in the proposed court as evidence that the government was not simply pursuing a vendetta against the rebels.⁴⁸

Negotiating the Terms of the Tribunal

In autumn 2000, UN and Sierra Leonean negotiators reached agreement quickly on the basic framework for the Special Court. By February 2001, after modest amendments, both sides approved the draft agreement and a statute to govern the Special Court. It would be based in Freetown and would be independent from the United Nations and from Sierra Leonean domestic courts, enjoying concurrent jurisdiction with domestic courts but primacy over them. It would feature an internationally appointed prosecutor and registrar, the court's chief administrative official. Each of its two trial chambers and its appeals chamber would include international and Sierra Leonean judges, with foreign judges in the majority.

The Special Court would have jurisdiction to try crimes against humanity, war crimes, and other serious violations of international humanitarian law after the Abidjan Peace Agreement was signed on November 30, 1996. The Sierra Leone government pressed for jurisdiction to extend back to the war's beginning in 1991, but the United Nations demurred, largely for cost considerations.⁴⁹ The court would consequently focus primarily on abuses in Freetown rather than in rural areas where the violence had begun—a feature that drew criticism from rights groups and some Sierra Leoneans.⁵⁰ At the Kabbah government's request, the Special Court would also have jurisdiction over certain national crimes, including arson and abuse of children under fourteen years of age.⁵¹ This concession to national sovereignty would have little practical effect, however, as prosecutors chose not to bring any charges under those domestic laws.⁵²

Perhaps the most important aspect of the court's mandate surrounded its personal jurisdiction. The SCSL's international architects sought to avoid the high costs associated with the ICTY and ICTR, and did not wish to see peacekeepers in the dock.⁵³ They therefore limited the SCSL's personal jurisdiction to those bearing "greatest responsibility" for the crimes.⁵⁴ This concept was unprecedented in international criminal law, and was not defined in the draft SCSL agreement or statute, though there was rough agreement on numbers. Kabbah foresaw the court's jurisdiction "being limited to the dozens."⁵⁵ Zacklin concurred in September 2000, estimating that roughly twenty-five to thirty persons would be tried.⁵⁶

The question remained concerning which groups would be targeted. In this crucial respect, the parties forged an ambiguous agreement. The Sierra Leone government favored focusing on the RUF, a view Information Minister Julius Spencer expressed when he argued that "the RUF was at the centre of all of what has happened."⁵⁷ Many analysts agreed, and international officials suggested that the RUF would be the main targets for prosecution. For example, US Ambassador to the United Nations Richard Holbrooke said in July 2000, while pushing for a special court, that it was

“very important that Foday Sankoh and his henchmen who have committed these war crimes be brought to justice.”⁵⁸ Nevertheless, the SCSL Agreement and Statute left the prosecutor wide discretion on which potential suspects to target—including the progovernment CDF. The only jurisdictional carve-out was for “peacekeepers and related personnel,” who were subject to the courts of their sending states.⁵⁹

The government’s failure to exclude CDF trials was evidently a product of poor communication, weak leverage, and wishful thinking. “I think there was a misapprehension of the national government, which thought the whole process was about the RUF,” says Franklyn Bai Kargbo, who participated in early talks about the Special Court as a civil society leader and later became minister of justice.⁶⁰ Solomon Berewa has written that based on the negotiations, “there was no way to detect that the jurisdiction of the Special Court would extend beyond the RUF.”⁶¹ Sierra Leone’s negotiators reportedly voiced their preference for focusing on rebel forces, but UN officials replied that an internationalized process would require prosecutorial discretion to follow the evidence.⁶² Critics would later flay the Kabbah administration for failing to shield the CDF from prosecution, characterizing it as evidence of incompetence and undue readiness to cede sovereign power.⁶³

The tribunal’s funding scheme also portended future challenges. The Special Court would be funded by voluntary contributions rather than assessed contributions from UN member states—a design feature Annan criticized on the basis that the court would face high risk of shortfalls that would damage its operations and the UN’s credibility.⁶⁴ Annan refused to approve the SCSL Agreement for nearly a year until enough donor commitments were in hand to fund the early stages of the court’s work.

In January 2002, UN and Sierra Leonean officials inked the final agreement. There was some debate in Sierra Leone’s Parliament over whether to ratify the pact. Some opposition lawmakers feared that the tribunal would target certain ethnic constituencies disproportionately and dispense victor’s justice, adding that Kabbah himself was a potential suspect and should not be allowed to contract with the United Nations for a hybrid court.⁶⁵ Parliament nevertheless passed a domestic law ratifying the treaty in April 2002. This gave the Special Court a sound legal basis and the legitimacy that came with it.

Unequal Leverage

Some Sierra Leoneans resented that national voices were not more prominent in the negotiations for the Special Court, which took place largely at UN headquarters in New York.⁶⁶ Weak and reliant on foreign peacekeepers and development aid, which in 2000 totaled nearly 30 percent of their country’s GDP,⁶⁷ Sierra Leonean officials were keen to please their donors.⁶⁸ Deputy Justice Minister Arrow Bockarie, who served as a defense lawyer at the Special Court, argues: “We asked for the Court, but

everything was designed by the West.”⁶⁹ The scholar Ibrahim Abdullah concurs. “In the postwar context, Sierra Leoneans were not in control,” he asserts, noting that even cabinet members had to trek to the office of the UN Development Program for cash to fund their ministries. “You can make a request, but the process you requested is not in your control. That is exactly what happened here.”⁷⁰

Even those who welcomed the Special Court’s design agree that the international side took the lead. “To us, the proposed system was new. So to that extent, it was largely driven largely by donors, spearheaded by the US and UN,” says Kargbo.⁷¹ Nevertheless, the extent of Sierra Leonean agency in the court’s creation was sufficient to give the Kabbah administration and its successors a deep investment in the process. As the court’s principal defender, Ibrahim Yillah, argues: “Sometimes governments are forced by pressure to enter into agreements. In this case, it was the government of Sierra Leone [proposing a hybrid tribunal]. So by a large, there was cooperation, because the regime was the regime that requested the court.”⁷²

That political dynamic would prove to be a crucial foundation for the Special Court’s operations as sensitive, potentially destabilizing cases later moved forward.

Launching the Tribunal

The SCSL Agreement helped the court survive early challenges to its constitutionality and independence. Shortly after the court began work, defense lawyers filed a motion arguing that outsourcing judicial authority infringed on popular rights and violated Sierra Leone’s constitution, under which “sovereignty belongs to the people of Sierra Leone.”⁷³ The SCSL Appeals Chamber dismissed the challenge swiftly by ruling that popular sovereignty had “the effect of enabling the Government validly to exercise those powers vested in it by the Constitution, of which the [treaty] making power is one.”⁷⁴ In a domestic case challenging the constitutionality of the SCSL Agreement, the Supreme Court of Sierra Leone likewise found the accord to have been duly ratified and to constitute an international court operating outside its supervisory jurisdiction.⁷⁵

Both Sierra Leonean authorities and the public were generally receptive to the concept of a hybrid court. Most regarded the UN’s role as necessary and legitimate. “We were a fragile state that had almost lost its sovereignty, so were ready to hand it over to a considerable extent to the UN if it would help end impunity,” explains the Sierra Leonean scholar Desmond George-Williams.⁷⁶ “Having the UN involved in establishing the Court was noncontroversial,” adds Binta Mansaray, who led the Special Court’s outreach section for its first several years. For Sierra Leone’s war-weary population, extensive foreign involvement in governance “was already in the psyche of the people” due to the large UN peacekeeping presence and other international interventions. In that context, a UN role in the Special Court was “a logical thing.”⁷⁷

Many thought leaders in academia and civil society welcomed the venture, and the inclusion of national judges and personnel meant it was not seen as an entirely foreign enterprise.

The government's willingness to confer authority on international actors was evident as the Special Court staffed key positions. The Kabbah government had requested that provisions in the draft SCSL Agreement referring to Sierra Leonean judges be replaced by reference to judges "appointed by" Sierra Leone, leaving the government free to choose foreign nationals.⁷⁸ The government did nominate international judges for two of its four allocated positions, and appointed the British national Desmond da Silva as deputy prosecutor despite the SCSL Agreement's requirement that the deputy prosecutor be Sierra Leonean.⁷⁹ When Berewa asked Parliament to amend its ratification act to permit the appointment of a foreign deputy prosecutor, legislators obliged. Several members of Parliament offered statements in favor of the amendment, arguing that an international prosecutor might be less biased and that the international community had played a crucial role in bringing an end to the civil war.⁸⁰ None opposed the measure.

The dominance of international appointees in the prosecutor's office generated some resentment in the Sierra Leonean bar, which interpreted Da Silva's appointment as a statement that no Sierra Leonean was fit for the job.⁸¹ The appointment of an American prosecutor, David Crane, also raised eyebrows over the potential for undue US influence over the proceedings. At the same time, his appointment was a welcome form of insurance for continued US backing.⁸² Discussion of the US role at the Special Court captured well the benefits and possible drawbacks of decisive leadership on the international side of a sovereignty-sharing arrangement.

With the exception of the defense office, most of the court's key positions were occupied by international staff at the outset. Sierra Leonean personnel generally viewed that arrangement as necessary and appropriate, because so few national judges, lawyers, and staff had experience dealing with international law and procedure and complex criminal cases. Sierra Leonean authorities "were not uncomfortable ceding a lot of the functions to internationals," says Franklyn Bai Kargbo, who later became justice minister, noting that even the Sierra Leonean bar association was receptive to an internationally led process.⁸³

Local receptivity to the Special Court was driven in significant part by an active outreach effort. As early as August 2002, prosecutor David Crane and registrar Robin Vincent led "town hall meetings" in the country. By early 2003, an Outreach Section was created and led by Binta Mansaray, the court's first Sierra Leonean section chief. Having an American prosecutor and international majority on the bench helped the court's outreach team differentiate the Special Court from the domestic justice system, which had a dismal public reputation. "We had to make a deliberate effort to let

people know this is a different kind of justice that no money could buy,” Mansaray explains. “Involvement of the UN lends credibility to that.”⁸⁴

The SCSL’s outreach efforts were more effective than those of any preceding internationalized tribunal.⁸⁵ Outreach via radio, meetings around the country, and civil society engagement helped to clarify the court’s role and its relationship to the concurrent Truth and Reconciliation Commission (TRC) established pursuant to the Lomé Agreement. In particular, court officials had to explain to the public that its mandate was to assign criminal responsibility rather than dispense compensation, and that only those bearing “greatest responsibility” would be tried. The latter point was important, as TRC officials complained that Special Court proceedings were undermining the truth-telling process by raising fears that those who spoke would be prosecuted.

The prominent role of national staff in outreach helped address perceptions of some Sierra Leoneans that the Special Court was essentially a foreign enterprise less connected to the population than the TRC—a sentiment perhaps encouraged by the court’s gleaming modern facility on a hilltop overlooking Freetown. Early outreach efforts paid dividends. An NGO survey by the Campaign for Good Governance in late 2002 found that two-thirds of Sierra Leonean respondents had heard about the Special Court, mostly via radio, and 62 percent regarded it as necessary.⁸⁶ An informal 2003 poll by the NGO No Peace Without Justice suggested that more than two-thirds of Sierra Leoneans polled saw the Special Court as necessary, and another two-thirds expected it to deter future conflict.⁸⁷ Even most ex-combatants expressed support for the court after attending NGO workshops explaining its purpose.⁸⁸ Importantly, outreach also “softened the ground” for investigators and defense lawyers who sought to interview witnesses who would otherwise have been afraid to speak.⁸⁹

The Norman Indictment

Despite a relatively warm welcome, Sierra Leonean support for the Special Court was quickly put to the test. The indictment of Sam Hinga Norman, the former CDF leader and sitting minister of internal affairs, caused confusion and anger among many Sierra Leoneans who saw him as a hero for defending the government against rebel attack during the war. The court’s ability to withstand this early test reflected the Kabbah administration’s commitment to the venture, the extent of international leverage, and effective performance in outreach by Special Court personnel.

The court began issuing indictments in March 2003. Former RUF leader Foday Sankoh was arrested and died of natural causes in the Special Court’s custody several months later. Sam Bockarie, an RUF leader nicknamed “Mosquito,” notorious for wartime brutalities, was killed in Liberia weeks after his indictment. Some saw his death as a murder to prevent him from talking, ordered by former Liberian president

Charles Taylor, who was also indicted by the Special Court. Three other RUF leaders were indicted and arrested in spring 2003: the commanders Morris Kallon, Augustine Gbao, and Issa Sesay. The initial list of indictments also included AFRC leader Johnny Paul Koroma, who remained at large, and AFRC commanders Alex Tamba Brima and Ibrahim Bazy Kamara. Another AFRC commander, Santigie Borbor Kanu, was later indicted.

While most of those indictments were widely expected, many Sierra Leoneans were shocked when the Special Court also indicted Sam Hinga Norman and, soon afterward, his second-in-command Moinina Fofana and CDF commander Allieu Kondewa. President Kabbah reportedly learned of Norman's impending prosecution just hours before Norman was arrested. "The whole turn of events took [Kabbah] very much by surprise. . . . He didn't expect that the net would expand to try the CDF," asserts the historian Joe Alie, a confidante of Kabbah.⁹⁰ Norman did not expect Kamajors to be indicted, and had expressed "delight that his adversaries during the conflict would be called upon to account to the Special Court for the atrocities they committed."⁹¹ CDF forces also had perpetrated abuses, but most Sierra Leoneans believed their crimes paled beside those of the RUF. The CDF had defended the government from rebel attack in the absence of a viable army. As former SCSL defense lawyer Charles Jalloh notes, Norman was "perceived by many as a national hero deserving of a medal of honor."⁹²

Any sovereignty-sharing arrangement carries the risk that international partners will cross domestic red lines. Norman's indictment sparked "utter confusion" and outrage in many quarters.⁹³ The historian Lansana Gberie argues, "This obvious lack of sensitivity to historical context was deliberate." Gberie says it showed that the Special Court would "trample" Sierra Leonean interests and needed to pursue "an inchoate notion of 'international humanitarian justice.'"⁹⁴ Critics argued that decisions to prosecute suspects and invalidate amnesties should be made by Sierra Leoneans, not foreigners.⁹⁵ Alie argues that it was "a catastrophic mistake [to have] the Special Court taking powers beyond the president," and that the Norman arrest "fractured the Sierra Leone People's Party" and contributed to its subsequent electoral defeat. "It created the impression that the government wasn't sufficiently appreciative of what the CDF had done."⁹⁶ Adding to the outrage, Norman was flown to Bonthe Island after his arrest and held in a facility once used for slaves en route to the Americas via the Middle Passage.⁹⁷ Gberie argues, "Public humiliation appeared to have been a key objective: Crane was determined to show that holding political office in Sierra Leone was of no consequence to the Court."⁹⁸

For precisely that reason, the Norman indictment also reflected a prime rationale for sovereignty sharing: to help insulate proceedings from domestic political pressures. In his opening statement at the CDF trial, Crane stressed that the Special

Court had to focus on alleged criminal wrongdoing: "Politics must remain barred from the proceedings."⁹⁹ In a private conversation with former British ambassador Peter Penfold, Crane reportedly added that he had to be seen as "even-handed."¹⁰⁰ The SCSL Agreement clearly gave him authority to indict CDF suspects, and there was ample evidence that CDF forces had committed serious crimes. The deeply unpopular indictments did show that CDF members were not politically immune from prosecution.

Some senior Sierra Leonean officials saw the CDF indictment as an attack on national sovereignty.¹⁰¹ Kabbah wrote that he was "quite stunned and upset" about the arrest of Norman, whom he called a "true patriot" and "close friend," but he did not criticize the court's decision publicly. He explained that he "could do little because we had promised the UN and other relevant bodies that we would not interfere in the work of the Special Court."¹⁰² His government remained highly dependent on external aid. "The government at that time was powerless against the external agencies and particularly the US and UN, which basically tied his hands," argues Alie.¹⁰³ Deputy Justice Minister Arrow Bockarie, a former SCSL defense lawyer, invokes a similar metaphor to depict Western pressure on Kabbah, saying, "his arms were completely twisted."¹⁰⁴ Although Kabbah could have quietly undermined the process, his training as a lawyer and respect for judicial independence may have contributed to his willingness to see the Norman trial move forward.¹⁰⁵

Some doubted that Crane would act without a green light from Kabbah,¹⁰⁶ and unsubstantiated rumors swirled about Kabbah's possible political motives for allowing Norman to face trial. Some Sierra Leoneans called the SCSL "Kabbah's court,"¹⁰⁷ and some resented that he did not face charges after serving as Norman's boss as president and defense minister.¹⁰⁸ Norman's arrest nearly prompted an outbreak of violence, and thousands of former CDF fighters began to mobilize before Norman himself urged calm and asked them to let the judicial process take its course.¹⁰⁹

The Special Court's domestically led Outreach Section also helped preserve calm. The Court had "lost its legitimacy" in some quarters, recalls Ibrahim Tommy, who served in the Outreach Section. Still, the government furnished protection to court staff who traveled to engage with Norman's core constituents directly. Outreach introduced skeptical populations to the victims of CDF atrocities, helping them understand.¹¹⁰ Further controversy emerged in late 2003, when the Special Court denied Norman's request to testify publicly before the TRC.¹¹¹ Still, Kabbah gave full-throated support to the Special Court at its 2004 ribbon-cutting ceremony. He stressed its importance for Sierra Leone and the international community and said: "This 'hybrid' institution . . . [must] dispel any notion that it is a political tool of a particular government or group of States. This is crucial to its success because of perceptions and misperceptions about the so-called 'thin line' between politics and

the administration of justice on the one hand, and international politics and international law on the other.”¹¹²

Kabbah pledged that his government was “fully committed” to the court’s success and would continue to support it, adding that “cooperation is in the interest of the people of this country, in particular the victims of the atrocious crimes that the Court has been empowered to try.”¹¹³

The Delivery of Justice

The Special Court’s core mandate was to deliver credible criminal justice through fair and efficient trials. At the request of the prosecutor, the court bundled the separate indictments into three joined cases and one individual case against Charles Taylor. Trials began with the CDF case in June 2004. The RUF and AFRC trials started not long afterward, and the Taylor trial commenced after his 2006 capture.

In providing judicial services, the Special Court had several advantages vis-à-vis other hybrid courts. The cases at issue were modest in number and reasonably well defined, and most indictees were apprehended. Most judges and lawyers came from common-law systems and were accustomed to broadly similar judicial practices and rules of evidence and procedure. Court personnel generally spoke a common language and faced relatively low cultural barriers. The preponderance of UN appointees helped shield the Special Court from domestic political pressures, while the vesting of administrative authority in a single international registrar promoted efficiency and transparency. Strong Sierra Leonean participation in the outreach office helped the tribunal connect with the population. Perhaps most importantly, the Special Court enjoyed consistent political support from the government and from international partners.

The Special Court still faced important challenges. Unstable funding was a recurrent problem; and the pursuit of Charles Taylor and the decision to try him in The Hague raised difficulties related to sovereign immunity and the hybrid court’s nexus to the Sierra Leone population. The CDF trial presented obstacles when Kabbah refused to testify, and again later when Norman’s death sparked renewed popular outrage. A change in government in Freetown and the occasional strains of mixing local and international personnel in a single judicial entity also added challenges. Despite these obstacles, the Special Court largely succeeded in meeting its mandate.

The Chase of Charles Taylor

One of the Court’s key challenges was to apprehend Charles Taylor, its best-known indictee. The Taylor indictment was a bold prosecutorial challenge to head-of-state immunity, and it thus had important sovereignty implications. It was leaked while Taylor was in Ghana amid the Liberian peace talks, and Taylor promptly challenged the court’s jurisdiction over him as a head of state—a challenge the SCSL rejected,

though its status as a treaty-based court gave it no clear authority to compel cooperation from other states.¹¹⁴ Some analysts feared that the prospect of prosecution would cause Taylor to dig in his heels and continue to fight. Instead, under intense US pressure, Taylor fled from Liberia in summer 2003 and went into exile in Nigeria as part of a peace deal. Without Chapter VII authority from the UN Security Council, the Special Court had no power to compel cooperation from Nigerian authorities—an important drawback of the court's creation via treaty.

Crane and others instead began a lengthy diplomatic campaign to secure Taylor's arrest. In 2006 the Nigerian government apprehended Taylor in the act of trying to flee the country, and they sent him to Liberia. Liberian President Ellen Johnson Sirleaf, once Taylor's domestic ally, then succumbed to international pressure and transferred him to the Special Court. In this respect the hybrid SCSL delivered an opportunity for justice that was widely welcomed in Sierra Leone but would have been unthinkable for a domestic court.

Soon after Taylor's arrival in Sierra Leone, the UN Security Council, citing the risk of instability in Liberia and Sierra Leone if he were tried in Freetown, issued a Chapter VII resolution authorizing the Special Court to transfer him to The Hague for his trial, which would begin in 2007. Some court observers criticized the move, which rendered the trial inaccessible to ordinary Sierra Leonean survivors.¹¹⁵ In this regard, the SCSL came to look more like a fully international process than a hybrid one.

Funding Impasses

While the trials unfolded, the Special Court had to manage the funding challenges inherent in a scheme of voluntary contributions. True to Kofi Annan's prediction, funding proved a perennial challenge. By 2004, as donations lagged the court's mounting costs, the United Nations had to infuse emergency cash from its "subvention fund" of unused assessed contributions from the general UN budget.

Funding uncertainty presented operational challenges, such as difficulty in planning expenditures. Charles Jalloh, who served as a defense lawyer for Charles Taylor, argues that the Court's "volatile donations-based funding structure" led to an under-inclusive scope of prosecution and adversely impacted resources for the accused.¹¹⁶ Voluntary contributions also exposed the Special Court to the risk of undue donor influence. The scholar William Schabas argues that donors kept the SCSL "on a drip feed, the better to influence decisions and the behavior of the Court."¹¹⁷ Taylor's defense team challenged the court's legitimacy on the basis that voluntary contributions rendered it dependent on a handful of Western donors, particularly the United States and Britain. When donors provide funds, Taylor argued, they want to call the shots.

Officials at the Special Court reject the claim that donors have exercised untoward influence on the proceedings. Binta Mansaray notes that among other safeguards,

judges and the prosecutor are not notified when donors contribute funds through the registry. She asserts that, “to the best of my knowledge, this Court has never been pressured to indict or not to indict” by donors or the Sierra Leonean government. “Never has any of the parties attempted to go beyond the line drawn” with respect to political interference.¹¹⁸ Indeed, there is no clear evidence of donor efforts to arm-twist the court. Yet the fact that the SCSL president and prosecutor sometimes met with donor officials contributed to concerns about political influence. Former SCSL President Jon Kamanda notes that the need for court officials to fundraise is a distinct drawback of the voluntary contribution model.¹¹⁹

Challenges in the CDF Trial

Domestically, the CDF trial was the most controversial. It also presented some of the most difficult legal questions for the hybrid court, giving rise to the most notable instances of dissent among the SCSL judges. One challenge emerged when Fofana and Norman asked the Special Court to subpoena President Kabbah after he declined their requests to testify voluntarily on their behalf. The defendants argued that Kabbah knew they did not bear “greatest responsibility” for the crimes at issue, and that he was most responsible due to commands he had given them. The Trial Chamber denied the application, and in a concurring opinion Judge Benjamin Itoe explained: “President Tejan Kabbah is not just an ordinary Sierra Leonean but also . . . incumbent President and Sovereign Head of State of the Republic of Sierra Leone.”¹²⁰ The Trial Chamber noted that the Constitution of Sierra Leone grants the president immunity from subpoena.

This ruling affirmed the principle of head of state immunity, but departed from the prior jurisprudence of the ICTY, a Chapter VII tribunal, which had held that state officials could be subject to the orders of international courts. In 2008, the SCSL Trial Chamber found in the RUF case that Kabbah was not immune from subpoena, and Kabbah did testify—interestingly, on behalf of RUF commander Issa Sesay, by noting his role in the peace process after 2000. Judge Itoe sought to justify the reversal by arguing that the CDF defendants merely had sought to embarrass Kabbah by exposing his involvement in the conflict,¹²¹ a distinction of dubious legal validity. A more obvious difference was that by 2008, Kabbah was no longer Sierra Leone’s sitting president. The SCSL thus appeared to bend to the constraints of the sovereignty-sharing venture.

In February 2007, as the CDF trial neared its end, the Special Court faced perhaps its gravest political challenge when Norman died after being sent for a medical operation in Sénégal. Rumors circulated that the Special Court had mistreated him. Norman had recently declared a change in party affiliation, and some Sierra Leoneans suspected that government agents had killed him to prevent him from revealing the

dirty laundry of sitting SLPP officials.¹²² Although no compelling evidence emerged to that effect, Norman's death brought a new wave of public discontent. "He died in detention like Foday Sankoh," notes historian Joe Alie. "If you go to Norman's hometown, they will never forgive for that."¹²³

The Special Court weathered the challenge, both due to continuing government support and because the tribunal had earned a considerable measure of public trust through regular and sustained outreach. "I never appreciated outreach until Norman died," says Binta Mansaray. "If we hadn't done the kind of outreach we did, the Court would have closed. It would have been overrun."¹²⁴ The court proceeded to issue its first verdicts in June 2007 in the AFRC case, convicting the defendants of eleven of fourteen counts of war crimes, crimes against humanity, and other offenses. It sentenced Alex Tamba Brima and Santigie Borbor Kanu to prison terms of fifty years each, and sentenced Brima Bazy Kamara to forty-five years.

Shortly afterward, the Special Court issued the CDF judgment, which included the most consequential split between national and international judges at the SCSL, convicting Moinina Fofana and Allieu Kondewa of several counts and sentencing them to six and eight years in prison, respectively. Justice Bankole Thompson, the Sierra Leonean member of the Trial Chamber, dissented from the CDF convictions and asserted: "I entertain more than serious doubts about whether in the context of the uniquely peculiar facts and circumstances of this case a tribunal should hold liable persons who volunteered to take up arms and risk their lives and those of their families to prevent anarchy and tyranny from taking a firm hold in their society, their transgressions of the law notwithstanding."¹²⁵

On appeal, prosecutor Stephen Rapp requested longer sentences given the gravity of the crimes. The Appeals Chamber upheld the convictions, and raised the sentences to fifteen years for Fofana and twenty for Kondewa. Sierra Leonean Justice George Gelaga King dissented, citing the "difficult, risky, selfless" contribution the accused and other CDF had made to peace, and noting pointedly the medal Kabbah had awarded Fofana for his service.¹²⁶ His Sierra Leonean colleague on the chamber, Justice Jon Kamanda, supported conviction. He reasoned that CDF defendants "went far beyond the point of trying to do good" when raping and amputating victims, looting, and committing other crimes, and that such acts were "plain wrong" and should be judged "by the same standard."¹²⁷ Yet he dissented from the majority with respect to sentencing, concluding that there was "no point in increasing their punishment."¹²⁸ The question of how to weigh the perspectives of international judges and their national counterparts, some of whom had experienced atrocities directly, goes to the heart of the normative questions around sovereignty sharing. Kamanda argues that having a majority of international justices helped ensure that, despite powerful sentiments, the court "applied the law as it should."¹²⁹

Justice King's dissent related partly to a legal debate surrounding the Special Court's application of the doctrine of superior responsibility to Kondewa. That doctrine is derived from international laws governing formal armed forces, but the CDF lacked the structure and chains of command that exist in armies. Kamajor fighters instead responded to spiritual leaders, whom they believed to possess mystical powers that could help render them invisible or impervious to bullets. Some critics, including Justice King, have argued that applying superior responsibility to Kondewa on the basis that he acted as a "high priest" is "preposterous" and "laughable" in the local cultural context.¹³⁰ While grafting international criminal law onto local practices can indeed be awkward, similar critiques could be leveled at any court applying "modern" legal principles to occult Kamajor practices.

The 2007 Election

Just days after the CDF judgment, Sierra Leoneans headed to the polls for the first round of presidential elections. The SLPP's candidate was Solomon Berewa, the prime national architect of the Special Court. His chief opponents were Ernest Bai Koroma, of the All People's Congress (APC), and Charles Margai, a defense lawyer in the CDF case who had established the new People's Movement for Democratic Change. Margai's followers included many Kamajors and other ethnic Mende who traditionally supported the SLPP. After Margai finished third in the first round, he threw his support behind the APC, helping Koroma emerge victorious by cutting into the SLPP's core constituencies. Some senior SLPP figures criticized the outgoing president, Kabbah, arguing that the Norman indictment and the CDF judgment had cost the SLPP the election.

Koroma's election presented a risk common to sovereignty-sharing ventures: that a change in leadership would jeopardize the domestic political commitment needed for a joint venture to proceed. The Special Court was clearly identified with Kabbah and Berewa. Given the support Koroma had received from some Kamajors, a downgrade in government support for the tribunal was conceivable. Instead, Koroma stayed the course. "We had a change of government, but not a change of policy on the Special Court," notes Mansaray, crediting the Koroma administration. "They looked at the victims, not at politics, when it came to the Special Court."¹³¹ The change of power within Sierra Leone could well have damaged the political foundations for the venture, but again the sovereignty-sharing partnership proved resilient.

The RUF and Taylor Verdicts

In 2009 the Special Court returned its third verdict in the RUF case. Issa Sesay and Morris Kallon were convicted on sixteen of eighteen counts, and were sentenced to fifty-two and forty years respectively. Augustine Gbao was given a twenty-five year

sentence after being convicted on fourteen counts, including the May 2000 seizure of UN peacekeepers as hostages. The Taylor trial proceeded in The Hague, punctuated by extensive testimony from Taylor himself; it culminated in a conviction on eleven counts and a sentence of fifty years for his role in planning, aiding, and abetting war crimes and other abuses by his RUF subordinates. The RUF and Taylor trials featured numerous witnesses and other forms of evidence, and the verdicts were widely welcomed. The perceived need to hold the Taylor trial in The Hague for security reasons arguably “sapped the energy from the trial” to some extent, as many Sierra Leoneans wished to see the trial held in Freetown—a prime benefit of an in-country hybrid court.¹³² Still, Sierra Leonean public approval of his trial and conviction were strong.¹³³

The Special Court’s decisions did draw some criticism. For example, defense lawyers and legal scholars have faulted the court for adopting an overly expansive conception of “joint criminal enterprise,” a doctrine under which individuals engaged in a common criminal plan or design can be held liable for acts carried out in furtherance of that plan.¹³⁴ It has also been criticized for inconsistency in its handling of other contentious issues, such as the question of whether forced marriage meets the legal standard to constitute a crime against humanity.¹³⁵ While these were legitimate critiques, they had little to do with the Court’s hybrid character.

Other challenges related more closely to that hybrid character. Defense lawyers have faulted the Special Court for inconsistency in the treatment of defendants, pointing in particular to the dissent of two national judges in the CDF, and to the shorter sentences Fofana and Kondewa received.¹³⁶ Taylor also contended that the process was tainted by donors’ political interference; and while the Trial Chamber rejected that claim, it pointed to the general problem of selective justice that opens any special tribunal to charges of politicization.

A Gradual Rebalancing of the Court

Throughout the life of the Special Court, those who served at the tribunal report a constructive relationship between national and international personnel. Peter Andersen, former SCSL chief of outreach and public affairs, notes that mutual respect was a key to the court’s collegial work environment, fostered by two-way office communication, an integrated team structure, and efforts on both sides to show appreciation for one another’s language and customs.¹³⁷ The most significant source of friction revolved not around sovereign control, but around vast disparities in compensation—a pervasive challenge in sovereignty-sharing arrangements and international operations in fragile states more generally.¹³⁸ The Special Court worked to narrow the gap in salaries for staff with similar functions, but benefit packages attached to UN contracts were worth up to fifteen times the value of “local” contracts. “There was a sense of unfairness [and] significant bitterness at that time,” recalls Mansaray.¹³⁹ Some national

staff unsurprisingly resented the implication that their skills and knowledge were less valuable, especially as they developed on-the-job expertise.¹⁴⁰ Some simply departed.

Once the SCSL opened an office in The Hague to manage the Charles Taylor trial, some Sierra Leoneans also were paid on the lucrative international scale. While this showed that differential pay was not based solely on nationality, a sense of inequity remained. Interestingly, however, local staff tended to direct their resentment less toward UN appointees, whom they did not blame for accepting high salaries. Rather, they blamed the donor Management Committee, and above all the Sierra Leonean government, which had pledged to push to narrow the compensation gap but had failed to deliver. In that sense, the sovereign did not put its foot down.

As the Special Court completed its cases, departing international staff were replaced increasingly by Sierra Leoneans who had developed added experience and competency. This “phased-in approach” included putting more Sierra Leonean personnel in senior posts.¹⁴¹ “It was a legacy issue, but it was also a cost-saving issue,” explains Mansaray.¹⁴² This transition reflected the general intent of sovereignty-sharing arrangements to return authority to domestic agents as they build capacity to manage critical functions.

Legacy and Domestic Impact

As David Crane has noted, the Special Court hoped to make “a lasting contribution to promoting accountability and the rule of law,” both by delivering justice and through capacity building and legacy activities.¹⁴³

The Provision of Justice

In terms of service provision, the Special Court was likely the most successful UN-backed hybrid court to date. The proceedings generally comported with international standards, and vastly exceeded the quality of trials that domestic courts could have produced. The Special Court relied on copious evidence, featured competent and diligent prosecution and defense teams, and issued reasoned judicial decisions largely in keeping with relevant prior international jurisprudence. While not above reproach, it produced reasonable and credible convictions for some of the most egregious crimes in Sierra Leone’s history, and thus issued an important challenge against impunity.

In the process, the Special Court made significant contributions to international criminal jurisprudence. Its decisions on the recruitment and use of child soldiers, its recognition of forced marriage as a crime against humanity, and its prosecution of attacks on peacekeepers all broke new ground and paved the way for subsequent prosecutions of those offenses. The Special Court also set a precedent of major importance by deciding that domestic amnesties do not shield suspects of certain major international crimes from prosecution in international courts. It became the first court to indict a sitting president in a neighboring country and eventually bring him

to trial—a process with important implications for the principle of head-of-state immunity. The court thus helped to advance the aim of its key external sponsors in strengthening the global regime of international criminal law.

Surveys suggest that the Special Court also earned reasonably strong public legitimacy. A 2007 survey by the BBC World Service Trust and NGO partners found that more than seven in ten respondents believed the court would achieve justice and deter others from committing similar crimes. More than two-thirds rated the court's performance as excellent or good, and most believed the court was putting the right people on trial.¹⁴⁴ Although a subsequent 2012 survey focused more on the court's legacy, large majorities again expressed approval of the SCSL's contributions to justice.¹⁴⁵

Public approval was not uniform. Some Sierra Leoneans bristled at the price of the process and believed that much of the money should have been used to compensate victims or fund reconstruction projects.¹⁴⁶ The Special Court was not a judicial bargain. Intended to last for three years and cost \$75 million, it endured for a dozen years and consumed roughly \$300 million. This paled beside the aggregate price tags of the fully international ICTY and ICTR, but the SCSL was comparably costly on a per-defendant basis. Some Sierra Leoneans also chafed at the small number of persons charged and the relative comfort of convicted persons, whose air-conditioned cells had televisions and other amenities considered luxuries in many parts of Sierra Leone.

To a large extent, these public frustrations would be difficult for the court to address. A hybrid process meeting high standards of professionalism and integrity was bound to be costly by local standards, even if significant efficiency gains were possible, and respecting basic rights would inevitably require the court to treat notorious figures much better than most survivors believe they deserve. Public complaints about the SCSL process highlight the difficulty of building sovereignty-sharing ventures that satisfy the aspirations of diverse audiences including domestic authorities, their international partners, and members of the public.

Reconciliation and Normative Change

More difficult to ascertain is the extent to which the Special Court process succeeded in advancing societal reconciliation and accountability norms in Sierra Leone. Some observers, particularly in Sierra Leone's legal community, assert that the Special Court proceedings have altered the way in which Sierra Leoneans think about and speak about criminal accountability.¹⁴⁷ Binta Mansaray argues: "One of the greatest contributions was to send a message—a very loud and clear message—that no one is above the law."¹⁴⁸ Former Justice Minister Franklyn Kargbo adds: "There is no Sierra Leonean who is willing to go to war anymore, because the Court imprinted on our national psyche that impunity is not an option. That is the best takeaway from the establishment and operation of the Court."¹⁴⁹

A 2012 survey on the Court's impact and legacy supported claims that the SCSL made an important impression. In that survey, 91 percent of respondents said that the SCSL had contributed to bringing peace, 82 percent believed the Court had contributed to greater respect for human rights and the rule of law, and 64 percent believed the Special Court had "contributed towards containing the culture of impunity."¹⁵⁰

Others argue that the process did little to change the discourse in a domestic system plagued by weak capacity and dubious independence on cases involving the government. Henry Mbawa, a former head of Sierra Leone's Justice Sector Coordination Office, argues that the Special Court process reflected "a continuation of elite struggle" in which the Kabbah administration and its international partners assigned blame for atrocities and defanged the rebel movement, but failed to deal with underlying "structural violence" in the society. "It's sharing sovereignty, but with political undertones, to maintain elite dominance" and thereby facilitate continued patrimonial rule, he argues.¹⁵¹

Positive Institutional Legacies

The Special Court left behind a number of positive legacies for the domestic judicial system. Judges and lawyers point to provisions in the draft Code of Criminal Procedure pertaining to witness protection and pretrial discovery as concrete principles and practices derived from the Special Court.¹⁵² Another example pertains to the rules of evidence. Sierra Leonean judges traditionally relied on overly rigid standards for admissibility that led to exclusion of relevant evidence. They learned from the Special Court's example to adopt somewhat more flexible standards in which judges admit a wider array of relevant evidence and then use their judgment to assign it appropriate weight.¹⁵³

The principal mechanism for this transfer of procedures and practices has been the return of Special Court judges and lawyers to the domestic system. Minister of Justice Joseph Kamara served as deputy prosecutor at the SCSL, and has sought to adapt some of its practices in domestic courts.¹⁵⁴ Judges such as Jon Kamanda and the late George Galaga King, and lawyers such as the former deputy prosecutor Abdul Tejan-Cole have been among the other key agents for change. National courts have hired former SCSL staff to upgrade information technology and other systems.¹⁵⁵

The Special Court also has had some impact on domestic criminal law, as SCSL decisions have informed legislation on topics such as child protection and domestic violence.¹⁵⁶ There is less evidence of the court's impact as a source of precedent. Judge Monfred Sesay of the national Appeal Court asserts that for domestic lawyers and judges, the Special Court is a "legitimate source of precedent."¹⁵⁷ Yet it rendered no verdicts under domestic law, and some Sierra Leonean lawyers regard this as a missed opportunity to embed helpful legal principles domestically. "Those precedents would

be referred to in our courts going forward,” argues Africanus Sorie Sesay, a leading legal practitioner in Freetown. “But I’ve never heard Sierra Leonean lawyers citing the Special Court.”¹⁵⁸

Another possible missed opportunity was the failure in the 2002 Ratification Act to explicitly incorporate the provisions of the SCSL Statute into domestic law.¹⁵⁹ Ibrahim Yillah, the principal defender at the Residual SCSL created to manage the court’s ongoing functions, calls this missed opportunity a “matter of profound regret.”¹⁶⁰ Incorporating those crimes would have enabled Sierra Leonean prosecutors to bring cases for war crimes, crimes against humanity, and other serious violations of international humanitarian law in local courts. A further confounding factor is that the Lomé Agreement’s amnesty provisions remain in effect, barring domestic prosecutions for lower-level crimes during the civil war.¹⁶¹

The Limits of Capacity Building

One of the most challenging aspects of the SCSL’s mandate was to help strengthen the capacity of the beleaguered national judicial system. The design and composition of the SCSL frustrated this objective, as did the failure of national authorities to devise an organized means of harnessing lessons from the proceedings. The court’s budget did not include robust provision for training or capacity building, and officers of the court tended to focus their energies on the important tasks of conducting high-profile trials and conducting outreach.

Over time, the Special Court did carry out some capacity-building initiatives, such as programs to train translators within the Sierra Leonean courts and to train judges and legal staff in the juvenile justice system. The Special Court also developed a formal legacy program, which continues under the auspices of the Residual SCSL and includes a detailed archive from the proceedings.

There is general agreement that Sierra Leonean judges, lawyers, administrators, and security personnel learned a great deal from participating in the Special Court process. Some brought that knowledge back to the national system. However, the relatively modest number of Sierra Leoneans in key positions inevitably limited the efficacy of that transmission mechanism. Capacity-building possibilities were also limited when Sierra Leoneans opted not to return to jobs within the domestic system. The Special Court drew complaints that it was draining much-needed capacity from the domestic legal system.¹⁶²

The Sierra Leone Parliament has not taken action to pass a law or amend the constitution to enable judges to apply jurisprudence and procedural norms and practices from the SCSL in local courts. Without that legal framework, importing international law and procedure could violate the Constitution of Sierra Leone, which does not include international law as a source for domestic law.¹⁶³ In some cases, the principles

and practices at the SCSL also fit awkwardly beside national law, since the court incorporated aspects of the civil law tradition alongside the common-law principles followed in Sierra Leone.

Ongoing Domestic Challenges

The Special Court proceedings have had little evident effect on the challenges that most bedevil the domestic judicial system—namely political interference, corruption, and resource and capacity constraints. These are problems beyond what a specialized judicial vehicle could be expected to rectify. The 2015 Supreme Court decision upholding President Koroma's dismissal of the vice president—an act widely chastised by legal commentators as unlawful—was the most salient reminder of a system in which even the most senior judges can sometimes betray the public trust.¹⁶⁴ Few Sierra Leoneans expect a fair hearing in cases that involve senior executive officials. At the community level, justice remains sparse, and crime rates remain high. The judicial system is woefully underresourced, and bribes are still a greater source of income than salaries. The structural causes for social instability and violence, such as poverty and high youth unemployment, remain intact.¹⁶⁵

Even the Special Court building—intended to be a significant concrete aspect of the tribunal's legacy—shows the difficulty of transferring the best aspects of the SCSL process to the domestic judicial system. The building and grounds already look frayed at the edges and are liable to fall into disrepair, as their maintenance costs loom over the cash-strapped domestic judiciary. The SCSL courthouse epitomizes a general challenge of sovereignty-sharing ventures: the difficulty of developing institutions that are effective and appropriate in providing immediate service delivery, and which can be handed off and maintained domestically when external actors depart and the accompanying surge of donor funding subsides.

Conclusion

The SCSL is a relative success story. It was built on a reasonably solid political foundation and grounded in a treaty that communicated formal sovereign consent. President Kabbah had clear political interests in seeing major RUF and AFRC figures and Charles Taylor stand trial, as did the court's main external sponsors: the United States, the United Kingdom, and the United Nations. Moreover, American, British, and UN officials had extensive leverage in Sierra Leone, which was deeply dependent on foreign aid and reliant on international security provision after the civil war. Foreign leverage partially explains why the political equilibrium supporting the SCSL held even when the controversy surrounding the CDF case arose. Kabbah's own commitment also appears to have played a role, whether due to personal convictions or due to rivalry with Norman. The fact that Kabbah was not indicted

may reflect a cost of maintaining domestic political backing, but the benefits of durable domestic consent were clear.

The SCSL's performance, both inside and outside the courtroom, helped strengthen the political coalition supporting its work, especially during the most trying moments in the CDF proceedings. The fact that the SCSL used a single language and operated in a common-law tradition shared by the host state and its prime external partners certainly helped in the design and execution of justice, as did adequate if not always timely finances from New York, London, Washington, and elsewhere. International personnel at the SCSL were able to deliver governance services to Sierra Leone that its own war-battered judiciary could not, and key national staff likewise contributed greatly to the venture.

Former SCSL President Jon Kamanda argues that the Special Court provides "a good model" for postconflict justice. "National judges knew the terrain" of Sierra Leonean politics and society, he says, while "international judges came with a balancing view" that emphasized strict application of the law.¹⁶⁶ Ibrahim Yillah agrees that the tribunal "struck the right balance."¹⁶⁷ Binta Mansaray argues that for a country that desires a hybrid judicial process, the Special Court furnishes a useful model: "If it is not forced upon a country, if it is an explicit agreement, there can be mutual respect and support, and it can be effective."¹⁶⁸ The court generally was regarded as legitimate, it was able to conduct extensive outreach across the country, and its verdicts largely were accepted as credible and appropriate.

Still, the SCSL's impact was limited in important ways. The process remained distant from the personal experiences of most ordinary Sierra Leoneans,¹⁶⁹ and it did little to change their perceptions of the domestic legal system. It had only modest effects on capacity building, and major barriers to effective access to justice and the rule of law in Sierra Leone remain largely intact—problems a specialized hybrid court could not reasonably be expected to resolve. The Special Court thus illustrates well the challenge in sovereignty-sharing ventures of moving beyond effective stopgap service provision to strengthen domestic systems sustainably.

Compromising on Hybrid Justice

IN NOVEMBER 2018, two elderly men sat expressionless before a panel of red-robed judges in a modern, theater-style courtroom adorned with the flags of Cambodia and the United Nations. Nuon Chea and Khieu Samphan, the most senior surviving leaders of the infamous Khmer Rouge regime, listened as a judge read the verdict convicting them of genocide, crimes against humanity, and war crimes in the late 1970s. That verdict and their 2014 conviction for related crimes were widely welcomed and important steps in addressing Cambodia's haunted past, but they came amid a long and troubled judicial process. The Extraordinary Chambers in the Courts of Cambodia (ECCC), a hybrid court designed to try certain crimes of the Khmers Rouges, is the offspring of an unhappy marriage between national and international partners.

The ECCC shows the possibility to share sovereignty effectively where political interests overlap, but also the peril of building a hybrid court on a precarious political foundation. It reflects a political compromise rather than a shared vision on how to organize an optimal accountability process. Relations between UN officials and leaders of the incumbent Cambodian People's Party (CPP) have been fraught from the outset. During protracted and sometimes bitter negotiations, international actors lacked the leverage to convince Cambodian leaders to accept an internationally led mixed court. The price of Cambodian consent was to create a specialized domestic court with a Cambodian majority on the bench, bifurcated national and UN "sides," and other features that obscured the partners' precise roles and responsibilities. The agreement to create the court was itself ambiguous in legal character—more than a technical MOU but less than a treaty—leaving the scope of UN appointees' authority

in doubt. This model assuaged Cambodian sovereignty concerns, but left UN negotiators deeply dissatisfied and ambivalent about the venture. The structure of the ECCC left it exposed to a high risk of domestic capture.

In its first few cases, the ECCC showed a capacity to implement credible justice and capitalize on the benefits of hybridity when its sponsors' interests overlapped. External resources and technical proficiency raised standards well above those of local courts, while Cambodian knowledge and participation facilitated investigations, victim engagement, and public outreach. While far from perfect, the court's performance in its first two cases offer a reasonably strong justification for the joint venture, and public perceptions of the court have been largely positive.

The tribunal also has shown the pitfalls of sharing sovereignty when the overlap in national and international priorities is narrow, however. UN officials have struggled to address corruption allegations and other problems on the Cambodian side of the court, and the two sides have feuded over the jurisdiction of the ECCC, which is authorized to try "senior leaders" and others "most responsible" for atrocities of the Khmer Rouge era. Most problematically, Prime Minister Hun Sen and other senior officials have intervened publicly to curb the tribunal's reach. Hun Sen has thus managed to control key aspects of the process, limiting the scope and impact of the proceedings significantly and diminishing the court's credibility and legitimacy to some audiences. Moreover, the beleaguered domestic judicial system remains little affected by the hybrid process, and mired in continuing corruption and executive interference.

The Political Context for Shared Sovereignty

Both the Khmer Rouge movement and the process to hold Khmer Rouge leaders accountable for their abuses reflect the contentious domestic and international politics that have shaped Cambodia's troubled modern history. Cambodia emerged as an independent state in 1953 under the leadership of Prince Norodom Sihanouk. His royalist regime sought to steer a neutral course in the Cold War that gripped Southeast Asia. However, the war in Vietnam spilled increasingly into Cambodia, and the communist Khmer Rouge ("Red Khmer") movement arose in resistance to Vietnamese encroachment, US bombing, and episodes of brutal repression by the royalist regime in Phnom Penh. While Sihanouk was abroad in 1970, a right-wing military coup brought General Lon Nol to power. The coup ignited five years of bloody civil war between the US-backed military regime and the swelling ranks of Khmer Rouge fighters inspired by a diffuse sense of Maoist ideology and intensely xenophobic brand of nationalism.¹

In 1975, as US support for the Lon Nol regime dwindled and American forces prepared to withdraw from Vietnam, Khmer Rouge forces overran government defenses and streamed into Phnom Penh. Initially greeted as liberators, they proceeded

swiftly to implement a reign of terror that consumed an estimated 1.7 million lives—roughly one-quarter of the population—in less than four years. Members of the Lon Nol regime, foreigners, ethnic minorities, intellectuals, merchants, and religious figures were among those targeted for abuse or physical destruction by the shadowy regime led by Pol Pot. Its murderous rule continued until January 1979, when a group of Khmer Rouge defectors returned with invading Vietnamese forces to seize control. The leaders of the government that the Vietnamese army installed included current Prime Minister Hun Sen and other figures who have been central to the development of the current governing regime, including Heng Samrin and the late Chea Sim.

The Vietnamese invasion marked a decisive break between China and Vietnam, which had drifted toward Moscow after the Sino-Soviet split. China had been the principal external patron of the Khmer Rouge regime, and it resisted the Vietnamese occupation of Cambodia, launching a border invasion in an unsuccessful bid to “teach Vietnam a lesson.” In Phnom Penh, the Vietnam-backed government convened a tribunal in summer 1979 to try Pol Pot and his deputy prime minister and foreign minister, Ieng Sary, whom it painted as tools of Chinese hegemonism in Southeast Asia. After a brief trial in absentia riddled with procedural flaws and political rhetoric, the People’s Revolutionary Tribunal issued history’s first conviction under the 1948 Genocide Convention. Few saw the exercise as much more than a show trial.²

Rather than focusing on Khmer Rouge abuses, most of the international community concentrated on resisting the Vietnamese occupation. The US government, its Western allies, and the conservative members of the Association of Southeast Asian Nations joined Beijing to form a diplomatic entente to deny legitimacy to the Vietnamese occupation, and the Cambodian government it put in place. Importantly, the Khmers Rouges were part of a coalition advanced as the legitimate Cambodian governing authority. Cambodian royalists led by Prince Sihanouk were the diplomatic face of that coalition, but Khmer Rouge guerillas were the primary fighting force. For a decade, the Vietnam-backed People’s Republic of Kampuchea (PRK) waged war against Khmer Rouge guerillas. In 1985, Hun Sen emerged to lead the PRK government, which tried half-heartedly to reintroduce aspects of communist economic policy but shifted increasingly toward a haphazard process of market liberalization. The PRK remained desperately poor, internationally ostracized, and stunted by Khmer Rouge destruction of preexisting state institutions.

As the Cold War thawed, Vietnam agreed to withdraw from Cambodia, and a series of talks in Jakarta and Paris led to a peace settlement and the dispatch of the UN Transitional Authority in Cambodia (UNTAC). That mission included important sovereignty-sharing elements but did not address the issue of Khmer Rouge impunity, as the major external powers deemed the Khmers Rouges essential to the negotiation of an effective peace deal. UNTAC deployed in 1991 for an eighteen-month mission

focused largely on preparing Cambodia for national elections. The Khmers Rouges frequently violated the agreed cease-fire and were irritants to the peace, but they were marginalized politically after boycotting the 1993 elections and continued to lose military strength as Chinese and Thai assistance evaporated.

The elections yielded a fragile two-headed government. Prince Norodom Ranariddh, leader of the royalist Funcinpec party, had won the largest plurality of the votes, but Hun Sen of the CPP—the descendant of the Vietnam-backed government of the 1980s—finished second and still enjoyed control over the security forces and bureaucracy. In an awkward compromise, the two bitter rivals agreed to serve as co-prime ministers, but they continued to jockey for position beneath the surface. It was in that charged political context that serious discussion of a Khmer Rouge accountability process began.

A Bitter Partnership

Most of the ECCC's performance problems can be traced to the relatively narrow base of shared interests between Cambodian governing elites and their international partners since the idea for internationalized Khmer Rouge trials emerged in the 1990s. The initial push came primarily from the United States. In 1994, the US Congress passed the Cambodian Genocide Justice Act, pursuant to which the State Department funded the Documentation Center of Cambodia (DC-Cam), established by scholars at Yale University. From 1995 onward, DC-Cam became the central in-country locus for the collection of archives, physical evidence, and testimonies pertaining to Khmer Rouge atrocities.

As that evidentiary foundation was being laid, political dynamics within Cambodia still militated against an accountability process. The Khmer Rouge insurgency continued, and Hun Sen launched a "national reconciliation" policy aimed largely at securing defections via amnesty—a policy that helped him divide and conquer the insurgency. In that context, Ranariddh and Hun Sen competed to attract Khmer Rouge defections. Hun Sen gained the upper hand in 1996 when he secured the defection of Pol Pot's former deputy prime minister and foreign minister, Ieng Sary, and roughly 3,000 of the remaining 7,500 Khmer Rouge guerillas still active in the western parts of the country.

The government's approach shifted in June 1997, when Ranariddh and Hun Sen cosigned a letter requesting UN assistance to set up a tribunal.³ However, that request was issued at a time when the two co-prime ministers were jockeying furiously for power. It appears that part of Hun Sen's motivation for the request was to scare remaining Khmer Rouge insurgents into concessions.

In July 1997, tensions came to a head when Hun Sen accused Ranariddh of dealing secretly with the Khmers Rouges to destabilize the government.⁴ In a bloody set

of street battles, CPP forces defeated Funcinpec partisans, and Hun Sen took center stage politically. Most Western governments roundly decried the events as a coup, and the US government and others imposed sanctions. China responded with political and economic assistance—a key watershed in the relationship between Beijing and the CPP, which pivoted from enmity during the era of Vietnamese occupation to a close partnership in the post-1997 period.

On the UN side, US officials including Secretary of State Madeleine Albright and War Crimes Ambassador David Scheffer led a campaign for an international tribunal, presenting Khmer Rouge accountability as a normative imperative and an essential step to the broader advancement of international criminal justice.⁵ Other key governments, including those of France, Australia, and Japan, came to share that view. The Khmer Rouge accountability process also represented an important peace-building step left unaddressed by UNTAC, which had deferred justice in the interest of enticing the Khmers Rouges into a peace settlement.

US officials pressed unsuccessfully for a tribunal along the lines of the ICTY or the ICTR, confronting the threat of a Chinese veto in the UN Security Council, and other member states' frustration with the length and cost of the ad hoc courts. In April 1998, Pol Pot died in the jungle near the Thai-Cambodian border under mysterious circumstances after media reports leaked US preparations for a possible raid to capture him.

While discussions on a possible tribunal proceeded in New York, Cambodia's domestic politics were changing. With a commanding grip on the security services, bureaucracy, and courts, Hun Sen began a resolute campaign to consolidate power domestically. He won the 1998 elections over a divided and reeling opposition, and with a combination of carrots and sticks his government brought the Khmer Rouge insurgency to heel. No longer communist in a meaningful sense, Hun Sen embraced generic strategies of authoritarian rule and patronage politics. After decades of armed conflict, he presided over one of the world's poorest countries and a state with exceedingly weak institutions. The country remained highly aid-dependent. By 1999, however, when earnest negotiations began over the shape of a tribunal for surviving Khmer Rouge figures, Hun Sen was in control.

CPP leaders were ambivalent about Khmer Rouge trials.⁶ This was evident in Hun Sen's vacillation on the subject and in his comment in December 1998, after the defection of the senior Khmer Rouge officials Nuon Chea and Khieu Samphan, that Cambodia should "dig a hole and bury the past."⁷ A judicial process could comprise a culminating chapter in the CPP's victorious struggle against the Khmers Rouges, but trials were risky. Hun Sen and other CPP leaders, including Heng Samrin and Chea Sim, had held official posts in the Khmer Rouge regime before defecting to Vietnam and returning with the Vietnamese army to oust Pol

Pot in 1979. In their long ensuing fight to defeat the Khmer Rouge insurgency, they had sometimes co-opted elements of the Khmer Rouge resistance. Victory over the dreaded Khmers Rouges is a central thread in the legitimating narrative that has helped keep Hun Sen and the CPP in power for most of the post-1979 period. Exposure of the links between the CPP and the Khmer Rouge movement could therefore be deeply damaging, and political control over the trials would be the *sine qua non* for CPP participation.

As the idea of a tribunal simmered, bitter disagreement surfaced over whether the United Nations or the Cambodian government should lead the process. A group of UN experts dispatched in early 1999 recommended an ad hoc international tribunal and explicitly rejected the idea of a “mixed Cambodian-foreign court.”⁸ Group member Steven Ratner later explained that the UN experts believed a hybrid tribunal “would depend too much on the cooperation of the Cambodian government,”⁹ which presided over a weak judicial system riddled with corruption and political interference.

CPP leaders reacted angrily, asserting that the trials would be domestic in nature. Hun Sen said that Ta Mok, a senior figure in custody, would be tried domestically. Hun Sen and Foreign Minister Hor Namhong argued that the United Nations had little credibility, as it had allowed a political coalition including the Khmers Rouges to occupy Cambodia’s General Assembly seat during the 1980s, sidestepped accountability in the UNTAC period, and done little to defeat the Khmer Rouge insurgency.¹⁰ Hun Sen added that an international tribunal would jeopardize hard-fought domestic peace and violate Cambodia’s sovereignty. He exclaimed that the only task the UN secretary-general would give to Cambodians would be to “go into the jungle to capture the tiger.”¹¹ CPP leaders distrusted a UN-led process that could damage the party’s standing, either by indicting incumbent officials with links to the Pol Pot regime or by getting credit for justice the CPP had not delivered.

US officials, including then Senator John Kerry, proposed a hybrid court to break the impasse. That helped bring the UN and Cambodian officials to the table for negotiations beginning in mid-1999. The two sides agreed to the principle that both domestic and UN-appointed personnel would play significant roles in trials that would be held in Cambodia and would focus on certain domestic and international crimes committed during the Pol Pot era. However, the struggle for control continued. UN negotiators argued that international leadership was imperative for delivering credible justice. They pressed for a preponderantly international court like the Special Court for Sierra Leone, which featured international majorities on the bench, a UN-appointed prosecutor, and an international registrar to manage court administration.¹² Hun Sen shot back, saying, “Cambodia wants to be given an opportunity to be masters of its own situation. You can participate, but do not try to be masters of the issue.” He added that he wanted the tribunal not to be a

“foreign woman . . . in a Khmer dress,” but rather a “Khmer woman” with “foreigners to come and help put on the make-up.”¹³ He proposed a special national court with foreign participation.¹⁴

The Cambodian government was less susceptible to international pressure than the government in Sierra Leone, and its leadership was less credibly committed to the legal norms embedded in international criminal justice. By 1999 the CPP had a strong political position domestically. No international peacekeepers were present, and China provided mounting economic aid and other forms of assistance to cushion the potential blow of a Western pullback. The threat of a Chinese veto on the Security Council also ruled out the imposition of an international tribunal through a Chapter VII resolution—the basis for the tribunals for Rwanda and the former Yugoslavia. Moreover, Cambodia had physical custody of some key suspects. Ieng Sary, Nuon Chea, and Khieu Samphan had defected, and Cambodian forces had apprehended Ta Mok, a former Khmer Rouge military commander, and Duch, the infamous former chief of the Khmer Rouge central security office. CPP leaders thus held firm in their demands. In 2002 the UN negotiating team abandoned negotiations, citing Cambodian intransigence and the risk of attaching the UN’s name to a flawed judicial process it would be hard-pressed to control.¹⁵

Soon afterward, however, Kofi Annan and a group of key UN member states keen to pursue justice pressed the negotiating team to return to Phnom Penh to conclude a deal.¹⁶ With their leverage diminished and hands tied, UN Legal Counsel Hans Corell and his colleagues returned to Cambodia and accepted a hybrid court with preponderantly domestic composition. Human rights groups roundly criticized the draft agreement, arguing presciently that the structure of the ECCC would leave it exposed to Cambodian executive interference and a high risk of corruption. Nevertheless, the UN team accepted the terms.

The deal signed in June 2003 was a framework agreement between the United Nations and the Cambodian government.¹⁷ The legalistic and detailed ECCC Framework Agreement was more than a political pledge, but its precise legal character was ambiguous. Unlike the Special Court for Sierra Leone, the ECCC is not rooted in a treaty. Cambodian officials argued that a treaty would violate its sovereignty, and insisted on basing the tribunal in a national law, which they passed in 2001 while the Framework Agreement was still under discussion. Although Cambodia’s leaders later signed the Framework Agreement, they passed the revised ECCC Law in 2004 with similar provisions. A domestic law, not an agreement with the United Nations, thus created the tribunal.¹⁸ The lack of clarity on the role of the United Nations—somewhere between that of an equal partner and that of a technical service provider—reflected misaligned preferences and would contribute to problems in performance.

Ambiguities in Institutional Design

After lengthy and arduous negotiations, the Framework Agreement and the ECCC Law enumerated many of the parties' rights and responsibilities. To accommodate differences, however, the ECCC's institutional design was complicated and left some aspects of the arrangement unclear. It sought to satisfy Cambodian reluctance to share sovereignty while granting the UN side enough authority to garner international funding and political support. It required applying a mix of international and domestic laws and procedures, leaving ECCC judges and lawyers the challenge of trying to piece them together.

One key concession to Westphalian sovereignty was to bifurcate the tribunal. Unlike any other hybrid court, the ECCC is split into national and international sides, each with a separate stream of funding. It has national and international co-prosecutors and co-investigating judges, as well as a Cambodian director of administration and a deputy director appointed by the United Nations. Staff roles are also divided. For example, a UN appointee leads the Defense Support Section, while a Cambodian heads the unit responsible for outreach to victims. David Tolbert, who has served as registrar at the Special Tribunal for Lebanon and as UN special expert assisting the Khmer Rouge trials, calls the ECCC's structure the "worst possible design" for a hybrid court.¹⁹

The ECCC was also endowed with an ambiguous procedural regime. Under the Framework Agreement and the ECCC Law, the court's procedure must be "in accordance with Cambodian law," but may seek guidance from international criminal procedures when lacunae must be filled, when the proper interpretation of local rules is unclear, or where questions arise about a rule's consistency with international standards.²⁰ However, no comprehensive domestic code existed for the ECCC to consult before Cambodia adopted a new Criminal Procedure Code in 2007. That code did not address some of the special challenges of a mass crimes procedure, and it was based on French civil law procedures that in some cases had been judged obsolete or inconsistent with human rights norms.²¹

The ECCC judges therefore drafted "Internal Rules" of evidence and procedure for the court, based loosely on the draft Cambodian code but importing elements of international criminal procedure, which is rooted primarily in the common-law tradition. The Internal Rules reflect a mix of national and international principles and practices drawing from both civil and common law, contributing to inefficiency, confusion, and judicial inconsistency.

Much of the ambiguity surrounds the role of the co-investigating judges, modeled on magistrates in the French civil law system. In Cambodian law, investigating judges typically conduct lengthy confidential investigations and build an extensive case file

to inform a brief public trial. International criminal procedure is based primarily on the common-law tradition, in which prosecutors and defense lawyers conduct investigations in advance of a lengthy trial featuring extensive witness testimony and cross-examination. The ECCC's reliance on co-investigating judges put tremendous weight on the integrity and efficacy of a confidential investigation, which contributed to criticism of the court in contentious cases in which Cambodian and international judges disagreed.

Moreover, as former US Ambassador-at-Large for War Crimes Clint Williamson argues, "The idea that having a judicial investigation behind closed doors would speed the process was deeply flawed, because there is so much appetite from the public to hear the story. . . . A lengthy trial phase is bound to happen."²² Lengthy trials have indeed occurred, as prosecutors and defense lawyers demand the right to question witnesses cited in the case file, and trial judges grapple with complex fact patterns. From an efficiency standpoint, this produced what the former head of the ECCC Defense Support Section, Rupert Skilbeck, calls the "worst possible outcome" of a full-length judicial investigation and a full-length trial.²³

To deal with possible feuds between co-prosecutors and co-investigating judges, the ECCC framers created the Pre-Trial Chamber. Its rulings are not binding on the Trial Chamber, which in turn is subject to review by the appellate Supreme Court Chamber. Issues can be litigated at four different levels. These institutional handicaps have lowered the efficiency of the proceedings and raised the cost. Trials initially projected to cost \$56.3 million over a three-year period have now continued for more than thirteen years and have cost more than \$360 million.²⁴

Perhaps the tribunal's most important distinguishing structural feature is the preponderance of domestic judges. Unlike most hybrid courts, the ECCC has a majority of national judges in each chamber—three of five on the Pre-Trial and Trial Chambers, and four of seven on the Supreme Court Chamber. Unlike the government of Sierra Leone, Cambodian authorities filled all of their allocated seats. The UN team insisted on a supermajority voting provision that required at least one international judge to support an affirmative decision by any of the ECCC's chambers. Still, in this and other respects, the ECCC is the most preponderantly domestic of the UN-backed hybrid courts.²⁵ ECCC judge Huot Vuthy argues that the ECCC gives Cambodians deep involvement in the process and represents "one of the best models for cooperation between national and international sides."²⁶ Council of Ministers spokesman Phay Siphon adds that the design was a way "to form the tribunal to respect sovereignty," and to ensure that Cambodia remains "on equal footing."²⁷

The Cambodian-majority structure presented a clear risk of domestic capture. As the ECCC defense lawyer Victor Koppe argues, "The people in power, even after all these years, have a strong interest in a particular narrative being told"—namely, one

that would buttress rather than erode their reputation as the leaders who opposed and conquered the Khmers Rouges.²⁸ The near-absence of domestic institutional safeguards added to the danger of a politicized or corrupted process.

UN officials and NGO leaders foresaw the dangers of corruption and domestic executive interference,²⁹ and both sides anticipated possible friction between the tribunal's national and international personnel. They thus negotiated provisions to deal with disputes—most notably the creation of the Pre-Trial Chamber. The tribunal's dispute resolution mechanism did not address all important risks, however. It did not provide a means to address administrative problems, which were foreseeable for a bifurcated institution, or problems related to political interference.

Unlike the hybrid courts for Sierra Leone and Lebanon, the ECCC has neither a donor management committee to oversee court operations nor endorsement by the UN Security Council. The United Nations reserved the right to withdraw in the event of Cambodian noncompliance,³⁰ but that option would be difficult to exercise as UN funds, personnel, and reputation became invested in the ECCC. Ultimately, disputes would be settled “by negotiation” or other agreed means.³¹ Without overwhelming international leverage and with questionable domestic commitment to the court, working through differences would prove challenging.

One crucial source of potential friction pertained to personal jurisdiction. The ECCC is empowered to try several international and domestic crimes committed during the Pol Pot era, from April 1975 to January 1979. That temporal and geographic frame suited the interests of donors keen to avoid inquiry into the preceding ear of civil war and US bombardment, just as domestic authorities were loath to be held accountable for post-1979 abuses. However, the two sides did not achieve a genuine meeting of the minds on personal jurisdiction, despite discussing the issue at length during talks to create the court.³² They agreed to focus on trials of “senior leaders and others most responsible” for crimes of the Pol Pot era, but differed on how to interpret that phrase,³³ a problem that would later haunt the proceedings when Cambodian authorities stonewalled certain disfavored trials. Avoiding a rigid suspect list was necessary and appropriate to preserve prosecutorial independence; but in retrospect, this ambiguity allowed the Cambodian government to feign consent to an independent judicial process. The structure of the court then helped host state officials largely control the process.

Early Administrative Challenges

The court's cumbersome institutional design and the underlying preference misalignment responsible for it led quickly to problems in implementation. National and international personnel often sat on opposite sides of the hall, reporting to different bosses. Pay differentials were a source of domestic irritation, and managers on both

sides found it difficult to run integrated offices. Robin Vincent, the former registrar at the Special Court of Sierra Leone, and former ICTY administrative chief Kevin St. Louis found in a 2007 review that the split administrative structure was “unhelpful and divisive” and that it hindered, confused, and frustrated efforts by staff to carry out their mandates.³⁴

Ownership gaps emerged as the two sides haggled over which side bore certain responsibilities, particularly with respect to funding. The Cambodian government insisted that it discharged its obligation to pay for roughly \$13 million of the initial \$56 million total through in-kind contributions of land for the courthouse and other services. The main courtroom lay bare for over a year as the two sides debated who bore the burden of furnishing it.³⁵

The split structure put each side of the court under a different master, with Cambodians answering to the government and UN appointees answering to New York. In 2007, the UN Development Program issued an audit of the court’s administration, castigating the divided structure and noting that international section heads were not allowed to recruit, evaluate, or even keep time sheets for Cambodian staffers.³⁶ The UNDP audit also found that most Cambodian recruits “did not meet the minimum requirements” for their jobs, and were hired nontransparently and overpaid.³⁷ It recommended nullifying past hires and relaunching recruitment under UNDP oversight. The Cambodian government lashed back, calling that recommendation “unacceptable and non-negotiable,” as it would “essentially mean a re-negotiation of the entire basis and character of the ECCC, as a national court with international participation and assistance.”³⁸ Significant improvements to human resource practices were made,³⁹ but the episode was an early show of Cambodian resolve to defend the sovereign turf it had negotiated.

A more serious problem arose soon after the court’s establishment, when credible allegations emerged of an extensive kickback scheme. Cambodian staffers told the Open Society Justice Initiative (OSJI), a civil society group monitoring the trials, that they had to pay a large share of their salaries to their superiors in exchange for their jobs.⁴⁰ Cambodian officials denied the allegation, though a video of a Cambodian ECCC official supported the claims.⁴¹

The international response was unenthusiastic. Donors privately complained that OSJI should have approached the court before airing allegations publicly. UN officials did not believe that the Framework Agreement gave them remit over administrative affairs on the Cambodian side of the court, and international judges believed the court’s structure did not give them a mandate to intervene.⁴² Only after further evidence of corruption surfaced in 2008 did the United Nations take action. The UNDP froze donor funds that it administered for the Cambodian side of the court, and UN special expert David Tolbert requested a confidential “review” of the allegations by the

UN Office of Internal Oversight Services.⁴³ Tolbert then sent a confidential report to Cambodian officials showing the allegations to be credible and recommending a national investigation.⁴⁴ Although UN officials were able to pressure CPP leaders to take action, the remedy was to send the Cambodian director of the Office of Administration on indefinite medical leave and appoint a government insider with dubious anticorruption credentials to an auditing role.⁴⁵ That weak resolution again reflected Cambodia's effective assertion of Westphalian sovereignty.

The Trial of Duch

One reason for donor reluctance to press hard on the corruption issue was keenness to see the first Khmer Rouge trial begin. It concerned Duch, the former chief of Office S-21, the infamous Khmer Rouge secret prison at the site of the former Tuol Sleng Secondary School in Phnom Penh. Thousands of suspected enemies of the Khmer Rouge regime were interrogated and tortured at S-21 before being carted off to the “killing fields” of Choeung Ek.⁴⁶ Elderly persons, mothers, and innocent children were killed—often with ax handles, to spare prized bullets—before being dumped in mass graves. The photos taken of them and the documents that Duch neglected to burn are among the most iconic reminders of Khmer Rouge crimes.

Duch's trial was a reasonably easy test for the court, as the documentary, physical, and testimonial evidence against Duch was overwhelming, and he had confessed to his role publicly before the trial began. Perhaps even more importantly, the trial of Duch was not politically sensitive. He was neither an ally of the CPP leadership nor the commander of a significant following. Duch was expendable.

The Duch trial showed the ECCC's ability to deliver credible justice when high-level political preferences aligned. The trial featured copious documentary evidence, witness testimony, and victim participation—in particular, through a judge-created scheme enabling certain survivors to join the proceedings as civil parties entitled to courtroom representation and the right to request “collective and moral” reparations.⁴⁷ Survivors of S-21 took the stand to share their harrowing experiences, prosecutors and defense made spirited cases, and Duch himself engaged actively in the proceedings. Judges produced reasoned decisions based on extensive research, and issued a lengthy and well documented judgment and conviction—all elements seldom if ever evident in local judicial processes.

The trial was not without hiccups. It took many months to complete, and at the eleventh hour Duch's Cambodian and international co-defense lawyers split dramatically. The Cambodian lawyer entered a plea of not guilty, while his international colleague argued that Duch was merely entitled to a sentence reduction, as he had committed crimes under orders and had feared for his own life.⁴⁸ That dramatic divergence again illustrated the hazards of the court's bifurcated design.

Duch's sentence was the subject of much consternation. The Trial Chamber gave Duch a term sentence rather than the maximum penalty of life imprisonment, and it took the remarkable step of issuing a sentence reduction due to human rights abuses Duch had suffered during a lengthy pretrial detention at the Phnom Penh Military Court without charges.⁴⁹ This was a notable challenge to the government by Cambodian and international judges, in the interest of due process principles. However, the resulting sentence of nineteen years provoked an understandable outcry among many victims, who also scoffed at the court's meager nonfinancial reparations award. On appeal, a Supreme Court Chamber supermajority of four Cambodian judges and one Japanese judge reversed the Trial Chamber's decision, sentencing Duch to life imprisonment without a request to do so from the co-prosecutors. They argued that the ECCC was "an independent and internationalized court" and had not engaged in "concerted action" with the Phnom Penh Military Court⁵⁰—questionable reasoning, given the court's creation under domestic law. While Duch's life sentence was widely welcomed, some analysts saw the appeal judgment as allowing popular pressure to trump human rights—the type of result a hybrid structure is meant to help avoid.⁵¹

Despite these shortcomings, this "Case 001" can be considered a relative success. It produced the first conviction through a credible judicial process for crimes of the Pol Pot era—an important and widely welcomed contribution to Cambodian society, after decades of impunity. In many respects it also provided a positive example of a serious courtroom trial process for legal practitioners and for the many students and survivors viewing the proceedings in the ECCC's theater-style gallery.

The Case against Senior Leaders

The court's second case, dubbed "Case 002," has presented greater challenges. It is the centerpiece of the accountability process, initially featuring the joint trial of the four most senior surviving leaders of the Pol Pot regime. They included Nuon Chea—known as "Brother Number Two" and Pol Pot's second in command—as well as head of the State Presidium, Khieu Samphan; Deputy Prime Minister and Foreign Minister Ieng Sary; and Sary's wife, Ieng Thirith, who was minister of social affairs. They were accused of playing key roles in the orchestration of Khmer Rouge policies that blended millenarian social and economic objectives with official paranoia and a crushing security apparatus.⁵²

Politically, the case is more sensitive than the trial of Duch. Ieng Sary was convicted in absentia by the 1979 Cambodian tribunal, and received an amnesty and pardon in his 1996 defection deal with Hun Sen, requiring the ECCC to rule on the effect of a domestic judgment, amnesty, and pardon. The case also has involved efforts to call government officials as witnesses—summons the government has rebuffed. Legally,

the case is dauntingly complex, which has contributed to problems in applying the court's hybrid laws and rules fairly and consistently. The result has been a lengthy process marked by frequent controversy.

Drags on Efficiency

The ECCC's efficiency challenges have been nowhere more evident than in Case 002. The court's indictment came in September 2010, more than four years after the tribunal opened its doors. This reflected the breadth and complexity of the case, as well as the court's cumbersome system of relying first on the co-prosecutors and then the co-investigating judges to conduct investigations. At its first hearing on the case in 2011, the Trial Chamber decided to sever the case into a series of minitrials covering specific sets of alleged offenses, fearing that aging defendants would die or become unfit to stand trial before a judgment could be reached on the numerous and complex crimes charged.⁵³

The first trial, Case 002/01, would focus primarily on crimes committed during the 1975 Khmer Rouge evacuation of Phnom Penh. Among other abuses, Khmer Rouge forces had dispersed families forcibly into agrarian communes while screening out and shooting members of the previous political regime. In addition to severing the cases, the Trial Chamber introduced restrictions on the participation of civil parties, who numbered nearly four thousand in Case 002, as compared to fewer than one hundred in the Duch trial. Even these efforts to accelerate justice did not bring about verdicts against all four accused. Ieng Thirith suffered from dementia, and in late 2011 the court declared her unfit to stand trial.⁵⁴ In early 2013, Ieng Sary died of natural causes before the trial concluded. After years of negotiation for the ECCC and a lengthy investigation, only two senior leaders would face a verdict.

Domestic Amnesty and Double Jeopardy

Early in Case 002, the ECCC faced two particularly sensitive legal questions surrounding Ieng Sary. The first was whether prosecuting him would violate the principle of "double jeopardy," since he had been convicted of genocide at the Vietnam-backed tribunal in 1979. The second was whether he was protected from prosecution at the ECCC by a royal decree he had received from then King Sihanouk in 1996. That decree had pardoned Ieng Sary for the 1979 conviction, and had given him amnesty from prosecution under a 1994 law outlawing membership in the Khmer Rouge organization, and perhaps also for other offenses.⁵⁵

The Trial Chamber's decisions were notable for the challenges they posed to strict Westphalian sovereignty. The chamber held that Ieng Sary's amnesty violated the trend in customary international law against amnesty for grave international crimes, as well as Cambodia's treaty obligations to punish violations of the 1948

Genocide Convention and 1949 Geneva Conventions. It thus ruled that the amnesty did not shield Ieng Sary from prosecution for the international crimes with which he was charged.⁵⁶ The Trial Chamber found that the principle of “double jeopardy” did not bar Ieng Sary’s prosecution, because “the 1979 trial was not conducted by an impartial and independent tribunal, in accordance with the requirements of due process.”⁵⁷ That holding, supported by all three national judges, was remarkable, given that the incumbent Cambodian government was essentially the same one that had sponsored the 1979 tribunal. Defense lawyers appealed, and the matter was not resolved before Ieng Sary’s death in 2013, but the Trial Chamber judgment exhibited the court’s willingness to criticize domestic institutions in at least some contexts.

Debate over Summoning Government Officials

Sovereign resistance was on display in 2009 when international co-investigating judge Marcel Lemonde sought to summon senior government officials. The ECCC’s Internal Rules gave him authority to issue summonses he deemed necessary for the investigation.⁵⁸ However, those rules had been drafted by judges—principally Lemonde—and were not products of an accord with the government. The six officials ignored the summonses, and Lemonde elected not to seek enforcement on the basis that coercive measures would be “fraught with significant practical difficulties” and would delay the judicial investigation.⁵⁹

The Pre-Trial Chamber agreed, citing the likelihood that the summoned officials would invoke parliamentary immunity; but it directed the co-investigating judges (CIJs) to investigate whether the government had discouraged the six officials from appearing.⁶⁰ Not long afterward, government spokesperson Khieu Kanharith was quoted in the press as stating the government’s position that they should not testify, and adding that UN appointees at the court could “pack their clothes and return home” if they were dissatisfied.⁶¹ The CIJs nevertheless found an investigation into government interference unwarranted, and the three national judges on the Pre-Trial Chamber agreed, on the dubious basis that a spokesman’s statements could not have intimidated the government officials.⁶² The two international judges dissented stridently; but without a supermajority in favor of an investigation, the matter was closed.

Lemonde and defense lawyers have argued that the summoned officials had information important to the trial,⁶³ but ECCC judge Martin Karopkin notes that summoning senior government officials would inevitably be challenging, requiring the court to approach the issue “in a way that’s sensitive to the culture” and the positions of those summoned.⁶⁴ Government spokesman Phay Siphon argues that the request was “arrogant” and did not follow Cambodian official protocol. “They don’t

understand Cambodian culture or the sovereign state,” he says. “They forget who they are.”⁶⁵ Most international observers saw the officials’ refusal to appear simply as a means to shield the CPP from inquiry.⁶⁶

Other Challenges

Defense lawyers also have complained that Cambodian judges at the ECCC have unfairly shielded CPP leaders from inquiry during the trial. Nuon Chea’s co-defense lawyers, Victor Koppe and Son Arun, filed a voluminous closing brief at the end of the second trial in Case 002. They lambasted the Trial Chamber’s refusal to summon National Assembly President Heng Samrin or to admit evidence of an interview in which he spoke favorably of Nuon Chea as “good, fair, polite and loyal” and Khieu Samphan as “powerless.”⁶⁷ They also decried the court’s refusal to admit a report by Human Rights Watch alleging that Hun Sen’s unit of Khmer Rouge fighters was involved in a deadly attack on a group of Muslim Chams.⁶⁸ The Trial Chamber dismissed these requests as irrelevant to the cases at hand, and as efforts simply to stir controversy and impugn the court’s credibility. Still, matters such as the refusal of government officials to testify render the court vulnerable to charges of political interference—a major problem in Cases 003 and 004. The defense also raised more mundane challenges in Case 002, such as inconsistent application of rules and procedures. Ieng Sary’s defense counsel, Michael Karnavas, in particular has accused the court of “cherry-picking” rules to achieve desired outcomes, which the ECCC’s blend of Cambodian and international procedures facilitates.⁶⁹

Despite these challenges, Case 002 again has shown the ECCC’s ability to manage sophisticated criminal trials when it enjoys sufficient political support. In 2014, Nuon Chea and Khieu Samphan were convicted in Case 002/01 of crimes against humanity and sentenced to life in prison.⁷⁰ The Trial Chamber’s verdict was criticized for poor structure and a lack of clarity on certain points of fact and law, but the appeals judgment issued in late 2016 rectified or clarified a number of key points and upheld most convictions and the defendants’ life sentences.⁷¹ The final judgment was a landmark in Cambodia’s long struggle against impunity and was welcomed in many quarters, though some dismissed the verdict as too little, too late.⁷²

The trial for Case 002/02 began in late 2014 and encompassed a wider array of criminal charges, including genocide against Muslim Chams and ethnic Vietnamese, forced marriage and rape, and various crimes committed at Khmer Rouge prisons and work sites. The trial lasted for 276 days and featured testimony from 185 witnesses, civil parties, and experts before concluding in June 2017.⁷³ The November 2018 verdict found both Nuon Chea and Khieu Samphan guilty of genocide and other enumerated offenses, and issued each a second life sentence.⁷⁴ In 2019, ninety-three-year-old Nuon Chea passed away while his case was on appeal, leading ECCC

judges to terminate proceedings against him. The appellate chamber declined to vacate the trial chamber judgment against him but found that without the completion of appellate review, it could not issue a final verdict of his guilt or innocence in the case.⁷⁵ His surviving comrade, eighty-eight-year-old Khieu Samphan, may still see the judgement on appeal, but Nuon Chea's death exacerbates a sense that the tribunal's most sweeping ultimate legal pronouncement was anticlimactic.

The Battle over Personal Jurisdiction

The most contentious matter at the ECCC has surrounded Cases 003 and 004—cases brought by successive international co-prosecutors against several former Khmer Rouge military and regional commanders. The rationale for Cases 003 and 004 has been to round out the Khmer Rouge trials by addressing several major classes of crime: atrocities within the central security apparatus including S-21 (Case 001), nationwide crimes at the policy level (Case 002), abuses by Khmer Rouge military forces (Case 003), and major violations orchestrated at the subnational level (Case 004). CPP leaders have sought to limit the scope of prosecution to the first five persons charged, all of whom are or were highly visible Khmer Rouge figures deemed politically expendable. By contrast, Hun Sen and other senior officials have opposed Cases 003 and 004, creating a long and uncomfortable standoff between the tribunal's domestic side and many of its key international personnel.⁷⁶

Case 003 initially featured two of Pol Pot's military chiefs—former navy Commander Meas Muth and air force Commander Sou Met—before Sou Met's death in 2013. Case 004 has featured former regional officials Yim Tith, Im Chaem, and Ao An, each of whom occupied key positions within the Khmer Rouge zone and district-level government structures. The cases began when the first international co-prosecutor, Robert Petit, initiated investigations. Cambodian co-prosecutor Chea Leang opposed proceeding toward prosecution, and the Pre-Trial Chamber was unable to reach a supermajority vote to decide the matter, as judges split along national and international lines.⁷⁷ The international co-prosecutor's request for a judicial investigation thus proceeded by default.

The dispute intensified after Hun Sen told visiting UN Secretary-General Ban Ki-moon that “case three is not allowed.”⁷⁸ International co-investigating judge Marcel Lemonde pressed his Cambodian counterpart, You Bunleng, to proceed with an investigation, but You stalled. Lemonde resigned; and his replacement, Sigfried Blunk, joined You in shutting down Case 003 after a very brief investigation.⁷⁹ New international co-prosecutor Andrew Cayley declared publicly that the alleged crimes had not been “fully investigated,”⁸⁰ and the international Pre-Trial Chamber judges slammed the Office of Co-Investigating Judges for a poor investigation and raised doubts about its impartiality.⁸¹ International legal staff in the office raised their concerns

with the UN secretary-general, and resigned en masse when the United Nations took no action.⁸²

Soon afterward, Judge Blunk departed. Cambodian Court officials refused to recognize the authority of his successor, Laurent Kasper-Ansermet, after the Cambodian government refused to certify his appointment on account of his “re-tweeting” of articles critical of Blunk’s investigation.⁸³ Resisted by the national side at every turn, Kasper-Ansermet resigned shortly afterward in frustration. His replacement, Mark Harmon—the fourth international co-investigating judge in as many years—continued the investigation without support from the national side. In 2015, he charged each of the four surviving Case 003 and 004 suspects with wide-ranging criminal offenses.⁸⁴

Legally, the dispute has hinged on the question of whether the Case 003 and 004 suspects fall within the court’s jurisdiction, which is limited to “senior leaders” and others deemed “most responsible” for crimes of the Pol Pot era. Defense teams have made legitimate arguments to that effect, but domestic political leaders have intruded serially in the process, clouding the extent to which Cambodian court personnel in particular are free to make their own decisions. Nicholas Koumjian, who served as the international co-prosecutor at the ECCC from 2013 to 2019, argues rightly that there is no “magic line” to demarcate who was most responsible for crimes of the Khmer Rouge era, but this should be a legal and not a political decision.⁸⁵ Hun Sen has intervened publicly on multiple occasions to voice his opposition to Cases 003 and 004, arguing that broader prosecution could threaten civil war.⁸⁶ A government spokesperson added that if UN officials kept pressing for the cases, they could “pack their bags and go home.”⁸⁷ CPP leaders thus asserted their sovereign power to put a foot on the process if they wished to do so. With no evident signs of unrest, their true concern appears to be that prosecutors could charge sitting Cambodian officials or Khmer Rouge figures with links to the current government.

Cambodian officials at the ECCC assert that they operate independently and without political pressure from the government.⁸⁸ However, they have fallen uniformly into line behind Hun Sen, asserting that the Case 003 and 004 suspects do not amount to those “most responsible” for crimes during the Pot Pot era, and refusing cooperation with the international co-prosecutor and co-investigating judge.⁸⁹ “It’s a no-go situation,” says former ECCC defense lawyer Victor Koppe about cases 003 and 004. “They just don’t want it to happen, and it’s not going to happen.”⁹⁰ Overt, heavy-handed political interference has diminished the court’s credibility and capacity to function.

UN officials and key donor states have been loath to push on the CPP leadership. In part, this reflects a lack of clear ownership of the problem on the international side, which has no concentrated locus for leadership on matters related to the ECCC.

It also reflects an abiding UN caution in interpreting its legal authority under the Framework Agreement and the fact that both the United Nations and donors have invested heavily in the tribunal and thus have a stake in declaring its success.⁹¹

Cases 003 and 004 continue to flounder. In 2017 the co-investigating judges agreed that Im Chaem does not qualify as a “senior leader” or one “most responsible” for serious crimes, arguing that her rank as district secretary was relatively low and that evidence suggested she was responsible for many fewer deaths than originally believed.⁹² On appeal, the three Cambodian judges agreed. Over the objections of the two dissenting international judges, the case against Im Chaem was concluded.⁹³ In 2018 and 2019, the co-investigating judges issued competing orders on suspects Ao An, Meas Muth, and Yim Tith. In each case, the Cambodian judge issued orders dismissing the cases, arguing that the suspect did not fit within the court’s jurisdiction. In each case, his international counterpart disagreed. In 2020, the ECCC’s appellate chamber terminated the case against Ao An, noting “the absence of a definite and enforceable indictment.”⁹⁴ Neither of the two remaining cases will likely move forward.

The impasse has damaged the tribunal’s public legitimacy and has eroded donors’ interest in continuing to support the tribunal. In 2017, ECCC judges took the remarkable step of suspending proceedings in Cases 003 and 004 for lack of funding.⁹⁵ The court’s largest sponsor, Japan, and other donors since have provided financial lifelines.⁹⁶ However, by 2020 there was general agreement that the ECCC was winding down and that public interest in the court had greatly diminished. The death of Duch in September 2020 only added to the sense that the long process was coming to an end.

Public Legitimacy of the Proceedings

The Cambodian population generally welcomed the Khmer Rouge trials and UN involvement in the process. In that sense, the sovereignty-sharing venture began with what Julia Birte Gippert calls “initial legitimacy,”⁹⁷ or at least a thick cushion of provisional public acceptance.⁹⁸ In 2002 a survey by the Documentation Center of Cambodia found that more than 70 percent of respondents favored UN participation to overcome problems in the domestic judiciary, while only 19 percent favored a purely domestic process.⁹⁹ In a 2004 survey by the Khmer Institute for Democracy, nearly 97 percent voiced support for international involvement,¹⁰⁰ again reflecting dismal public confidence in local judicial institutions widely perceived as corrupt, underresourced, and beholden to the executive.

Early surveys showed confidence in the sovereignty-sharing venture to deliver credible justice for crimes of the Pol Pot era. A 2008 survey by the International Republican Institute found 69 percent public approval for the tribunal; and by early 2009, as coverage of the Duch trial occurred, nearly 93 percent expressed approval in a survey by the Documentation Center.¹⁰¹

The ECCC's small Public Affairs Section initially focused more on donor and media communications than on broader outreach to the population. This was in part due to an expectation that the extensive network of local and international civil society organizations in Cambodia would conduct much of that work. Over time, that partnership developed, and the court itself became more proactive in outreach to villages and schools, and in the design of programs to involve the public in courtroom proceedings and reach them via digestible print materials and other media. Among other things, more than three hundred thousand Cambodians have been able to visit the tribunal,¹⁰² and the court's innovative civil party scheme has made the experiences of survivors a prominent facet of the trials. Public outreach thus became an area of relative success, capitalizing on the in-country location and mixed personnel composition of the hybrid court. The former UN court spokesperson Lars Olsen asserts, "It wouldn't be possible to have effective outreach without nationals."¹⁰³

The Khmer Rouge trials also have had important knock-on effects. The ECCC process helped draw resources and attention to the legacy effects of Khmer Rouge atrocities, and government support for the tribunal created political space in Cambodian schools and villages to speak more openly about the topic. Civil society groups launched numerous initiatives in connection with the court proceedings, such as victims' forums, oral history projects, and the introduction of curricula for secondary schools and universities on Khmer Rouge history—a topic once excluded almost entirely from the classroom.

Surveys conducted between 2008 and 2011 show that the court enjoyed relatively strong public legitimacy—or at least continued acceptance—among the general Cambodian population during its first several years.¹⁰⁴ As in other cases of international criminal justice, most survivors did not report a deep understanding of the criminal process, and some expressed frustration at its length and cost. The ECCC proceedings generally diminished in public salience over time,¹⁰⁵ perhaps in part because the focus on a handful of senior leaders and Duch also meant that the trials did not address the lower-level crimes that most survivors had witnessed or experienced directly. In a 2018 survey, four-fifths of respondents expressed a wish to see Cases 003 and 004 move forward, and only half perceived the ECCC as independent. Nevertheless, nearly two-thirds of victim respondents still rated the ECCC positively overall, saying they believed that the court had made a meaningful contribution to justice.¹⁰⁶ Despite the ECCC's many challenges, general public support for the process and for international involvement suggests that many if not most Cambodians have deemed this sovereignty-sharing venture legitimate as a means to improve upon local justice.

Those who have participated most directly in the proceedings, as civil parties or civil society partners and monitors, generally have been more critical and more

inclined to challenge the court's legitimacy. As problems relating to corruption, delays, and political interference became more apparent, some scholars and civil society leaders came to view the court as a "farce,"¹⁰⁷ a "failure,"¹⁰⁸ and an irredeemable "sham."¹⁰⁹ As the controversy around Cases 003 and 004 continued, many official international observers also came to dimmer views of the ECCC, manifest partly in their diminishing financial contributions, and fainter praise for its operations. It is fair to conclude that among some of its most attentive audiences, the ECCC's perceived legitimacy has diminished over time.

One of the prime critiques of the ECCC process is that by joining the Hun Sen government in a flawed joint venture, the international community has helped to legitimate his corrupt and authoritarian regime and focus attention more on past human rights abuses than on present ones.¹¹⁰ While it is not clear how much the troubled ECCC process has benefitted Hun Sen domestically, his ability to control the process has limited the court's potential contribution to reconciliation and the rule of law.

Limited Capacity Building and Barriers to Reform

In a 2004 report, Kofi Annan forecast that the ECCC could have "considerable legacy value, inasmuch as it will result in the transfer of skills and know-how to Cambodian court personnel."¹¹¹ Senior CPP and UN officials, as well as Cambodian court personnel, have also touted the ECCC as a "model court" that can and does set a positive example for national judicial reform.¹¹²

The Khmer Rouge tribunal was not designed in a manner to optimize capacity building. Neither the Framework Agreement nor the ECCC Law require the court to undertake purposive training exercises. The only such requirement comes from a single provision in the court's Internal Rules mandating the Defense Support Section to carry out training for defense lawyers in partnership with the Cambodian bar association.¹¹³

Some capacity building and mutual learning have occurred as a consequence of the mixed composition of the tribunal. Pre-Trial Chamber president Prak Kim San asserts that shared responsibility and the exchange of views and knowledge has been "the most successful thing from the ECCC," and that his international colleagues "take our arguments seriously, and we take theirs seriously."¹¹⁴ Cambodian co-investigating judge You Bunleng argues that even disagreements can be advantageous, because "we have to support our view with arguments and have to strengthen our capacity in research and legal reasoning."¹¹⁵ To be sure, not all accounts are so positive; linguistic and cultural barriers and different legal systems sometimes lead to a sense that the two sides of the court interact like oil and water.¹¹⁶ Still, court personnel generally agree on the learning opportunities that the hybrid venture affords.

Many court personnel report that the experience of working together in a hybrid institution has helped promote learning and local capacity building. Extensive documentary evidence, computerized filing systems, and written reasoned opinions all offer useful examples for domestic proceedings. Co-prosecutor Chea Leang stresses that “the technical skills and knowledge we get from the ECCC is important” for her and other Cambodians who double-hat as leaders of the domestic judicial system.¹¹⁷ Some of those systems have been implanted into domestic courts.¹¹⁸ Certain Cambodian court officials, such as Trial Chamber president Nil Nonn, also have provided models for courtroom management and legal reasoning for younger Cambodian lawyers.¹¹⁹

Despite some useful transfer of technical know-how, the corruption scandal and feud over Cases 003 and 004, punctuated by loud Cambodian political interference, has undermined the ECCC’s capacity to serve as a “model court.” Those problems may simply reinforce the principle that in Cambodia, law remains more an instrument of political power than a constraint upon it.¹²⁰

Indeed, the ECCC process has had little demonstrable effect on broader Cambodian judicial reform. Judicial corruption is endemic. In 2019, Cambodia was ranked 162nd in Transparency International’s annual Corruption Perceptions Index, out of 180 countries surveyed—roughly the same score it received as the ECCC opened its doors more than a decade earlier, when it ranked 151st out of 163.¹²¹ Qualitative accounts of Cambodia’s judiciary also furnish dismal scores.

If anything, judicial independence and integrity have regressed in Cambodia. The Hun Sen government continues to use the courts as weapons with which to target opposition politicians. In 2017 the government moved to close what space remains for political dissent in Cambodia, expelling the US-based National Democratic Institute and shutting down the *Cambodia Daily*, Voice of America, and Radio Free Asia, some of the few remaining in-country sources of political critique.¹²² Opposition leader Kem Sokha was charged with treason for plotting to overthrow the government, and Cambodia’s high court then dissolved the opposition Cambodia National Rescue Party on specious grounds that it plotted to topple the government.¹²³ The 2018 national elections occurred without a credible opposition party, and Hun Sen returned to power with a tight continuing grip on the judiciary.¹²⁴ Courts are no more likely to rule evenhandedly now in cases involving senior government officials than they did in the past.¹²⁵

The Dangers of a Fragile Foundation

The ECCC’s experience shows the positive contributions that a sovereignty-sharing arrangement can make in areas where the partners’ interests intersect, but it also shows the danger of building such a venture on a precarious political foundation. UN and CPP leaders agreed on enough points to forge the venture and meet certain goals with

reasonable success. The ECCC will leave behind a wealth of evidence and testimony, a handful of convictions for some of modern history's most appalling human rights abuses, and an example of many aspects of a fair and effective judicial process. However, divergent preferences and political tension at the top have plagued the proceedings in multiple ways, and institutional features designed to accommodate mutual misgivings about the partnership have undermined the court's efficacy.

Despite general public support for the ECCC, the Hun Sen government has been able to control the scope of the process and has set very narrow limits on the justice that the Court can deliver. Diplomatic pressure might have helped to enforce the terms of the deal, but UN officials have found it difficult to speak with a single voice and exercise decisive leverage. Unlike the case of the Special Court for Sierra Leone, no single state has taken a consistent lead on the international side—largely due to tense US relations with the Hun Sen government. The UN has provided seals of approval when it has approved of the process, and is too deeply invested to criticize its failings sharply. When differences have arisen, Hun Sen has been able to “run circles around the internationals” and has controlled the process from a political standpoint—precisely one of the eventualities a sovereignty-sharing venture was meant to prevent.¹²⁶

There is broad agreement among international lawyers and human rights advocates that the ECCC is not a model to be cloned. Hans Corell, the UN legal counsel who reluctantly signed the agreement for the court, argues that “the ECCC should not be used as a model for any future effort of this nature.”¹²⁷ By contrast, the late Cambodian Deputy Prime Minister Sok An called the court “a good model not only for Cambodia, but also for internationally assisted courts that may be established in the future.”¹²⁸ The Cambodian government has enjoyed a high degree of political control, as well as robust international financial support—the combination most fragile state governments hope to achieve. The clear price of this deference to sovereignty is the risk of capture by domestic elites with little interest in the rule of law.

Imposing a Mixed Tribunal

ON VALENTINE'S DAY IN 2005, a massive explosion rocked downtown Beirut. Assailants detonated roughly a ton of TNT as the motorcade of former Prime Minister Rafiq Hariri passed by the iconic beachside Saint-Georges Hotel. Hariri and twenty-two others were killed. The Hariri assassination was the latest in a long string of political killings in Lebanon, but it had a special political impact. Hariri was the country's leading Sunni political figure, and he enjoyed support from a broad array of Lebanese from other confessional groups. His murder sparked the "Cedar Revolution," in which tens of thousands of Lebanese protesters took to the streets, demanding justice and a withdrawal of occupying Syrian forces, whom many believed to be responsible for the crime. Large counterprotests erupted to defend Syria and its local Lebanese allies, including Hezbollah.

The Hariri assassination threatened the fragile truce among rival political and religious factions that had held the country together since the end of the grueling Lebanese Civil War in 1990. It also occurred during a time when Lebanon lay at the crosshairs of intense regional competition related to the US-led war in Iraq, the Global War on Terror, and the enduring Arab-Israeli conflict. The process of pursuing accountability for the murder of Hariri would be the subject of fierce political contestation.

It was in this context that Lebanese authorities sought to share sovereignty with the United Nations. In 2005, Lebanon outsourced the investigation of the attack to a special UN commission. That commission's findings led to the establishment of the Special Tribunal for Lebanon (STL), a UN-backed hybrid court charged with

adjudicating the Hariri assassination and related crimes. UN involvement aimed to mitigate the political interference that would accompany any domestic process. However, it became the subject of bitter controversy within Lebanon, reflecting the country's deep domestic political divides. Lebanese officials inked an agreement with the United Nations to create the STL, but they were unable to secure its ratification. External actors did not force the STL on the government, but the government's consent was deeply compromised by the executive's inability to procure parliamentary support.

The government's international supporters thus created the court via a Chapter VII Security Council resolution, attaching the initial agreement as an annex. That maneuver left the STL with an ambiguous institutional identity—a hybrid court requested by Lebanese officials but ultimately imposed by the Security Council. Whether the STL is a case of shared sovereignty is debatable; the fragility of its political foundations is not.

Neither the independent commission nor the STL has been able to escape the severe constraints arising from Lebanon's domestic divisions. Resistance from Hezbollah and allied domestic groups has prevented the tribunal from performing crucial tasks such as apprehending suspects, obtaining evidence, and conducting broad public outreach. The tribunal's legitimacy has been challenged from the start, and its impact on the Lebanese judicial system has been minimal. This case shows the extreme difficulty of sharing sovereignty without a sufficiently strong domestic coalition to support the venture.

The Political Backdrop

The Hariri assassination occurred against the backdrop of long-standing political tensions within and around Lebanon. Since the end of the French mandate in 1943, Lebanon had been vulnerable to international intrusion and internal factional strife. Its diverse tapestry of confessional groups was stitched together loosely by an unwritten National Pact, which outlined a rough power-sharing arrangement among the major groups. Maronite Christian, Sunni, Shia, Druze, Orthodox, and other confessional groups sought to build a coherent national identity. For a time the system worked, and by the 1960s Lebanon was an oasis of relative peace and prosperity—the “Paris of the Middle East.” However, the country began to bend as demographic change, the influx of myriad Palestinian refugees, and other pressures mounted on a small country in a rough neighborhood. In 1975, Lebanon collapsed into a bitter fifteen-year civil war pitting clan against clan and splintering the state, largely along confessional lines. As external actors intervened, Lebanon also became a theater for regional conflict, beginning with the Syrian occupation in 1976 and including the Israeli invasion in 1982.

Political assassinations were a frequent tool of internecine conflict. These included the 1977 killing of the Druze leader Kamal Jumblatt; the 1982 murder of Maronite President-Elect Bashir Gemayel, which sparked the infamous massacre in the Palestinian refugee camps of Sabra and Shatilla; the 1989 murder of President René Moawad; and many others.¹ Roughly 145,000 Lebanese died during the war, and some 17,000 were missing after a rash of enforced disappearances. There were few investigations and even fewer convictions. Impunity was ubiquitous. It was concretized when the Lebanese Parliament passed a sweeping 1991 general amnesty law covering crimes committed before the law's enactment.

Regional Rivalry and the Syrian Role

The 1989 Taif Agreement helped bring an end to the Lebanese Civil War, but it effectively blessed Syrian hegemony in Lebanon as a means to guarantee the peace.² Syrian troops remained, and Syria wielded extensive influence over Lebanon's politics and internal security. During the 1990s, Hariri emerged as a leading figure in Lebanon's postwar reconstruction and served his first term as prime minister. After the 2000 death of longtime Syrian President Hafez al-Assad and the ascent of his son, Bashar al-Assad, Hariri challenged the Syrian occupation during his second term as prime minister. International pressure on the Syrian occupation also mounted after 9/11, as the United States and many of its allies resented Syria's support for Hezbollah, its close ties to Iran, and its opposition to the US-led military campaign in Iraq.³

As opposition to the Syrian occupation rose, Syria pressed Lebanon in 2004 to extend the term of pro-Syrian President Emile Lahoud. France and the United States sponsored UN Security Council Resolution 1559, which called for "strict respect of the sovereignty" and "political independence" of Lebanon.⁴ Resolution 1559 demanded that all "foreign forces" (namely Syrian and Israeli) withdraw from Lebanon, that militias (namely Hezbollah) disband and disarm, and that the presidential election proceed "without foreign interference or influence," again pointing clearly to Syria.⁵ The next day, Lebanon's Parliament extended Lahoud's term nevertheless. Former Economy Minister Marwan Hamadeh and two other cabinet members resigned in protest. Several weeks later, Hamadeh was the victim of an assassination attempt.

Hariri was widely perceived as a key architect of Resolution 1559, and Assad reportedly summoned him to Damascus and threatened to "break Lebanon" over Hariri's head if Hariri did not approve the extension of Lahoud's presidency.⁶ Hariri soon resigned, but he and his supporters continued to oppose Syria's role in Lebanon while preparing for the 2005 elections. In early February, less than two weeks before Hariri's assassination, his delegates to a key political meeting at the Bristol Hotel called for a full and immediate Syrian withdrawal and restoration of Lebanese sovereignty.⁷

The Impetus for Justice

In that context, Hariri's assassination was a watershed. It sparked the "Cedar Revolution" and spurred the formation of a cross-sectarian political movement that demanded criminal accountability and the withdrawal of Syrian forces, whom many Hariri supporters suspected of orchestrating the crime. The French and US governments spearheaded international calls for justice, also suspecting that Syria had played a role in the attack, and demanding a Syrian withdrawal. Just hours after the assassination, the White House press secretary released a statement that called the murder "an attempt to stifle [Hariri's] efforts to build an independent, sovereign Lebanon free of foreign domination," suggesting Syrian involvement in all but name.⁸

The following day, the US government withdrew its ambassador from Damascus, and a State Department spokesman noted that the outgoing ambassador "delivered a message to the Syrian Government expressing our deep concern as well as our profound outrage over this heinous act of terrorism."⁹ French president Jacques Chirac, a personal friend of Hariri, led calls for an international investigation and reportedly called for an international court on the day of Hariri's funeral in Beirut, which he attended. At the urging of the US and French governments,¹⁰ the president of the UN Security Council promptly issued a statement condemning the "terrorist bombing," demanding accountability, asking the secretary-general to report urgently on the attack, and expressing concern about "the potential for further destabilization of Lebanon."¹¹ That risk of domestic and spillover regional security would be the hook justifying Security Council involvement in Lebanon's domestic affairs.

After an exchange of letters with President Lahoud, UN Secretary-General Kofi Annan quickly dispatched an independent fact-finding mission led by Irish deputy police commissioner Peter FitzGerald to look into Hariri's killing. Many Lebanese regarded the introduction of an international commission as necessary and appropriate. "We needed international technologies," explains STL judge Ralph Riachi, noting the complexity of the investigation.¹² "Lebanon could not carry out an investigation then due to its weak political constitution," adds Ashraf Rifi, who then headed Lebanon's Internal Security Forces.¹³ Lebanese politics were indeed in turmoil as protests grew and the political landscape polarized into two rival coalitions. In late February, pro-Syrian Prime Minister Omar Karami resigned and dissolved the government. Days later, Assad announced that he would withdraw the sixteen thousand Syrian troops still stationed in Lebanon to the border region. On March 8, pro-Syrian factions led by the Shia parties Hezbollah and Amal staged a mass demonstration to counter the rising Cedar Revolution and thank Syria for its role in support of the resistance to Israel. Lahoud reinstated Karami as prime minister. Pro-Hariri groups, including most members of the Sunni community, responded with mass rallies on March 14.

In April, unable to form a government, Karami resigned again, in advance of planned May 2005 elections. Hostility between Lebanon's pro-Syrian "March 8" and anti-Syrian "March 14" coalitions and their international supporters foreshadowed that international involvement in the response to the Hariri assassination would be hotly contested, both at home and abroad.

Outsourcing the Investigation

In late March, the "FitzGerald Report" was released. It asserted that Hariri had been the victim of an assassination and that the Lebanese security services and Syrian military intelligence were primarily to blame for the "lack of security, protection, law and order in Lebanon."¹⁴ The report, recounting the alleged threat by Syrian President Bashar al-Assad to Hariri before Lahoud's extension, held the Syrian government primarily responsible for the political tensions leading to Hariri's assassination. The report flayed the initial Lebanese criminal investigation, stating: "The Lebanese investigation process suffers from serious flaws and has neither the capacity nor the commitment to reach a satisfactory and credible conclusion."¹⁵ The FitzGerald report concluded that finding the truth would require creating "an international independent commission . . . with the necessary executive authority to carry out interrogations, searches and other relevant tasks."¹⁶ FitzGerald warned that even such a commission would likely struggle to gain government cooperation and fulfill its mandate while the current leaders of Lebanon's security apparatus remained in office.

Assad and pro-Syrian constituencies in Lebanon denied that Assad had threatened Hariri, and slammed the report for relying on anonymous witness accounts without corroborating documentary or forensic evidence.¹⁷ Many others, including US and French officials, welcomed the report and shared FitzGerald's doubts about Lebanese capacity to hold trials. As one US diplomat recalls, domestic prosecution of Hezbollah or Syria was perceived to be "tantamount to starting civil war."¹⁸ The American and French governments led the push for an international investigation.

Design of the UNIIIC

Under heavy public pressure led by the Hariri family, Prime Minister Karami wrote to Annan even before the release of the FitzGerald report, pledging to cooperate with a UN-backed international commission of inquiry.¹⁹ In April the Security Council passed Resolution 1595 setting up the International Independent Investigation Commission (UNIIIC), led by German prosecutor Detlev Mehlis. To Mehlis, the killing of Hariri and others represented "reason enough to establish an international investigative group to assist and support what was at the time the limited Lebanese capacities to identify the perpetrators."²⁰

The commission's mandate was indeed to "assist the Lebanese authorities in their investigation of all aspects of this terrorist act"—a noteworthy characterization of the attack—but the resolution made clear that the UNIIIC would conduct its own investigation, and called upon the Lebanese government to "take into account fully" the commission's findings and conclusions.²¹ The commission would thus assume some of Lebanon's normal sovereign investigatory functions. The resolution stressed the consensual nature of the arrangement, welcoming the Lebanese government's approval of the Security Council's decision to create the UNIIIC and the Lebanese officials' readiness to cooperate with the commission "within the framework of Lebanese sovereignty."²² Moreover, the council decided that the commission "shall . . . enjoy the full cooperation of the Lebanese authorities," including access to evidence, freedom of movement, and resources to support the investigation.²³

The council did not invoke Chapter VII authority, and thus the provisions of Resolution 1595 requiring Lebanese cooperation with UNIIIC investigators rested on the foundation of Lebanese consent to the arrangement. Still, the language of Resolution 1595 was crafted carefully to hold Lebanese officials' feet to the fire—an implicit acknowledgement that Lebanese consent to the UNIIIC's activities was potentially fragile and was not shared by all elements of the Lebanese government and security services.

In May and June 2005, the March 14 coalition won parliamentary elections, ushering the way for longtime Hariri ally Fouad Siniora to become prime minister and form a new government. In June, the Lebanese government signed an MOU with the UNIIIC agreeing to assist but not interfere with the commission's investigation.²⁴ That agreement drew the ire of March 8 leaders, who argued that the investigation should be handled domestically. That month, two other anti-Syrian figures, journalist Samir Kassir and parliamentarian George Hawi, were killed by car bombs, adding to the sense of domestic and international outrage over serial assassinations.

The UN-Led Investigation

Mehlis and the UNIIIC faced considerable obstacles. Their investigation began in June 2005, four months after the bombing, which gave perpetrators ample time to destroy evidence. A full analysis of the crime scene did not occur until a further three months had passed.²⁵ The early investigation focused on two individuals who purported to be Syrian intelligence officials. On the basis of their testimony, in August 2005 Mehlis requested the arrest of four pro-Syrian generals: Jamil al-Sayyed, the former director of general security; Ali El-Hajj, director of internal security forces; Raymond Azar, head of army intelligence; and Mustapha Hamdan, head of the Republican Guard. They represented four key pillars of the Lebanese internal security apparatus.

The UNIIIC's proponents welcomed the investigation and regarded it as highly professional.²⁶ FitzGerald and Mehlis "proved remarkable in their efforts to push back against the Lebanese-Syrian security complex and force the arrest of four Lebanese generals suspected of covering up the assassination and deflecting the course of justice," writes Chibli Mallat, an international lawyer who ran against Lahoud for president in 2005–6, and who was among the first to advocate for a special tribunal.²⁷ By stark contrast, the March 8 coalition saw the UNIIIC, the initial fact-finding mission, and the proposed tribunal as political moves to weaken Syria and its allies. Hamdan encapsulates that charge: "When they arrested me, they didn't want Mustapha Hamdan. They wanted Emile Lahoud. They wanted the Syrian intelligence system. . . . At that time, there was a conspiracy to change the system. The one leading the conspiracy wants two heads: Emile Lahoud and Bashar Assad."²⁸ By the "one leading the conspiracy," Hamdan meant not the United Nations—a mere "tool"—but the United States.²⁹

In October 2005, Mehlis released a preliminary report that pointed directly to Syria, finding probable cause to believe that the decision to kill Hariri "could not have been taken without the approval of top-ranked Syrian security official[s]."³⁰ Many members of the March 14 movement and their international allies welcomed the finding, but others rued the investigation as politicized and unprofessional. To link Syria to the crime, Mehlis had relied on evidence and testimony from two purported Syrian intelligence officials. The credibility of that testimony soon unraveled, as a report in the German magazine *Der Spiegel* alleged that some witnesses were paid for their testimony. One of the key witnesses reportedly called his brother in Paris to say that his testimony had made him a millionaire, and he was eventually arrested in France for deceiving UN officials. Another witness publicly recanted his story and said that he had been kidnapped, tortured, and bribed.³¹

The scandal surrounding the false witnesses undermined the credibility of the UNIIIC investigation. It prompted criticism from March 8 partisans, who argued that Mehlis and his team had fabricated evidence to achieve a preordained aim of implicating Syria in the assassination. Nevertheless, the headline finding of the report—that Syria was responsible for the terror attack—had resonance in many quarters inside and outside Lebanon. The UN Security Council issued another resolution declaring Hariri's assassination and its implications to be a threat to international peace and security, and thus the basis for invoking Chapter VII authority.³²

Continuing Crisis and Steps toward a Tribunal

While the UNIIIC conducted investigations, Lebanon's string of targeted assassinations continued. The journalist and former cabinet member May Chidiac was attacked and maimed in September, not long after an attack on pro-Hariri Defense Minister

Elias Murr killed two of his fellow passengers. Hours after the second UNIIIC report was issued—dangerously mentioning the names of some witnesses consulted—Gibrán Tueni, an anti-Syrian journalist and member of the Lebanese Parliament, was murdered. Many saw these attacks as strong further evidence of Syrian involvement in the Hariri assassination. Nicolas Michel, who then served as UN legal counsel, describes this string of assassinations as the “decisive factor” leading to the Lebanese government’s request for a special tribunal.³³

Request for a Hybrid Court

In December 2005, the UNIIIC published a follow-up report based on further witness testimony, an investigation of the scene of the blast, intercepted telephone records, and files from Lebanon’s Internal Security Forces. Siniora then wrote to the UN secretary-general requesting that the Security Council establish a “tribunal of an international character” inside or outside Lebanon to address the attack that killed Hariri, and to extend the UN-led investigation to other killings, explosions, and attempted assassinations in Lebanon, from the October 2004 attack on Marwan Hamadeh onward.³⁴ According to Michel, Siniora’s request for a tribunal with an “international character” was understood to refer to a hybrid tribunal rather than one along the lines of the ICTY or the ICTR.³⁵

The Security Council promptly requested that Annan help the Lebanese authorities determine what support they would need.³⁶ Invoking Chapter VII authority to bind Syria and other parties, it also extended the UNIIIC’s mandate and expressed its openness to the possibility of authorizing the commission to investigate crimes beyond the February 14 attack.³⁷ March 8 leaders responded angrily to Siniora’s request, and Hezbollah and Amal boycotted the cabinet for two months.

Continued UNIIIC Investigation

Serge Brammertz, a Belgian prosecutor, replaced Mehlis in January 2006. He reportedly said that Mehlis had been “carried away by anti-Syrian sentiment” and had “raced ahead under international pressure to implicate Syria, without checking the admissibility of the sources.”³⁸ Brammertz took a quieter approach, avoiding the press and issuing a series of reports more focused on technical issues, such as forensic evidence and crime scene analysis, than on specific individuals.

Brammertz’s low-key approach was welcomed by some of the tribunal’s critics, including the Syrian authorities. Nevertheless, the basic political criticism of the UNIIIC as an instrument of Western intervention at the behest of the March 14 alliance persisted. So did the incarceration of the four generals, who remained in detention without charges and with scant credible evidence against them, prompting criticism from the UN Working Group on Arbitrary Detention and eliciting concern

from the US State Department.³⁹ These problems contributed to divided public and elite opinion of the legitimacy and effectiveness of the UN investigation, and would feed into deliberations over the creation of the Special Tribunal.

Negotiating a Mixed Court

In March 2006, Annan issued a report recommending the establishment of a “mixed tribunal,” sharing the Security Council’s implied view that “a purely national tribunal would not be able to effectively fulfill the task.”⁴⁰ The Security Council promptly passed a resolution asking Annan to negotiate with the Lebanese government to create a mixed court.⁴¹ Importantly, the initiative earned broad domestic approval. In March, to reduce political tension, Speaker of the National Assembly Nabih Berri, a Hezbollah ally, convened a National Dialogue in Lebanon comprising leaders across the Lebanese political spectrum. The National Dialogue’s first agenda item in March 2006, agreed to by consensus, included voicing support for the establishment of “the international tribunal.”⁴²

UN and Lebanese negotiators sought to create the court through a bilateral agreement. “The institutional architecture was to be inspired by the model of the Special Court for Sierra Leone,” recalls Nicolas Michel, who led the UN team.⁴³ Between April and July 2006, the UN and Lebanese delegations agreed to the text of a draft agreement and a draft statute. The proposed tribunal’s mandate was much narrower than those of any previous internationalized criminal courts, focusing only on the attack that killed Hariri, and other crimes that were deemed to be related and of a similar level of gravity. This invited charges of selective justice. Critics pointed to the failure by the Lebanese government and the international community to investigate thousands of disappearances dating from the civil war, as well as numerous prior political assassinations. To some, the proposed STL was largely a political instrument to advance the aim of the March 14 alliance and of the United States and its allies, including Israel, to weaken the Assad regime in Syria and defang Hezbollah.⁴⁴

Political Paralysis in Lebanon

Just days after the July 2006 negotiations of the special tribunal concluded, war erupted in Lebanon after Hezbollah militants kidnapped two Israeli soldiers in a cross-border raid. During the month-long war, Israeli Defense Forces inflicted heavy losses on Hezbollah, but Hezbollah avoided defeat and was viewed by many Lebanese as the victor. The war boosted Hezbollah’s prestige immensely, within Lebanon and around the region. Hezbollah’s leading role in the postwar reconstruction process also raised its influence, particularly in the Shia communities where many human casualties had occurred, where much civilian infrastructure was in ruins, and where Hezbollah had stronger writ than the government.⁴⁵ Hezbollah accused Siniora of

colluding with Israel during the war,⁴⁶ and the pro-Hezbollah political opposition sought a greater share of power in Lebanon.

In that context, the discussion over justice changed. Members of the Siniora government's cabinet from the pro-Syrian parties of Hezbollah and Amal objected to the proposed tribunal. In November 2006, Siniora sought a cabinet vote to approve a draft UN protocol to lay the foundation for the STL. Six of Lebanon's twenty-four cabinet ministers resigned, including all five Shia ministers, paralyzing the system and plunging Lebanese politics into crisis. Hezbollah, Amal, and the Free Patriotic Movement of the Maronite leader Michael Aoun organized extended protests, camping outside Siniora's office for several weeks.⁴⁷ In late November, the UN Security Council gave its blessing to the draft agreement and statute, and authorized Annan to conclude the deal.⁴⁸ The next day, Lebanese Minister of Industry Pierre Gemayel was assassinated, an event which Michel argues "can hardly be considered as coincidental."⁴⁹ The Maronite son of one former Lebanese president and nephew of another, Gemayel had been highly critical of Syria and Hezbollah.

Despite the domestic crisis, the Siniora government signed the STL agreement in January 2007, and the United Nations followed. The pact immediately came under domestic challenge. March 8 leaders argued that the absence of Shia representation rendered Siniora's government illegitimate, as the Lebanese Constitution requires that "the sects are fairly represented in the formation of the Cabinet" and denies legitimacy to any authority "contradicting the charter of co-existence."⁵⁰ An eighteen-month opposition political boycott ensued. Lahoud refused to sign the draft agreement or other legal measures of the government, and Speaker of the House Nabih Berri of the Amal Party refused to convene Parliament.

In February 2007, a group of progovernment legislators signed a petition asking the UN Security Council to use its Chapter VII authority to create the STL. The country's political leaders staked out contrasting positions. The ensuing debate featured competing sovereignty narratives: one emphasizing the need to protect Lebanese independence from Syria, and the other presenting the STL as a form of Western encroachment. Former President Amine Gemayel, who argued in favor of a consent-based tribunal, explains: "At that time, we were facing a real problem of sovereignty. We were not fully sovereign while other countries were on our soil like the Syrians, Iranians, Hezbollah who were their proxy, or the Israelis in the south. It was very difficult for the national authorities to investigate because they weren't in control of the security apparatus. Cooperation with international actors was essential."⁵¹

"The Lebanese judiciary was absolutely unable to handle this case," echoes Charles Rizk, a former justice minister and one of the tribunal's prime architects. "If the state does not provide protection for the judge, how can he judge a case as explosive as this one?"⁵²

Opponents of the petition to the UN Security Council expressed support for a tribunal but not the one agreed by the Siniora government. President Lahoud said that the “trial should not be politicized.”⁵³ Sheikh Naim Qassem, the deputy head of Hezbollah, said that once Lebanon’s “unconstitutional government” was brought down, a new government would need to “set up an international tribunal which serves all the Lebanese . . . a criminal tribunal, not a political one.”⁵⁴ Qassem also issued stark warnings to the March 14 coalition and its Western supporters, saying that if pro-Hariri lawmakers relied on external support and bypassed Parliament, their “power [would] fail,” and that “the Security Council should not get too involved in the Lebanese details . . . if they want a stable Lebanon.”⁵⁵ Hezbollah parliamentary Hassan Fadlallah added that the March 8 coalition would “not allow [the ruling] party to put Lebanon in the hands of the U.S. administration.”⁵⁶

An End Run of Lebanese Domestic Institutions

On April 3, a majority of seventy members of Parliament submitted their petition to Kofi Annan asking that all necessary measures be taken to establish the tribunal. The Siniora government issued a similar appeal. Annan sent Michel to Beirut to try to marshal support for ratification, but opposition leaders refused. Hezbollah declined to discuss the STL’s creation until an agreement was reached on establishing a unity government in which the March 8 coalition would have enough cabinet seats to control the Council of Ministers, or at least to exercise a veto. Berri argued similarly that the terms governing the tribunal could be agreed upon if a legitimate unity government representing all parties were in place. None of the major players opposed creating a tribunal in principle—opposition would have earned them public scorn—but the STL became a political football in a larger game of domestic power politics.

Unable to have the sovereignty-sharing agreement ratified, in May 2007 Siniora declared a “dead end” and asked the UN Security Council to create a hybrid court unilaterally.⁵⁷ The following day, President Lahoud wrote a letter excoriating “the tyranny of a ruling clique” headed by Siniora, which he accused of “seeking power through an outside force over its people and institutions.”⁵⁸ Lahoud warned that a tribunal established by means other than a treaty would violate Lebanon’s constitution, lack legitimacy, and be unable to deliver credible justice.⁵⁹ The US, French, and British governments nevertheless pressed for the resolution, while Russia sought to limit the scope of the tribunal’s mandate as a means to protect Syria.⁶⁰ On May 30 the Security Council used its Chapter VII authority to establish the STL, passing Resolution 1757. Five council members, including China and Russia, abstained. With sleight of hand, the council created the tribunal as an independent UN body while attaching and incorporating the terms of the proposed agreement between Lebanon and the United Nations to give them binding force.

The text of the resolution called for “strict respect of the sovereignty, territorial integrity, unity and political independence of Lebanon,” and sought at every turn to present the tribunal’s creation as consensual.⁶¹ The text recalled the early 2006 negotiations between UN officials and “authorized representatives of the Government of Lebanon,” and the signing of the agreement to establish the court in early 2007. It noted that a parliamentary majority had expressed support for the tribunal and “the demand of the Lebanese people” that the culprits be brought to justice. It also commended the secretary-general and the Lebanese government for taking “the final steps for the conclusion of the Agreement,” and asserted that “all parties concerned reaffirmed their agreement in principle to the establishment of the Tribunal.”⁶² The UN-Lebanese agreement, attached as an annex, laid out the provisions governing the tribunal as points agreed upon with the government. The resolution made only glancing reference to the “serious obstacles” the Lebanese government faced in establishing the tribunal through the domestic “Constitutional process”⁶³—and thus downplayed questions regarding the government’s capacity to conclude the agreement.

While Resolution 1757 gave the STL a relatively firm basis at international law, it did so by virtue of the Security Council’s Chapter VII authority. Five council members, including Russia and China, abstained from the vote on the grounds that the resolution infringed on Lebanon’s sovereignty. The Qatari representative said it “entailed legal encroachments known to all,” and the South African representative said “it is not appropriate for the Security Council to impose such a tribunal on Lebanon.”⁶⁴

Debate also raged in Lebanon. Ashraf Rifi argues that there is no “absolute sovereignty,” and that Resolution 1757 was as important for peace and security in Lebanon as the resolution authorizing the UN peacekeeping mission in the country.⁶⁵ STL judge Ralph Riachi adds: “We didn’t want to have another Chapter VII [resolution], but because Parliament was closed, we had to do so. When you have a problem of war and peace, you go to the UN for help.”⁶⁶ However, Siniora’s end run of his domestic political opponents fueled their ire. Resolution 1757 allowed for the STL Agreement to become effective without approval by the Parliament and negotiation and approval by the president, both of which are required by Lebanese law for the conclusion of treaties. Scholars Samer Abboud and Benjamin Muller call this a “blatant bypassing of Lebanese law.”⁶⁷ Opponents of the tribunal argued that the Security Council had acted *ultra vires* by imposing treaty obligations on a state that had not ratified the instrument, and saw the council’s willingness to disregard Lebanese domestic opposition as evidence of the political motives behind the STL.⁶⁸ Detractors also saw the council’s characterization of the Hariri assassination as a terrorist act and threat to international peace as evidence of politicization.⁶⁹

The STL thus rests on an extremely precarious political foundation. UN Security Council Resolution 1757, which provides the tribunal’s legal basis, aimed to give effect

to a voluntary arrangement between the United Nations and a sovereign state. An elected Lebanese government did request its creation, but that government's consent was deeply compromised by its inability to forge a relative domestic consensus and its inability to procure parliamentary approval for a treaty. The Security Council ultimately imposed the terms of the deal, nullifying the lack of formal parliamentary consent. That troubled birth would leave the STL exposed to legitimacy challenges throughout its lifetime.

Elements of Shared Sovereignty at the STL

The STL's architects sought to preserve as much of its intended hybrid character as possible despite the use of a Chapter VII resolution to bring about its establishment. The STL is not an organ of the United Nations, and is not funded by the UN budget. Rather, it relies on voluntary contributions from international donors for 51 percent of its funds, and on the Lebanese government for the remaining 49 percent. Contributions have come from diverse foreign sources,⁷⁰ led by Western European and North American donors that hold eight of the ten seats on the STL Management Committee alongside Lebanon and Japan. Lebanon has borne its share, though not without regular delays in disbursement due to complications in Lebanese domestic politics. STL registrar Daryl Mundis notes that until the past few years, irregular disbursements forced the STL to ride a "roller coaster" to manage its budget and engage in strategic planning—a common challenge for hybrid courts reliant on voluntary contributions from multiple donors.⁷¹

The STL is the first internationalized tribunal to apply only domestic (in its case, Lebanese) criminal law to carry out prosecutions. To a large extent, this reflected the absence of an agreed international definition of the crime of terrorism, which was the core crime alleged by the Siniora government and the international sponsors of the tribunal. Some council members, particularly Russia, resisted any reference in the STL Statute to international instruments defining terrorism, or to the extension of the tribunal's mandate to crimes against humanity.⁷² The tribunal's reliance on Lebanese law would later give rise to challenges, as Lebanon's domestic jurisprudence on terrorism is unsettled and may exclude attacks undertaken with bullets rather than large blasts, ruling out STL trials of some assassinations with potential links to the Hariri case.

While relying on Lebanese law for the substantive definitions of crimes, the STL Statute permits international forms of criminal responsibility, including "common purpose" liability and superior responsibility.⁷³ These provisions draw from international criminal law rather than from Lebanese jurisprudence, opening the STL to a normative challenge that it violates the principle of *nullum crimen sine lege* by exposing suspects to conviction for crimes that were not punishable under domestic law at the time the acts were committed.⁷⁴

Procedurally, the STL has defaulted to being much like an ad hoc international court. It uses adversarial proceedings without an investigating judge, and thus differs markedly from Lebanon's inquisitorial civil law system. The STL Statute required that the judges drafting the tribunal's Rules of Procedure and Evidence be "guided, as appropriate, by the Lebanese Code of Criminal Procedure" and other sources reflecting "the highest standards of international criminal procedure," to ensure a fair and expeditious legal process.⁷⁵ However, the STL's rules give clear precedence to international procedural law, specifying that they must be interpreted first with reference to "international standards of human rights" and "general principles of international criminal law and procedure," and only then with reference to Lebanon's Code of Criminal Procedure "as appropriate."⁷⁶ Accordingly, no real issues have arisen concerning the application or nonapplication of Lebanese procedural law at the STL. The main debate has been over the application of the relevant international principles and procedures, which at times varies across international and hybrid courts.⁷⁷

The STL also has a preponderantly international staff. The UN secretary-general appoints judges and other key court officials, consulting with the Lebanese government, and most key spots are designated for internationals. Only one of the three Trial Chamber judges, two of five Appeals Chamber judges, one of two reserve judges, and a deputy prosecutor are explicitly required to be Lebanese nationals.⁷⁸ The composition of the STL's professional staff is also overwhelmingly international. As of 2018, 90 of the tribunal's 220 professional staff came from the United States, Canada, United Kingdom, or France. Only 27 were Lebanese, and most others hailed from Western Europe or Australia.⁷⁹ The relatively small share of Lebanese professional staff—roughly 15 percent—has been the subject of some criticism, and some Lebanese have pressed for a greater share of staff positions. However, court officials note that despite active recruitment efforts, hiring and retaining Lebanese nationals often has been difficult.⁸⁰ This is partly a matter of distance, climate, and culture; but, as the deputy head of the Defense Office, Heleyn Uñac, notes, it remains "a challenge for Lebanese lawyers to be on the front line" for a variety of other reasons.⁸¹ Perhaps the most obvious reason is the political sensitivity of the process.⁸²

The tribunal's brick-and-mortar home is strongly international in look and feel. For security reasons, the tribunal is located in the Netherlands in the leafy town of Leidschendam, a suburb of The Hague. Its modern facility is well equipped but has a quiet, sterile atmosphere far removed from the vibrancy and tumult of Lebanese politics. The tribunal's location reflects legitimate security concerns, but its distance reduces its accessibility to the Lebanese public—one of the key purported advantages of hybrid courts over fully international tribunals. For this reason, Riachi sees the court's location as a key shortcoming.⁸³ The STL does have an office in Lebanon for the conduct of investigations, subject to certain privileges and immunities. In terms

of its legal basis, its personnel composition, and its location, the politicization of the STL within Lebanon thus gave rise to an internationally led process, weakening the role of Lebanese actors.⁸⁴

Importantly, the STL Agreement requires that “the Government shall cooperate with all organs of the Special Tribunal” and “shall comply without undue delay” when asked by the tribunal to assist with matters such as locating and identifying people, serving documents, arresting or detaining suspects, and transferring them to the tribunal.⁸⁵ However, the STL Statute does not require cooperation from Syria.

Competing Political Frames

The STL's advocates presented heavy international involvement as a necessary safeguard for fair trials. For March 14 leaders, sharing sovereignty was also a means to attract international political backing for a venture bound to encounter fierce domestic resistance. That resistance was readily apparent in early 2008, when Wissam Eid, a senior Lebanese counterterrorism official, was assassinated by a car bomb. Eid had made key breakthroughs in the investigation by analyzing the mobile phone data that would lead to indictments and furnish much of the evidence used by the STL at trial. Critics argued that the STL breached Lebanese sovereignty and was designed largely to advance US and Israeli interests by impugning Syria and its allies in Lebanon—particularly Hezbollah.⁸⁶ The STL's limited jurisdiction and primary focus on a single “terrorist attack” against Hariri gave ammunition to critics who sought to paint the tribunal as a political tool rather than an instrument of justice. In a country where myriad crimes during and after the civil war era had gone untried, March 8 leaders and other critics decried the STL's primary focus on the Hariri assassination as selective justice.⁸⁷ “The critique has been that the reason this is being exceptionalized is political,” says journalist Habib Battah. “This time we really want to know who the bad guy is, but other times we don't want to know.”⁸⁸ As the scholars Are Knudsen and Sari Hanafi argue, the STL process entailed from the start “an internationalization of domestic political conflict in a deeply divided country.”⁸⁹

Those divisions deepened in a dramatic series of events in May 2008. The Lebanese government announced plans to remove the chief of security at the Beirut International Airport due to his ties to Hezbollah, and pledged to shut down Hezbollah's telecommunications network. The latter move would render the group highly vulnerable to Israeli forces. Hezbollah responded the next day, soon occupying west Beirut and Shuf Mountain, the stronghold of Druze leader Walid Jumblatt, a prominent March 14 member. The episode reconfirmed Hezbollah's military dominance within Lebanon, and thus the danger for any government or political party of falling too far out of its favor. Even before the tribunal opened its doors, the political space in which it could operate was shrinking.

Early Performance Challenges

The STL opened its doors in March 2009, facing a daunting series of operational challenges. Its charge was to carry on from the UNIIC's investigation, which had been mired in controversy. The four pro-Syrian Lebanese generals who had been arrested in 2005 were still in custody, and the UN Human Rights Council raised concerns about their arbitrary detention. The political landscape in Lebanon had evolved in Hezbollah's favor, making it difficult to imagine that domestic cooperation would be easily forthcoming or that suspects could be apprehended.

Release of the Four Generals

The tribunal faced the immediate challenge of how to handle the detention of the four generals, who had been incarcerated for nearly four years without facing charges. Their continued detention had been a point of serious friction in the UNIIC sovereignty-sharing arrangement. "Brammertz said everywhere that the arrest [of the generals] was a Ministry of Justice affair . . . which was a patent lie," argues former Lebanese Justice Minister Charles Rizk, saying that Lebanese officials had made the arrest "on the express recommendation of the UN commission."⁹⁰ One of Daniel Bellemare's first acts as STL prosecutor was to recommend that the tribunal release the generals for lack of evidence. Pretrial judge Daniel Fransen did so in April 2009.⁹¹ Some analysts welcomed the decision. "It was a sign that the tribunal aimed at applying the law fairly," argues Heleyn Uñac of the STL's Defense Office.⁹²

Critics blasted the court, however, asserting that the release of the four generals showed that their initial arrests had been improper and politically motivated. "The committee failed and a lot of people lost confidence in them, so the tribunal says we're starting anew," argues Mustapha Hamdan, one of the generals released.⁹³ "When a court releases you on the basis of false witnesses, the court should open a file on the false witnesses and start an investigation," adds Jamil al-Sayyed, another of the generals. "They held us hostage for four years; it was about politics, full stop."⁹⁴ Al-Sayyed proceeded to seek a remedy from the STL. Although the tribunal did not assume responsibility for the generals' prolonged detention, it was mandated to carry on work commenced by the UNIIC,⁹⁵ which linked the two entities and made the acknowledgement of the improper detention a serious setback.⁹⁶

The following month, *Der Spiegel* published leaked details of forthcoming indictments against four Hezbollah members.⁹⁷ The revelation brought a torrent of criticism from the March 8 coalition. Hezbollah leader Hassan Nasrallah sought to derail the process by freezing Lebanon's funding, pressing for the withdrawal of the four Lebanese judges and renouncing the STL Agreement. He led a campaign demanding

that a special commission be created to investigate the “false witnesses” who allegedly tampered with evidence to justify the four generals’ arrest. The March 14 coalition demurred, seeing the proposed commission as a means for the STL’s opponents to delegitimize the court.

Forging Agreements to Cooperate

While these controversies played out, the STL was negotiating the terms of its cooperation with the Lebanese government. In 2009 and 2010, the tribunal and government signed MOUs on establishing an STL office in Lebanon and government cooperation with the STL prosecution and defense offices. Although Resolution 1757 obliges Lebanon to cooperate with the tribunal and adhere to the STL Agreement, these MOUs specify the precise modalities of cooperation.⁹⁸ Notably, the MOUs provide for disputes to be settled by negotiation or arbitration, and the tribunal has no easily available means to compel the Lebanese authorities to act where interpretations of the MOUs diverge.

Ibrahim Najjar, who negotiated the MOUs as Lebanon’s justice minister, explains that he “wanted to stick by Lebanese sovereignty and play by Lebanese rules and laws and procedures.”⁹⁹ He adds: “We are the body that delegates to the Special Tribunal. The Special Tribunal does not govern Lebanon. This is written into all the protocols.”¹⁰⁰ In terms of practical cooperation in Lebanon, the arrangement thus resembles a consensual delegation agreement more than the product of a binding UN Security Council resolution.

Najjar also notes that he sought to “distribute responsibility” for cooperation with the STL across different domestic institutions and “didn’t want the Attorney General to do it alone,” as he was “afraid of the political pressures” that would be brought to bear.¹⁰¹ Moreover, he reasoned that “one day a justice minister may be appointed from another political side in Lebanon.”¹⁰² This approach reflected the fragility of Lebanese official support for the tribunal on the ground. While dispersing responsibility may have reduced the pressure directed at any single domestic authority, it may also have raised the risk of ownership gaps, making it easier for any single office to shirk responsibility for the dangerous job of assisting the STL.

Domestic and Regional Political Change

While the STL was commencing operations, politics in Lebanon and the country’s external relations were shifting in ways that had profound implications for the court. Rafiq Hariri’s son, Saad Hariri, became prime minister in November 2009. However, the general trajectory of domestic political change was to reposition Hezbollah and its Syrian allies as commanding forces in Lebanese politics, and to weaken the coalition of domestic and external actors supporting the STL proceedings.

Regionally, Syria staged a comeback and repaired relations with Saudi Arabia, long regarded as a prime regional supporter of Hariri's Future Movement. "Originally the Saudis were enraged that their man in Lebanon was killed," asserts Hilal Khashan, a prominent Lebanese political scientist. However, that began to change when King Abdullah ascended to the throne. Hezbollah proved its worth in the 2006 war against Israel, and Saudi Arabia became preoccupied with other threats, such as the Houthis rebellion in Yemen. In 2009, Saudi Arabia and Syria restored relations. As the correlation of forces shifted, Walid Jumblatt defected from the March 14 alliance and issued "an unambiguous apology to Syria" on the television network Al-Jazeera.¹⁰³ Jumblatt recanted his criticism of Assad in the aftermath of the Hariri assassination and began to support Hezbollah's party line, saying: "I wish the STL had not existed, and it is better for justice to expose the false witnesses."¹⁰⁴

By 2010, the Saudi leadership sought stability in Lebanon as it addressed priorities elsewhere such as Yemen. According to Khashan, "Hariri was under intense pressure from the Saudis to let [the assassination] go."¹⁰⁵ In that context, Saad Hariri visited Assad in Damascus, mended fences with Nasrallah, and changed his tune with respect to the tribunal. "In 2010, in order for Saad Hariri to win the prime ministership again, he had to exonerate Hezbollah," argues Khashan.¹⁰⁶ Hariri thus pivoted in remarkable fashion, saying that the crime was committed by a few unruly Hezbollah agents rather than by the organization itself. He said: "Accusing Damascus of the assassination was a mistake. The false witnesses misled the investigation, and they have caused harm to Syria and Lebanon . . . [and] politicized the assassination."¹⁰⁷ Hariri's decision to exonerate Hezbollah was a grave disappointment to some of the STL's most ardent supporters.

Fueled by Saad Hariri's concession, and eager to thwart or delegitimize the forthcoming indictments of its own members, Hezbollah accused Israel of the Hariri assassination and campaigned to create a political commission to investigate claims that "false witnesses" had tampered with evidence to implicate the four pro-Syrian generals in 2005. In a two-hour televised address in August 2010, Nasrallah claimed that Hezbollah possessed video evidence of an Israeli drone and fighter planes over Beirut and surrounding areas on the day of Hariri's murder.¹⁰⁸ In October, the Assad government issued arrest warrants for thirty-three people, including UNIIIC leader Detlev Mehlis, whom it alleged had participated in an effort to implicate Syria.¹⁰⁹ Syrian and Saudi officials sought to mediate the crisis by discussing ways Lebanon could distance itself from the tribunal. For Saad Hariri, such a move would be costly.

Further Performance Obstacles

The STL launched its first case in unenviable circumstances. By early 2010, a survey by Pechter Middle East Polls showed that while 79 percent of Lebanese Sunnis

regarded the tribunal as “free and fair,” 55 percent of Christians and 85 percent of Shias disagreed.¹¹⁰ A further survey by the Lebanese daily *as-Safir* found that 60 percent of Lebanese regarded the probe as politicized.¹¹¹ Even before the STL could issue an indictment, its perceived legitimacy was under serious challenge.

In early 2011, as the STL's first indictments loomed, Saad Hariri refused opposition demands to suspend cooperation with the tribunal. Eleven ministers loyal to Hezbollah resigned, bringing down his government. Days later, a Lebanese television station played leaked audio recordings of a conversation between Saad Hariri, UN investigator Gerhard Lehmann, Lebanese intelligence official Wissam al-Hassan, and Muhammad Zuhair Siddiq—one of the two “false witnesses.” Hariri had previously denied involvement with Siddiq. To many listeners, the tape showed that Hariri had lied and that he hoped Siddiq would implicate Syria.¹¹² March 14 supporters began a new wave of protests, and the crisis endured until Hezbollah formed a new government in June.

The advent of a March 8 government did not derail the issuance of the STL's first set of indictments in summer 2011 against four Hezbollah members for the attack that killed Hariri, but political change in Lebanon did foreshadow further challenges. The most obvious challenge was to pursue arrests. Former Justice Minister Rizk recalls: “At that time, the tribunal had the sovereign right to do whatever they wanted to do within the framework of the [STL] Statute. The Lebanese were totally discharged. And I can assure you they were happy to be discharged, because it was a heavy thing on their shoulders.”¹¹³

That sense of discharge was an apt metaphor for the ownership gap that emerged in relation to executing the arrest warrants. UN and US officials pressed for the government to act, but what transpired was a transparent game of buck passing. Prime Minister Najib Mikati said responsibility lay “with Prosecutor General Said Mirza, not the cabinet.”¹¹⁴ Mirza said that the legal measures necessary for arrest “took their course towards implementation.” Saad Hariri's Future Movement said that if Hezbollah did not cooperate, it would “refer to domestic and international options.”¹¹⁵ Amid this vague language was the obvious reality that no one was in a position to pry the suspects away from Hezbollah.

While the arrest warrants lingered, the leaders of Lebanon's major political factions negotiated to find a way to “satisfy Hezbollah while allowing the Future [Movement] and Hariri to save face.”¹¹⁶ Among other compromises, Syria backed off the thirty-three indictments, Hezbollah backed off its demands for a commission to investigate the false witnesses, and Hariri backed away from statements implicating Syria and Hezbollah or welcoming UN efforts to weaken them. “Saad Hariri knows for sure that no one can be prime minister or president without the consent of Hezbollah,” argues political analyst Kamel Wazne. Hezbollah understood that

blocking funds for the tribunal would be highly provocative, and opted to allow it to continue, “because here, you agree to manage your differences.”¹¹⁷ As the political bargains surrounding the STL became ever more apparent, the tribunal’s public legitimacy faded.¹¹⁸ “How can you not be skeptical?” asks Rizk, once a staunch supporter of the tribunal.¹¹⁹

The STL also became a lower priority for the foreign governments who largely sponsored the process. The Bush and Chirac administrations passed from office, conflicts in the Middle East evolved, and Western policies changed. “For them, they’re finished,” says former President Gemayel. “It was their duty in 2005 to get that resolution [creating the UNIIIC] passed. Now it’s no longer their daily concern.”¹²⁰ By the time the tribunal’s fifth indictment was issued against another Hezbollah suspect in 2013, the political energy surrounding the tribunal had dampened.

The Ayyash et al. Trial

The STL’s first trial began in January 2014, nearly nine years following the Hariri assassination. The case featured the four Hezbollah members indicted in 2011—Sayim Ayyash, Mutapha Badreddine, Assad Sabra, and Hassan Oneissi—and a fifth member, Hassan Mehri, who was later added to the case. All the defendants remained at large. As in some civil law systems, the STL has the power to join significant numbers of defendants and try them in absentia,¹²¹ and it did so in the *Ayyash et al.* case.

The trial proceedings were slow but generally careful and in keeping with international standards. Victims’ representative Nada Abdelsater-Abusamra expresses “nothing but admiration” for the courtroom proceedings.¹²² The conduct of the Trial Chamber and the management of proceedings generally have been well regarded both by lawyers and by victims, and the STL has issued some useful jurisprudence, such as its decisions pertaining to the domestic definition of terrorism and the crime of association under Lebanese law.¹²³ The Trial Chamber considered evidence from nearly three hundred witnesses and admitted more than three thousand exhibits into evidence in a courtroom trial that lasted for more than four years.¹²⁴

Perhaps the most striking feature of the *Ayyash et al.* trial, however, was the prominence of non-Lebanese expert witnesses as the prosecution tried to prove its case largely through evidence from mobile phone communications. A complex legal strategy of triangulating communications and positions was essential, because other forms of evidence were scarce. Nonexpert witness testimony played little part in the trial. “It is difficult to give evidence implicating persons, political parties, or regimes who are still in power,” explains Abdelsater-Abusamra.¹²⁵ In any case, when it came to securing the testimony of witnesses, the Trial Chamber in *Ayyash et al.* resorted to subpoenas sparingly.¹²⁶

Lebanese Noncooperation

Hezbollah had shown both its military and political ascendancy in Lebanon, which made it unlikely that government authorities would be able to apprehend the suspects—if indeed they tried. When the tribunal did request that the prosecutor-general arrest the four accused Hezbollah members, there was little sign that Lebanese authorities tried to locate them. The STL learned in 2016 that Badreddine, a senior Hezbollah military commander and the highest-ranking of the defendants, was killed in Damascus. The tribunal withdrew charges against him. The other four suspects remained at large for the duration of the trial. In many instances, Lebanese authorities responded to STL requests for assistance with a mix of foot-dragging and buck-passing. This was a particular problem for the defense. Defense lawyers for Assad Sabra, one of the accused, filed multiple motions to seek documents and other evidence from the Lebanese government.¹²⁷ When the Lebanese authorities did not fulfill the first such request, the STL's pretrial judge simply extended the deadline for cooperation.¹²⁸ Lebanese noncooperation also contributed to a delay of the start of the trial.¹²⁹

In dealing with responses to defense requests for assistance of the Lebanese government, the STL Trial Chamber experienced ministries communicating that they were unable to locate documents, that relevant officials were out of the office, or that administrative formalities were not being observed.¹³⁰ Both the tribunal and the Lebanese authorities have been careful to use diplomatic language in such judicial exchanges, but the aggregated effect of the Lebanese response has been to slow proceedings in the *Ayyash et al.* trial.¹³¹ Trial Chamber President David Re says of cooperation with national authorities: "A Trial Chamber must ensure equality of arms in the defense having all the information and resources needed to mount a defense to the charges. But finding the balance when there is resistance to providing that information is uber-challenging. In fact, it's almost impossible. The consequences of making a finding of noncooperation with the STL against a UN member state could have major political repercussions, and possibly ramifications for the tribunal itself. But against this is the paramount concern that accused persons must receive a fair trial according to law."¹³²

The Trial Chamber issued politely worded requests for the Lebanese authorities to cooperate and carry out court requests, but it lacked viable means to enforce compliance. The tribunal's ultimate weapon—a complaint to the UN Security Council—was almost certain to backfire. In theory, the council could intervene in an effort to require the Lebanese government to produce evidence, pursue arrests of suspects, and otherwise cooperate with the tribunal. Lebanon is obligated to cooperate under the terms of Resolution 1757, which created the STL pursuant to

the council's Chapter VII authority. However, with the war in Syria raging, Russia would surely oppose pressing the Lebanese government to do the tribunal's bidding. China would likely follow, and there was little reason to expect US or French officials to invest much political capital in trying to shake loose the suspects and risk added instability in the Levant. "Clearly you have to consider the efficacy of a UN Security Council referral, although securing government cooperation and thus the right to a fair trial remains the overriding consideration in making the decision," Re argues.¹³³ For all practical purposes, Lebanon's degree of cooperation was voluntary.

Officially, the STL has maintained the polite fiction that the Lebanese government is cooperative, though it often needs more time to respond to court requests. With such heavy reliance on Lebanese cooperation and no viable Security Council stick to wield, the STL has little leverage. The international legal scholar Göran Sluiter argues that as Lebanese noncooperation continues, the STL may need to consider more drastic measures, such as a stay of proceedings.¹³⁴ Among other problems, a lack of government cooperation denies the parties potentially incriminating or exonerating evidence that may be crucial to a fair and credible judgment.¹³⁵ To international lawyer Chibli Mallat, the "brutal obstruction of justice" by Assad, Lahoud, and Nasrallah has reduced the once-promising STL to being a "paper tiger."¹³⁶

Trials in Absentia

Due to the government's inability or unwillingness to arrest any of the five suspects, the STL has become the first modern international or hybrid court of its kind to hold a trial in absentia. Holding trials in absentia comports with Lebanese law and was deliberately written into the STL Statute, as the court's architects foresaw the likely limits of national cooperation in apprehending the accused. Alejandro Wolff notes that it was "always understood" that it would be difficult to bring suspects to the court.¹³⁷ Nevertheless, trials in absentia have opened the STL to criticism on due process grounds, and have raised concerns about its ability to uphold the rights of the accused. Omar Nashabe, who served as a consultant to the STL defense team, argues further that the tribunal's foreseeable inability to gather information on Hezbollah—a feat even the world's leading intelligence agencies struggle to achieve—is "evidence that it's a political trial and not about justice."¹³⁸

In addition, the absence of in-court defendants has deprived an already distant trial process of the human element that helps elicit public interest in the proceedings, and leaves "very little to latch onto" for public consumption.¹³⁹ The technical and legal subject matter discussed in the Trial Chamber can be gripping for targeted audiences, such as international criminal lawyers and the friends and family of the deceased, but such hearings are difficult to translate for public observers. Trials in

absentia focused on highly technical evidence take some of the “dynamism” out of the process,¹⁴⁰ and the courtroom gallery is seldom crowded.

The length of proceedings and challenges to the STL’s legitimacy and independence have also taken their toll on its personnel. Several top court officials have resigned. Some analysts suspect that the resignations reflect frustration over political meddling in the tribunal’s work, including alleged guidance from UN officials at headquarters to delay or dilute findings in view of the political sensitivity of the process.¹⁴¹

Outreach Barriers and Ebbing Public Interest

Outreach is a crucial function if the preponderantly international STL is to have a pronounced local impact and maintain a strong supportive domestic coalition. To that end, the STL’s office in Beirut includes an active Outreach and Legacy Unit. That team has developed a robust partnership with the Beirut Bar Association, through which the tribunal has helped expose Lebanese lawyers to the work of the court and vice versa. The STL also has led an Inter-University Program, which provides training in international criminal law and procedure and convenes students from diverse Lebanese universities. A dean of one participating university called it “the best effort at reconciliation in Lebanon since the civil war.”¹⁴² The Outreach and Legacy Unit also has worked to educate the public about the tribunal—a key task, given the divergent narratives about the tribunal in Lebanon.¹⁴³ Outreach to the general public has been challenging, however. “Because of the political climate, some people [have been] afraid to engage with the STL,” explains Olga Kavan, the STL’s head of outreach and legacy.¹⁴⁴ Many civil society groups also have been loath to participate actively in such a politically charged process, and STL outreach officials have been keen not to engage solely with NGOs that support the tribunal.¹⁴⁵

The slow pace of the proceedings has frustrated many in the general Lebanese public who were keen to see criminal accountability.¹⁴⁶ Some analysts have speculated that political meddling may be delaying the tribunal’s work,¹⁴⁷ but in fact donors on the STL’s Management Committee have raised regular questions about the speed of the process while respecting the need for judicial independence.¹⁴⁸ The length of the complex trial process has meant that certain key figures are no longer able to testify, such as the late Rustom Ghazalah, former head of the Syrian intelligence network in Lebanon. “Justice delayed is justice denied,” argues Mehlis, the former UNIIIC head.¹⁴⁹ The STL’s focus on the attack against Hariri and slow progress on other possible trials has also been a source of dismay to some observers. “I’m deeply, deeply, deeply frustrated,” says former President Gemayel, who believes that the assassination of his son falls within the STL’s mandate.¹⁵⁰

The tribunal's basic legitimacy has remained deeply contested, with political leaders arguing for and against the STL along predictable lines. In 2018, as the *Ayyash et al.* trial drew to a close, Saad Hariri spoke outside the STL building to voice support for the tribunal and demand justice for his father's killing. Hassan Nasrallah warned the tribunal not to "play with fire" and said, "The tribunal means nothing to us and its rulings are of no value."¹⁵¹ Another Hezbollah official decried the STL as "a scandalous breach of Lebanese sovereignty."¹⁵² Most Lebanese citizens get their information about the tribunal from highly partisan news media, particularly television news, which has exacerbated polarization.¹⁵³ To journalist Habib Battah, the divisive discourse around the STL process "does not seem like a way to build a justice system, to have reconciliation. It seems like a way to drive a wedge deeper."¹⁵⁴ Yet in the latter years of the *Ayyash et al.* trial, the STL became much less salient in political discourse. "It's a faded issue in Lebanon, no longer really relevant," says political analyst Wazne.¹⁵⁵ "Most Lebanese concluded that the tribunal is as bad as the Lebanese judiciary in finding justice. Now everybody says it amounts to nothing. Nobody has faith in it or takes it seriously," adds Hilal Khashan.¹⁵⁶ In September 2018, lawyers delivered closing arguments in the *Ayyash et al.* case with no prospect of apprehending the suspects, and with little public fanfare—a "whimper" rather than a "bang."¹⁵⁷

The Verdict

In August 2020, after a delay due to Covid-19, the Trial Chamber announced its long-awaited verdict in the *Ayyash et al.* case. In a tome of nearly 2,700 pages, the judges reviewed the relevant mobile phone data and other evidence in painstaking detail, and convicted Ayyash unanimously on five charges including conspiracy to commit a terrorist act, commission of a terrorist act, and the murder of Hariri and others who died in the attack. It unanimously acquitted the other three surviving defendants, however, concluding that the evidence available did not prove their culpability beyond a reasonable doubt.¹⁵⁸ The judgment noted that Ayyash was part of a conspiracy to assassinate Hariri, that Ayyash supported Hezbollah, that Badreddine was a senior Hezbollah official, that Syria and Hezbollah may have had motives to eliminate Hariri, and that the decision to kill Hariri was likely made after a key meeting in which Hariri's delegates called for a Syrian withdrawal from Lebanon. Nevertheless, the Trial Chamber asserted that there was "no evidence that the Hezbollah leadership had any involvement in Hariri's murder and there is no direct evidence of Syrian involvement in it."¹⁵⁹

Saad Hariri responded to the verdict by saying, "I think today everybody's expectation was much higher than what came out, but I believe the tribunal came out with a verdict that is satisfying and we accept it." At the same time, he said that Hezbollah would have to "make sacrifices," as the verdict regarding his father's assassination

showed that the “network responsible is from [Hezbollah’s] ranks.”¹⁶⁰ Many Lebanese observers were deflated, if not surprised, by what Chibli Mallat calls a “timid” STL verdict.¹⁶¹ Released just weeks after the massive blast that devastated Beirut, the verdict left many questions unanswered and brought renewed doubts about the prospects for accountability in Lebanon. Mallat writes: “The streets of Beirut, recently battered by explosions in its port area, seethed with disappointment and anger.”¹⁶²

Effects on the Domestic Judicial System

Advocates of the UNIIIC and STL hoped that both the investigation into the Hariri assassination and related crimes and the ensuing trials would help strengthen the domestic judiciary and accountability norms in Lebanon. Choucri Sader, who was part of the Lebanese delegation to negotiate the STL, expected that the participation of Lebanese judges would help “rejuvenate” the country’s legal system after many years of war and Syrian occupation. He compared the STL to the hybrid courts of the French mandate period, which had helped to forge the modern Lebanese judicial system.¹⁶³ Yet the STL is a more distant institution, with small numbers of Lebanese judges involved.

To some extent, the UNIIIC appears to have had a capacity-building function by introducing new forensic techniques, such as the use of mobile phone data in criminal investigations. Participants in the STL’s Visiting National Professionals program, which provides opportunities for Lebanese lawyers to spend stints working at the tribunal, also report acquiring useful legal knowledge and skills.¹⁶⁴ The STL’s events and symposia with the Beirut Bar Association also have fostered opportunities for Lebanese lawyers to learn from the tribunal’s work. Nevertheless, the international law professor Karim El Mufti describes the STL as “a missed opportunity.” The STL proceedings included many elements that could serve as useful models, such as careful application of the rules of evidence and respect for the rights of the accused. “All of these, one would hope, would be institutionalized, but that requires political will,” El Mufti notes. In Lebanon, “courts fall under the clientelistic control of politicians,” and changing that is beyond the power of the Special Tribunal.¹⁶⁵

There is general agreement that neither the UN investigation nor the tribunal has had a significant impact on the national judicial system or enhanced public confidence in the rule of law. Riachi calls this a “big frustration” of the process.¹⁶⁶ Carmen Abou Jaoude, a leading justice advocate in Lebanon, laments that with respect to strengthening the local judiciary, “while the STL has involved Lebanese judges and drawn from our legal expertise and some of our laws, it unfortunately does not appear to have had much effect on our judiciary, which remains unable to prosecute the crimes committed since 2004 and to challenge the culture of impunity in Lebanon.”¹⁶⁷ The central problem in Lebanon’s courts is not a deficit in judges’ technical capacity and

legal training, but rather extensive corruption and a lack of judicial independence. Former Minister of State for Administrative Reform and civil society leader May Chidiac, survivor of one of the attempted assassinations in 2005, argues that there are “good judges in Lebanon,” but that the Syrian occupation had infiltrated Lebanon’s government institutions and left its residue in the judicial system.¹⁶⁸

The dearth of accountability in Lebanon has risen to the surface again with the rise of large popular protests in 2019 and the tragic explosion at the port of Beirut in August 2020. As the *Ayyash et al.* verdict was released, domestic and foreign critics of Lebanon’s government dysfunction were pressing for the creation of an international commission to probe the causes for the blast.¹⁶⁹ This followed calls earlier in the year for a UN anti-corruption commission.¹⁷⁰ Despite considerable public frustration with the UNIIIC and STL, calls for sovereignty-sharing arrangements thus continue in Lebanon.

Conclusion

The STL process shows clearly the dangers of sharing sovereignty when a supportive political equilibrium is lacking. From the outset, political divisions inside and outside Lebanon have plagued the tribunal, as has ambiguity about its legal status—an issue tied inextricably to debates over its legitimacy. To many critics, the STL is not a case of “shared” sovereignty at all. Against that backdrop, the STL’s effort to implement credible justice for the Hariri assassination and related killings has been fraught with obstacles to its performance of justice.

This case has shown the difficulty of sharing sovereignty with a deeply divided state. Khashan argues that “Lebanon’s sectarian leaders do not know how to play politics without having a foreign sponsor,” and laments “the sad truth that the roots of the country’s lack of sovereignty are primarily internal and are imbedded in its anachronistic, confessional political system.”¹⁷¹ In such a system, it may not be possible to build a winning coalition to support a sovereignty-sharing arrangement. Instead, the STL has become for most purposes an international court that lacks robust cooperation from Lebanon—an arrangement that faces severe limits in delivering justice, and minimal avenues for strengthening sovereign state institutions.

Another lesson from the STL is that the windows of political possibility for effective sovereignty sharing are usually fleeting. Chibli Mallat and Alejandro Wolff both conclude that the process of creating the STL and conducting trials was too slow to seize the political momentum arising from the series of 2005 assassinations and early progress in the investigations.¹⁷² Over time, the Lebanese government’s fervor and capacity to press forward with cases abated as a result of domestic compromise,¹⁷³ while opposition from Hezbollah and others remained firm. International and public interest dissipated, leaving the tribunal largely cast adrift, prosecuting shadow defendants

and ultimately issuing a verdict that reflects the enduring barriers to accountability in Lebanon more than the power of hybrid justice.

The STL's experience offers an important cautionary tale for hybrid criminal processes in the future. It speaks to the extreme difficulty of sharing sovereignty, or even imposing foreign involvement, in judicial processes that winning domestic coalitions do not support. In recent years, efforts to build hybrid courts to address crimes during the civil conflicts in South Sudan, Syria, and Sri Lanka all have stalled or foundered due to a lack of host-state support.¹⁷⁴ The Kosovo Specialist Chambers will almost certainly encounter resistance if the case involving Kosovo President Hashim Thaci moves forward. The Special Criminal Court in the CAR is also apt to face political headwinds as it proceeds to investigate alleged war crimes in a state that remains highly divided and riven by continued conflict. The work of the Special Court for Sierra Leone and parts of the Khmer Rouge tribunal process in Cambodia show that effective hybrid justice is possible, but to a great extent that effectiveness depends on identifying and capitalizing upon political windows of possibility.

Sharing Sovereignty in the Streets

IN SPRING 2006, one of the world's youngest states suffered a near collapse. In Dili, the capital of Timor-Leste, the government called in the army after protests by hundreds of dismissed military personnel turned violent. Residents fled their homes in large numbers, and the security forces began to splinter into rival factions. Lethal clashes ensued involving a combustible mix of current and former soldiers, police, and civilians. The police force in Dili imploded, as officers fled their posts and hid their uniforms. On May 25, nine unarmed police officers were gunned down by army-linked rivals. Mobs and martial-arts gangs swept through the city, torching homes, destroying businesses, and beating or killing their perceived foes.

The crisis brought a breakdown in law and order and threatened to tip the country into civil war. Without a viable police force, the local population was woefully unprotected. As lawlessness spread, Timorese leaders called on the United Nations to step into the breach. They consented to the UN Mission in Timor-Leste (UNMIT), which at its core featured an agreement to share sovereignty in the streets. UN police (UNPOL) dispatched to enforce the law alongside local officers while seeking to reconstitute and strengthen the fledgling Timorese police force. This remarkable venture was not the first to engage international police in domestic law enforcement, but it would become the most substantial and long-lasting UN mission of its kind.

This chapter discusses the emergence of joint policing as a form of shared sovereignty, highlighting the difficulty of forging effective partnerships over law enforcement given domestic loathness to cede authority and limited international competence to wield it. It then presents a detailed case study of Timor-Leste, which illustrates

themes common to most joint policing ventures. These include government reluctance to share police powers, the consequent tendency to confer qualified consent and forge ambiguous agreements, and the many obstacles foreign officers face to delivering effective performance in the field. While external actors have delivered important stopgap security services in Timor-Leste and elsewhere, they generally have struggled to carry out ordinary policing functions and win broad public acceptance. They also have a weak collective record in implanting sustainable domestic police reform.

Outsourcing Law Enforcement Authority

There are sometimes compelling reasons to share police powers. In many fragile states, police lack both the capacity and the incentives to enforce laws effectively and equitably. They often function more like partisan security forces than public servants, and leaders often reward them more for loyalty than for sound law enforcement. Moreover, since policing is highly visible, law enforcement failures tarnish public perceptions of the legitimacy and efficacy of state institutions. External actors have the potential to offer superior technical prowess and political independence, improving services and contributing to local police capacity and reform. In some cases, they can provide an essential stopgap when local police simply implode.

Law enforcement authority has been among the most difficult governance functions to share, however. National leaders invariably resent the need to share sovereignty over law enforcement, which they see as a crucial pillar supporting their positions in power. They have done so only when they are deeply dependent on outsiders for security succor. Moreover, external actors usually have been reluctant to assume expansive law enforcement authority in fragile states, due to its normative sensitivity and practical difficulty. This has left such ventures with weak political foundations, which in turn has led to ambiguous agreements about the scope of external policing authority. External actors often have struggled in the field, facing foreign environments and limited cooperation from local officers, undermining their ability to win broad public support. Advancing domestic institutional reform has been a consistent challenge.

Hints of the practice emerged during the Cold War, as peacekeepers went beyond traditional support missions to perform limited law enforcement functions as part of the first UN Emergency Force in the Sinai and Gaza Strip (1956–57), the UN Operation in the Congo (1960–64),¹ and the UN Temporary Authority in West New Guinea (1962).² Shared policing authority reemerged more prominently in the 1990s as part of complex “second-generation” peacekeeping missions that aimed, among other things, to strengthen the domestic rule of law. It entailed moving beyond the traditional “SMART” approach to international police missions, which entailed supporting, monitoring, advising, reporting, and training local officers. Sovereignty

sharing meant engaging in interim law enforcement, including the exercise of certain “executive” authority such as the powers to detain and arrest criminal suspects. Sovereignty sharing also involved international police more deeply in the “three Rs” of reform, restructuring, and rebuilding of local police.³

Formal sovereignty sharing has arisen only when local leaders have been extremely vulnerable. During the 1990s, external actors wielded limited police powers in Cambodia, Haiti, Bosnia, Somalia, and Eastern Slavonia—all places where domestic governments were inchoate or lacked domestic forces to deal with rampant insecurity.⁴ During the “neotrusteeships” established for Kosovo and East Timor in 1999, UN police assumed full domestic law enforcement authority, handing it over gradually to nascent local police forces. The three most substantial joint policing arrangements have all come about when ruptures in law and order have threatened mass upheaval in fragile states—in the Solomon Islands in 2003, in Timor-Leste in 2006, and in the Central African Republic (CAR) in 2014, where a transitional government agreed to joint policing as part of a set of “urgent temporary measures.” In every case, national consent to share sovereignty has been driven by acute insecurity—not necessarily a shared vision for how to conduct policing or advance police reform—leaving most such ventures with fragile political foundations.

Domestic ambivalence over external involvement in domestic policing usually has led to ambiguous agreements. The seminal example was the UN Transitional Authority in Cambodia (UNTAC), established pursuant to a 1991 peace agreement between Cambodia’s major political factions and key external stakeholders. UNTAC civilian police had the ambiguous authority to exercise “supervision or control” over their Cambodian counterparts.⁵ This vague provision helped procure the consent of Hun Sen and the Cambodian People’s Party—the country’s most powerful political faction, which dominated the police and resisted UN oversight. However, it led to predictable confusion and noncooperation in the field.⁶

In Kosovo and Timor-Leste, the relationships between local and international police often were unclear, producing ownership gaps or feuds over who had certain responsibilities. Vagueness has been the hallmark of informal arrangements in Haiti, Liberia, South Sudan, and elsewhere, where governments sometimes have allowed UN police and peacekeepers to carry out police functions as an extension of their civilian protection mandates. These “cloudy edges”⁷ of international authority leave host governments discretion on when to allow external policing, and the ability to claim success for operations that go well and disavow those that fail.⁸

The principal exception to this ambiguity was the Regional Assistance Mission to Solomon Islands (RAMSI). Unlike other ventures in this domain, RAMSI was created by a treaty instrument ratified by the legislature.⁹ The embattled government in Honiara gave an Australian-led coalition explicit and extensive policing powers

to stem an existential law-and-order crisis and rebuild domestic institutions. The strength of state consent and clarity of RAMSI's mandate translated into operational effectiveness. Shortly after its establishment in 2003, RAMSI restored law and order in Honiara by arresting scores of suspected criminals, disarming rival gangs and ethnic militias whose clashes threatened the basic stability of the state, and sacking roughly one-quarter of the local police force.¹⁰

In RAMSI and other missions, international police sometimes have provided much-needed stopgap security services, particularly in contexts such as crowd control, antigang campaigns, and VIP protection. These functions align with their comparative advantages in areas that require technical capacity and resources more than local knowledge. Since the neotrusteeships in Kosovo and East Timor, the United Nations has emphasized these forms of policing by dispatching formed police units (FPUs)—units of 120 to 140 armed officers. FPU operations are most clearly “where the rubber meets the road” for international involvement in normally sovereign domestic police functions, notes one official from the US State Department's Office of Criminal Justice Assistance and Partnership.¹¹ FPUs typically have managed tasks such as controlling demonstrations, protecting UN staff and facilities, and conducting high-risk operations such as responses to riots and gang violence.¹²

Domestic and international interests often converge in these areas. External actors tend to prioritize preventing mass unrest, addressing cross-national threats such as organized crime and terrorism, and engaging in “particularized protection” of political elites and foreign nationals.¹³ These foci tend to align with domestic officials' interests in protecting themselves, their regimes' stability, and their access to foreign aid. Where interests align and external actors have the requisite skills, international police have delivered sound services. For example, UN personnel helped stem dangerous riots in Dili in 2006 and carried out effective joint operations against gangs in Port-au-Prince in the years following. In 2010, US and UN forces stepped into the breach to help control the chaos following the Haitian earthquake.

More often, however, international actors have struggled to perform well in the field and earn public acceptance or legitimacy. Policing is difficult in familiar settings, and is even tougher in conflict-ridden or lawless environments far from home. In states such as Cambodia, Haiti, and Timor-Leste, most outsiders have lacked the language skills and contextual knowledge to conduct effective community policing, which requires engaging the local population and developing trust to gather information and induce compliance.¹⁴ External actors thus have a tendency to focus on military-style policing, which can reinforce problematic domestic practices—a critique leveled at the international police mission in Bosnia.¹⁵

Recruiting high-quality international officers has been a persistent challenge. Donor states have furnished meager funds to the UN Police Division and have resisted

calls for a sizable standby international force. Governments with well-trained police typically need them at home, and officers usually earn promotions more from service in their normal jurisdictions than for overseas adventures. For these reasons, most international police missions have had to be cobbled together on the fly, drawing officers from states where UN salaries are appealing. As of mid-2020, the largest contributing states were Senegal, Rwanda, Egypt, Bangladesh, and Nepal. Most others came from sub-Saharan Africa, including states with dismal human rights records, such as Zimbabwe and Niger.¹⁶ Belated efforts to develop standard operating procedures have met with controversy, as many states contend that a single UN code threatens their sovereignty and unique cultural approaches to law enforcement.¹⁷

International police and peacekeepers sometimes have behaved badly. In Cambodia, some units alienated local populations through prostitution, bar fights, and boorish behavior.¹⁸ UN peacekeepers and police have been implicated in excessive violence and sexual abuse in Haiti, the CAR, and the Democratic Republic of the Congo. Feeble accountability for international personnel, who are generally repatriated rather than subjected to serious punishment, has only added to local public frustration.¹⁹

Local police are not always eager to cooperate, seeing shared sovereignty as an imposition and affront rather than a partnership. In Cambodia, local police refused to cooperate with UN counterparts in numerous cases.²⁰ In Haiti, a co-location scheme failed in part because local officers took umbrage at the notion of UN oversight.²¹ In Kosovo, local officers lost confidence in UN police and NATO troops for responding poorly to ethnic riots in 2004 and putting lesser-armed Kosovars on the front lines of riot control.²² When external police and local officers do cooperate, other problems can arise. Strengthening state security in fragile states is never a politically neutral enterprise,²³ and working with local police inevitably involves siding with the government to some degree. External actors can be “tainted by association” when they are regarded as abetting abusive state actors.²⁴

A further performance problem has been that policing work functions as one link on a chain. When other domestic institutional links are broken, even effective police work can founder. In Cambodia, when UNTAC civilian police investigated abusive local officers, they could only hand off cases to a corrupt and noncompliant judiciary controlled by the Cambodian People’s Party.²⁵ In Haiti, UN peacekeepers and local police had to send arrested criminal suspects to a woefully inadequate prison system, and then on to prosecutors with very low rates of attempted or successful prosecution.²⁶ In the CAR, UN police sometimes simply have released criminal suspects for lack of available detention facilities and in recognition that the anemic court system cannot process the cases.²⁷ All of these problems have undermined the ability of international police to earn performance legitimacy and thus public support for

sovereignty-sharing ventures. In most cases, local authorities have reclaimed control soon after crises have passed.

External actors have also had limited success in catalyzing police reform. Perhaps the most successful instance came in Kosovo, where UN police trained the new Kosovo Police Service and gradually transferred most law enforcement responsibilities to it by 2006. International partners contributed strong personnel and resources, and Kosovars were keen to build an effective police force as an indicator of the territory's entitlement to sovereign status.²⁸ By the late 2000s, Kosovo police were performing better than many of their regional counterparts and had a high degree of public satisfaction.²⁹

Most sovereignty-sharing ventures have been less successful in implanting sustainable police reforms. Domestic leaders generally have fended off undesired proposals, and malign incentives for officers have proven difficult to change without broader systemic transformation. In Cambodia, local police shrugged off international supervision and remained a corrupt partisan force conducting serious human rights abuses. In Haiti, international support for the new Haitian National Police (HNP) paid dividends in the mid-1990s, but the HNP soon fell prey to malign incentives, as officers took sides in domestic political feuds and reverted to rent-seeking.³⁰ Despite its successes in service provision, RAMSI also struggled to build capacity and implant lasting reform in the Royal Solomon Islands Police (RSIP). In 2006, RAMSI forces had to step into the breach again when the RSIP proved unable to manage a new round of riots and looting.³¹ A decade later, as RAMSI wound down, concerns abounded about the RSIP's readiness.³²

All of these dynamics—the general fragility of government consent, the tendency to forge ambiguous agreements, and the difficulty of delivering effective police performance and implanting reform—have been apparent in UN policing efforts in Timor-Leste. UN police did help restore security and improve the domestic police force to some degree. However, the case shows that the political foundation for shared sovereignty can erode quickly as crises pass and domestic leadership changes. Timorese and UN preferences diverged, the partnership drifted, and performance suffered, undermining domestic public and elite support for the venture. Timorese elites reclaimed control well before a strong national police force could take root.

Timor-Leste's Path to Shared Sovereignty

Sovereignty sharing emerged within a series of UN missions designed to help Timor-Leste build a functioning state from the rubble remaining after almost three centuries of Portuguese colonial rule and twenty-four years of heavy-handed Indonesian military occupation. Neither the Portuguese nor the Indonesian armed forces had given the Timorese much experience or capacity to self-govern. East Timor—as Timor-Leste was known before it gained lasting independence in 2002—was a small, distant and

often sleepy Portuguese colony with a cadre of colonizers largely content to preside over Dili while investing scant resources in their subjects or in the outlying provinces.

As the Cold War encroached on Southeast Asia, a left-wing nationalist movement known as Fretilin arose to resist Portuguese rule. When a leftist government toppled the conservative Salazar regime in Lisbon in 1974, it announced plans for gradual decolonization, but East Timor's independence was to be painfully brief. Indonesian president Suharto saw the prospect of an independent East Timor as a possible beach-head for Chinese communist influence, as well as a possible source of inspiration for other independence movements in the archipelago and an impediment to Indonesia's economic interests in the resource-rich Timor Gap. In late 1975, US President Gerald Ford and Secretary of State Henry Kissinger gave Indonesian president Suharto a "green light" to invade East Timor, sharing concerns about communism and supporting Suharto's conservative New Order regime.³³ Just nine days after the independent Democratic republic of Timor-Leste hoisted its flag, Indonesian troops swept into the small half-island territory.

The Indonesian military occupation that followed was repressive and often brutal, as well over one hundred thousand Timorese were lost in conflict-related deaths.³⁴ Timorese were given little influence over civil administration, but Indonesian forces did co-opt some Timorese to become part of the security apparatus—largely recruits from the western part of the territory. Fretilin led the resistance to the Indonesian occupation, spawning a military wing known as Falintil, while a Timorese diaspora campaigned for diplomatic succor. The tide turned in their favor after the end of the Cold War and a 1991 massacre at Santa Cruz cemetery in Dili that brought worldwide attention to Indonesian abuses. The 1997 Asian Financial Crisis then weakened Indonesia's grip by sending its economy into a tailspin, bringing the downfall of the Suharto regime, and forcing the Indonesian government to go cap in hand to Western donors for a financial lifeline.

In August 1999, the Timorese people held a referendum in which an overwhelming 78.5 percent expressed their desire to separate from Indonesia. Indonesian special forces and pro-Indonesian Timorese militias responded violently. At least one thousand people died, and brutalities and mass arson drove roughly two-thirds of the population from their homes. An estimated 70 percent of the country's physical infrastructure was reduced to ashes.³⁵ The violence subsided only when the UN Security Council used its Chapter VII authority to authorize an Australian-led military intervention. The spree of violence left in its wake charred physical structures, collective trauma, and minimal local capacity to govern. The Indonesian personnel who had administered the territory vanished from their posts, returning to Indonesia.

To manage this deeply impoverished and stateless territory, the United Nations created a neotrusteeship. Without a juridically recognized state or a functioning

national government, the UN Transitional Administration in East Timor (UNTAET) assumed broad sovereign authority, including full executive policing responsibility. UNTAET provided many much-needed governance services, but soon came under fire for functioning like a “UN kingdom” and offering too little local involvement.³⁶ In 2001, as criticism of imperious UN administration mounted and Timorese leaders took steps toward establishing an independent government, UNTAET shifted toward a strategy of “Timorization” to prepare East Timor for independent statehood.³⁷

Creation of the Timorese National Police

Among many other tasks, UNTAET was charged with creating a new Timorese national police force that would assume executive policing authority gradually from UN police. Policing infrastructure was nearly nonexistent after the Indonesian withdrawal, and in that respect the Timorese police force had to be created almost from scratch. One challenge was to cultivate the technical skills and experience needed to carry out sound policing. Another was to construct a force reasonably independent of political elites and committed to serving the public interest. UNTAET did not meet either challenge.

From the outset, UNTAET’s interest in developing police capacity clashed with its interest in constructing a politically independent police service. The only available cadre of trained Timorese police officers had been part of the Indonesian police (Polisi Republik Indonesia, or POLRI). In its first round of recruiting, UNTAET selected some 340 ex-POLRI officers, and installed many in senior posts. They were joined by very young and inexperienced recruits. UNTAET built around ex-POLRI officers to engage those with substantial policing experience and clean records, but in doing so it imported institutional norms and habits that it hoped the new domestic police force would avoid.³⁸

Many Timorese resented the hiring of police associated with the repressive Indonesian occupation. Whereas the Timorese military enjoyed prestige associated with its members’ past resistance of occupation, the police had long served as agents of foreign oppression and enjoyed little public trust. The prominence of ex-POLRI officers undermined efforts to present the new police force as one that would serve the public interest. Ex-POLRI involvement also generated mistrust within the ranks of the East Timor Police Service and between the police and army, which was comprised primarily of ex-Falintil guerillas who had resisted Indonesian occupation.

UNTAET’s reliance on ex-POLRI officers exemplified its approach to building the East Timor Police Service, which emphasized haste and technical needs over the political implications of the process.³⁹ The training of new police recruits was also fraught with problems. Timorese struggled to learn from UN police, as contingents from diverse countries applied different methods in the field and taught different

techniques in the new police academy.⁴⁰ Institutional weakness rendered the Timorese police easily susceptible to politicization, as factions developed primary allegiance to commanders or political elites rather than to the state.⁴¹ They were woefully unprepared to assume full responsibility as East Timor approached the May 2002 elections that would furnish the country's first sovereign government.⁴²

An Initial Round of Shared Sovereignty

After independence, the renamed state of Timor-Leste assumed the mantle of juridical sovereignty, but had anemic capacity to govern. The newly elected government, led by President Xanana Gusmão and Prime Minister Mari Alkatiri, agreed to a follow-on UN peacebuilding mission called the UN Mission of Support in Timor-Leste (UNMISSET), which would last from 2002 to 2005. The new UN mission shifted to a supporting role with respect to Timor-Leste's civil administration, but retained sizable peacekeeping and police forces. Roughly 1,250 UN police deployed across Timor-Leste's thirteen districts. For the first time in an independent sovereign state, the United Nations exercised control over the national police.⁴³ Shared sovereignty was to be transient; UN police would train Timorese officers and hand over authority according to an agreed timetable.

This sovereignty-sharing arrangement was devised shortly before Timor-Leste's independence, while UN administrators retained broad authority.⁴⁴ Timorese leaders consented, though their utter dependency on international support left them little alternative. UN administrators essentially handed down the terms of agreement, and Timorese had scant involvement in defining the vision and mission of the rebranded the Policia Nacional de Timor-Leste (PNTL). That would contribute to a "vacuum of purpose and identity," and leave room for continued disunity and politicization.⁴⁵

The agreements governing UNMISSET's police activities were ambiguous in their division of security responsibilities between UN police, blue-helmeted UN peacekeepers, and the sovereign state.⁴⁶ In particular, the arrangement left unclear the sensitive issue of how much authority and responsibility the Timorese commissioner and police would possess before the point when all power had been handed to the national police. That ambiguity undermined the cultivation of strong leadership within the PNTL. Paolo Fátima Martins, an ex-POLRI officer, had been named commissioner of the Timorese police in 2001 but had little formal authority, and this eroded his leadership and capacity to exercise discipline over rank-and-file officers.⁴⁷ Confusion also existed in the field, where UN and Timorese officers were sometimes unsure of their responsibilities.

The most important challenge in implementation was that UN and Timorese leaders had very different priorities with respect to policing. UN officers focused largely on their mandate to provide executive policing in lieu of a capable Timorese police

force. For capacity building, UN police continued to emphasize technical readiness rather than politics. Even this effort was not very successful. Officers from some forty countries implemented different policing models across districts, which undermined the effort to build a single Timorese policing model and *esprit de corps*.⁴⁸ Language barriers and limited local knowledge among UN police also undermined the effectiveness and coherence of the meager three-month training provided to PNTL candidates in the Timorese police academy.

For senior Timorese officials, policing was more a political issue than a technical one. President Gusmão's power base within the security apparatus was in the military. Prime Minister Alkatiri and Minister of Internal Affairs and Security Rogério Lobato, both rivals of Gusmão, sought to build the PNTL as a counterweight. In late 2002, Lobato asked police chief Paolo Martins to hire five hundred disaffected veterans who had been excluded from the army. Martins and Gusmão saw the move as a bid to stack the PNTL with guerillas loyal to Lobato and Alkatiri. Martins refused the order.⁴⁹ This led to a November incident in which more than one hundred protesters attacked a major police station. Gusmão demanded that Alkatiri sack Lobato, but Alkatiri refused. In December 2002, demonstrations in Dili against Alkatiri spun out of control. Angry mobs carried out widespread looting, and PNTL officers killed two protesters and wounded sixteen others.⁵⁰ These developments showed that Timorese governing elites viewed the police more as an instrument for factional power competition than as an evenhanded public security service.

In these and other sporadic bursts of violence, UN peacekeepers or Timorese troops had to intervene to stem the chaos. The PNTL's problems prompted a 2002 Joint Assessment Mission including Timorese and international officials, which found a litany of problems such as weak management and administration, inadequate training, incoherent policies and doctrines, and poor communication and call responses.⁵¹ UN Secretary-General Kofi Annan urged the Security Council to slow the reduction in UN police and peacekeepers,⁵² but the council and key donor states insisted that full handover of policing and defense authority would occur as scheduled in May 2004.⁵³

Harbingers of trouble surfaced again shortly before the handover, when members of the army and police clashed in the eastern city of Lospalos.⁵⁴ Asked what he considered the country's prime security threat, one army officer replied: "the police."⁵⁵ Annan noted in a report to the Security Council that "fundamental problems" remained in the PNTL, including "disturbing reports of excessive use of force, assault, negligent use of firearms, criminal activities, corrupt practices and violations of human rights."⁵⁶ Despite the PNTL's poor state, the handover of full policing authority nevertheless occurred, driven by donor fatigue, Timorese interest in asserting sovereignty, and a sense of the limitations of UN police.⁵⁷ As William Durch has argued, UNMISSET's hasty departure from Timor-Leste is the "reigning example of premature exit."⁵⁸

Establishing UNMIT

The problems of weak police capacity and tensions within the PNTL and between the police and the armed forces resurfaced dramatically in 2006. That crisis highlighted the shortcomings of one sovereignty-sharing arrangement and brought about the creation of another, prompting renewed international intervention and a “partial return to neotrusteeship in Timor-Leste,” centered on a new international police presence.⁵⁹

The 2006 Crisis

The 2006 breakdown of Timor-Leste’s security forces occurred against the backdrop of broader social cleavages and continued power competition among the country’s political elites. At the center of the feud were Prime Minister Alkatiri, head of the incumbent Fretilin party, and President Gusmão, leader of the opposition. Both the military and the PNTL were weak and deeply politicized. Most PNTL leaders had served in the Indonesian police force and hailed from the western part of the country. Most leaders of the military—the Forças de Defesa de Timor-Leste, or Falintil—were veterans from the east who had fought against Indonesia’s occupation. These divisions and the blurry demarcation of policing and military responsibilities undermined the new forces’ legitimacy and sowed the seeds for factional ruptures.⁶⁰

The trigger for the crisis was the March 2006 government dismissal of roughly six hundred military “petitioners”—more than 40 percent of the armed forces—who were protesting alleged discrimination against troops from the country’s western regions. The protests began peacefully, but on April 28 violence broke out as groups of youths broke through PNTL lines and attacked PNTL headquarters and the main government building in Dili.⁶¹ The PNTL soon disintegrated as officers left their posts and joined rival factions. The PNTL’s implosion reflected the hasty design and training of the force during the UNTAET and UNMISSET periods, as well as the meager experience of the PNTL operating independently. As Gordon Peake notes, “the PNTL was only sovereign to any extent for about two years” before the 2006 crisis.⁶²

With the PNTL in ruins, Alkatiri controversially called out the army to restore law and order. Troops used excessive force against some protesters, killing five, injuring many others, and prompting thousands to flee their homes.⁶³ The army crackdown did not put an end to the violence. Instead, elements of the decomposed military and PNTL engaged in armed clashes. In a showdown in May 2006, troops cut through the poorly organized PNTL “like a knife through butter.”⁶⁴ In one grisly event, soldiers killed nine unarmed Timorese police who had surrendered to UN forces.⁶⁵ Gang violence and other forms of unrest rose as law and order crumbled, particularly in the cities of Dili and Comoro. Thirty-seven people died, and more than 150,000 Timorese—more than 15 percent of the population—fled from their homes.⁶⁶

A Window of Preference Alignment

Amid the crisis, Timorese leaders saw a dire need for external security support. They requested and received help from some two thousand troops and police officers from Australia, New Zealand, Malaysia, and Portugal. An Australian-led military stabilization force arrived first and helped restore order. The Portuguese gendarmerie (Guarda Nacional Republicana, or GNR) also played a crucial role. Although accused at times of excessive force, the GNR succeeded in breaking up demonstrations and otherwise stemming the tide of lawlessness. The UN Security Council also extended the mandate of the UN Office in Timor-Leste, the political mission that replaced UNMISET in 2005 with a mandate to support the Timorese police and other key state institutions.

It was in that context that Timorese and UN officials began discussing the need to establish a UN police mission with a mandate to carry out executive functions. As Gordon Peake asserts, key UN member states and the Secretariat reasoned that “we’re doing it de facto anyway, but we need to codify it.”⁶⁷ On June 11, Timor-Leste’s leaders wrote to UN Secretary-General Annan with a sovereignty-sharing proposal:

The Policia Nacional de Timor-Leste (PNTL) has not been able to discharge its operational responsibilities as a law enforcement agency, and basically disintegrated on 28 April 2006. We wish to request that you kindly propose to the Security Council to establish immediately a United Nations police force in Timor-Leste, to maintain law and order in Dili and other parts of the country as necessary and reestablish confidence among the people, until the PNTL has undergone reorganization and restructuring so that it can act as an independent and professional law enforcement agency.⁶⁸

The letter asked that roughly 870 UN police remain in Timor-Leste for at least one year to carry out community policing, particularly in Dili, and that the contingent include formed police units with rapid-reaction capability to maintain law and order in Dili and other key regions as necessary. The Timorese government also asked the United Nations to provide an institutional and capacity-building advisory team to help reorganize the PNTL, in part by vetting PNTL officers and helping to establish relevant laws and policies.⁶⁹

By August the violence had subsided, as had the political struggle behind it. The 2006 dispute was linked to a mounting power struggle between Gusmão, Alkatiri, and Lobato. For years, Lobato had sought political power by cultivating loyal members of the security forces—particularly disaffected Westerners.⁷⁰ He resigned in June after he was accused of distributing PNTL weapons to militias for use against his political opponents.⁷¹ Alkatiri stepped down as prime minister several weeks later, under pressure for his role in the crisis and his alleged complicity in the transfer of weapons from the security services to civilian groups. Alkatiri was

replaced by a Gusmão ally, José Ramos-Horta. In July, Gusmão and Fretilin leaders achieved a truce of sorts. Gusmão essentially prevailed, though the interim government established after Alkatiri's resignation lacked the mandate and legitimacy of an elected administration.

As the dust was settling domestically, a UN assessment mission completed its report on Timorese security needs. On that basis, Annan wrote to the Security Council in August, recommending that UN police be dispatched "within the framework of an overriding executive policing mandate" to maintain law and order as Timorese leaders had requested, "through the provision of executive policing."⁷² Annan argued that the abatement of violence did not mean the crisis was resolved, and many of its underlying causes still needed to be addressed. However, the violent unrest that had motivated Timorese leaders to request an international police presence had ebbed, opening the door for changing attitudes toward a sovereignty-sharing mechanism.

Within the United Nations, views differed on how best to intervene. The June 2006 assessment mission argued for a light footprint, whereby roughly four hundred UN police would take over executive policing briefly in Dili and in one other district, as the PNTL reassembled. Advocates of this model stressed the importance of sensitivity to local politics, and the merits of working "behind the scenes."⁷³ UN police advisor Mark Kroeker and others at headquarters in New York argued that a much larger mission was needed to avoid the shortcomings of the UNTAET period. The latter view prevailed, and the UN police contingent reached 1,650 in number, nearly double what Timor-Leste had requested. Neither Timorese leaders nor the PNTL viewed such a large UN police mission as the appropriate medicine for their country's ailing security services.⁷⁴

Annan warned presciently that UN police would need to clarify policing arrangements between UNPOL and the PNTL, and stressed that an "enhanced international role in the security sector and elsewhere must fully respect the national sovereignty of Timor-Leste" as part of a "Timorese-owned and led" nation-building process.⁷⁵ Timorese leaders were loath to concede too much power to the United Nations, especially so soon after obtaining their long-coveted sovereign independence. UN officials insisted that executive policing would be essential to maintaining law and order and attracting contributions of police from member states. Executive policing was facially consistent with the letter of request that Timorese leaders had penned in June.

However, according to UNMIT political advisor Anthony Goldstone, the Timorese government did not explicitly request that UN police exercise executive authority. Rather, UN officials made that demand as the two sides negotiated the terms of a UN mandate—a demand Timorese officials resented.⁷⁶ High-level agreement on

the need for a UN police mission did not mean Timorese and UN authorities would see eye to eye on how to implement the arrangement, or even on how to interpret the government's original request for assistance in light of changing conditions on the ground.

Ambiguous Rights and Responsibilities

The Security Council resolution establishing UNMIT did little to resolve the question of how UN police would work alongside the largely disintegrated PNTL. It tasked UN police with "the restoration and maintenance of public security in Timor-Leste through the provision of support to the [PNTL] . . . which includes interim law enforcement and public security until the PNTL is reconstituted."⁷⁷ However, the mandate did not mention executive policing expressly, and it left unclear whether and when UNPOL could exercise managerial authority over the PNTL. Instead, it appeared to give the same responsibilities to both sides—a recipe for redundancy, confusion, and an unstable working relationship. An unclear division of labor between military and police forces only added to confusion about where ultimate responsibility for security lay in Timor-Leste.⁷⁸

The Timorese Parliament was loath to cede sovereignty, and the interim UN police commissioner soon abandoned his effort to forge a legally binding agreement on UN police responsibilities, which would require parliamentary approval.⁷⁹ Instead, to clarify rights and responsibilities, UN officials drafted a "Supplemental Arrangement"—effectively a memorandum of understanding between UNMIT and the Timorese government.

The Supplemental Arrangement sought to clarify how two parallel police forces could work in concert. UN police officers would be vested with all powers conferred on the PNTL under Timorese law, and would be subject to the exclusive command and control of the UNMIT police commissioner. The Timorese minister of the interior would cease to exercise authority over policing matters, and the UNMIT police commissioner would be the interim PNTL commander. Policing would follow a phased approach. In the "initial phase," UNMIT would have primary responsibility for police operations. During a "consolidation phase," UNMIT would gradually hand over responsibility to PNTL units meeting specified benchmarks. In the "full reconstitution phase," UNMIT would hand over all police operations in Timor-Leste after the police commissioner certified the PNTL's capacity to do so effectively. The Supplemental Arrangement also included detailed provisions on police training and reform.⁸⁰

Leaders of the dysfunctional PNTL accepted the government's decision in principle. Afonso de Jesus, who was then acting PNTL chief, recalls: "We are Timorese . . . but in 2006, we respected that the government was the one requesting [UNPOL with executive authority] because the police were failing."⁸¹ Still, assumption of UN control

over a police force that had begun exercising sovereign authority for just over two years was a delicate matter.⁸² “Timorese already had gained a sense of their self-worth” by 2006, says Fidelis Magalhaes, president of Timor-Leste’s Council of Ministers and a former chief of staff to two Timorese presidents.⁸³ Problematically, the Supplemental Arrangement was written without any time limit—a feature jarring to Timorese concerned about the deal’s sovereignty implications. Afonso de Jesus recalls exclaiming that “it could be up to ten or twenty years.”⁸⁴

Although Prime Minister Ramos-Horta signed the Supplemental Arrangement in late 2006, it lacked legal status and penalties for noncompliance, noting only that disputes would be “settled by negotiations.” The government did not fulfill its pledge to enact domestic legislation to support implementation of the arrangement,⁸⁵ and in 2008 the Timorese Court of Appeal found the Supplemental Arrangement to be “non-binding” and to constitute “an instrument of a merely political and administrative nature.”⁸⁶ Afonso de Jesus confirms that PNTL leaders likewise understood the Supplemental Arrangement as more akin to an informal MOU than a binding contract.⁸⁷

The absence of a binding legal agreement was not debilitating on its own. Strong commitment by the Timorese executive could have given the Supplemental Arrangement a similar effect. However, the qualified nature of Timorese consent quickly became apparent. Former Secretary of State Francisco da Costa Guterres notes that the placement of the PNTL under UN administration was particularly grating. “In 2007, when I came to office, we had to honor the agreement. We could not break this kind of agreement with the UN, [but] I was pushing for ownership [and] power-sharing to reflect developments in Timor-Leste.”⁸⁸ Faustino da Costa notes pointedly that, while talks between UNMIT and Timorese officials were based on the Supplemental Arrangement, “we still had the power.”⁸⁹ As the sovereign state, Timor was the residual rights holder and thus held an ultimate trump card. Over time, when the terms of the Supplemental Arrangement diverged significantly from Timorese preferences, national authorities increasingly ignored the terms of the deal.

Implementation: A Fraying Partnership

During the 2006 upheaval, Timorese officials welcomed the arrival of formed police units (FPUs) from Bangladesh, Malaysia, Pakistan, and Portugal, alongside foreign military forces, to respond to riots and other security threats, primarily in Dili. Those FPUs—totaling 638 officers—were later folded into UNMIT alongside 998 individual UN police. International police officers arrived in a “totally shattered city of Dili where there were no police.”⁹⁰

During that early period, “UNPOL was providing most of the functions,” while PNTL officers were “going along for the ride, sometimes literally,” recalls former

UNMIT political affairs officer Gary Gray.⁹¹ This was a sensitive issue, and both sides tended to downplay the extent to which international officers were carrying out sovereign police functions. “It was not easy for [PNTL officers]; they really felt the loss of face and power and trust,” says Eric Tan, former deputy special representative of the UN secretary-general.⁹² Gray notes that UNPOL “tended to have a bigger role vis-à-vis the PNTL than the official documents indicated,” in view of this sensitivity and to demonstrate progress in rebuilding the PNTL.⁹³

UNPOL did help to manage demonstrations and prevent the types of violence that had led to large-scale displacement in April and May 2006, even during the turbulent election season. Violence dropped from seventy reported incidents per week in Dili in early 2007 to half that number in 2008.⁹⁴ The large UN police presence was also a visible indication of international support for Timor-Leste’s stability, providing a sense of assurance that a more muscular intervention—likely led by Australia—remained available as a real security backstop.

Vetting Problems

Timorese consent to UNMIT’s policing authority soon began to erode among both elites and the PNTL rank and file, however. One major irritant was a troubled vetting process that began soon after UNMIT deployed. PNTL officers had to register with the United Nations, which then undertook investigations of those suspected of wrongdoing during the 2006 crisis. Officers cleared of malfeasance could rejoin the force after a completing brief five-day policing refresher course, a period of mentorship with an UNPOL officer, and final certification. Timorese leaders and rank-and-file officers deeply resented the process.

UNMIT had minimal institutional capacity to conduct investigations and relied on suspect evidence, often in the form of witness interviews through translation. Even when UN investigations uncovered credible allegations of police misconduct, the vetting scheme often encountered a wall of domestic resistance. Under the Supplemental Arrangement, UNPOL could recommend officers for removal but could not dismiss them. The power to fire officers might have been the single element of authority most conducive to strengthening the PNTL, but the minister of the interior held that authority and often defied UNPOL recommendations or dragged out cases.⁹⁵ Few investigations led to indictments, and none led to arrests of the officers in question. Most cases were simply returned to UNPOL for further investigation. While the vetting process was costly in terms of political capital, it delivered modest benefits at best. in accountability. Eventually, the Timorese government insisted on reinstating a number of senior officers whom the UN refused to certify. Some were quite senior—including the incumbent chief of the Dili District Police at the time, Pedro Belo.

While the certification process continued, UNPOL disarmed and stood down most PNTL police in Dili. This bred resentment, and without Timorese police to join their patrols, many newly arrived UN police lacked the language ability and local knowledge to gain intelligence and locate scenes of disturbance. This early sidelining of Timorese police led to a near breakdown between the two sides, and contributed to a lasting operational divide.⁹⁶

Early Performance Challenges

Meanwhile, some Timorese became frustrated by the perceived ineffectiveness of UNPOL. When lootings and burnings occurred into 2007, UN police “did nothing” and proved “largely incompetent to calm down Dili,” says Magalhaes.⁹⁷ Citizens regularly complained about UNPOL to Prime Minister Ramos-Horta, whom Magalhaes recalls asking: “They come to a place too late or let people go because they don’t know who the perpetrators are . . . so what’s the purpose of having them?”⁹⁸

As former UNMIT political affairs officer Matias Boavida notes, there was a “distancing during the election period” in 2007, as PNTL officers believed they were ready to reassume responsibility for internal security and resented UN administrative control.⁹⁹ Timorese criticized UNPOL for failing to share resources. “The UN had all the equipment available to them, but never shared with our officers—not even generators,” recalls Guterres. “Even in joint patrols, our police couldn’t sit in their cars” without a letter from a high-ranking Timorese official to seek authorization, he says.¹⁰⁰ With 2007 elections approaching, UNPOL focused largely on executive policing and gave less attention to its capacity-building mandate, and this strained relations between the two police forces. Guterres was “upset” and pushed to revise the Supplemental Arrangement, telling his UNMIT counterparts: “You are not teaching our people. You are doing some kind of discrimination against us.”¹⁰¹

Political Change in Timor-Leste

After the 2007 elections, a coalition government came to power behind Gusmão. The UN police presence was set to shrink after the 2007 elections, but violence associated with the political transition led the UN Security Council to extend the mandate.¹⁰² Although the new government did not resist the extension of UNMIT’s mandate, it did take steps to marginalize UNPOL and centralize state power over the security forces. Gusmão consolidated control of the military and PNTL under a single ministry he headed, and this rendered UN plans to reform the Ministry of the Interior obsolete.

Even more strikingly, the government simply began to enact policing measures without seeking UN consent. In December 2007, the PNTL in Dili re-created a one-hundred-officer Task Force to carry out executive policing functions. PNTL leaders explained that the unit was needed due to the failure by UN police to restore

security in the city.¹⁰³ They created the Task Force unilaterally—a direct challenge to UNPOL's executive mandate. The Task Force began operations and did help curb gang violence in Dili, but it used crude and sometimes brutal methods to arrest and interrogate suspects in violation of human rights norms. Its creation signaled not only a dismissal of supervening UNPOL authority, but also an implicit rejection of the policing model and methods advocated by the United Nations.

After rebels launched a near-fatal attack on the president and prime minister in early 2008, the government reasserted its sovereignty by organizing a joint response mission by the PNTL and military. It pointedly excluded UNPOL and put many PNTL officers under the command of the head of the armed forces—a clear violation of the terms of the Supplemental Arrangement, which the new government did not reaffirm. “The Timorese handled it in their own way, and they saw that they didn’t need 1,200 UN police,” argues former UNTAET official Jim Della-Giacoma, who later studied UNMIT closely as International Crisis Group’s South East Asia project director.¹⁰⁴ That episode punctuated the falling-out in the policing partnership, reflecting the rise in tension between UN and Timorese authorities as the latter sought to restore full sovereignty.¹⁰⁵

In February 2009, the Timorese Parliament passed a new Organic Law for the PNTL, drafted by Timorese authorities, reportedly without input from UNMIT.¹⁰⁶ It emphasized the need for military-style policing and organization and the need to move away from a policing model “disconnected from the Timorese reality”—a transparent swipe at UNPOL.¹⁰⁷

Evolution of the Deal

The two sides’ understanding of the deal evolved with the passage of the 2007 elections, the formation of a new government, the reconstitution of the PNTL, and the 2008 Appeals Court verdict on the status of the Supplemental Arrangement. The PNTL and the Timorese government pressed for a return of sovereign authority. “That happened very often,” recalls former acting UNMIT police commissioner Juan Carlos Arevalo Linares. “It has a lot to do with national pride.”¹⁰⁸ On the UN side, he adds, “there was more flexibility, because we realized it was normal that they wanted to take charge of their own institutions.”¹⁰⁹ The Supplemental Arrangement was useful, Arevalo Linares argues, but “it wasn’t a catastrophe when it was declared not legally binding.”¹¹⁰

Despite the UN’s increasing deference to Timorese sovereignty, concerns about the basic stability of the PNTL remained. Political infighting over the appointment of a new PNTL commissioner raised the possibility of another factional split, and one group of officers warned ominously that if an easterner were given the post, they would seek to organize resistance against the government.¹¹¹ Some police also complained of

withheld salaries. In part to avoid a showdown, the government selected Longuinhos Monteiro, who was not regarded as having tight links to either camp.¹¹²

By 2009, when Monteiro became PNTL commander, the two sides' understanding of the arrangement differed significantly from the immediate postcrisis period in 2006. "[On] the sovereignty issue I was always demanding, from my first day as commander," Monteiro says. "Under the Supplemental Arrangement [UN officials] were in charge of some policies, but I had to agree."¹¹³ If UNPOL took action without his approval, Monteiro says, he "would cut [cooperation] immediately." Monteiro asserts that the United Nations could help him oversee his forces, but could not do so directly. He adds that UNMIT Police Commissioner Luis Carrilho and other UN counterparts respected his assertion of sovereignty.¹¹⁴

Further Performance Problems: Distancing in the Field

Once the PNTL reconstituted in Dili, UN police struggled to assert their authority, creating what Jim Della-Giacoma calls "a fiction of UN control" as two parallel police forces operated in the same territory.¹¹⁵ Timorese police often did solicit UNPOL assistance, though usually not in ways that suggested shared sovereignty. When incidents arose requiring police responses, "the PNTL could ask them to be taxi drivers," says Nelson Belo, director of Fundasaun Mahein, a leading Timorese civil society group focused on security sector development.¹¹⁶ PNTL officers also turned to UNPOL counterparts when computers broke, office supplies dwindled, or electricity failed. Despite relying on these forms of support, the PNTL came to view executive UN policing as unnecessary and inappropriate. "By the end, the PNTL officers were in the front, and UNPOL officers were in the back, helping with IT" and other forms of support, Belo adds.¹¹⁷

To promote closer cooperation, the UN promoted "co-location" schemes in which UNPOL and PNTL members shared offices. However, physical proximity was no panacea. Interviews by the International Crisis Group found that UN and Timorese officers sometimes shared offices without ever talking to one another, and in one precinct not a single UN police officer knew the name of the local PNTL commander or where his office was. UN police reported that they often did not know what the Timorese officers they oversaw were doing, and that "joint" operations sometimes entailed Timorese operations followed by cursory UN sign-offs.¹¹⁸

Without PNTL cooperation, UN police struggled to communicate with ordinary citizens, and this compromised their effectiveness.¹¹⁹ "When [UNPOL] went out on their own, they created a lot of problems. They didn't know the culture or the language," explains Nelson Belo.¹²⁰ UNPOL often had little induction before arriving at Dili International Airport and going straight to their posts. When arguments or fights arose in the community, people crowded around to watch, as typically happens

in Timor-Leste. With limited knowledge of local languages and context, UNPOL officers often simply rounded up everyone and took them to the station, using interpreters to try to sort out victims, perpetrators, and onlookers.¹²¹

The reclaiming of Timorese primacy in the field reversed briefly in 2010, as complaints of police brutality rose after PNTL officers shot and killed a young musician in Dili. At Gusmão's request, the PNTL commander issued an order to put "UNPOL in front, PNTL behind." Ironically, that "new operational concept" called on UNPOL to play the executive policing role it had been playing notionally since 2006.¹²² As UNPOL retook the lead, an uptick in violence led Dili district commander Pedro Belo to accuse UNPOL of fleeing from confrontation and wearing firearms "just for show."¹²³ The PNTL were soon sent back to the front lines, and UNPOL's inability to quell street fighting helped Pedro Belo and others justify the Task Force model.

At times, tensions flared between UN police and their Timorese counterparts. Brawls between UN police and Timorese security force members in bars and nightclubs were not uncommon, sometimes escalating into fire fights. These became serious and frequent enough that in 2009, the US Embassy issued a warning to American citizens to avoid bars frequented by UN police.¹²⁴ The presence of foreign officers also grated on the population. Some Timorese resented the privilege of the UN police, who enjoyed air-conditioned offices and were easily spotted relaxing at local bars, restaurants, and beaches. Their large white SUVs were also visible throughout Dili, and a frequent source of public complaint was reckless driving by UNPOL officers—a familiar symbol of imperious international behavior in fragile states.¹²⁵

No survey was conducted to provide a clear quantifiable indication of public attitudes toward UN police. A 2008 survey by the International Republican Institute found that roughly three-quarters of public respondents voiced positive views toward UN support for the Timorese government, with one-third of those citing UN assistance in peace and security as the prime reason for their approval.¹²⁶ Sparse data make it difficult to assess the degree to which UN police were regarded as legitimate law enforcement actors by the local population. However, two things were clear. Surveys showed that the vast majority of Timorese continued to view village elders and other local figures—not UN or Timorese police—as the dominant providers of law and order,¹²⁷ and Timorese elites increasingly chafed at what they regarded as illegitimate UNPOL intrusion into their sovereign affairs.¹²⁸

Capacity-Building Constraints

What Timorese authorities and rank-and-file police demanded most was capacity building. UNMIT did include substantial training programs and a mentorship scheme, but the forms of capacity desired did not always match those the international police sought to impart. Problems arose on both sides. UNPOL was not well equipped

to provide effective, consistent, and appropriate training. At the same time, PNTL officers resisted some legitimate international efforts to build capacity.

Many of the problems witnessed under UNTAET reappeared. UN police came for relatively brief stints from a multitude of countries. Few had experience training in police academies. UN police from diverse national systems shared guidance that was often inconsistent, ill-suited to Timor-Leste's needs, and incoherent to Timorese police who were listening through translators. By the time of UNMIT, PNTL officers had "had a decade of this rotation, and they were tired of it," notes Della-Giacoma. Although police training was very much needed, "the Timorese had lost interest."¹²⁹

Moreover, Guterres notes that "some of the UN police come from countries with very low standards."¹³⁰ Some PNTL officers particularly resented having to accept training from UNPOL officers from Africa, viewing their countries as more troubled than Timor-Leste and asking: "Why did he come to teach me?"¹³¹ Some local police preferred training from Indonesians, whose language was more intelligible and whose methods were more familiar—methods that were highly questionable on grounds of human rights and corruption. The challenges of capacity building were compounded by "advice fatigue" among Timorese who had seen many waves of international advisors since 1999. "They hated the fact that the UN police were back to train them again," recalls Eric Tan. "There was no untoward incident in terms of physical violence, but you could see the animosity."¹³²

Frustrated by UN-led training, the Timorese government insisted on the handover of the police training center from UN to PNTL control in 2009. The prime minister issued a speech asserting that conflicting messages from diverse trainers had undermined the development of a coherent PNTL doctrine.¹³³ The government arranged for basic training to be provided by the Portuguese GNR, military gendarmes whom Timorese leaders regarded as decisive and effective at dealing with insecurity. The GNR's approach and methods were substantially different than the approach to civilian policing that UNPOL had advanced. The shift to the GNR model was thus a rejection not only of UN training but also of the broader direction of institutional reform the UN sought to implant. By 2010, an official UN report had decried "tremendous institutional gaps" in the PNTL, and outside analysts lamented that the UN had been "sidelined" and that its security sector reform efforts were "lame" or even "a disaster."¹³⁴

Mentoring was another prong of the capacity-building scheme laid out in the Supplemental Arrangement, but it proved difficult to implement. "We started off with a more hands-on mentoring approach, which was resented by a lot of the PNTL," says former UNMIT official Gary Gray. "By 2012, we weren't even allowed to use the word 'mentoring.'"¹³⁵ Gray notes that some Timorese frustration was understandable, as the program was "hit and miss" according to the individual relationships

involved.¹³⁶ “Mentors were often on holiday,” passed their mentees to colleagues, and brought very different backgrounds sometimes at odds with the official UN line, recalls Magalhaes.¹³⁷

Barriers to Institutional Reform

UNPOL was also compromised by its lack of clear authority to strengthen police systems through the process of rebuilding, reconstruction, and reform (RRR). Inability to dismiss police was one obvious challenge. No PNTL officer was fired on disciplinary grounds,¹³⁸ and Timorese officials kept control over other key functions crucial to reform, such as retention and promotion decisions.¹³⁹ The vetting process that began in 2006 consumed much time, money, and political capital, but had little lasting impact. In 2010 the Timorese government took over the vetting process and was expected to recertify all of the 250 officers yet to be cleared.¹⁴⁰ Although a UN commission of inquiry had recommended prosecution of those responsible for the 2006 crisis, Ramos-Horta chose to pardon those convicted, formally or informally.

UN officials also had little influence over institutional restructuring. Timorese leaders were simply not inclined to cede authority with respect to that part of UNMIT’s mandate. The government’s reconfiguration of the security services marginalized the Ministry of the Interior—a main object of reform in the 2006 Supplemental Arrangement. Its decision to draw the PNTL and military into a more unified structure flew in the face of the express UN effort to achieve clearer boundaries between the security services.

Like other UN police missions, UNMIT owed its inability to deliver meaningful institutional reform partly to its personnel composition. Few among its staff had any experience building police institutions, or setting up systems to manage issues such as finances or internal affairs.¹⁴¹ Edward Rees, a former UN political adviser and coordinator at the Department of Peacekeeping Operations, argues: “No-one would consider putting over a thousand doctors on planes to East Timor to establish the health service; they would send project managers and administrators with experience in running a health service and a much smaller number of doctors and nurses. Yet for some inexplicable reason the UN continues to send large numbers of UNPOL to establish a police institution.”¹⁴²

One reason was that UNPOL staff were not dispatched primarily to build a local police institution; they were sent mainly to address a near-term threat to the security and stability of the fledgling Timorese state. Officers with backgrounds in routine policing were sometimes asked to design and implement systems with which they had little experience—systems managed by specialized bureaucrats in their home countries.¹⁴³ Moreover, as Gordon Peake argues, security sector reform is intensely

political, and many of those assigned to work on it had “slim understandings of the politics, history and languages of the half-island” on which they worked.¹⁴⁴

Executive policing authority arguably undermined UNPOL's ability to carry out its mandates for reform and capacity building in the PNTL. UN police often grew frustrated by the difficulty of improving local policing practices, and found it more expedient and effective to carry out tasks themselves.¹⁴⁵ Moreover, UNPOL's executive authority contributed to a crisis in leadership in the disenfranchised Timorese security services, and sapped public confidence in the PNTL by reinforcing perceptions that the local police were second-rate.¹⁴⁶ Since responsibility for security ultimately fell upon the United Nations, the PNTL had less incentive to carry out its duties to the full extent of its capabilities. Its incentive was to wait for restoration of its authority while holding UNPOL responsible for security shortfalls.

More broadly, reform efforts were limited by the fact that UNMIT was given a mandate to reform police institutions but not other crucial parts of the security or justice sectors. The military emerged from the 2006 crisis as a relative winner and was not placed under a form of partial UN trusteeship—another indication of how domestic politics played out in the design of the sovereignty-sharing venture. The key sources of the 2006 crisis included disaffection within the military and rivalry and overlap between the army and police, but UNMIT had little if any authority to guide military reform. When UNMIT used its authority over the police to seek reform by investigating officers implicated in crime, files went to a judicial system with little evident capacity or commitment to see the cases through to fruition. Given the daunting challenges of building police capacity and leading institutional reform, one analyst asked pointedly whether that effort in Timor-Leste was a “mission impossible.”¹⁴⁷

Drawdown and a Clumsy Exit

By 2009, Timorese pressure on UNMIT to wind down the sovereignty-sharing arrangement was strong. That year, the two sides signed a protocol planning the incremental handback of full sovereign authority to the PNTL. UNPOL implemented a scheme whereby districts would be certified for handover of full control when they met four criteria: a stable security environment, an 80 percent certification rate of local PNTL officers, adequate logistics capability from the government, and oversight and support from stable government institutions. A process of reviews followed, exposing strengths and many needs of the PNTL across the country's thirteen districts. Hybrid four-member panels were established for each district, including two Timorese and two international members, to review assessments and make recommendations for handovers. The first assessment in early 2009 yielded worrying results, as more than half of the districts and police units evaluated failed the UN test to determine their readiness to stand on their own.¹⁴⁸

The prospect of withholding certification could have been a significant lever to encourage policing and broader governance reform. However, the credibility of the process was undermined by the agreed plan between the United Nations and the Timorese government to wind down UNMIT by the end of 2012.¹⁴⁹ Elisabeth Lothe and Gordon Peake note that when the special representative of the UN secretary-general presented UNMIT's benchmarks to the UN Security Council in early 2009, member states responded approvingly. However, an ensuing council discussion on UNMIT's budget contained no reference to such benchmarks.¹⁵⁰

In that context, UN officials used the certification scheme more as a means to justify the exit and declare success than to promote reform. Even poorly performing districts predictably earned certification before UNMIT departed. When they did not satisfy the initial standards for the handback, UNMIT requested some superficial remedies but ultimately lowered the bar. In March 2011, UNPOL completed the process of handing back policing authority to the PNTL, staying on to provide operational support in areas such as close protection, border policing, and joint patrols until the end of the mission. During that final phase, UN special representative Ameera Haq made clear that the PNTL was "squarely in the driver's seat," while UNMIT focused on capacity building.¹⁵¹

One of UNMIT's greatest avoidable shortcomings was the decision to take away the equipment UNPOL had furnished to local police stations across Timor-Leste. Analysts had long cited a lack of equipment as a key reason to doubt the PNTL's ability to assume full policing responsibility.¹⁵² The government had tended to focus its resource provision on the military, where senior civilian leaders had closer connections. The police, by contrast, were viewed as the subject of a UN project with limited Timorese input.¹⁵³ Many PNTL officers saw the prospect of a hardware handover as a major reward of the UN engagement, believing that they knew how to conduct policing in the local context but lacked the resources to operate effectively.

As UNMIT packed its bags, however, it left little equipment behind. Interior Minister and former PNTL commander Longuinhos Monteiro therefore sums up UNPOL engagement during the UNMIT years as "good entry, but bad exit." He laments that "when they disengaged, they disconnected" and "left us on the scratch again," refusing to leave behind generators, vehicles, and communications equipment the PNTL needed to function well. "We were relying a lot on those means for communication and rapid response. Suddenly it's switched off, and you panic. . . . Without the right equipment, you can be smart, but you're nothing."¹⁵⁴

The UN Legacy and Ongoing Concerns

UN officials declared the UNMIT policing mission a success.¹⁵⁵ Timorese police had assumed full authority in all of the country's districts, the PNTL had strengthened its capacity to some degree, and violence levels were low. The homicide rate had dropped

from a peak of 6.0 per 100,000 people in 2007 to 3.6 in 2010.¹⁵⁶ The absence of general crime statistics makes it difficult to assess whether other offenses subsided, but there is general agreement that the security situation has remained largely stable since UNMIT's exit.

Public perceptions of security and the PNTL also improved. A 2013 survey by the Asia Foundation found that the percentage of respondents somewhat or very concerned about their safety dropped from 73 percent in 2008 to 64 percent in 2013, and 69 percent of those who had requested help from the PNTL were satisfied with the outcome—up from 63 percent in 2008.¹⁵⁷ Large majorities also expressed confidence in the PNTL and saw improvement in police. In a separate 2013 survey of nearly three hundred Timorese citizens by scholar Han Dorussen, 63 percent of respondents said that security conditions had improved over the previous three years, and 70 percent described police performance as “good” or “very good.” Interestingly, 60 percent perceived PNTL performance as stronger after UNPOL departed.¹⁵⁸

While these findings convey important indications of success, significant grounds for concern remain. Della-Giacoma notes that the rapid drawdown of roughly 1,500 UN police had little evident effect on security conditions in Timor-Leste.¹⁵⁹ This had less to do with strong domestic capacity than a general reduction of the political tension associated with the 2006 crisis. The PNTL remained weak and poorly resourced, especially outside the capital. In most locales, they continued to play marginal roles in public security provision alongside informal and traditional community structures. The 2013 Asia Foundation survey found that only 9 percent of Timorese respondents would turn first to the police when a crime occurs, and only 8 percent regarded the police as having the primary role in maintaining law and order in their communities—while 86 percent saw village and community chiefs as playing that role.¹⁶⁰ A 2018 Asia Foundation survey found that public views of the PNTL remained overwhelmingly positive, and 27 percent of respondents would report crimes to the police, but 72 percent would turn to village and community leaders.¹⁶¹

PNTL officers still receive very low salaries, rendering them susceptible to side payments. Despite international engagement, most officers have elementary skill sets and operate within a system characterized by high-level corruption and weak administration. The PNTL's ongoing problems were on display in late 2018 after a drunk officer shot several teenagers, killing three and prompting protests across Dili against numerous incidents of police brutality.¹⁶² Perhaps even more dangerously, lingering politicized divisions within the PNTL and between the police and the army continue to be sources of potential instability.

Moreover, the PNTL remains one link in a very weak chain of law enforcement. Judicial reform, which was not part of UNMIT's mandate, has yielded meager results. This was long another domain in which the Timorese government shared

sovereignty, as foreign judges occupied many of the seats in Timor's appellate courts. That changed in 2014, when Parliament expelled the foreign judges summarily at Gusmão's urging. The government's stated rationale was a judicial decision in favor of the US firm ConocoPhillips in a tax dispute with the government, but the real rationale appeared to be protection of senior officials—particularly Finance Minister Emilia Pires—in pending corruption cases.¹⁶³ Rights groups condemned the move as the latest in a series of steps by executive leaders and legislators to interfere in judicial affairs and bring the courts under their control.¹⁶⁴ Timor-Leste now earns Freedom House's lowest possible score for judicial independence,¹⁶⁵ which bodes poorly for accountability over policing and raises concerns about the fairness of the criminal justice system more broadly.

Conclusion

International policing in Timor-Leste contributed usefully to stabilizing Dili in certain key phases, and it deserves some credit for helping to build a more capable and trusted indigenous police force. Nevertheless, the case of UNMIT illustrates the challenges of sharing police powers more than it does the promise. For sovereignty sharing to be justified in the law enforcement domain, it must provide benefits beyond what a traditional advise-and-support police program can deliver. UNMIT met that standard for a brief period in 2006 and 2007, but the benefits of its sovereignty-sharing elements dissipated thereafter.

Preference alignment between Timorese and international partners was brief and brittle, and the initial contract they forged to share sovereignty was vague and ultimately nonbinding. Once the crisis of 2006 subsided, UN police struggled to perform ordinary police tasks in the field, in part due to Timorese resentment of the arrangement. Those performance problems magnified the view among Timorese authorities that the venture had lost its justification. The government renegotiated the deal, steadily reclaiming its sovereignty despite the continued existence of UN Security Council resolutions giving the internationals the lead. In that context, UN police receded into the background. Most Timorese continued to view them as marginal contributors to law and order, which also helps explain why international police earned little evident public legitimacy and why the population generally welcomed their exit. UNMIT therefore sputtered toward its end—leaving behind a local force with few resources to implement the methods it had been taught, and questionable capability should old political wounds reopen.

The case of UNMIT carries important implications for international policing in the future. Formal agreements to share law enforcement authority, like those adopted in the Solomon Islands and in Timor-Leste, are apt to be rare, due to domestic aversion to apportion police powers. Even the concept of "urgent temporary measures,"

used now in the CAR to emphasize the transience of the UN police presence and sovereign discretion to reclaim full control, is unlikely to be invoked often, due to the risk that temporary arrangements will become open-ended. The most common forms of joint policing will likely occur at the margins of complex peacekeeping missions as host states allow international personnel to exercise limited powers of arrest and other law enforcement authority to carry out their civilian protection mandates.¹⁶⁶ These informal arrangements continue in complex missions in Mali, South Sudan, and elsewhere as UN police and peacekeepers seek to combat terrorist groups, manage camps full of displaced persons, and stem communal violence.¹⁶⁷

While such policing ventures look quite different than UNMIT, they are ultimately subject to similar political forces. Even more than a formal sovereignty-sharing pact, they depend on a supportive political equilibrium to function effectively. If forging strong cooperation between local and international partners proved difficult in Timor-Leste, a newborn country with a gestational police force, the challenges of sharing law enforcement authority in other fragile states are likely to be steep.

Contracting for Criminal Investigation

IN 2017, a striking series of events took place in Guatemala. President Jimmy Morales had campaigned on a pledge of clean governance in a country long ensnared by a web of official corruption and organized crime. Not long afterward, his brother and son were indicted for corruption after an investigation by Guatemala's attorney general and the UN-backed International Commission against Impunity in Guatemala (CICIG). The Colombian CICIG commissioner, Iván Velásquez, and Attorney General Thelma Aldana then dropped another political bombshell, recommending that the legislature lift President Morales's immunity to probe suspect campaign financing. Morales issued an order to expel Velásquez, but Guatemala's Constitutional Court blocked it, and a Guatemalan congressional committee recommended lifting Morales's immunity. The president was rescued from possible prosecution only when the full Congress voted to keep his immunity intact.¹

CICIG was the pioneering venture to combat government corruption and impunity by outsourcing criminal investigation authority. Launched in 2007, CICIG's mandate was to help address violence and corruption by clandestine armed groups linked to state institutions and organized crime. Its head was a UN-appointed commissioner who recruited international and Guatemalan investigators, forensic experts, and other personnel. It acted within the Guatemalan judicial system and had the authority to conduct investigations, file criminal charges, and help prosecute crimes while training local police and justice sector personnel and recommending reforms.² With support from key Guatemalan officials, international partners, and the public, CICIG had an extraordinary impact in Guatemala, punctuated by a 2015 case that toppled President Otto Pérez Molina and the 2017 case that put Morales in legal

jeopardy. Nevertheless, the commission encountered domestic efforts to clip its wings from the start, and it expired in late 2019.

This chapter explains how Guatemala's rule-of-law woes and a special confluence of factors helped elicit Guatemalan consent to share sovereignty. It discusses how CICIG earned public and international legitimacy through strong performance, taking advantage of an ambiguous mandate to probe state corruption and build a strong supportive coalition at home and abroad. It also discusses the blowback from some of Guatemala's most powerful political actors and how CICIG's supportive political equilibrium came undone, leading to its eventual closure and grave doubts about the sustainability of its impressive legacy of domestic institutional reform. This chapter concludes by reviewing regional proposals to clone CICIG, leading to a weaker sibling in Honduras and a more recently announced venture in El Salvador. The CICIG model arguably generates more public enthusiasm than any other contemporary form of shared sovereignty. For the same reasons, it also evokes deep elite suspicion.

The Impetus to Outsource Investigations

CICIG was created to help address an enduring scourge of violence and organized crime in Guatemala. Although a 1996 agreement had brought a formal end to the country's decades-long civil war, the country suffered from impunity and enjoyed little peace. Perpetrators of serious human rights abuses during the conflict went unpunished, and the shadowy security institutions responsible for wartime atrocities remained largely intact, sometimes morphing or melting into criminal syndicates. In 2002, Amnesty International declared Guatemala a "corporate mafia state" in which collusion between corrupt officials, business elites, and crime lords was rife.³ The drug trade thrived, and violent crime rates soared.

By 2006, Guatemala witnessed more than 6,000 murders, or 47 for every 100,000 people—one of the highest rates in the world, and a higher level than any point during the country's thirty-six-year civil conflict.⁴ A mere 7 percent of murder investigations produced suspects, and just 2 percent ended in convictions.⁵ Even those convicted were often freed from prison or allowed to run criminal rackets from behind bars. UN Special Rapporteur Philip Alston lamented in a 2007 report: "Guatemala is a good place to commit a murder, because you will almost certainly get away with it."⁶ The public had very low trust in the police and judicial system, which was poorly staffed and riddled with corruption.

Emergence of a "Mafia State"

Many of Guatemala's rule-of-law problems were related to the infestation of state institutions by clandestine criminal groups with roots in the military and intelligence organizations of the civil war era. These "parallel powers" had a particularly strong

grip over the security forces and the judiciary, but also infested the legislature and other nodes of political authority. The idea for CICIG arose as a way to confront the reality that Guatemalan state institutions were unable, and many senior officials were unwilling, to confront the impunity of the parallel powers that held the country in their grip.⁷

The idea of outsourcing investigative powers was bound to be controversial in Guatemala, where past foreign interventions had contributed greatly to contemporary woes. The United States in particular cast a long shadow over Guatemala's modern history. The dominance of the United Fruit Company in the early twentieth century helped entrench a plantation-based political economy—a paradigmatic “banana republic” in which elites of primarily Iberian descent ruled over a large underclass comprised primarily of indigenous Mayans.⁸ In 1954, President Jacobo Árbenz was deposed in a CIA-led coup after expropriating land from United Fruit and launching land reform and other policy changes that would have shifted the balance of political power in Guatemala.⁹ A military regime took hold, and when a group of left-wing junior military officers staged a revolt in 1960, Guatemala slid into a protracted civil war.

Throughout the Cold War, the US government backed right-wing military governments in Guatemala as part of its broader campaigns to forestall communist advances and protect American strategic and business interests. US assistance to Guatemala surged during the “Second Cold War” in the 1980s, when some of the gravest human rights abuses took place. Most notorious among these were massacres of Mayan civilians in 1982–83 amid a ruthless counterinsurgency campaign waged by then President Efraín Ríos Montt.¹⁰ By the end of the civil war in 1996, an estimated forty-five thousand people had disappeared, and roughly two hundred thousand had been killed. Most victims were of Mayan descent.¹¹

The CIA and the US military trained and worked with many of the Guatemalan security forces who committed atrocities during the civil war and later reemerged as the parallel powers.¹² The US government would later become a chief international exponent for CICIG, and the commission's lead financier. The keenness of some Guatemalans to outsource criminal investigation to a venture with strong US sponsorship is a telling indicator of how dire the dysfunction of domestic institutions had become. The willingness of others to go along is partly a reflection of the country's continued reliance on international assistance.

A Hybrid Precursor

CICIG was not the first UN-backed commission created to deal with the problem of impunity in Guatemala. In 1994, UN and Guatemalan officials established the Commission for Historical Clarification (CEH) to investigate human rights abuses during the civil war. The German head of the CEH worked with two Guatemalan

commissioners to prepare a detailed report that shed light on both individual abuses and the governance structures through which many were committed. The CEH also issued recommendations on how to reform Guatemalan institutions to better protect human rights going forward.¹³

The CEH had no binding legal authority, no ability to identify suspects by name, and no power to prosecute, however.¹⁴ Only a few low-level suspects were brought to trial after the issuance of the report, and most of the key reform recommendations were swept aside.¹⁵ Weak reform of public institutions and policies contributed to sustained poverty, official corruption, drug trafficking, and violent crime.

A Unique Outsourcing Arrangement

CICIG arose in this context as a way to confront impunity and reform domestic judicial institutions that were both poorly equipped and often unwilling to carry out their duties. The commission was unprecedented in some respects. It was an independent body created by the United Nations and funded by voluntary contributions of UN member states. It had the power to investigate any official or private person or entity for crimes within its jurisdiction, to present criminal charges to Guatemala's public prosecutor, and to serve as a complementary prosecutor in criminal cases.¹⁶ As Günther Maihold argues, it represented "an external governance intervention in the inner circle of traditional national sovereignty."¹⁷

The commission could request statements, documents, and cooperation from any Guatemalan government official or entity. It also could propose public policies and legal reforms, and request disciplinary action against obstructive local officials.¹⁸ The UN secretary-general appointed the commissioner, who had full discretion in hiring staff, but CICIG operated within the Guatemalan legal system and was charged with supporting state institutions. That design aimed to help CICIG personnel work closely with Guatemalan counterparts and build national capacity. It was also a way for the government to limit the Commission's independent power.

False Start toward an International Commission

Domestic officials' loathness to create a sovereignty-sharing arrangement that could probe their own activities accounts for the failure of the first proposal to outsource criminal investigation in Guatemala. That idea surfaced in 2002, when human rights groups proposed a commission modeled on the 1992 Grupo Conjunto para la Investigación de Grupos Armados Ilegales con Motivación Política—a joint investigatory commission created in El Salvador to investigate the rise of death squads who were targeting leftists after a peace deal brought a formal end to the Salvadoran civil war. Established by Salvadoran authorities, the Grupo Conjunto included a senior UN human rights official. It conducted an investigation and issued a public report

explaining why death squads had risen and how they operated,¹⁹ as well as a confidential appendix informing the Salvadoran government of death squad leaders and foot soldiers. The government did not launch any criminal investigations or trials, but the report catalyzed reform of the security services, and the killings ceased.²⁰ The Grupo Conjunto thus showed the potential of sovereignty sharing in this domain, as well as the limitations of a body that had to rely on compromised domestic institutions to conduct formal criminal investigations and prosecute offenders.

Guatemalan human rights groups proposed a variant on the Salvadoran model: an International Commission to Fight the Clandestine Security Structures' Impunity (CICIACS) composed of representatives from the United Nations, the Guatemalan government, and the Organization of American States (OAS). It would investigate illegal or clandestine acts by the government and private security forces, as well as their links to organized crime, and deliver a general report to the public and a more detailed confidential report to the government for possible criminal investigation or administrative proceedings.²¹ The US Embassy and others supported the proposal, as did President Alfonso Portillo, who saw support for the proposal as a means to assuage domestic and international critics who faulted his government's failure to address crime, corruption, political reform, and the military's outsized role in Guatemalan politics.²²

The United Nations sent an assessment mission to study the proposal, and concluded that Guatemala's domestic institutions were too weak and too deeply penetrated by criminal organizations to make the NGOs' plan work. UN officials issued a counterproposal for an independent UN prosecutorial agency with the power to investigate and prosecute cases in Guatemalan courts. A group of eight NGOs formed the "Coalition for CICIACS," lobbying and launching a public campaign to support the proposal, despite some reservations about its constitutionality. The US government and others also pressed Portillo behind closed doors.²³ Just days before leaving office, the Portillo administration signed an agreement with the United Nations to create CICIACS, and transmitted it to Congress for ratification.

Foreign governments, led by the United States, and international human rights groups pressed the new government of President Óscar Berger and the Guatemalan Congress to approve the deal. When Berger traveled to Washington and met with US Secretary of State Colin Powell, CICIACS was at the top of the US agenda. "It was his first talking point," recalls an aide to Powell.²⁴ The European Parliament also passed a resolution urging Guatemala to create the commission. However, the domestic political coalition supporting CICIACS was relatively narrow, including human rights NGOs, progressive media outlets, and a handful of senior executive officials. The proposal brought fierce opposition from conservative political forces, particularly the right-wing Guatemalan Revolutionary Front (FRG) led by General Efraín

Ríos Montt. The FRG argued that the arrangement—and particularly the provision for independent prosecutorial power—would violate Guatemala’s sovereignty. Many Guatemalans agreed. A highly public international campaign in support of CICIACS only reinforced perceptions that the proposal would amount more to taking sovereignty than to sharing it.²⁵

After the congressional committees for human rights and the interior rejected the agreement on sovereignty groups, the government asked the Constitutional Court to render a legal opinion. The court found parts of the draft law unconstitutional, primarily because the Guatemalan Constitution vests the power to bring criminal cases in Guatemala exclusively in the Office of the Public Prosecutor. The initiative lost momentum. The Open Society Justice Initiative argues that the “proposed model was too powerful, too invasive, trampled national pride and sovereignty, and threatened too many interests.”²⁶ This episode illustrates that even strong international backing is not enough to bring a sovereignty-sharing venture to fruition; a winning domestic coalition is also needed.

Creating CICIG

In late 2005, as the Berger administration’s inability to control corruption and organized crime became apparent, Guatemalan Vice President Eduardo Stein revived the idea of an international investigatory commission. He assembled a small government team to work with UN officials on a modified plan. In late 2006, under pressure from Washington, the Guatemalan government consented by asking for UN assistance to create such a commission.²⁷ In 2007, the Guatemalan Congress ratified the arrangement. On the surface, these were strong indicators of state consent. However, they reflected a particular confluence of factors and masked significant misgivings among many local elites—currents that would later threaten the political equilibrium needed for CICIG to function.

Negotiating CICIG’s Structure and Mandate

The revised arrangement that Stein designed with UN officials scaled back the commission’s powers to address concerns that it would seize too much sovereign power. Most importantly, CICIG would not have independent power to prosecute crimes. Rather, it would be limited to conducting independent criminal investigations, and would support the Public Prosecutor’s Office (Ministerio Público) through its investigative capacity. With the consent of the Public Prosecutor’s Office and judiciary, CICIG would be able to act as *querellante adheviso* (complementary prosecutor) in local courts, taking part in proceedings and requesting examination of evidence or court decisions. CICIG would not have the power to compel testimony directly. It would thus be heavily dependent on the attorney general.

The delineation of CICIG's jurisdiction was a very sensitive matter. Right-wing skeptics perceived the commission as a possible back door to investigating crimes of the civil war era. Politicians of many stripes feared that CICIG would delve into Guatemala's dense web of patron-client networks and shed light on pervasive official corruption. The result was a mandate with several deliberate ambiguities to procure consent. The commission was to

Determine the existence of illegal security groups and clandestine organizations, their structures, forms of operation, sources of financing, and possible relation to state entities or agents and other sectors that threaten civil and political rights in Guatemala;

Collaborate with the State in the dismantling of illegal security groups and clandestine security organizations and promote the investigation, criminal prosecution, and punishment of those crimes committed by their members; and

Recommend to the State the adoption of public policies for eradicating clandestine security organizations and illegal security groups and preventing their re-emergence, including the legal and institutional reforms necessary to achieve this goal.²⁸

Among other things, the mandate avoided mentioning corruption, which would have elicited strong pushback in the Guatemalan Congress. Yet it left ample scope for interpretation, and over time the commission would exploit the nexus between official corruption and clandestine or illegal groups to focus on graft despite the lacking an explicit mandate to do so. Moreover, the mandate's reference to civil and political rights aimed to establish the CICIG Agreement as a human rights treaty that would supersede domestic law and thus help the commission avoid legislative restriction of its powers.²⁹

The UN and Guatemala signed the agreement for CICIG in December 2006. CICIG would thus become a treaty-created body, rather than an organ of the United Nations. The commission's sponsors were hesitant to request that the General Assembly approve the establishment of CICIG as a UN organ, as some member states would likely resist setting a precedent of UN intervention into sovereign judicial functions.³⁰ Not all Guatemalan human rights groups were content with what they saw as a watered-down commission,³¹ but civil society and international support for the venture remained strong.

Steering the Agreement through Congress

With Guatemalan national elections approaching, Berger was initially reluctant to seek ratification. He did so only after a February 2007 scandal in which three Salvadoran members of the Central American Parliament and their driver were kidnapped and later riddled with bullets and left dead on the roadside. Four Guatemalan officers,

including the head of the organized crime investigation unit, were arrested for the murders, but were executed days later in their maximum-security prison cells, left face down in pools of blood. These grisly events prompted widespread perceptions that an illicit group within the National Police had killed the Salvadorans.³² International outrage and demands for justice followed.³³ Within Guatemala, Vice President Stein led a renewed charge to establish CICIG.

Berger submitted the CICIG agreement to Congress, requesting that it be ratified immediately on the basis of a national emergency. Congress demurred, and another round of debate ensued. Opponents repeated arguments that a UN-appointed investigatory commission would intrude on Guatemala's sovereignty.³⁴ Civil society groups such as Human Rights First argued that "CICIG [would] not weaken Guatemala's national sovereignty, but [would] support the state of Guatemala to strengthen the justice system."³⁵

The US government and European Union officials generally kept their heads down during the early congressional debate, to avoid the type of backlash that met their promotion of CICIACS.³⁶ In a meeting with Berger in March, President George W. Bush included the establishment of CICIG on his list of priorities.³⁷ A State Department spokesman pledged continued US support for CICIG, and applauded Berger for undertaking that "ground-breaking and promising initiative."³⁸ Supporters became more vocal in the summer, when momentum foundered, making clear that approval of CICIG would have important implications for foreign aid. The European Parliament passed another resolution urging ratification, and European officials lobbied in Guatemala. The US Congress explicitly linked a resumption of assistance to the Guatemalan Armed Forces in part to ratification of the CICIG Agreement. US Senator Patrick Leahy said he would not support Guatemalan participation in regional military cooperation initiatives with the United States if CICIG were not approved, and US legislators raised CICIG at every opportunity to impress its importance.³⁹

American pressure was particularly crucial given the seminal role of the US government in shaping and supporting Guatemala's economy and security forces. In 2005, the Bush administration lifted a fifteen-year-old ban on bilateral military aid, releasing \$3.2 million as a reward for Guatemalan progress against impunity and illegal armed groups.⁴⁰ In 2006, total US aid surged from \$55 million to more than \$100 million,⁴¹ which helped boost the country's overall net official development assistance from \$254 million to \$485 million.⁴² Although concerns about the drug trade gave the US government self-interest in providing aid to Guatemala, the absence of the communist threat that had motivated strong security cooperation in the past made another withdrawal of US assistance credible.

The Guatemalan Congress requested review from the Constitutional Court, which in May issued an advisory opinion finding that the agreement was constitutional and

comprised a human rights treaty that would supersede domestic law. Many candidates for elected office were keen to capitalize on the popular appeal of supporting the commission, perhaps underestimating the teeth that CICIG would develop.⁴³ The proposal notably gained support from both candidates in the 2007 presidential election: General Otto Pérez Molina, of the conservative Patriot Party, and Álvaro Colom Caballeros of the left-leaning National Union for Hope (UNE).⁴⁴

Approval was nearly derailed in July 2007, however, when the Guatemalan Congressional Committee on Foreign Relations—headed by the daughter of ex-dictator Ríos Montt—voted down the agreement on national sovereignty grounds. In an embarrassment to Colom, UNE member César Fajardo was among those to oppose CICIG. When media reports linked Fajardo to organized crime, Colom came under heavy criticism, responded by firing Fajardo, and threw his weight behind CICIG.⁴⁵ After a heated legislative debate, Congress ratified the treaty in August 2007, establishing the commission for a period of two years.⁴⁶ In September 2007, the UN secretary-general appointed the renowned Spanish prosecutor and judge Carlos Castresana Fernández.

A Confluence of Factors

Several factors contributed to the Guatemalan Congress's willingness to approve the deal and outsource investigative functions. The elimination of independent prosecutorial authority was important in lessening resistance, as was the strategic ambiguity in the commission's mandate. International pressure also contributed, particularly from the United States. Shortly after the CICIG Agreement was ratified, the US House and Senate approved FY2008 assistance to Guatemala through the Foreign Military Financing program.

Still, the most pivotal developments leading to ratification occurred within the realm of Guatemalan domestic politics. The passage of the CICIG Agreement through Congress reflected what *El Periodico*, a leading Guatemalan newspaper, called a “perfect storm” of “extraordinary and unrepeatable events.”⁴⁷ These included the killing of the Salvadoran parliamentarians and ensuing international outcry, the presidential campaign, and the ouster of Fajardo. Stephen McFarland, who served as US ambassador to Guatemala from 2008 to 2011, notes that while Stein's high-level push and a “steady drumbeat of support from civil society” were crucial, CICIG's approval also reflected “a certain factor of luck.”⁴⁸

The consent of Guatemala's Congress made the commission an unambiguous case of shared sovereignty. Ratification rendered the CICIG Agreement a binding treaty, which gave the commission a level of domestic legal legitimation that few sovereignty-sharing ventures have enjoyed. Strong domestic public and international backing for CICIG also produced a broad coalition of political elites in Guatemala on both the

left and center-right who had incentives to support the arrangement publicly. Nevertheless, strong elite resistance remained within right-wing parties and the security establishment, and many other political actors were ambivalent about a commission that would peer into the shadows cast by Guatemala's parallel powers. As CICIG began its work, it would face considerable domestic elite resistance.

The Waxing and Waning of Political Support

Implementing CICIG's mandate would require maintaining the delicate supportive political equilibrium that enabled its creation. After a challenging start, the commission showed its ability to deliver much-needed public services and reform, which won it strong support from international donors and Guatemalans frustrated by years of domestic judicial dysfunction. However, CICIG's success in probing high-level corruption and organized crime eventually elicited a domestic elite counterattack, leaving the path-breaking joint venture in peril.

Forging a Partnership on the Ground

CICIG began its work in 2008 with the benefit of a strong public blessing from the newly elected president, Álvaro Colom. Shortly before winning the November 2007 election, Colom pledged: "We pushed for the creation of the CICIG and we are going to give it all the support the Executive should give. We hope that it will be an institution that will support us in the war on organized crime and, above all, counsel us so that the institutional system that is created will be a sound, firm, stable, and lasting system."⁴⁹ The first left-leaning president in Guatemala for more than half a century, Colom had been elected partly on a platform to clean up corruption and reform the justice system in the violence-wracked country.

Despite Colom's backing, CICIG faced hurdles when working with and through the institutions it was mandated to reform. The clearest public resistance came from right-wing FRG partisans in the legislature, who decried CICIG as a violation of national sovereignty.⁵⁰ Quieter resistance within the bowels of the judiciary and the police were also formidable barriers. Some of CICIG's key powers are subject to domestic checks, including its ability to serve as *querellante adheviso* and examine evidence or court decisions, all of which require consent of the Public Prosecutor's Office and judicial approval. CICIG was also dependent on government action to enact and implement its proposed reforms.

Helen Mack, a leading Guatemalan human rights activist, worried that CICIG's effectiveness would be limited, because its job would entail probing the very "public officials who were . . . protecting and promoting impunity."⁵¹ Moreover, CICIG lacked any clear legalistic means of enforcing compliance on recalcitrant state officials. The scholar Naomi Roht-Arriaza forecast correctly that it would need "a delicate

combination of cajoling, training, threatening, and shaming the Prosecutor's Office (especially its higher level officials) and courts, as well as sufficient international funding and backing, to make the project work."⁵²

CICIG focused partly on forging partnerships with like-minded Guatemalan officials. As Castresana explained: "None of the institutions here are completely corrupt. So it's possible to find people in the police, in the prosecutor's office, and in the judicial system who are ready to be converted into our partners."⁵³ To develop a strong local counterpart, CICIG pushed for the creation of a domestic body with a similar focus. Under a February 2008 agreement with CICIG, Attorney General Amílcar Velásquez Zárata established the Fiscalía Especial Contra la Impunidad (FECI), a specialized unit within the Public Prosecutor's Office with personnel selected and trained by CICIG.

CICIG sometimes clashed with domestic authorities. International investigators initially struggled to build trust with Guatemalan counterparts.⁵⁴ Coordination was sometimes difficult: an inherent challenge of "partial delegation" deals that transferred limited domestic authority to external actors.⁵⁵ Working with Guatemalan police also presented challenges. In 2008, CICIG sent the Interior Ministry the names of 1,700 police officers it alleged to be corrupt,⁵⁶ and CICIG implicated other police for serious crimes linked to the parallel forces.⁵⁷ Notably, CICIG did not entrust Guatemalan police with its security, which was a major concern. It instead created a forty-five-person security team of security professionals and police officers from selected donor states.⁵⁸

Relations with Attorney General Velásquez were also tense at times. In early 2009, CICIG recommended that Velásquez bring four charges against a former senior prosecutor, alleging that he obstructed justice as state officials investigated the 2007 killing of the three Salvadoran parliamentarians. After prosecutors brought just two charges and a judge released the suspect on two thousand dollars bail, Castresana criticized the prosecution, called the low level of bail "a mockery of justice," and demanded that the judge recuse himself out of concern of bias.⁵⁹ Castresana relied heavily on the bully pulpit and on continued support from domestic civil society and international backers to hold the government to the terms of the deal. He clearly saw the US government as a key political defender of the commission's work, meeting often with senior US officials to provide updates and seek US assistance amid discussions of the renewal of CICIG's mandate. Despite his public criticisms of corruption in the courts, Castresana explained privately to US officials that he enjoyed good relations with President Colom and the attorney general.⁶⁰ The Colom administration generally welcomed CICIG's work and approved the 2009 extension of its mandate.

Emblematic Cases and the Rosenberg Investigation

With limited resources, CICIG elected to focus on high-profile cases that were emblematic of systemic abuses in Guatemala. The commission thus chose not to investigate most

complaints submitted to it, leaving public doubt about its mandate and raising concerns about its utility. This contributed to a generally rocky beginning to the commission's work, and put in jeopardy the delicate political equilibrium supporting it.

A key turning point came in 2009, when a high-profile and politically charged murder case gave CICIG a chance to show its worth to the public. In May 2009, a lawyer named Rodrigo Rosenberg was gunned down on his bicycle in Guatemala City, days after predicting on video that he would be the victim of an assassination organized by President Alvaro Colom and his associates. The video went viral, and street protests erupted. Predominantly white, urban Guatemalans from the country's traditional elite demanded that the left-leaning Colom resign. The president's supporters—largely indigenous Mayans from poorer communities—staged counterdemonstrations.

In that polarized social and political context, CICIG launched an investigation. "That was when CICIG really started getting noticed," both by those supportive of its mission and by those wary of its work, recalls former US ambassador McFarland.⁶¹ The US government helped to defend CICIG's ability to conduct the inquiry. McFarland convinced opposition leader Otto Pérez Molina to stop calling for Colom to step down, and hosted a meeting between the two men "to give political breathing room to the CICIG investigation."⁶² Scholar Anita Isaacs argues, "The presence of CICIG calmed tempers enough to allow violence to resume its merely everyday character."⁶³ CICIG also won external support, including an October 2009 UN General Assembly resolution defending the commission and applauding its work.⁶⁴

In January 2010, Castresana showed an incredulous public extensive forensic evidence suggesting that Rosenberg had actually planned his own murder. While not all observers were convinced by this conclusion, CICIG was widely praised for the professionalism of the investigation, which relied partly on the triangulation of telephone calls to show that Rosenberg set the killing in motion. CICIG's exoneration of Colom calmed the public, leading the US ambassador to declare that CICIG had helped preserve "Guatemala's stability and democracy."⁶⁵

A few weeks later, CICIG helped secure the arrest of former Guatemalan President Portillo (2000–2004) for embezzling public funds. Portillo had fled to Mexico at the end of his presidency due to public outrage over his alleged graft, was extradited back to Guatemala for trial, and then was apprehended in a 2010 CICIG-led operation while trying to flee the country. A judge initially denied CICIG permission to serve as *querellante adhesivo* alongside the prosecutor in the Portillo trial. Portillo was later acquitted on all charges, in a widely criticized 2011 judgment.⁶⁶ The Portillo case showed the limits of CICIG's power, though Portillo was later extradited to the United States and convicted for money laundering.

Other emblematic cases in 2010 enhanced the commission's public legitimacy and enabled CICIG to overcome early efforts to sideline it. In March, Guatemala's chief

of police and his top antinarcotics intelligence officials were arrested and accused of serving as operatives for the Zetas, a powerful Mexican drug cartel with tentacles throughout Central America. Another case revealed a rash of extrajudicial killings perpetrated by state authorities during the Berger administration. Crimes previously seen as untouchable began to yield convictions.

Winds of Change and Domestic Blowback

In May 2010 Colom appointed a new Guatemalan attorney general, Conrado Reyes, over the objections of the US government and many civil society groups.⁶⁷ Reflecting elite fears about CICIG's reach, he began to dismiss staff and dismantle corruption investigations that his office had pursued with the commission over the preceding two years. This raised international law enforcement concerns, and ambassadors from the United States, Spain, and Sweden pushed the Guatemalan government to remove Reyes. McFarland explained to Colom that unless Reyes was removed, the United States would suspend law enforcement cooperation with Guatemala. Colom then approached the head of the Constitutional Court to discuss annulling Reyes's selection.⁶⁸ Castresana, frustrated by Reyes's actions, exclaimed, "The patient refuses to take the medicine that is recommended."⁶⁹ At a heated press conference that made front-page national news, Castresana resigned in protest and revealed evidence linking Reyes to organized crime.⁷⁰ Days later, Castresana also aired details of a smear campaign against him devised by CICIG's opponents. Shortly afterward, the Guatemalan Supreme Court ousted Reyes and ordered that a new attorney general be appointed.

In 2010, the former attorney general of Costa Rica, Francisco Dall'Anese Ruiz, took over as CICIG's head. Dall'Anese took a lower-key approach than Castresana, which carried risks. "Castresana understood that in Guatemala being a high-profile individual gave you additional power," stresses McFarland.⁷¹ Castresana's use of the media spotlight indeed helped CICIG garner public support and ward off attacks from resistant elites. Still, some CICIG staff and observers saw Dall'Anese's adoption of a lower profile as a healthy development, concerned that Castresana's image as an internationally appointed "supercop" or "modern-day Elliot Ness" could cut against the commission's longer-term goal of enhancing the capacity and public legitimacy of national institutions.⁷²

The controversy surrounding Reyes and Castresana paved the way for a crucial changing of the guard on the domestic side, and the rise of a Guatemalan supercop. In late 2010, President Colom appointed Claudia Paz y Paz Bailey as public prosecutor. Paz y Paz—an intrepid former law professor with a passionate commitment to rooting out corruption and organized crime—transformed the Public Prosecutor's Office. Her tenure marked a period of unusually strong preference alignment between national and international parties to a sovereignty-sharing arrangement.

Paz y Paz promptly launched an anticorruption campaign within the ministry, rooting out dozens of venal or ineffective prosecutors.⁷³ Alongside CICIG, she investigated drug cartels, bringing about the arrest of five of the country's ten most notorious drug traffickers from powerful groups, including the Sinaloa Cartel and the Zetas.⁷⁴ CICIG helped her develop the institutional capacity to lead landmark cases for civil war atrocities, including the cases of former presidents Efraín Ríos Montt and Óscar Mejía Víctores.⁷⁵ The most salient was the prosecution of Ríos Montt for genocide against members of the ethnic Mayan community in the early 1980s. Through these and other cases, CICIG and its domestic allies chipped away at the sense that Guatemalan leaders operated above the law.

CICIG's bold action and its measures to strengthen Guatemalan institutions, including transfer of technical expertise and recommendation of domestic legal reforms, won it plaudits at home and abroad. The public had long known that corruption and criminality pervaded public institutions, but CICIG provided credible evidence elucidating how the parallel powers worked. Civil society leader Helen Mack explained: "Before, we denounced these networks and we did not have the proof. What is happening now is that all this is being aired . . . CICIG's presence has helped to uncover this and to give evidence of a whole system of corruption and impunity in the country."⁷⁶

CICIG's work was not unchallenged, however. As Kate Doyle writes, by 2012 there were "two winds blowing in Guatemala"—the "gale force" of efforts led by CICIG and Paz y Paz to prosecute senior military figures involved in rights abuses, and a "rising storm of right-wing outrage and resistance" that helped sweep the conservative ex-general Otto Pérez Molina into power.⁷⁷ Human rights advocates deemed Pérez Molina to be implicated in the crimes of the Ríos Montt regime, and feared that he would curtail the campaign against impunity.⁷⁸

The case of Ríos Montt foreshadowed the rise of domestic elite resistance to CICIG. In May 2013, he was convicted of genocide and crimes against humanity; but just ten days later, the Constitutional Court vacated the verdict in a 3-2 decision on narrow and questionable procedural grounds.⁷⁹ The Guatemalan Bar Association sought to revoke the license of the judge who had ruled against Ríos Montt.⁸⁰ In May 2014, Paz y Paz was removed by a decision of the Constitutional Court on a dubious technicality, seven months before the end of her term.⁸¹ The commission established to select a new attorney general, then removed her from the list despite assessing her to be the second most qualified candidate.

Bringing Down a President

Despite mounting headwinds, CICIG charged forward. Iván Velásquez of Colombia, a former magistrate and prosecutor, became its third commissioner in 2013.

He chose to expand CICIG's work in the extremely sensitive area of anticorruption, where Guatemala's parallel powers and organized crime interface with state officials. Velásquez entered with bold rhetoric, warning CICIG's domestic opponents, "You can't influence us. . . . We aren't linked to the business class, or military, or judges or lawmakers. That gives us enormous freedom."⁸²

For a time, Velásquez's frontal assault on corruption helped strengthen CICIG's supportive political coalition. The commission's public appeal rose with a string of successful prosecutions, such as the 2014 case against the former army captain Byron Lima Oliva, who had been convicted for the 1998 murder of a Catholic priest who had shone light on military abuses during the civil war. CICIG and Guatemalan investigators revealed that Lima had built a powerful and lucrative criminal syndicate from his prison cell. He had entered and left prison routinely with police complicity, and developed a stunning level of influence over the Guatemalan prison system, even dictating prisoner transfers and selecting people for senior appointments.⁸³ The CICIG-led investigation broke apart his corruption ring, leading to charges against fourteen prison officials. Another key case showed fraud in the country's Social Security Institute, as government officials overpaid for Mexican pharmaceuticals in exchange for kickbacks.

CICIG achieved its most striking impact in 2015, when its joint investigation with the Public Prosecutor's Office exposed a massive case of fraud and corruption involving Guatemalan President Otto Pérez Molina, Vice President Roxana Baldetti, cabinet ministers, and nearly one hundred other individuals. The case was dubbed "La Línea," in reference to a telephone hotline used by importers to reach government officials, who took bribes in exchange for lower import taxes—favors costing the Guatemalan treasury some \$120 million. CICIG and Guatemalan investigators used wiretaps and documents to elucidate the network and provide compelling evidence that Pérez Molina and Baldetti had pocketed roughly half of the bribe money.

Before CICIG, the notion of bringing such charges against a sitting president was almost unthinkable, but the clarity of the evidence—in particular, the recorded wiretaps—gave Pérez Molina and Baldetti no viable means to evade the charges. Thousands of Guatemalans took to the streets in peaceful weekly demonstrations to demand government accountability—the largest public protests in Guatemala's recent history. In August 2015, roughly one hundred thousand people took part in a general strike, demanding Pérez Molina's resignation.⁸⁴ In September, Guatemala's Congress voted unanimously to strip him of immunity from prosecution. The following day, a judge issued an order for Pérez Molina's arrest, and the president tendered his resignation. Pérez Molina, Baldetti and many others were arrested, tried, and convicted.

Performance Legitimacy and Survival

As the scholar Kirsten Weld asserts, “CICIG’s achievements . . . exceeded its original proponents’ wildest aspirations.”⁸⁵ Over its first decade of operations, the commission helped launch hundreds of investigations involving myriad government officials and numerous criminal structures. By leading investigations and empowering the Public Prosecutor’s Office, CICIG contributed to remarkable improvements in Guatemala’s fight against crime. Between 2008 and 2018, the country’s murder rate fell from 45 per 100,000 to 22.5.⁸⁶ During the same period, rates of acquittal in homicide cases also plunged by half.⁸⁷ The conviction rate of all crimes rose from a dismal level of 2–4 percent to 30 percent by 2013.⁸⁸

CICIG’s work did bring criticism. The Guatemalan scholar Armando de la Torre argues that since the end of the civil war, Guatemala has been in a “humiliating prostration” to foreign powers, and that CICIG represents “the final stab to Guatemala’s sovereignty.”⁸⁹ From his prison cell, Pérez Molina argued that US officials forced him to extend CICIG, which is “above everyone [and] isn’t accountable to anyone.” He said this was “not the strengthening of justice that we are after in this country.” A senior Guatemalan military leader echoed that sovereignty critique, calling the commission “an extension of the United States’ State Department in Guatemala.”⁹⁰ Others construed CICIG as an ideologically driven body advancing a leftist agenda and undermining Guatemala’s stability.

Despite these challenges to its legitimacy, CICIG survived. Shielding it was a political coalition including some sitting officials, broad domestic public support, sympathetic media and civil society organizations, and international defenders concentrated in Washington and New York. Within Guatemala, CICIG emerged as the country’s most trusted public institution.⁹¹ In a 2015 survey by *Prensa Libre*, 66 percent of Guatemalans expressed confidence in CICIG, much higher than percentage expressing confidence in the domestic judicial system (25 percent), the police (26 percent), legislators (12 percent), or the president (11 percent).⁹² Castresana asserted that CICIG has reached a “tipping point” at which, “[at] least for the foreseeable future, any Guatemalan president who refuses to renew CICIG’s mandate would invite a massive civil uprising.”⁹³ In 2017 a survey by AmericasBarometer found that more than 70 percent of Guatemalans surveyed expressed trust in CICIG—far above trust of the Constitutional Court.⁹⁴ Few if any sovereignty-sharing ventures achieve such clear public legitimation.

International financial and political support was crucial. CICIG’s staff of roughly two hundred people depended on foreign grants, and the US government has provided approximately half of that total. Perhaps even more importantly, the US government also stepped in at key junctures to protect CICIG politically. In 2015, Vice President

Joe Biden pressured Pérez Molina to extend CICIG's mandate at a time when Pérez Molina was under investigation. "He told me it was practically a condition" for continued US aid, Pérez Molina later explained, adding that CICIG's extension was "one of the things I must regret."⁹⁵

The Showdown in 2017

The ouster of Pérez Molina was the high-water mark for CICIG's effective exercise of independent power. Its 2017 probe of incumbent President Jimmy Morales brought the country to the verge of a constitutional crisis, but ultimately Morales survived and led a counterattack by domestic elites keen to terminate CICIG. Morales's turn against CICIG had a certain irony. After Pérez Molina's fall, Morales ran for president with the slogan that he was "neither corrupt nor a thief" and won a landslide victory, earning nearly 70 percent of the vote. Morales might have faced a stiffer test from Manuel Baldizón, who was initially favored to defeat Pérez Molina, but Baldizón suffered a major setback when CICIG and the Public Prosecutor's Office raised corruption allegations against his running mate and several of his fellow party members.⁹⁶ As one of his first moves as president, Morales vowed to extend CICIG's mandate by four years.⁹⁷

CICIG was not beholden to Morales, however. It launched a probe against Morales's brother and son for tax fraud in early 2017, infuriating the new president. In August, on the eve of their trial, Velásquez and Attorney General Thelma Aldana challenged the president more directly when they requested a formal investigation of more than eight hundred thousand dollars of unregistered funds used by Morales during his presidential campaign. Morales released a video declaring Velásquez "persona non grata" and asserting that the CICIG chief had violated Guatemalan sovereignty by meddling "in domestic affairs, which are the sole responsibility of the Guatemalan state." He issued an order to expel Velásquez, and argued that he had the constitutional power to do so as leader of a "free, independent and sovereign state"⁹⁸—a classic appeal to Westphalian norms. The Constitutional Court differed, however, and issued a temporary injunction against the order.

Protests erupted in Guatemala City. Several senior officials, including the health minister, resigned in protest. International condemnation was swift. UN Secretary-General Antonio Guterres expressed "shock."⁹⁹ US Senator Patrick Leahy issued a thinly veiled warning that expulsion of the CICIG chief would put American aid to Guatemala in peril.¹⁰⁰ The crisis deepened when a Guatemalan congressional committee recommended that Congress strip him of immunity, and sent the matter to the full Congress for a vote.

Legislators began to close ranks, and an overwhelming 84 percent of members of Congress voted to retain Morales's immunity. His defenders argued that CICIG was

too zealous and was imperiling the country's political stability. Congressman Raul Romero said, "Democracy isn't built by changing the president every two years."¹⁰¹ Behind these plausible arguments was elite self-interest. Alvaro Montenegro, head of the anticorruption organization Justicia Ya, explained, "Members of Congress are making a pact of corrupt officials," in fear that they too would be investigated.¹⁰² "This wasn't really about sovereignty," echoes former US ambassador McFarland. "It was about avoiding prosecution."¹⁰³ In September 2017, shortly after the row with Morales, CICIG's mandate was renewed until 2019, but rising resistance was clear. When renewing Velásquez's visa in September, the Guatemalan foreign ministry warned him publicly on its website to "refrain from interfering in the internal affairs" of the country, until a court ordered the ministry to remove the post.¹⁰⁴

Ebbing US Support and the Domestic Elite Counterattack

The probes into Morales and his family affirmed the rule of law but raised obvious risks, since a refusal to extend CICIG's mandate was clearly within Guatemala's sovereign power. To stay alive, CICIG would require stout and sustained public and international support, as it had during and after the 2015 La Linea scandal. Public protests against Morales showed that CICIG retained strong popular appeal, but US support waned, leaving the commission much more exposed politically. Morales courted the Trump administration, most notably by mimicking the controversial US decision to move its embassy in Israel to Jerusalem. Trump's stated aversion to nation-building and favorable references to Morales by key legislators such as Marco Rubio (R-FL) suggested that the tide could be shifting against CICIG in Washington. When the US ambassador to the United Nations, Nikki Haley, voiced continued US support for CICIG, she cautioned that it did not "need to be in the paper every day"—another subtle portent of change.¹⁰⁵

Morales then gained an unanticipated ally. Bill Browder, a billionaire fiercely critical of Russian President Vladimir Putin, alleged that CICIG had done Putin's bidding by targeting the Bitkov family, which had fled to Guatemala under threat from Putin. The Bitkovs were arrested as part of a case probing corruption in Guatemala's immigration agency. Conservative media in the United States picked up the story, and US legislators convened a hearing. Although no clear evidence of collusion with the Kremlin was presented, several lawmakers concluded that the Bitkov case called CICIG's integrity into question. Echoing Morales's claims that CICIG violated Guatemalan sovereignty and carried a leftist ideological bias, Senator Mike Lee (R-UT) wrote: "The people of Guatemala have a fragile democracy. But it is one that they themselves deserve to facilitate—not U.N. outsiders. We should be supporting President Morales at a critical time when the leaders of Venezuela and Cuba seek to destabilize the region and his nation."¹⁰⁶ Lee and others recommended suspending six million dollars in US funds for CICIG. Rubio announced the measure, citing

concerns that CICIG had been “manipulated and used by radical elements” and by the Kremlin.¹⁰⁷ For the first time, the bipartisan consensus on CICIG was broken, and US support for the commission sputtered.

In August 2018, Morales moved against CICIG, announcing that he would not renew the commission’s mandate when it expired in September 2019. Without offering evidence, he accused CICIG of encouraging corruption, “violating our laws,” perpetrating “judicial terror,” and engaging in “selective prosecution with an ideological bias.”¹⁰⁸ A convoy of military jeeps encircled CICIG’s headquarters, where television cameras recorded military officers yelling, “Good riddance to the foreign communists.”¹⁰⁹ Days later, Morales barred Velásquez from reentering the country, calling him “a person who attacks order and public security” in Guatemala.¹¹⁰ He added that CICIG would promptly begin transferring work to Guatemalan institutions. Thousands of protesters returned to the streets, demanding Morales’s resignation. Ominously, troops moved into the streets as the Guatemalan government defied a court order to lift the ban on Velásquez.¹¹¹

CICIG retained strong public legitimacy; a 2019 survey by the polling firm Prodatos would find that 72 percent of Guatemalan respondents wished for CICIG to stay.¹¹² However, US government responses offered CICIG little hope of an international rescue. The day after Morales moved against CICIG, US Secretary of State Mike Pompeo praised Guatemala for security cooperation on Twitter, and made no mention of the commission. In a subsequent phone call to Morales, Pompeo “reiterated the United States’ support for Guatemalan sovereignty,” expressing US support for a “reformed CICIG” but leaving the details unclear.¹¹³

The political coalition supporting CICIG’s work thus unraveled. In the country’s 2019 presidential election, none of the top three candidates gave CICIG full-throated support. Center-left candidate Sandra Torres said she would consider putting CICIG’s survival to a public referendum, though her alleged campaign finance violations cast doubt on that pledge.¹¹⁴ In any event, the winner of the election was her conservative opponent, Alejandro Giammattei, who had been the subject of a CICIG investigation before a judge dismissed the case in 2011. Giammattei has close connections with the business and security elites who have spearheaded opposition to CICIG, and after a landslide victory, he confirmed his intent to shutter the commission. In September 2019, not long before Giammattei took office, Morales terminated CICIG by declining to renew its mandate.

CICIG’s Legacy for Domestic Institutions

Like most sovereignty-sharing schemes, CICIG was created with a specific mandate to build Guatemala’s institutional capacity and implant reforms. For much of its lifetime it enjoyed enough domestic buy-in or acquiescence to carry out these tasks effectively.

It helped strengthen Guatemalan systems by transferring technical knowledge, recommending legal and institutional reforms, vetting and sometimes removing judicial appointees, and setting positive examples of professionalism. Yet the sustainability of its reforms is very much in doubt.

Technical Transfers

CICIG has helped deliver major improvements to Guatemala's criminal justice system. "Technically, the transfer has been tremendous," explains scholar Sander Wirken of CICIG's help in building Guatemalan investigative capacity. Before CICIG was established, the Guatemalan Public Prosecutor's Office had virtually no wiretapping capability or ability to conduct DNA or ballistic analysis. It thus had to rely almost entirely on witness testimony—a dubious proposition in a society in which witnesses could easily be intimidated, bribed, or both. CICIG investigators introduced wiretap techniques and the legislative framework to make them usable by courts.¹¹⁵

CICIG helped establish a special investigations unit in the Public Prosecutor's Office, and reorganized the criminal analysis unit. It also brought equipment for analyzing DNA and ballistic evidence, training Guatemalan colleagues how to use them.¹¹⁶ It implemented new methodologies to pursue group investigations that can uncover criminal networks and patterns of illicit activity, as well as individual crimes. It introduced new strategies for plea bargaining. Importantly, CICIG also helped revamp the Guatemalan system for witness protection.

One of CICIG's prime contributions was its role in building the FECI and vetting officials in the Office of the Public Prosecutor. CICIG was also instrumental in the establishment of a special police unit. In 2010, the United Nations launched the Transitional Justice Program (PAJUST), backed by governments including Denmark, the Netherlands, Sweden, and the United States to formalize the efforts led by CICIG to strengthen Guatemala's legal system and mobilize much-needed funds for the Public Prosecutor's Office and other government agencies and NGOs.¹¹⁷

Institutional Reforms

CICIG also had a mandate to propose policy reforms and legislation, though its powers were circumscribed. It had to rely on state institutions to promulgate laws and enact institutional policies. Some of CICIG's proposed reforms were adopted. In October 2008, it recommended amending Guatemalan laws and procedures, including laws on immunity, criminal procedure, prosecution of organized crime, witness protection, and weapons and ammunition.¹¹⁸ Those contributed to legislative action in 2009 on arms restrictions, and a decree authorizing techniques, such as video testimony, to combat organized crime.

CICIG recommended a second set of reforms in 2009, including a proposal to create special High Risk Courts for organized crime. Following that recommendation,

Guatemala established two such courts, both of which feature added security for the courtroom, for witnesses, and for judges.¹¹⁹ That was a major success, since open-access courts were generally understood to be death knells for any efforts to prosecute organized crime. CICIG also led efforts to establish wiretap legislation, and reformed the extradition law. While many other reforms proposed by CICIG have not prompted legislative or executive action,¹²⁰ the steps that have been taken are significant.

CICIG also contributed to institutional reform by helping to put in place more transparent systems for vetting judicial personnel.¹²¹ Although it lacked the power to exclude or dismiss judicial appointees, it prevailed on the Congress to pass a law giving CICIG and Guatemalan civil society organizations opportunities to comment on prospective appointees. The commission has since shaped debate over numerous controversial appointees and played a key role in blocking some of them, including at least three Supreme Court justice nominees and numerous appeals court judges. The 2010 removal of Reyes, sparked by Castresana's resignation, was also an important intervention.

Doubts about Sustainability

Most of the changes CICIG helped implant are now in peril. After departing as CICIG's first commissioner, Castresana cautioned that the necessary reform would "take years," and that building a strong domestic judiciary is "a house by house type of fight. The institutions are infiltrated . . . and we have to remove the bad public servants from these institutions one by one."¹²² Velásquez warned that, without profound domestic political reforms, the parallel powers will regroup, reorganize, and take steps to undermine progress made to date.¹²³

Some steps were taken to promote greater national ownership. The Guatemalan unit working directly with CICIG was renamed the FECI and given a bolder mandate to emphasize its stand-alone significance, not just its role in supporting CICIG. The collaboration between CICIG and the FECI helped build an elite cadre of Guatemalan investigators and prosecutors. Still, as Wirken argues, the extent to which these technical transfers benefit the public "all depends on the political control of these capacities."¹²⁴

CICIG cannot be said to have transformed the domestic judicial system or the political institutions most crucial to building the rule of law in Guatemala. Beyond the FECI, the Public Prosecutor's Office remains underfunded and thinly spread across the myriad alleged crimes brought to its attention. For Guatemalan prosecutors, it was convenient during CICIG's tenure to emphasize international leadership in sensitive investigations. The prosecutors are highly vulnerable to intimidation, and will continue to be so unless major advances occur in security sector reform. To stand on their own, Guatemala's judicial institutions require more than the technical knowledge, legal reforms, and positive examples that CICIG provided. They need vastly more resources and much better security.

The continued weakness and corruption within the national police, military, and other state institutions also limit what Guatemalan prosecutors can likely achieve without the resources and political heft of CICIG beside them. The police, in particular, continue to be regarded as one of Guatemala's most corrupt institutions.¹²⁵ As CICIG's closure approached, those who invested in its reform efforts feared that much of the progress CICIG helped deliver would be in jeopardy following its departure. Indeed, FECCI head Juan Francisco Sandoval lamented in June 2020 that the Guatemalan government's fight against corruption was "going backwards."¹²⁶ He explained that Guatemala's institutions were not "strong enough to face the backlash from those involved" in corruption, who were "using all the weapons at their disposal," such as budget cuts and intimidation of staff, to weaken the FECCI and other rule of law institutions.¹²⁷ CICIG's legacy of reform is thus very much in peril.

A Portable Model?

During its tenure, CICIG was among the most effective sovereignty-sharing ventures to date. It provided much-needed public services in a domain in which domestic institutions were sorely lacking. It took on politically explosive cases and demonstrated what had long appeared improbable, if not impossible, in Guatemala: trials subjecting the very highest officials to the rule of law. Moreover, CICIG helped to build capacity in Guatemalan domestic institutions and reform them in important ways. For all of these reasons, it has been touted as a "model worth replicating" in other states seeking to strengthen the rule of law.¹²⁸

The ouster of Pérez Molina and other senior officials in Guatemala set off a wave of demonstrations in neighboring states—a "Latin American Spring" demanding transparency and accountability. Calls to clone CICIG came from diverse sources, from senior US officials to street protesters.¹²⁹ However, resistant political elites counter-mobilized. CICIG's ability to probe high-level corruption is what makes its model most appealing—and most threatening to incumbents.

CICIG's anticorruption crusade did spawn a weaker sibling in Honduras. In 2015, "Indignados" filled the streets of Tegucigalpa for months after revelations of a massive corruption scheme in the Honduran social security system. Protesters demanded a UN-backed commission akin to CICIG, and the resignation of President Juan Orlando Hernández, a putative target of corruption probes. The Indignados had foreign allies in seeking a commission against impunity in Honduras—a "CICIH." US Vice President Joe Biden and Under Secretary of State Tom Shannon recommended that option publicly,¹³⁰ and the US Senate approved two million dollars to support such a commission if it were established.¹³¹ However, US officials did not try to impose a CICIG-like body on Honduras. Shannon stressed: "The important thing about the CICIG is that it is a Guatemalan solution for a Guatemalan problem. That is, it was not something imposed; it was something requested by Guatemala. If Honduras

looks for something similar, it has to be something built for Honduras, it has to be a Honduran solution. . . .”¹³² In other words, a sound political foundation for shared sovereignty requires significant domestic participation.

Domestic elite support was not forthcoming. Hernández rejected calls for a “CICIH.”¹³³ Instead, his administration inked a 2016 agreement with the Organization of American States (OAS) to create the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH). It includes Honduran and international judges and prosecutors, giving the latter limited powers including the authority to “oversee the work of and provide technical support to entities of the Honduran justice system” as they investigate and prosecute corruption.¹³⁴

MACCIH does carry an element of shared sovereignty, particularly through its ambiguous reference to oversight; yet it lacks CICIG’s clout.¹³⁵ Its authority to oversee Honduran prosecutors is backed only by the power to forward corruption allegations to Honduran authorities, and to note any Honduran refusals to initiate cases in OAS reports the Honduran government reviews before publication.¹³⁶ MACCIH has helped Honduran prosecutors secure convictions for corruption, including conviction of several senior officials implicated in the 2015 social security crisis. But it has otherwise struggled to make headway on high-level graft as incumbent officials play a game of “cat and mouse” to limit its effectiveness.¹³⁷ Critics have thus called MACCIH a “ruse designed to appease domestic and international critics,”¹³⁸ and a “mere Band-Aid on a gaping wound.”¹³⁹ Many Indignados agreed, angry at what they regarded as a half-measure to get protesters to lower their placards.¹⁴⁰ Without sufficient domestic elite participation, a sovereignty-sharing scheme is bound to falter.

Proposals to clone CICIG have also arisen in Mexico, El Salvador, Panama, Peru, Argentina, and elsewhere as weary citizens look to outsiders to curtail rampant corruption.¹⁴¹ Former Mexican Secretary of Foreign Affairs Jorge Casteñada expressed the rationale by quoting a senior Guatemalan official: “It hurts to admit that we cannot clean the house ourselves. But it is better than if someone does not do it.”¹⁴² Others have opposed a CICIG-like commission for Mexico on state sovereignty grounds. The influential Cuban author Carlos Alberto Montaner captures the Westphalian rebuttal: “Justice must be imparted by nationals themselves so it does not raise suspicion of foreign intrusion. . . . It is never pleasant when a foreigner without real roots, alien to the idiosyncrasy of the society, accuses and persecutes nationals who proclaim their innocence.”¹⁴³ A senior Salvadoran official put the case even more stridently in 2016, saying, “The creation of a CICIG in El Salvador is nothing more than an attempted coup d’état against our government.”¹⁴⁴

In most cases, efforts to export CICIG have stalled in the face of domestic elite resistance, but the model remains alive, particularly in El Salvador. In 2017, Salvadoran Attorney General Douglas Meléndez said that an international commission could be necessary, citing the meager budget of the Public Prosecutor’s Office and the pressure

it faced from groups hostile to its mission. A survey that year showed that 53 percent of Salvadorans saw a CICIG-like commission as “very necessary,” while only 9 percent said it would be “counterproductive.”¹⁴⁵ The country’s current president, Nayib Bukele, campaigned as an outsider committed to curbing corruption, and promised to create an International Commission against Impunity in El Salvador (CICIES).¹⁴⁶

While proponents hoped for a CICIES much like CICIG, Bukele has steered toward a body more like MACCIH. In September 2019 he issued a presidential decree creating an OAS-backed commission that was limited to “technical counseling,” and which lacked investigatory powers. Two months later, the United Nations transmitted its proposal for a more autonomous and potent commission, akin to CICIG, but the Salvadoran government has not responded. Bukele says simply that working with the OAS was “much faster.”¹⁴⁷ Corruption allegations against Bukele, as well as widespread criticism of his harsh antigang measures and his draconian lockdown over Covid-19, have prompted new calls for a robust commission.¹⁴⁸ The same factors make the Bukele administration less likely to consent.

Despite the CICIG model’s public appeal in fragile states wracked by impunity and corruption, developing and maintaining the requisite political equilibrium will be difficult, in El Salvador and elsewhere. CICIG survived for more than a decade—a long period for external actors to be so involved at the core of a sovereign state. An enduring public demand for accountability, championed by an active civil society, has incentivized many domestic political elites to support CICIG or at least tolerate its activities. The commission’s performance helped earn it widespread public approval and legitimacy, making it a difficult target for opponents to attack.¹⁴⁹ Strong external backing, particularly from the United States, was also a crucial ingredient.

CICIG’s campaign was bound to generate blowback, including legitimate arguments about the proper role of external actors in domestic governance, and more self-serving elite efforts to curb the commission’s reach. As push came to shove, wary sovereign actors reasserted themselves; and without stronger US support, CICIG expired. Its exit raises a key concern about sovereignty-sharing arrangements: whether they can move beyond service provision to develop domestic institutions that can maintain excellence after the internationals depart. CICIG transferred technical capacity, affected institutional norms and culture, and helped the Public Prosecutor’s Office win high public esteem. Still, Guatemala’s judicial system is acutely vulnerable, leaving the depth and extent of CICIG’s domestic legacy in peril. If even CICIG could not leave lasting governance reforms in its wake, the challenge for sovereignty-sharing arrangements in this respect is clear.

Cosigning to Curb Corruption

IN JUNE 2019, thousands of Liberians poured into the streets of Monrovia. They protested the failure of President George Weah, the former soccer star, to tackle economic mismanagement and corruption as inflation soared and rumors swirled of missing money in the central bank.¹ These were not new grievances. More than a decade earlier, Liberian and international authorities had launched the Governance and Economic Management Assistance Program (GEMAP)—a controversial and pioneering venture designed to address economic mismanagement and theft of state assets following the country's civil war. GEMAP featured shared sovereignty, as international personnel held cosignature authority with Liberian officials, and thus veto power over certain decisions at several key agencies and state-owned enterprises. GEMAP helped deliver significant improvements in services during roughly four years of operations, but as recent rallies against Weah suggest, sustaining reform has been much more challenging.

GEMAP was the most expansive sovereignty-sharing venture to date focused on nonjudicial means of curbing corruption. This chapter explains how GEMAP was forced upon Liberia's transitional government by overwhelming donor pressure, and why President Ellen Johnson Sirleaf later gave the program her blessing. It discusses how Sirleaf's commitment and that of Liberia's major international partners, led by the United States, enabled GEMAP to reduce corruption and put better economic management systems into place. Strong performance helped to justify GEMAP to some external and domestic observers, though it was not highly visible to the public. Domestic officials soon reclaimed full authority, however, before deep reforms

could take root. This chapter ends by noting efforts to clamp down on corruption elsewhere, such as a joint body to monitor reconstruction aid in Haiti and a mixed anticorruption commission in Afghanistan—ventures that illustrate the many pitfalls of sharing sovereignty to challenge corruption.

Exploitation, Civil War, and Kleptocracy

Liberia's contemporary governance problems have deep historical roots, as does the qualified nature of its sovereignty. Created as a colony for freed American slaves and freeborn blacks in 1822, Liberia emerged as an independent country that did not suffer direct foreign rule. However, the American Colonization Society and the US government exerted strong *de facto* authority, and the relatively small number of "Americo-Liberians" with ancestry in the United States came to dominate Liberia to the exclusion of the indigenous population. The United States remained a key external partner. The immense Firestone rubber plantation, established in 1926, furnished the small West African state with much of its foreign exchange. Liberia shared its sovereignty at times during the early twentieth century, with foreigners appointed to government roles to ensure loan repayments, and nearly went into receivership of the League of Nations in 1930 when an international investigation found Firestone and the Liberian government complicit in forced labor.²

Liberian politics were organized around the president, who dominated decision-making and managed a hierarchical patronage system based largely on personal ties. During the Cold War, President William Tubman became a key US ally, as US military bases including an airport and deep-sea port made Liberia a key node for American power projection in Africa. Tubman presided over a period of relative flourishing for the country's Americo-Liberian elite, but the indigenous population grew restive as the benefits of development accrued largely to a privileged few. Tubman's successor, William Tolbert, reoriented the country's foreign and economic policies. Tolbert established relations with China and the Soviet Union, championed the New International Economic Order and African resistance to neocolonialism, and pushed to renegotiate foreign concessions with Firestone and others.³ Relations with the United States soured.

In 1980, a young military officer named Samuel Doe took power in a violent coup, emerging as the first indigenous president in Liberia's history. Rather than fulfilling its pledge to govern for the poor, the new government simply took its turn at the till. The Doe administration supplanted the centralized patronage system of the past with an even more problematic network of ties between senior officials and wealth-generating criminal organizations. Doe secured some aid by returning initially to close alignment with the United States, but he governed brutally and mismanaged the economy. The weak economy began to crumble, as did frail state institutions.⁴

After winning a 1985 election, Doe's relationship with the United States deteriorated. His regime became an embarrassment to the US government, and concerns rose about Liberia's ability to repay its debt as it fell \$400 million into arrears with the World Bank and the International Monetary Fund (IMF). Doe's venal rule was punctuated by opulent shows of corruption, such as orders of Mercedes-Benz vehicles for senior officials and lavish renovations of the presidential palace.⁵

US officials sought a solution through shared sovereignty. Doe was uninterested in sharing sovereignty, but in 1987 US officials convinced him to allow a team of seventeen American financial experts to deploy to key control points in the Liberian national bank and finance ministry, such as the customs and budget office. The initial US proposal would have required these "operational experts" (OPEX) to cosign all government documents relating to fiscal expenditures. After Liberian officials pushed back, the agreement for the Liberia Economic Stabilization Support Project was amended to include a more ambiguous provision for foreign "endorsement" of government finances.⁶ Disputes between advisors and Liberian officials went to Doe for adjudication—a provision intended to signal respect for Liberian sovereignty.

The OPEX team began its work in early 1988, gaining control over government financial accounts to help manage spending and boost government revenues. American advisors were tasked with approving government checks after verifying that the required money was in the bank, that the expenditure was in the budget, and that the price was fair for goods and services purchased. Many Liberian officials reacted angrily, asserting that the program amounted to neocolonialism.⁷ Doe and other high-ranking officials ignored communications from the OPEX team, helped Liberian bureaucrats end run international controls, and did not implement the reform measures contained in the project agreement.⁸ The arrangement failed quickly, and by late 1988 the US advisors were withdrawn. The OPEX final report explained bluntly: "The simplest explanation why the OPEX project failed was that the President was not committed to the objectives of reform and recovery."⁹ That experience echoed a previous attempt by the IMF to curb Zaire's corruption and soaring debt by installing the German banker Erwin Blumenthal to monitor the central bank in 1978–79. Blumenthal issued a damning report three years later, depicting how Mobutu Sese Seko's government had maneuvered around controls he sought to impose.¹⁰

Liberia followed a similar path. By 1989, an estimated 40 percent of government revenues went straight into Doe's personal accounts, taking Liberia's long-standing practice of personalistic patronage to a new extreme.¹¹ US support for Doe slowed to a trickle, and popular resistance to his rule rose. The country collapsed into civil war when the warlord Charles Taylor invaded northeast Liberia from neighboring Cote d'Ivoire. The following year, another warlord named Prince Johnson, a former Taylor ally, captured Doe. Johnson broadcast his torture of Doe, whom he then executed.

Years of conflict followed, marked by gruesome atrocities. Taylor controlled much of the countryside, while a Nigerian-led regional peacekeeping force maintained a fragile grip on Monrovia, the capital. The country's formal economy imploded, and GDP plunged by more than 90 percent, from \$1 billion in 1988 to just \$135 million by 1995.¹² Liberia became a prototypical failed state.

After a pause in fighting in 1997, Taylor remarkably won a national election, largely due to public fear that denying him victory would bring continued warfare. Over the next six years, Taylor presided over a kleptocracy, pillaging the state and investing almost nothing in public services or institutional development. The security services were tools for enrichment, encouraged to take what they could and pass a share up the ladder. By 1999, Taylor's main opposition mounted large attacks, and the country spiraled again into civil war. The country's GDP plummeted, partly as a consequence of UN sanctions on diamonds and timber exports, the country's primary sources of foreign exchange.¹³ Atrocities continued as rebels advanced on Monrovia.

In July 2003, Taylor resigned and fled the country after US President George W. Bush twice demanded that he do so. Soon afterward, US Marines landed in Monrovia as a show of American force and resolve to support the ensuing peace operation. In Accra, Ghana, the Liberian government and major rebel organizations signed the Comprehensive Peace Agreement, which established the National Transitional Government of Liberia (NTGL) to bridge the period until the inauguration of an elected national government in early 2006.¹⁴ The United Nations established the UN Mission in Liberia (UNMIL), giving blue helmets to resident regional peacekeepers and dispatching new military forces. UNMIL was requested by the Liberian parties in the Accra peace agreement, but was endowed by a UN Security Council resolution with Chapter VII enforcement authority. The mission would soon include nearly sixteen thousand troops, the second-largest such mission in the world behind the one deployed in the Democratic Republic of the Congo, where a slightly greater number of troops had covered twenty times the territory.¹⁵

As UN peacekeepers deployed, Liberia remained subject to Security Council sanctions on diamonds and timber. By late 2003, Liberia's debt swelled to \$2.9 billion—more than six times the country's GDP.¹⁶ The large UNMIL presence and Liberia's heavy dependence on foreign aid brought about what the scholar Louise Anderson has called a "tacit trusteeship"—a circumstance in which a strong international role in governance was neither entirely imposed nor wholly consensual.¹⁷

GEMAP's Creation

A long history of misrule and the destruction wrought by the Liberian civil war left behind widespread poverty and displacement and weak, corrupt, and unaccountable governing institutions. By 2003, many government buildings had been ransacked,

and an IMF report noted, "Government functions largely collapsed, owing to the displacement of most civil servants."¹⁸ Liberia's external partners envisioned the transitional period as a chance to prepare the ground for a democratic government, but NTGL officials did little to improve state administration. Instead, many used their brief terms in office to deplete state assets before a handover of power or a relapse into civil war. State revenues plunged to a mere \$45 million in 2003 and \$62 million the following year,¹⁹ one of the lowest totals per capita in the world. As debt arrears continued to mount, Liberia was cut off from many sources of international financial assistance.

In early 2005, the European Commission shared with donors a series of scathing audits of the Liberian central bank and five revenue-generating state-owned enterprises (SOEs): the port authority of Monrovia, Roberts International Airport, the Forestry Development Authority, the Liberia Petroleum Refining Company, and the Bureau of Maritime Affairs. The revelation of the audits was a "tipping point," showing that pervasive theft of state assets was crippling the transitional government's provision of public services.²⁰ There was widespread concern among Liberia's international partners that the NTGL would bequeath little to a future elected government.²¹ Donors also feared that Liberian elections might bring to power another government committed more to private patronage than to the public good.²²

The Sovereignty-Sharing Proposal

Officials in the US government, the European Community, and the Bretton Woods institutions came to the view that international actors had to intervene temporarily to help manage Liberia's economic affairs. With decrepit state institutions, Liberia was "the most decimated place I'd ever seen," recalls former US ambassador John Blaney, who served in Monrovia at the time. "We had to cut down on the stealing."²³ UNMIL was already exercising sovereign authority in the security domain, as peacekeepers deployed throughout the country. Donors concluded that deep international involvement in the country's economic affairs was also imperative, and expected the Liberian public to be supportive even if NGTL officials were not.

Donors proposed a plan, eventually with support from the Economic Community of West African States (ECOWAS), that would place international personnel in key government ministries and parastatals, bring foreign judges into Liberian courts, and establish a joint oversight committee with broad veto powers over government policies. The Economic Governance Action Plan (EGAP) was bold. In part, it reflected lessons learned from the 1988 OPEX sovereignty-sharing venture, putting in place stronger oversight mechanisms to avoid a similar failure.

Reactions to the EGAP proposal were mixed. Leaders of the transitional administration rejected the plan, chiding it as an international effort to impose trusteeship

over Liberia.²⁴ NTGL leaders also objected to the plan's open-ended nature and its proposal for UN Security Council endorsement, concerned that any terms imposed by a Chapter VII resolution would be tough to unwind.²⁵ Some Liberian intellectuals with less pecuniary self-interest also opposed sovereignty sharing on normative grounds. These critics included former interim president Amos Sawyer and Professor Syrulwa Somah, who wrote that EGAP would amount to "colonisation" and a takeover by well-paid foreign nationals of resources that belonged to Liberians.²⁶ The racial sensitivity of granting mostly white foreign officials power in a weak West African state lay just beneath the surface. The NTGL submitted an alternate plan in which officials would take study tours in countries with good governance and in which even their scribes would earn generous compensation. From a donor perspective, the NTGL proposal was a "total nonstarter."²⁷

Despite concerns about EGAP, many other Liberians accepted or welcomed foreign intervention into economic governance. Former Finance Minister Augustine Ngafuan saw EGAP as proposing "neotrusteeship" and "stood strong against that level of intrusion," but recalls: "There was a debate in this country. The [transitional] government was deemed very corrupt. Liberians themselves were asking for the country to be in UN receivership—Liberians themselves . . . There was a clamor that things were going out of bounds."²⁸ Presidential candidate George Weah and other politicians argued that controls were needed to prevent rampant theft. Liberian civil society leaders who focused on democracy, human rights, and good governance supported the plan. Ezekiel Pajibo, leader of the prominent Center for Democratic Empowerment, said Liberia had to "swallow this bitter pill" and argued that the NTGL's sovereignty claims had "no substantial basis," given its failure to protect the population.²⁹ The anthropologist Mike McGovern found through interview research that most ordinary Liberians also supported the plan, "casting doubt on the motivations of political actors who talk about the sovereignty of the same country they have, in many cases, been pillaging until quite recently by force of arms."³⁰

Although the NTGL fought against sharing sovereignty, Liberia was in a position of dire dependency. It was heavily reliant on UN peacekeepers, and the country had few sources of revenue beyond its ship registry and concessions on rubber plantations. Any prospect of economic recovery hinged on relief of the vast debt Liberia had accumulated relative to its paltry economy, and renewed access to IMF and World Bank funding, as well as the lifting of timber and diamond sanctions imposed by the UN Security Council. This combination of factors gave international actors an unusual degree of leverage, which they exercised. The US government warned that security assistance could be suspended, and the European Community and World Bank threatened aid cutoffs if the NTGL did not agree to the proposed intervention.³¹ The Security Council also encouraged the NTGL to consider commissioning

international experts to attract external support—a thinly veiled indication that agreement would have implications for sanctions relief.³²

After some negotiation, the NTGL and a US-led group of donor representatives converged around GEMAP, a “more acceptable version” of the original plan.³³ It dropped provisions for foreign judges and an oversight committee with general veto power, and stressed its “full respect for the sovereignty of Liberia.”³⁴ Nevertheless, the GEMAP agreement did envision significant sovereignty sharing. It provided for a joint steering committee and international advisors with cosignature authority at the central bank, finance ministry, Bureau of the Budget, Cash Management Committee, and several revenue-generating agencies. The parties also agreed that “for every GEMAP person there would be a local counterpart, and the purpose of that was to ensure knowledge transfer. That was the key part,” asserts Wilson Tarpeh, who led the Liberian negotiating team.³⁵

Arm-Twisting and NTGL Consent

Donors formed the International Contact Group for Liberia and launched a campaign pressing NGTL leader Charles Gyude Bryant to sign the GEMAP agreement. The Contact Group included representatives from the United Nations, the United States, the European Union, the IMF, the World Bank, ECOWAS, the African Union, and several European and African state partners. Its membership gave it tremendous leverage, as well as African participation to provide a cushion of regional legitimacy. Blaney recalls that ECOWAS was his “strongest ally” in promoting GEMAP and that it “did not show a lot of sovereignty neuralgia,” viewing the situation in Liberia as a serious threat to regional peace and stability.³⁶ “There was always some concern” about Western officials “laying down the law,” he adds, and some in Washington feared that Blaney’s role was “too proconsulish.” In general, however, GEMAP won strong international support.³⁷ UN Secretary-General Kofi Annan pressed Bryant at the request of donors. On September 8, the Contact Group issued a statement threatening to cancel a \$44 million European aid package and other assistance if Liberia refused to implement GEMAP.

Bryant resisted, insisting on changes to the draft agreement, accusing the Contact Group of trying to turn public opinion against him, and asserting, “I will not sign that document.”³⁸ Donor officials had to pursue him to Roberts International Airport in Monrovia, en route to meetings with Annan and the General Assembly in New York, to gain his signature on the agreement. Bryant managed to take off without signing the technical annex, which would allow him to show his signature to the secretary-general while still debating the terms in the annex. Donors had to fax the annex to World Bank official Mats Karlsson, who intercepted Bryant and

procured his signature during his stopover in Accra.³⁹ This was an emblematic case of compromised consent.

The fact that an unelected transitional government had signed the GEMAP agreement left it open to normative challenge,⁴⁰ as did the fact that the NTGL's agreement hinged so clearly on its weak bargaining position and on pressure verging on coercion.⁴¹ The legal basis for GEMAP was a provision in the Comprehensive Peace Agreement requiring the NTGL to implement the agreement's provisions and take steps to mobilize donor support for rehabilitation and reconstruction.⁴² The GEMAP agreement was not a treaty, however, and it lacked a clear basis in Liberian law. It was a legalistic framework agreement between the NGTL and Contact Group members—more than a political pledge, but with uncertain binding force.⁴³ The specific scope of authority that international actors would have was also unclear. This arguably made it a less direct affront to Westphalian sovereignty, but it left important questions unanswered.

In short, the GEMAP agreement was an ambiguous agreement resting on compromised consent. What gave it weight and enforceability was the donor consensus behind it, as well as the UN Security Council's subsequent endorsement of GEMAP and its request for progress reports from the secretary-general on its implementation.⁴⁴ The development and maintenance of a political equilibrium supporting the arrangement would be crucial to its success.

Sirleaf's Commitment

In November 2005, Ellen Johnson Sirleaf won Liberia's scheduled presidential election, becoming Africa's first female head of state. It was possible that she would seek to unwind the sovereignty-sharing arrangement imposed on the NTGL. Early in her presidential campaign she had said that she did not expect GEMAP to be necessary under her leadership.⁴⁵ Had she resisted the program, GEMAP would have been difficult for Liberia's international partners to maintain. She would have had ample regional support, as many other African leaders were concerned about the precedent that GEMAP could set.⁴⁶ "Whatever form it took, it had to have government consent to have legitimacy," says former Liberian Finance Minister Wilson Tarpeh.⁴⁷

Cognizant of Liberia's dire governance challenges and need for international support, however, Sirleaf gave the arrangement her blessing. In her inaugural address, she said Liberia must "welcome and embrace" GEMAP and would "accept and enforce [its] terms" to curb corruption, strengthen domestic systems, and build capacity while working to "render GEMAP non-applicable in a reasonable period of time."⁴⁸ Somewhat ironically, as Morten Bøås argues, the most legitimate government in Liberia's history thus became subject to some of the most extensive external controls.⁴⁹

Sirleaf and others in her administration were unenthusiastic about the

sovereignty-sharing aspects of GEMAP, but they shared its objectives enough to view the program as a necessity.⁵⁰ A Harvard-educated economist and former World Bank official, Sirleaf aimed to implant more transparent and technocratic governance in Liberia. She had campaigned on that platform, and Ngafuan argues, “If we can pin her victory to one single reason, it’s that people thought she could solve this [corruption] problem.”⁵¹ Among her first acts as president were to fire nearly the entire staff of the corrupt Ministry of Finance and many other civil servants; promise investigations into embezzlement and graft; require senior officials to declare their assets; create a new anticorruption commission; and reform laws on public finance, budgeting and procurement.⁵²

Sirleaf also had powerful political incentives to work closely with international partners. She was lauded abroad, but was more controversial within Liberia, as she had allied with Charles Taylor in the 1980s in an effort to oust Samuel Doe.⁵³ US support had played an important role in her 2005 election, and international backing remained a key pillar of her winning political coalition. Her local appeal rested partly on her international profile and access to aid, and GEMAP helped her offload some responsibility for moves that weakened powerful political actors in Liberia, including some of her rivals. She was the archetype of a national leader whose preferences and interests aligned well with the goals of the sovereignty-sharing intervention.

Given Liberia’s severe capacity limitations, Sirleaf viewed GEMAP as necessary in the short run.⁵⁴ She saw GEMAP as advancing “what the government should be doing anyway,” notes Matt Chessen, who served in the US Embassy in Monrovia and was one of GEMAP’s key architects.⁵⁵ The program was an important signal to donors; and at a 2006 speech in Washington, Sirleaf stressed that her administration was “vigorously implementing” GEMAP.⁵⁶ She also saw GEMAP as a way to obtain information about what was occurring in her own ministries and address malfeasance, and also as a mechanism for communicating her seriousness of purpose to the public and the international community.⁵⁷ Importantly, GEMAP strengthened her hand vis-à-vis the Liberian legislature, and enabled her to advance her reform agenda with fewer constraints, citing the need to adhere to the deal and keep donors engaged.⁵⁸ Thus, despite her discomfort with sharing sovereignty over key economic policy functions, GEMAP was underpinned by strong government consent and cooperation at the top.

At the same time, GEMAP was designed to incentivize Liberian cooperation. NTGL negotiators had rejected an open-ended arrangement, so donors included a conditional termination clause instead. GEMAP would expire after three years, but only if Liberia had implemented the reforms needed to reach “completion point” under the enhanced Heavily Indebted Poor Countries (HIPC) initiative—the gateway to debt relief.⁵⁹ As one World Bank official said, it would be a “miracle” for Liberia

to reach completion point in three years.⁶⁰ GEMAP would therefore last for a longer period with the carrot of debt relief and a full handback of sovereignty to motivate reforms. The link to UN sanctions was also a major incentive for Liberia to cooperate. Thus, even while Liberia held “residual rights” to sovereignty, its international partners retained a high degree of leverage, enabling international personnel to contribute meaningfully to policy choices and get serious attention from Liberian counterparts. These continuing incentives were crucial during the implementation phase, as Liberia and its international partners ironed out numerous specifics, such as the precise extent of cosignature authority and the way to resolve tensions.

Implementing Shared Sovereignty

In the words of Ambassador Blaney, GEMAP was “a program of de-toxification . . . to start to free Liberia from its kleptocratic binging.”⁶¹ While UN peacekeepers managed hard security, GEMAP would protect against threats from the inside by curbing official corruption. Together, these interventions sought to change incentives in Liberia, discouraging predatory actors from seeking public office to reap private gains and encouraging the rise of a more service-oriented political class.⁶² Among other things, GEMAP aimed to raise Liberia’s government revenues and transparency on both expenditures and revenues, which were to be deposited in the central bank. With greater knowledge of the volume of public resources at hand, Liberians would be better able to make their preferences for government spending known, and better able to hold politicians accountable.

The GEMAP agreement spelled out numerous areas of cooperation toward those ends. It built upon the scaffolding of a bundle of preexisting donor technical assistance projects across numerous agencies. Its structure was complex, and international actors’ authority was often vague, so the mechanics of sovereignty sharing had to be worked out largely as the arrangement was implemented. This led to considerable variation in how GEMAP evolved across Liberian institutions. It also rendered the arrangement somewhat opaque, and contributed to a low level of basic public understanding of the program. Unlike ventures such as the Special Court for Sierra Leone, the UN International Commission against Impunity in Guatemala, or the UN police mission in Timor-Leste—all of which were easier for the population to observe—GEMAP operated largely out of public view.

Structure of the Arrangement

GEMAP deployed international personnel to numerous Liberian institutions. Several were endowed with cosignature authority. The IMF appointed an international chief administrator at the Central Bank of Liberia. The World Bank appointed an “independent international expert” to the Cash Management Committee, a body comprising

officials from the Ministry of Finance and the Bureau of the Budget, responsible for approving government expenditures. The US Agency for International Development (USAID) appointed an advisor to the Bureau of the Budget, an independent government agency responsible for budget allotments, as well as an adviser to the Ministry of Land, Mines, and Energy. USAID also appointed international “controllers” to several state-owned enterprises: Roberts International Airport, the Bureau of Maritime Affairs, the National Port Authority, the Forestry Development Authority, and the Liberia Petroleum Refining Corporation. Cosigning authority gave these international appointees considerable leverage, largely because Sirleaf made clear that she would enforce the terms of the deal.

Although the GEMAP agreement helped set expectations about many of the arrangement’s features, it was hardly a “complete” contract. In particular, the agreement and its technical annex left ample room for interpretation of the scope of cosignature authority, which was bound to generate controversy. The chief administrator at the central bank was given power to cosign for “operational and financial matters with special emphasis on banking operations and ensuring that internal controls and audits are carried out according to established principles.”⁶³ In the Ministry of Land, Mines, and Energy, the agreement foresaw a “need for technical expertise with binding cosignatory authority to ensure transparency and accountability in the area of concessions.”⁶⁴ The international expert at the Cash Management Committee would have similar authority to “help ensure transparency in the expenditure process.”⁶⁵ The purpose of cosignature authority in SOEs and other institutions was “to improve financial management practices.”⁶⁶ In each case, the precise nature and breadth of cosignature authority had to be worked out in practice.

As GEMAP took root, some international appointees cast vetoes often. Others employed the authority sparingly, instead using their cosigning power to request and receive information and consult with Liberian staff before decisions were made.⁶⁷ Cosignature authority lent added significance to regular meetings between national and international partners, and forced some sensitive issues to the surface, increasing transparency.⁶⁸ It also gave international advisors regular exposure to routine financial processes and important paperwork.⁶⁹ In that sense, GEMAP established a “tripwire,” helping international aid providers and the Sirleaf administration detect malfeasance by domestic authorities.⁷⁰

A working-level technical team of Liberian and donor representatives coordinated implementation of the program. Oversight and dispute resolution were vested in the newly created Economic Governance Steering Committee (EGSC), with roughly even numbers of Liberian and international members. Donors initially proposed that the EGSC would be cochaired by the Liberian head of state and a Contact Group representative, but Liberians rejected the idea on the grounds that ultimate executive

authority could not be divided. As a compromise, the Liberian president chaired the committee with an international deputy chair—which in practice became the US ambassador.⁷¹ The committee settled disputes by seeking consensus, again as a form of deference to national sovereignty. “You cannot have a majority vote on a committee that has a head of state,” explained World Bank official Luigi Giovine.⁷²

Where disagreements surfaced at the staff level, the EGSC generally was able to exercise discipline over the process. This was a result of strong preference alignment between international partners and Liberia’s leaders, as well as their shared interest in maintaining the cooperative relationship needed for GEMAP and other aspects of the international intervention in Liberia to succeed. Importantly, those discussions took place in the shadow of continued Liberian dependency on international partners for debt and sanctions relief, peacekeeping provision, and other forms of support. Still, a strong high-level partnership did not translate into uniform cooperation on the ground. As in other sovereignty-sharing ventures, the agency of lower-level officials was also a crucial determinant of the arrangement’s impact.

Loci of Strong Cooperation

The cosignature arrangement generated least pushback in the Ministry of Finance, the Cash Management Committee, and the Bureau of the Budget, where Liberian leadership were committed to the venture. Sirleaf chose another World Bank veteran, Antoinette Sayeh, as her first minister of finance. Sayeh supported GEMAP enthusiastically, and saw the arrangement as an important means to strengthen Liberia’s institutions and empower technocrats vis-à-vis domestic rivals steeped in the politics of patronage.⁷³ She was “very easy to deal with” and “anxious to get these controls in place,” recalls Jorge Segura, whose firm was a key USAID implementing partner for GEMAP.⁷⁴

Budget formulation and execution were widely seen as keys to building a stronger Liberian economy and funding more effective state institutions. Preceding Liberian governments had left the Sirleaf administration little upon which to build. Liberia’s budget system had long been a recipe for corruption: high degrees of secrecy, few constraints on the movement of funds across line items, and few controls on procurement. Meager revenues were often misspent, particularly on lavish overseas trips by government officials.⁷⁵ Staggering deficits occurred in the 1980s, and budget data and documentation were woefully unreliable, virtually vanishing in the 1990s.⁷⁶

Before GEMAP’s establishment, international advisors had helped Liberia’s transitional government adopt a cash-based system to achieve a balanced budget. The interministerial Cash Management Committee (CMC), chaired by the finance minister, was tasked with approving all government spending. However, the system broke down quickly. The CMC faced enormous pressure to clear payments, and struggled without clear budgetary priorities and data on line ministries’ spending and balances.⁷⁷

GEMAP stationed an international advisor on the CMC who wielded cosignature authority. Even that intervention did not cure the committee's ills during GEMAP's first few months. Amitabh Tripathi, the advisor put in place by the World Bank, reports that senior NTGL officials continued to make arbitrary and nontransparent budget decisions.⁷⁸ That changed after Sirleaf's inauguration and Sayeh's arrival as finance minister. The new administration created the Technical Secretariat in the Ministry of Finance, headed by the World Bank appointee but staffed by Liberians. To control expenditures, they established a system whereby the CMC vetted all purchase orders and expenditure vouchers from line ministries to ensure that the proposed spending was in the ministry's budget, was consistent with Liberia's procurement law, and could be funded by cash on hand at the central bank.⁷⁹

IMF reports documented that under GEMAP, the CMC became much more effective at managing funds and verifying expenditures.⁸⁰ These and other assessments stressed the importance of external controls.⁸¹ Tripathi agrees that the external advisor played a "critical role," but cautions against accounts that "privilege the 'co-signatory' aspect of GEMAP over the role and commitment of the national leadership in the successful working of the CMC." He argues that provision of an external actor alone could not provide effective controls, given the nature of public financial management. Local ownership was essential.⁸²

IBI International, USAID's key implementing partner for GEMAP, promoted local ownership in agencies it engaged, including the Ministry of Land, Mines, and Energy (LME) and the Bureau of Budget (BOB). GEMAP relinquished cosigning authority at LME as advisors built stronger relationships with Liberian counterparts and embarked on a major review of government concessions. IBI head Lucie Phillips, who also served as a GEMAP advisor to LME, emphasized that international advisors should "stay out of the limelight" and "make it an empowerment process rather than a head-butting process."⁸³

That approach was apparent at the BOB, where GEMAP aimed to promote a more transparent and effective process for executing the budget. Liberia used a system of monthly budget allotments to line ministries, but before GEMAP, allotments had routinely exceeded legislative appropriations as executive officials used their own discretion in releasing funds to favored ministries. The scheme was also riddled with petty corruption and delay, as bureau staff demanded fees to issue allotments.⁸⁴

GEMAP advisor Eileen Browne used cosignature authority to send back allotment requests that contained irregularities or were not reflected in the budget. Musah Dixon, who worked in the BOB, recalls that "there were a lot of cases like that," as Browne caught requests that had suspect justifications or which exceeded appropriations.⁸⁵ Some staff resisted. "The system was full of cracks," he explains. "Once someone came to straighten it out, there would be hostility in some quarters."⁸⁶ However,

staffers came to accept and embrace the new system and to review and allotment requests more carefully for fear of having them rejected.⁸⁷

Browne refrained from using her veto to dictate which expenditures were desirable, seeing an “important distinction” between sovereign discretion over budget policy and the faithful execution of agreed procedures.⁸⁸ By focusing on technical implementation, she and other GEMAP advisors generally sought to minimize the extent to which they appropriated sovereignty. Browne helped the bureau introduce clearer forms and procedures to minimize delays and curb corruption. During GEMAP’s involvement, the average time required for budget allocation and for processing allotments improved from a few weeks to a few days.⁸⁹

Browne credits much of GEMAP’s success in the Bureau of the Budget to its Liberian director, Augustine Ngafuan, who “committed enthusiastically to the cosigning arrangement” and saw the GEMAP advisor as “an ally who could help him replace rent-seeking behavior with formal controls.”⁹⁰ . . . He was more inclined to see Americans as helpful and supportive than as taking away sovereignty.⁹¹ Among other steps, Ngafuan put an end to “fees” collected by his staff to process allotment requests. Ngafuan explains that he appreciated the cosigning arrangement, explaining, “I needed someone I could trust. . . . To me, it was more of a partnership for accountability and transparency than an intrusion.”⁹²

In 2008, Ngafuan replaced Sayeh as finance minister. Vishal Gujadhur, who served as an advisor to Ngafuan, notes that some poor payments “got through the net” during the transitional period, again pointing to the importance of strong domestic controls.⁹³ The BOB’s initial status as a small independent agency and a focused technical mission also helped in the development of standards and practices.⁹⁴

After a few years, the BOB merged into the Ministry of Finance to become the Department of the Budget. As the ministry’s capacity strengthened and Ngafuan proved willing and able to police corruption, Browne advised that cosignature authority was no longer necessary. Ngafuan agreed, asserting Liberian sovereignty more than his predecessor had.⁹⁵ When cosignature authority ended in October 2009, the Department of the Budget held a graduation ceremony of sorts—an event welcomed by both donors and Liberian politicians as a sign of progress.⁹⁶ “Ending it was as important as having it,” Browne stresses.⁹⁷

Sovereignty Challenges at the Central Bank

GEMAP faced a much different reception at the Central Bank of Liberia (CBL), where Governor J. Mills Jones resisted the cosignature scheme and appointment of an international chief administrator. “He saw this as an affront and fought it from the beginning,” recalls Steve Radelet, who served as Sirleaf’s economic advisor at the time.⁹⁸ Jones argued that CBL officials had worked closely with IMF advisors during

previous programs, and had developed the competence to manage affairs on their own. Soon after taking office in late 2005, the new US ambassador, Donald Booth, “put his foot down” and convinced Jones to accept the arrangement; but the forced marriage did not go well.⁹⁹ “It became a bit acrimonious,” recalls former Finance Minister Boima Kamara, who served at the CBL during GEMAP’s early years. Jones insisted that GEMAP “was violating our sovereignty and violated the act of the Central Bank of Liberia” by giving key decision-making powers to a foreign appointee.¹⁰⁰ The cosignature scheme unwound quickly at the CBL, and the GEMAP appointee left after only fifteen months, to be replaced by an advisor with scaled-back authority over operational matters.¹⁰¹

Jones’s approach to GEMAP has been criticized domestically. “The governor wanted to act as if he was operating in a full sovereignty environment. That was not the case,” argues former Finance Minister Wilson Tarpeh. “It was imprudent on his part to insist that the IMF advisor not have the authority” in line with the rest of the GEMAP program that the government had endorsed, Tarpeh adds, citing subsequent scandals at the CBL.¹⁰²

Cleaning Up State-Owned Enterprises

GEMAP stationed controllers with cosigning authority in four parastatal entities: the National Port Authority, the Forestry Development Authority, the Liberia Petroleum Refining Company, and Roberts International Airport. These SOEs had long functioned as “slush funds” for venal politicians and warlords who stacked the enterprises with appointments for family and friends.¹⁰³ “Most of the institutions get flooded with incompetent people,” explains one Liberian assistant controller who worked with GEMAP.¹⁰⁴ Sovereignty sharing in the SOEs faced considerable challenges. These were products of both structure and agency, as the introduction of externally imposed controls produced some unavoidable tension that varied according to personalities and working styles.

GEMAP controllers arrived to face major obstacles common to all four SOEs: stunningly inadequate accounting and financial systems, anemic institutional capacity, and staff resistance to new procedures and controls. “It was starting from scratch,” says Jorge Segura, who recruited controllers for the SOEs.¹⁰⁵ Many SOE staff owed their positions to patronage rather than assessed need. Agency heads long had given family and friends jobs with ill-defined responsibilities, leaving them behind as new heads arrived to do the same. Many staff had little relevant training, and interpreted their roles as rent-seeking opportunities rather than cogs in a bureaucracy dispensing public services. Sirleaf likewise appointed some SOE leaders who had been accused of past corruption as she assembled an administration representing diverse domestic constituencies.¹⁰⁶ The challenges were thus formidable in the parastatal agencies, and controllers routinely had to use the veto in all four SOEs.

Nevertheless, controllers' experiences varied. They worked alongside Liberian managing directors who possessed a range of competence and commitment to reform. GEMAP controllers also had variable technical and diplomatic skills. Recruiting qualified experts willing to live in postwar Liberia posed real challenges, especially since the key contracting firms were not specialists in public financial management. Once in Monrovia, some controllers built strong relationships with Liberian directors, while others clashed with one another and with Liberian counterparts, as diverse personalities interacted in a stressful operating environment.¹⁰⁷ Some GEMAP controllers had strong knowledge in public financial management, while others lacked the requisite skills or engaged in improprieties that limited the program's effectiveness.¹⁰⁸

The National Port Authority

Problems were great at the National Port Authority (NPA) and at the Freeport of Monrovia, which was both a key node of Liberia's economy and the primary locus for customs enforcement.¹⁰⁹ Built by the US military during World War II, it was the entry point for 95 percent of Liberia's imports and accounted for more than 90 percent of all customs revenue after the civil war.¹¹⁰ That revenue was needed badly by the government and by the port itself, which needed major repairs. Two of the port's four quays had been decimated during the war, and shipping channels needed for trade, relief, and reconstruction were partially blocked by a multitude of unremoved shipwrecks and accumulated silt. During the transitional period, little progress was made. Transactions were in cash, records were scarce, and corruption and theft of cargo were rife. Rather than fixing the port, the rebel group leader given control over the port in the Accra Peace Agreement simply used it to embezzle funds and employ their cronies, tripling the port's employees in two years with no functional gains to show.¹¹¹

GEMAP arrived to find the port's finance "helter-skelter," with no real accounting system. "They didn't even have a general ledger," recalls Dogba Norris, the Liberian GEMAP assistant controller.¹¹² Norris reports that the port's managing director and finance team were appreciative of the accounting and reporting systems GEMAP put in place. Less popular was the focus by GEMAP controller Tom Downing on policing runaway corruption at the large and sprawling port authority. Downing blocked payments on overpriced contracts,¹¹³ but his assault on graft generated blowback from some Liberian counterparts, who complained that the GEMAP controller was "witch-hunting."¹¹⁴

In 2007, Downing discovered a suspect million-dollar contract with a company in which Musa Bility, the chairman of the NPA's board, exercised influence. The NPA had rented a tugboat from a Ghanaian firm, which included fuel in the price of the contract. Nevertheless, the NPA was paying the firm linked to Bility to provide the same fuel each month, in advance via automatic debit and without verification

of delivery. This incident usefully illustrates three ways in which cosigning authority could help address apparent corruption. First, that authority gave the GEMAP controller an impetus to dig. Downing notes that he “wouldn’t have discovered the problem if [he] wasn’t signing checks for fuel.”¹¹⁵ Second, his cosignatory role gave him “a warrant to request information” about the suspicious contract. Third, cosigning power enabled Downing to assert that he would not cosign an extension of the suspicious contract when it expired unless the NPA conducted a proper bidding process.¹¹⁶

Bility and NPA managing director Togba Ngangana accused Downing of sabotage and demanded his dismissal. US ambassador Donald Booth pushed back, sending Bility and Ngangana a stern letter admonishing them to allow Downing to do his job. After Bility had the letter published in the press, President Sirleaf chastised Booth, asking if he had forgotten who was the president of Liberia.¹¹⁷ As the dispute unfolded, Sirleaf moved Bility and Ngangana from their posts, but also ordered Downing to leave the country. Booth objected; and as a compromise, Downing was reassigned to the Forestry Development Authority (FDA).

Soon after the feud made news, Sirleaf said in a public address that GEMAP’s experience had been mixed, as some areas had seen a “loss in the spirit of teamwork,” and some international experts “feel that they are auditors or judges” and reported to the principals who paid them.¹¹⁸ The matter was not just about sovereignty; it was about patronage, peacebuilding, and Sirleaf’s domestic political control. Some of the port workers objecting to Downing were ex-combatants allied to a former rebel leader who managed NPA operations.¹¹⁹ Even with a new NPA leadership team, the incoming GEMAP controller at the port and his Liberian assistant controller found “a fight from the start” with a resistant national staff.¹²⁰ Old corruption problems subsided briefly, but would later resurface.

The Forestry Development Authority

As at the port, Downing was “quite assertive” at the FDA within the frame of his terms of reference, using his cosigning authority on procurement checks, contracts, and other transactions.¹²¹ He signed a number of small concession agreements that he found unproblematic, but withheld signatures on a dozen large forestry concessions, because he “found pervasive, fundamental problems with every single one.”¹²² After trying to resolve the issue through internal channels, he worked with the NGO Global Witness to spotlight problems with the contracts in the press, but ultimately the concessions moved forward. Since the GEMAP agreement gave controllers cosigning authority at the SOEs, contracts without those signatures were presumptively invalid. However, no clear enforcement mechanism existed when Liberian officials chose to proceed; another example of the frequent difficulty of enforcing sovereignty-sharing agreements.

The FDA's Liberian managing director, John Woods, generally was receptive to reform, recalls Norris, but "a lot of staff did not appreciate it." Staff resisted new procedures, sought to evade controls, and were keen for GEMAP to end, seeing it "as a hindrance to that corruption."¹²³ Bernard Bropleh, who was the FDA's finance manager, echoes that the reforms pushed by GEMAP faced "pushbacks from almost every angle" from "people who for years were used to doing it their way and were resistant to change."¹²⁴ Staff pressured the Liberian finance team to approve suspect requests, and sometimes found ways around the controller's veto. "It was more of a resistance to change in general than to foreign intervention," Bropleh adds, because Liberian government support for the program meant staff generally "didn't see it as foreign."¹²⁵ Regardless, staff resistance left the FDA vulnerable as GEMAP wound down.

The Liberia Petroleum Refining Company

Systems were also dysfunctional at the outset at the Liberia Petroleum Refining Company (LPRC). The first GEMAP controller was dismissed almost immediately for problems outside work,¹²⁶ involving alleged sexual misconduct with minors. Aagon Tingba, who served as the Liberian chief accountant and understudy to the GEMAP controller, recalls that the second GEMAP appointee struggled due to a lack of finance and accounting background, before a more assertive controller, Sophie Hobbs, took over. Controllers "caught a lot" in terms of improper payment requests, and helped Tingba and others "build an accounting system from scratch."¹²⁷ Managing director Harry Greaves had financial expertise, and GEMAP advisors described him as committed to the program,¹²⁸ but as in other SOEs, staff resistance had to be overcome.

One challenge, apparent at the LPRC and at other agencies and SOEs, was for Liberians who returned to the country as part of GEMAP to earn local trust and respect. "Honestly, there was a sense of discontent and rejection," recalls Tingba, and a view that government leaders were "not appreciating knowledge on the ground. They had a wait-and-see, lack of cooperation attitude," he says, that took returning Liberians some time to overcome.¹²⁹ When rent-seeking opportunities were removed, Liberians working closely with GEMAP often faced personal appeals and recriminations. Controls were effective at curbing corruption when they were in place, but were seen as something national staff could wait out. "It was perceived as a foreign imposition," explains Winsley Nanka, who served as the Liberian GEMAP assistant controller. "The belief was that GEMAP was going to be there for a temporary time," after which the controls would relax, Nanka says.¹³⁰

The larger challenges for the LPRC, like other SOEs, were corruption allegations involving national officials. Sirleaf defended Greaves after he was alleged to have engaged in a corrupt deal with a Nigerian oil firm, but she later sacked him after Greaves released an audio recording of a government minister trying to extort three hundred

thousand dollars from him. Greaves argued that he was fired for whistleblowing.¹³¹ Several years later, he was found dead on the beach in Monrovia, causing some observers to speculate that he had been murdered.¹³²

Roberts International Airport

At the airport, GEMAP hired controller Alex Cuffy, a Liberian who had lived for an extended period in the United States. Cuffy presented himself as an advisor, but found his cosignature authority imperative: "Without that, I couldn't do anything." He used his signatory authority to police contracts and funds coming in and out of Roberts International Airport, and to keep revenues from being siphoned.¹³³ He initially encountered resistance, and had to exercise his authority often. "We were basically taking illegal bread from people's tables, and they didn't like you for that," he explains.¹³⁴ However, as staff learned of his willingness to block corrupt purchases, the volume of suspect requests declined. The arrival of a new and less corrupt managing director also helped. Cuffy developed a good working relationship with his Liberian counterparts, in part by picking his battles.¹³⁵

The security of GEMAP controllers was a real issue. They sometimes received death threats for withholding signatures on corrupt SOE deals, and some GEMAP advisors chose to disregard minor issues to advance the overall objective of fiscal responsibility.¹³⁶ To others, picking battles meant conceding to corruption.¹³⁷ GEMAP advisors and donors thus faced dilemmas as they sought to curb corruption while maintaining constructive relationships with their counterparts and the Liberian government more broadly.¹³⁸ Even in a period of immense donor leverage over Liberia, GEMAP's success hinged heavily on state consent.

Disagreements between GEMAP appointees and Liberian officials often surfaced in technical team meetings. One underlying source of tension related to whose voices were heard. Some international advisors chose to give presentations themselves, which frustrated Liberian agency heads keen to build experience, exhibit national leadership, and take ownership for reforms.¹³⁹ In other cases, feuds over policies or transactions erupted. GEMAP controllers often faced pressure to be "more flexible" in exercising their cosigning authority.¹⁴⁰ On the rare occasions when clashes reached the level of GEMAP's oversight body, the Economic Governance Steering Committee, international advisors often had to budge. Even a friendly leader like Sirleaf was not willing to countenance ousting a senior domestic official over a feud with an outsider—another example of the state's power as residual rights holder.

Winding Down and Sustaining Reforms

After a few years of GEMAP operations, Liberian officials across the government pressed for the end of cosignature authority.¹⁴¹ By 2009, most controllers had become

“advisors,” winding down cosignature authority and declaring that GEMAP had been a success. The most successful cosignatory partnerships emerged, unsurprisingly, in cases in which Liberian officials saw GEMAP controls as helpful in reaching their own objectives. The backgrounds of international advisors also played a role. Seniority and experience tended to earn GEMAP advisors more respect, conveying the impression that they had the competence to advise and train their Liberian colleagues and carry out the due diligence needed to exercise their cosignature authority well. It also suggested that they had little to prove and were content to advise more than to seek control.¹⁴² Indeed, even before GEMAP changed from posting “controllers” to posting “advisors,” the most effective generally presented themselves as such—an important form of respect for sovereignty on the ground. “The key is to get people who are knowledgeable and experienced enough to identify wins the counterpart will see as wins,” says former GEMAP budget advisor Eileen Browne.¹⁴³ The model works best when external actors “understand they are there to empower and not to take change,” adds Lucie Phillips, who served as advisor at LME.¹⁴⁴ Still, the experience of the SOEs in particular showed that sustaining the gains made during GEMAP would be far from straightforward.

GEMAP’s Dividends

GEMAP produced clear benefits for Liberia by helping Liberia rebuild trust among donors, gain access to debt relief and development lending, and put clamps on institutions that were riddled with corruption. At times, the existence of GEMAP and the EGSC helped the Sirleaf administration undertake unpopular but important reforms by providing political cover, as Liberian officials could attribute decisions partly to donor pressure.¹⁴⁵ Examples include Sirleaf’s decisions to annul forestry concessions shortly after taking office, and to lay off numerous civil servants in bloated public ministries.¹⁴⁶ The reforms GEMAP introduced or enabled had broad public benefits, helping to keep Liberia’s fragile economy afloat and thus support the peace.

One clear rationale for GEMAP’s sovereignty-sharing features was to restore trust with donors. Former Finance Minister Boima Kamara argues: “The framework for GEMAP that allowed for cosigning authority in domestic governance structures—that was necessary. . . . At the time, it was important for the external partners to have a clear idea there was prudence in financial management.”¹⁴⁷

GEMAP indeed proved to be an effective signaling device. During Sirleaf’s first several years in office, international partners took dramatic steps to ease the country’s economic burden. In 2006 the UN Security Council elected not to renew timber sanctions on Liberia despite the Liberian government’s failure to meet the benchmarks laid out in a 2003 resolution.¹⁴⁸ The following year, the council lifted sanctions on Liberia’s

export of raw diamonds.¹⁴⁹ The World Bank approved a series of projects punctuated by a \$430 million grant under the 2007 “Re-engagement and Reform Support Program,” to help Liberia meet urgent budget needs as it prepared to clear its arrears and normalize relations.¹⁵⁰ In 2008 the IMF also granted Liberia renewed access to funds after an \$888 million bridge loan helped the Sirleaf administration clear its arrears to the fund. That paved the way to a \$952 million IMF assistance package.¹⁵¹

Even more importantly, the IMF and the World Bank endorsed Liberia’s designation as a “decision point” country under the enhanced HIPC Initiative—the gateway to partial debt relief and to the fuller relief provided at “completion point.”¹⁵² In 2010, the Bretton Woods institutions and the “Paris Club” of major bilateral creditors announced that Liberia had reached completion point, and issued \$4.6 billion in total debt relief to Liberia—roughly 90 percent of Liberia’s debt and more than three times the value of the country’s GDP.¹⁵³ GEMAP was not the primary reason for Liberia’s debt relief but, as a former US Treasury official explains, the arrangement “gave comfort to donors” and “helped speed things up” as they reengaged with Liberia, gave it access to much-needed credit, and granted debt relief.¹⁵⁴

Another of GEMAP’s key contributions was its implementation of controls on public spending—a vital step to curtail the widespread misallocation of state assets that had occurred under the transitional government. Liberia scored large gains in the Open Budget Survey, conducted by the International Budget Partnership to measure budget transparency and oversight. From 2008 to 2010, only Mongolia registered greater improvement among nearly one hundred countries surveyed.¹⁵⁵ GEMAP advisors were not responsible for progress alone—much of which resulted from the new government’s support for reform—but they did help strengthen controls through cosigning and improving information and management systems.¹⁵⁶ Evidence included reports of malfeasance when international advisors were temporarily absent.¹⁵⁷

Improvements in expenditure management helped address corruption, which subsided in part due to controls put in place by GEMAP. Between 2005 and 2010, Liberia rose from 137 to 87 on the Transparency International Corruption Perceptions Index.¹⁵⁸ In the World Bank’s Worldwide Governance Indicators, which offer comparative assessments of member economies, Liberia’s ranking on control of corruption jumped from the 7th percentile in 2004 to the 33rd percentile by 2010.¹⁵⁹ GEMAP played a constructive role in helping to identify and curb some of the most egregious excesses, though Sayeh and others acknowledged that corruption remained a major challenge, and that local actors were able in some cases to find workarounds.¹⁶⁰ GEMAP thus helped change both the actual level of corrupt practices and perceptions of corruption, which affect investment, economic growth, and popular confidence in the economy. Revenues also rebounded from \$80 million in 2005 to more than \$211 million in 2009,¹⁶¹ though GEMAP cannot claim

primary responsibility for that success. Much of the revenue growth occurred via institutional channels where international experts were not present, and reflected reforms initiated by the government and its aid partners outside of the GEMAP framework.¹⁶²

Challenges in Capacity Building

While GEMAP helped greatly in curbing corruption, its capacity-building impact was much more limited. The program's primary focus was on improving operations, as reflected in the brief treatment of capacity building in the GEMAP agreement. International advisors and controllers focused on meeting operational needs much more than on formal training exercises. A two-year program in the Ministry of Finance was the only formal program at the outset, with informal programs in other agencies.¹⁶³ This focus on stopgap service provision reflects a frequent challenge in sovereignty-sharing ventures. "The institutions were so overwhelmingly corrupt, it was hard to avoid focusing on corruption," explains Downing, "but the government wanted capacity building." Cosignature authority contributed to this "tension" in the GEMAP arrangement, because the responsibility to exercise that power in entities riddled with corruption predictably led to conflict, thus making it more difficult to strengthen rapport and build capacity.¹⁶⁴

Even Liberian officials who supported GEMAP almost uniformly criticize the capacity-building aspect of the program. "That was one of the principal reasons that we allowed GEMAP to go—the transfer of knowledge," asserts Wilson Tarpeh, lamenting that GEMAP did not take effective measures to build sustainable capacity.¹⁶⁵ "The capacity-building element was missing from the beginning," adds Alex Cuffy.¹⁶⁶ President Sirleaf echoed that complaint in a 2007 speech, saying that a "major deficiency" of the program was a "lack of capacity development for sustainability." She added, "This fault has contributed to tensions between foreign and local experts, thereby raising issues of ownership and sovereignty."¹⁶⁷ GEMAP's low priority on capacity building frustrated Sirleaf and some Liberian officials and diminished their interest in the arrangement over time. Largely for this reason, Liberians are generally "less glowing in their appraisal of GEMAP than some of the donors are," notes Radelet.¹⁶⁸

GEMAP did bundle and build upon some preexisting technical assistance projects; and late in the program's lifetime, USAID developed a training program with the Liberian Institute of Public Affairs, in response to Liberian complaints. The program proved extremely popular. "It just exploded," recalls Mechell Jacob, who then served as USAID's chief of party for GEMAP.¹⁶⁹ Successive programs were put in place to meet the Liberian appetite for training, such as the Financial Management Training program in Monrovia, and a fellowship program that placed young international professionals as special assistants to senior Liberian officials.¹⁷⁰

However, those efforts did not erase criticism of GEMAP on capacity-building grounds. “We didn’t get value for money,” says former Finance Minister Boima Kamara, comparing the amount of money GEMAP donors spent on the program to its impact on local professional capacity. “I saw it only as a watchdog. It didn’t have the other dimension of the transfer of knowledge.”¹⁷¹ Aagon Tingba notes that GEMAP did not feature the type of monthly training courses that are routine practice in multinational accounting and finance firms. “GEMAP should have instituted that,” he says. “You build an institution so it will be maintained when you leave, and that depends on locals.”¹⁷²

The Difficulty of Sustaining Reforms

GEMAP introduced major upgrades to the financial and accounting systems in many parts of the Liberian government, and greatly strengthened anticorruption controls. It also helped reform-oriented Liberian officials assert their policy preferences, rise in the ranks and claim more authority.¹⁷³ Maintaining reforms after GEMAP’s conclusion has been difficult, however. Backsliding has occurred in many offices, agencies, and ministries where GEMAP advisors and controllers worked, as less reform-oriented managers take office, and staff members revert to old forms of rent-seeking behavior.¹⁷⁴ “I imagine even President Sirleaf knew it was too soon” to end cosigning authority, says Segura, noting that it would be naive to expect GEMAP to change incentive structures in just a few short years.¹⁷⁵

Charles Amo-Yartey, the IMF resident representative in Monrovia from 2014 to 2017, observed in 2017 that Liberia and its international partners had made a great deal of progress in strengthening formal systems, but that those structures alone do not suffice. Leadership and the integrity of public officials are also vital. “You can have all the controls and [public financial management systems] you need, but when senior officials want to come together to circumvent it, they will.”¹⁷⁶ Tingba similarly stresses that reforms established in Liberian institutions can erode quickly when new leaders do not reassert the policy priorities of their predecessors.¹⁷⁷

Backsliding was pronounced at the Forestry Development Authority. Bernard Bropleh says “it went downhill” after the conclusion of GEMAP and the departure of managing director John Woods. He linked this to GEMAP’s limited capacity-building campaign. “If you train 1 percent of the management structure but the others are left, it raises serious pressure,” he says, meaning that the push from staff to revert to past practices will be strong.¹⁷⁸ Dogba Norris agrees. “While we were there, they didn’t have a chance to steal the resources . . . there were very strict procedures in place . . . but as soon as we left, they went back to the same old way,” Norris reports. “We set up very good systems, but they just trashed it,” he adds, noting that a number of FDA staff were later “relieved of their positions or even jailed.”¹⁷⁹ Winsley Nanka

adds: “In my mind, [GEMAP’s reform effort] was not very successful. When they left, everything broke down.”¹⁸⁰

To some extent, the backsliding reflects the resurgence of old ways of doing business when international personnel left. Domestic elite resistance to corruption also weakened. After making significant progress during her first presidential term, Sirleaf’s second term was marked by a less vigorous advancement of good governance. She dealt privately with a number of cases of corruption, giving officials implicated in wrongdoing second chances in an apparent effort to keep her network of political alliances intact.¹⁸¹ She came under criticism, even from her own party, for nepotism after appointing her three sons and other close relatives to senior positions.¹⁸² Those allegations put Sirleaf on her back foot and made it more difficult for her to challenge corruption by other senior officials.

The limits to reform have been most apparent in the SOEs in the period since GEMAP’s departure. In 2013, the former managing director of Roberts International Airport, Ellen Cockrum, was accused of embezzling five hundred thousand dollars during her tenure.¹⁸³ In 2014, John Woods’s successor as Forestry Development Authority director, Moses Wogbeh, and several subordinates were arrested and tried on charges of having defrauded Liberia of millions of dollars by issuing fraudulent forestry concession permits.¹⁸⁴ In 2015, NPA managing director Matilda Parker—once considered a confidante of Sirleaf—and her controller were charged with large-scale theft of state assets, though a court dismissed the case several years later after government lawyers failed to produce witnesses.¹⁸⁵ While there is general agreement that some corruption charges have been brought in Liberia to defame reformers, genuine graft remains a serious problem.¹⁸⁶

Critics of GEMAP faulted the program for the “decidedly minimal role” played by ordinary Liberians in the development of GEMAP.¹⁸⁷ Others have argued that the program presented anticorruption and good economic governance as a foreign responsibility rather than a Liberian one.¹⁸⁸ Clearly, sustained progress against corruption requires changing incentives, norms, and habits. One study of Liberian perceptions of corruption showed that many Liberians regarded international anticorruption initiatives as ineffective, largely because officials continued to earn status and satisfy social expectations by exploiting public office for private gain.¹⁸⁹ The scholar Mike McGovern argued presciently during GEMAP’s lifetime that much more than five years would be needed to bring about the changes in incentives and political norms and institutions that the program envisioned: “Warlords and corrupt politicians could easily wait out a five-year hiatus, and such a period would not be long enough for a newer class of service-oriented politicians to develop a toehold in national politics.”¹⁹⁰ This mirrors arguments by Stephen Krasner and by James Fearon and David Laitin about the dangers of relatively brief external interventions.¹⁹¹

Without more embedded reforms, GEMAP's imprint on Liberia looks shallower today than it did several years ago. In 2018, George Weah became president in the first democratic transition in Liberia in seventy-four years, saying in his inaugural address that "the overwhelming mandate I received from the Liberian people is a mandate to end corruption in the public service."¹⁹² Questions remain. In fact, one factor motivating donors to push for GEMAP in 2005 was the possibility that Weah would be elected that year and prove unable or unwilling to challenge graft.

The problem is far from resolved. Between 2016 and 2019, Liberia's Transparency International ranking slid from 90 to 137.¹⁹³ Since taking office in early 2018, Weah has built a multimillion dollar estate and a modern hotel, raising eyebrows throughout Liberia. A series of scandals have broken, including more than \$100 million of "lost" cash from the Freeport of Monrovia and reports that more than fifteen thousand civil servants had not been paid for months.¹⁹⁴ As UN peacekeepers pulled out and aid declined, food prices spiked, adding to public anger. Since mid-2019, Liberians have held a series of large public protests to challenge economic mismanagement and rising graft.¹⁹⁵ Liberia is therefore at a dangerous crossroads, facing challenges much like those that drove donors to create GEMAP years ago.

Successes and the Question of Replication

GEMAP is a relative success story in providing better services, if not in implanting sustainable reforms. Liberia reached HIPC status, received debt relief and renewed access to international funding, and had sanctions relaxed as the program moved toward its 2010 completion. GEMAP's sovereignty-sharing elements helped the Sirleaf administration to achieve significant governance improvements and growth, and to repair a badly damaged international governance reputation. "GEMAP left behind stronger entities [and] was a successful intervention. It was necessary," says former Finance Minister Ngafuan.¹⁹⁶

The fact that GEMAP advisors were not highly visible to the general population makes it difficult to assess the extent to which the arrangement earned public legitimacy. No surveys provide a firm empirical basis for assessing its approval. However, Liberia's electorate expressed clear appreciation for economic growth and reduced corruption. A remarkable 74 percent expressed confidence in their government by 2008,¹⁹⁷ and Sirleaf won reelection in 2011 with more than 90 percent of the vote. While GEMAP obviously was not the only factor, these outcomes suggest that its work helped build the government's legitimacy—the ultimate goal of a sovereignty-sharing scheme. Many external observers also saw the arrangement as a success, and USAID cited GEMAP as a possible "model for building economic governance in post-conflict environments."¹⁹⁸ In 2011, the World Bank featured GEMAP in its *World Development Report* as an "extraordinary and successful episode in international

support,”¹⁹⁹ and GEMAP continues to be discussed as a case study in the bank’s dialogues on fragile states.

However, the political stars do not often align as well for shared sovereignty as they did in Liberia. Domestic leadership was a major factor. As Robert Rotberg argues, the program’s success owed largely to “Johnson-Sirleaf’s manifest willingness to ride herd on those in her government who would have preferred to act corruptly.”²⁰⁰ GEMAP’s architects readily acknowledge that in the absence of the arrangement, the Sirleaf administration would likely have generated positive results.²⁰¹ Clearly, sovereignty-sharing arrangements work best when the two sides work toward common goals, with international actors buttressing and supporting national authorities as the latter come to their feet. That cooperation was evident at the top in Sirleaf’s support for GEMAP and strong working relationship with successive US ambassadors and other donor officials.²⁰² At lower levels, GEMAP advisors and their Liberian counterparts shared a common language. Liberia’s cultural connections to many countries represented in the program—especially the United States—also facilitated working-level relationships and increased local receptiveness to international involvement.²⁰³

US leadership and relative donor consensus on the need for deep international engagement were also key to GEMAP’s successes. Other key donors, such as Britain, France, and the IMF and World Bank supported the program and viewed the US government as an appropriate leader given its special historical ties to Liberia and its extensive political influence in Monrovia. US and other donor officials also worked to procure the assent of ECOWAS governments, who were wary of sovereignty-sharing precedents but understood the regional risks of allowing Liberian government to remain dysfunctional. The resulting multilateral character of GEMAP gave it added legitimacy.

Moreover, the sheer extent of Liberia’s incapacity and dependency on foreign aid gave the government powerful incentives to implement the arrangement faithfully. While GEMAP’s cosignatory arrangement was an important lever for international influence, the prospect of sanctions, debt relief, and renewed access to aid was also a powerful driver for government cooperation.²⁰⁴ These conditions—a very weak and dependent state, a domestic leader with a strong commitment to reform, major foreign partners (the United States and European Community) committed to leading decisively, and relatively broad international support—are difficult to replicate. Those who participated in GEMAP and saw successes there agree.²⁰⁵

Proposals to emulate GEMAP generally have foundered on domestic or international resistance. In 2012, donors and a unanimous UN Security Council pushed Somalia to create a “joint financial management board” to manage government revenues and aid receipts, to address rampant diversion of state funds into officials’ private accounts.²⁰⁶ Somali leaders refused on sovereignty grounds.²⁰⁷ Donors retreated to an

international advisory board,²⁰⁸ showing that even a very weak state can resist calls to share sovereignty. With threats like piracy and al-Shabaab, Somali leaders could call the bluff of donors threatening to cut off aid.

UN Secretary-General Ban Ki-moon's 2014 proposal for a GEMAP-like program in the Central African Republic also ran aground after neighboring African states expressed their misgivings.²⁰⁹ International resistance thus forestalled a sovereignty-sharing scheme that the CAR, less a strategic priority than Somalia, may otherwise have had little capacity to resist. Proposals to develop GEMAP-type schemes for other troubled states such as the Democratic Republic of the Congo, Zimbabwe, and South Sudan similarly have gained little traction.²¹⁰ Deep internal divisions and a lack of strong national partners make the prospects of a successful joint venture more difficult to envision in those and many other fragile states.

A few other sovereignty-sharing schemes have taken shape, but they have been deeply troubled. After Haiti's devastating 2010 earthquake, US officials convinced Haiti to create a mixed commission to monitor reconstruction aid.²¹¹ Haitian Prime Minister Jean-Max Bellerive presented the idea to the country's Parliament, and when asked whether the plan would surrender Haiti's sovereignty, he replied with a candid indication of compromised consent: "I hope you sense the dependency in this document. . . . I am optimistic that in 18 months, yes, we will be autonomous in our decisions. But right now . . . we are not."²¹²

Co-chaired by Bellerive and former US President Bill Clinton, the Interim Haiti Recovery Commission (IHRC) had broad authority to lead Haiti's reconstruction planning and approve projects.²¹³ Although Haitian President René Préval could veto IHRC decisions,²¹⁴ critics flayed the commission for violating Haitian sovereignty, calling it part of a "de facto trusteeship"²¹⁵ and a form of "neocolonial humanitarianism . . . to dispossess [Haitians] of their sovereignty—or what remains of it."²¹⁶ Many saw the IHRC as part of a broader end run of the Haitian government that left it prostrate, an "NGO republic" at the mercy of foreign powers.²¹⁷ Despite US insistence that reconstruction was "Haiti-led,"²¹⁸ twelve Haitian members of the commission lamented that they felt "completely disconnected" from the decision-making process.²¹⁹ Criticism mounted that the IHRC was simply a means for foreign donors to pursue their own "neoliberal" priorities.²²⁰ Poor transparency and public outreach only magnified perceptions that the IHRC was more about seizing sovereignty than about sharing it.²²¹

Functionally, the IHRC floundered. Understaffing, unhelpful donor earmarks, anemic domestic capacity, and vague domestic reconstruction priorities all undermined performance that could have won the IHRC greater public and elite acceptance.²²² The IHRC largely failed to provide effective stopgap services or develop stronger indigenous reconstruction capacity.²²³ By March 2011, only 3.7 percent of the \$3.2 billion of approved projects had been disbursed,²²⁴ and little of the rubble

covering Port-au-Prince had been cleared. In 2012, Haiti's Parliament refused to renew the IHRC's mandate.²²⁵ This ill-fated venture showed how poorly sovereignty-sharing ventures are apt to perform when they lack domestic buy-in.

Domestic headwinds have also stymied a unique hybrid anticorruption committee in Afghanistan. In 2010, donors frustrated by the country's rampant official graft pressed Afghan President Hamid Karzai to create a mixed anticorruption entity.²²⁶ His consent was compromised, as he owed his position in power more to patronage than to transparent governance. Karzai created the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC), with three Afghan and three international appointees.²²⁷ However, he undermined it from the start, lodging it within the discredited domestic anticorruption body and appointing a notoriously corrupt political ally as the MEC's head—"a real kick in the teeth" to donors.²²⁸ The MEC made little headway as the Karzai government withheld cooperation and brushed aside nearly 90 percent of its recommendations.²²⁹

The MEC has made more headway under President Ashraf Ghani, a former World Bank official and finance minister who campaigned on pledges to curb corruption. Ghani granted the MEC greater independence and authority.²³⁰ By mid-2020, the MEC had furnished nearly 1,400 policy recommendations, asserting that the government has adopted nearly 40 percent of them.²³¹ It has issued reports detailing corruption in myriad official agencies.²³² International "mentors" have colocated with Afghan personnel in other anticorruption units tasked with following up on MEC reports.²³³ The foreign personnel have no formal judicial or law enforcement powers,²³⁴ however, and Afghan personnel have been loath to investigate senior officials.²³⁵

When it comes to probing high-level corruption, sovereignty is not a shield easily pierced. Legitimate state concerns about external exploitation exist alongside powerful elite interests to avoid accountability—interests hardly confined to fragile states. Of all forms of shared sovereignty, the GEMAP model may prove among the most potentially effective, and among the most difficult to replicate.

PART 3

Concluding Observations

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The Path Ahead

THE RULE-OF-LAW CHALLENGES facing fragile states are seldom amenable to easy fixes. This book has shown that sovereignty-sharing arrangements can perform well when they enjoy support from a sufficiently strong political coalition. In such cases, joint ventures have provided public services, sometimes helping to legitimate the involvement of external actors and generating a “virtuous circle” that facilitates further performance.¹ Yet this study also has shown that sovereignty-sharing arrangements often lack strong political foundations, thus undermining their performance and prospects for earning public legitimacy. Compromised or qualified host state consent and narrow overlapping interests often pose challenges from the start, contributing to ambiguous agreements and exacerbating the difficulty of implementing hybrid ventures in fragile state environments. In most cases, host state officials have been able to limit the reach of rule-of-law ventures that threaten their personal or regime security interests. Largely for this reason, shared sovereignty sometimes has helped patch holes in public service provision, but has a much weaker record of embedding durable domestic rule-of-law reforms.

Most of the sovereignty-sharing ventures examined in this book are, or were, part of a generation created in the mid-2000s. That generation is nearing its end. Yet new initiatives and proposals featuring shared sovereignty continue to arise because, despite the many challenges of joint rule-of-law ventures, more appealing policy options are sometimes unavailable. Justice advocates are pushing for mixed tribunals for South Sudan, Sri Lanka, and Syria alongside the ongoing hybrid courts for Kosovo

and the Central African Republic. Citizens weary of government graft are advocating for international anticorruption commissions in Lebanon and Latin America. Crises such as the Covid-19 pandemic may lead to further demands for shared sovereignty, since a government unable or unwilling to meet its public health responsibilities poses obvious global risks.

This concluding chapter discusses the future prospects for sovereignty sharing in fragile states. It presents some key analytic takeaways, considers their policy implications, and discusses geopolitical shifts and the evolution of shared sovereignty. It ends by discussing when sovereignty-sharing arrangements are most likely to be able to contribute usefully to the difficult state-building process in fragile polities.

Has Sovereignty Sharing Been Justified?

Even when governments are struggling, external involvement in core sovereign functions raises real normative questions, given power asymmetries and the principle of self-determination. Diplomatic language about “partnerships” can help at the margins, but the underlying transfers of authority remain sensitive and usually contentious. As has been discussed in chapters 1 and 2, the practice thus requires a strong justification in any given instance, and sovereignty-sharing ventures are apt to be considered legitimate only to the extent that various audiences view them as outperforming domestic rule-of-law institutions.

By this standard, most of the sovereignty-sharing arrangements examined in this book have reasonably strong claims to legitimacy. Most performed well relative to the likely domestic institutional alternatives. The Special Court for Sierra Leone (SCSL), the Governance and Economic Management Assistance Program (GEMAP) in Liberia, and the International Commission against Impunity in Guatemala (CICIG) clearly delivered services far beyond what domestic institutions reasonably could have delivered, even if each struggled to implant lasting reforms. CICIG in particular earned unambiguously broad public legitimacy in Guatemala, to the point that audiences in several other states have clamored for similar arrangements.

International involvement in domestic law enforcement in Timor-Leste certainly yielded better results than a traditional, support-only police mission or nonintervention would have produced during and immediately after that country’s 2006 security crisis. After 2007, the performance contribution of international police became less clear, and a training-focused mission could well have achieved a comparable impact without the cost of continued external involvement in sovereign affairs.

A similar logic applies to the Extraordinary Chambers in the Courts of Cambodia (ECCC). It has delivered a handful of credible landmark verdicts for mass atrocities that domestic courts could not have produced to a similar standard, and it has retained relatively strong public support throughout its operation. Its latter cases, however,

have been plagued by political interference from the Hun Sen government, making them much less distinct from the troubling practices of domestic criminal courts. The justification for continuing the joint venture has thus eroded over time, and with little prospect of additional cases, one can make a strong case that the United Nations should withdraw.

The process at the Special Tribunal for Lebanon (STL) is still not complete, though that venture—so riven by domestic discord that sovereignty had to be appropriated when it could not be shared—has struggled to justify its creation by delivering effective justice. Its legitimacy has been debated fiercely from the outset, and without stronger host state cooperation, the STL has been unable even to apprehend suspects. Support for the venture has waned, even within groups that were initially supportive, and its salience and political relevance declined even before the Trial Chamber issued a relatively muted verdict in its key trial.

This book has also touched more briefly on other sovereignty-sharing arrangements that have been perceived in many quarters as justified based on their performance. These include the Regional Assistance Mission to Solomon Islands (RAMSI), the Bosnian War Crimes Chamber, and the hybrid Extraordinary African Chambers in Senegal. It has also noted a number of joint ventures that have failed badly, such as joint policing in Cambodia in 1991–93, the anemic Special Panels for Serious Crimes in Timor-Leste, and the Interim Haiti Recovery Commission after that country's 2010 earthquake. Other sovereignty-sharing schemes have had more mixed results, such as the hybrid anticorruption commission in Afghanistan, or UN policing in Kosovo and Haiti. The jury is still out on whether a number of ongoing missions are justified, such as the new hybrid court for Kosovo and the mixed tribunal and joint policing arrangement in the Central African Republic.

Implications for Policy Practice

The mixed scorecard of sovereignty-sharing ventures, in terms of both performance and perceived legitimacy, means that the practice should be neither discarded nor regarded as a panacea. The fact that most such ventures have provided useful services is reason enough to keep sovereignty sharing on the unappetizing menu of international policy options for addressing governance in fragile states, even if they generally have struggled to help erect stronger domestic institutions that sustain performance over time.

Looking forward, rule-of-law proponents in major states, international organizations, fragile state governments, and civil society organizations need to discern when to pursue shared sovereignty, how best to design joint ventures, and how to facilitate strong performance on challenging fragile state terrain. This study points to several key factors that policy practitioners should consider.

Building Domestic Political Support

The most crucial determinant of performance and perceived legitimacy is whether a winning supportive political coalition emerges and survives. Any such coalition requires significant support from within the host government, including assent from its leader. His or her backing is crucial in determining a venture's success. In most fragile states, political power and decision making are highly centralized, and leaders have extensive formal and informal means by which to punish or reward their subordinates. The business of governance is typically more about serving the leader than about serving the state. When the leader opposes a venture or offers tepid support, staff-level cooperation with external actors almost always deteriorates. The ECCC, joint policing in Timor-Leste, and the mixed anticorruption initiative in Afghanistan under Hamid Karzai are examples.

The STL illustrates even more dramatically the challenge—if not the folly—of seeking to exercise authority vis-à-vis a reluctant, recalcitrant, or paralyzed sovereign. In that case, even a sizable domestic base of support with strong international backing has proved no substitute for a winning domestic coalition. Weak domestic support has also undermined external governance interventions in Haiti and Afghanistan, where US leadership has not been an antidote to some forms of domestic resistance, and to some degree has engendered that opposition.

A facile conclusion would be for international actors to avoid sharing sovereignty with domestic leaders who cannot commit credibly to a joint venture. That is much easier said than done. Leaders' attitudes and identities change. Even when a head of state resists a sovereignty-sharing scheme, better options may not be available to address governance failings that cause problems both inside the host state and beyond its borders. In such cases, the best hope for a sustainable and successful sovereignty-sharing scheme lies in the cultivation of pockets of elite support, buttressed by international pressure and backing from other domestic actors, such as the media, civil society, and the general public. This is the business of the external actors directly involved in the intervention, the diplomats supporting them, and above all, domestic leaders sympathetic to the venture.

Lower-level domestic officials are always a key constituency and are often resistant to part with authority—the transfer of which is an unambiguous statement of their deficiencies. Domestic government personnel are among the most likely to challenge the legitimacy and effectiveness of international actors as a means to reclaim their status and authority as well as any associated pecuniary payoffs. Their role is particularly important when a sovereignty-sharing venture is highly technical in nature and its impact difficult for the public to discern. This is most readily apparent in some areas of economic governance, such as the internal financial controls at the heart of

GEMAP in Liberia. By contrast, forms of shared sovereignty that are salient to the general population, such as high-profile criminal cases in Freetown or international policing in Dili, afford the possibility of winning extensive public support through strong performance.

The most interesting case in this regard is CICIG. It enjoyed enough initial support among Guatemalan authorities to survive the ratification process, but it could not rely heavily on top-level support once it began investigating past and present leaders including Otto Pérez Molina and Jimmy Morales. Instead, CICIG's winning Guatemalan coalition evolved to include many members of the public; civil society organizations; media; and some lawmakers, judges, and executive officials who remained committed to its quest. CICIG's survival of its 2017 showdown with Morales suggested that it would "outgrow" its dependency on support from domestic leadership by performing well in the eyes of many domestic stakeholders, broadening its local coalition, and enjoying continued foreign backing. Two years later, the government's closure of CICIG was a reminder that even a joint venture that earns strong public and international legitimacy cannot survive very long without a reasonably strong base of support—or at least acceptance—among host state elites.

Designing Joint Ventures

This study also carries lessons for the design of sovereignty-sharing arrangements. Treaties offer the strongest institutional foundation, as they are legally binding and require legislative ratification, which provides input legitimacy and indicates relatively broad domestic buy-in for a joint venture. In many cases, governments are either unable or unwilling to share sovereignty via treaties that would be difficult to modify or unwind. Governments generally resist tying their hands for an extended time, and international partners are typically reluctant and often unable to bind them. Executive agreements and MOUs are the most likely path for future sovereignty-sharing deals, offering flexibility but introducing problems when rights and responsibilities are unclear.

The evidence suggests that as the residual holders of sovereignty, governments will be able to exert considerable sway and modify deals in their favor as international attention and bargaining power wane. In some instances, such as policing in Timor-Leste and GEMAP in Liberia, domestic elites were able to modify and eventually unwind sovereignty-sharing schemes in a relatively brief period of time and without paying heavy political or financial prices. In other instances, such as the ECCC in Cambodia and the Special Tribunal for Lebanon, domestic authorities have been able to shape, limit, or control processes in ways that protect their regime interests. Over time, this may sap donor interest in such arrangements.

Designing a hybrid arrangement also requires defining its scope. Here the gold standard—a contract spelling out the relative rights and responsibilities of the

partners—is difficult to achieve. The governments of fragile states usually seek to impose narrow parameters on external actors' authority. They may welcome UN police to quell dangerous urban riots while disfavoring external control over local officers, they may allow a hybrid tribunal to prosecute their foes but not their friends, or they may admit outsiders to manage low-level graft while balking at foreign probes of grand corruption.

This presents a policy dilemma for international actors and civil society leaders keen to advance the rule of law. Joint ventures are most likely to elicit host state cooperation and meet their mandates when their missions align with domestic incumbent interests. Yet bending too much in that direction can turn a sovereignty-sharing venture into a political tool for incumbents rather than a means to strengthen the rule of law. Designing such an arrangement requires optimizing between the twin objectives of securing necessary domestic cooperation and constraining the domestic actors who hold sovereign power.

Applying International Leverage

This study shows that when domestic elites seek to capture sovereignty-sharing ventures to serve relatively narrow aims, international sponsors need to be willing and able to apply considerable leverage to hold the host government to the terms of the deal. This is not as straightforward as it might appear given the material weakness of the fragile states in question. The official external partners in many sovereignty-sharing schemes are international organizations such as the United Nations, the European Union, or the African Union. Each of these faces distinct challenges in exercising the type of leverage needed to keep sovereignty-sharing schemes on track.

The United Nations has a diverse membership and a diffuse organizational structure, and these internal constraints often prevent it from speaking with a strong corporate voice. The European Union, NATO, and other Western-led institutions may be capable of more decisive action, but they are apt to face stiffer legitimacy challenges because they represent the values and interests of select powerful states. The African Union and other southern organizations may enjoy the legitimacy that comes from regional representation, but member governments are typically loath to drive a hard bargain on matters concerning national sovereignty. Most of the relatively successful ventures have been driven by one or two states with extensive influence and deep interest in the target state, rooted in a combination of historical experience, strategic value, and economic investment. The SCSL was a US-led venture with Britain playing a key accompanying role. The United States was also the lead external player for GEMAP and CICIG, as Australia was for RAMSI.

Where this ingredient has been missing, sovereignty-sharing arrangements have drifted or floundered. The ECCC in Cambodia and the joint policing arrangement

during the UN Mission in Timor-Leste (UNMIT) illustrate the risk of partnership drift and obsolescing bargains, as national officials reclaimed authority in ways at odds with the original agreement. In both cases, UN bargaining power was compromised by the lack of a key member state or coalition willing to spend much political capital to enforce the terms of the deal. The policy implication is that international actors should be wary of sovereignty-sharing schemes in the sensitive rule-of-law domain unless a powerful foreign state can credibly pledge to stay committed.

Leverage is not just about guns and butter; a foreign state's history and relationship with the target state clearly affect its clout. Many analysts and practitioners cite Liberia as a case in which reasonably warm—though hardly unblemished—historical ties have contributed to extensive US leverage in Monrovia and have facilitated US leadership of international intervention. Even a foreign power with a deeply troubled historical record in the host state can wield levers of influence to support a sovereignty-sharing arrangement, especially if many domestic audiences regard the outside power's contemporary engagement as relatively benign. The case of Guatemala shows this strikingly.

Still, the exertion of strong leverage by an interested foreign government can become a double-edged sword if domestic observers come to see the sovereignty-sharing venture as a vehicle for neocolonial clout or regional hegemony. In that context, external actors will lack legitimacy, and this in turn impacts their ability to attract the supportive domestic coalition they need to deliver effective services.² Critiques of external actors can of course be instrumental. When the leaders of fragile states disfavor shared sovereignty, antforeign sentiment is not hard to arouse, especially among government actors keen to regain full authority.

The Special Tribunal for Lebanon's public legitimacy and ability to function have been impaired from the start, despite strong American and French backing and in some ways because of it. Accusations of Australian imperialism in the Solomon Islands or American hegemony over Haiti are other examples in which host authorities and other critics have adopted anticolonial rhetoric to deny legitimacy to ongoing external involvement in sovereign functions. The availability of this normative defense only magnifies the importance of substantial domestic elite backing for a joint venture to succeed.

Delivering Effective Services

For a sovereignty-sharing venture to be justified, it normally must deliver better services than local institutions could provide alone. Effective performance is by no means assured, even in reasonably favorable political conditions. International actors arrive with normative approaches and skills that are not always well suited to the local environment, and they usually work alongside local partners who are

burdened by severe capacity shortfalls and perverse incentives. Both domestic and international rule-of-law proponents need to take measures to facilitate strong performance in the field.

When one or more powerful states has enough interest to hold the host state to the deal, it usually also has enough interest to send ample funds and reasonably qualified personnel. The Special Court for Sierra Leone and RAMSI are both cases in point. By contrast, where no external actor has exercised this type of leadership, missions have struggled to coordinate service delivery and develop shared principles and practices to inform capacity-building and domestic reform. Here the Special Panels for Serious Crimes in Timor-Leste and the UN policing mission in Cambodia are apt examples.

In general, external actors have been most effective in performing technical tasks that can be abstracted from the local environment to some degree. Examples include the conduct of specialized criminal courtroom proceedings, the application of forensic technology, or the design and implementation of financial databases to monitor corruption. External actors generally have struggled to carry out tasks that require deep contextual knowledge. This charge is most readily apparent in policing, but also has been leveled at hybrid courts and international commissions, as in the case against Sam Hinga Norman and the Kamajors at the SCSL.³

The quality of the international supply of services is an element that can and should be improved over time. Some international organizations, such as the IMF and the World Bank, have created offices to address the special challenges facing fragile and postconflict states. However, there has been remarkably little investment within the UN system to develop stronger institutional capacity to address rule-of-law challenges in areas such as criminal justice, policing, and anticorruption.

Twenty-five years after the rebirth of international criminal justice via the tribunals for the former Yugoslavia and Rwanda, the United Nations still has no office dedicated to amassing and applying lessons learned to make its involvement in transitional justice ventures more effective. The International Criminal Court (ICC) could develop a role as the prime locus of international standards and expertise. In addition to taking cases that national courts are unwilling or unable to try, the ICC could develop a more proactive form of “positive complementarity” whereby it runs coordinated programs to build domestic judicial capacity.⁴ There is no mechanism yet enabling the ICC to serve as the external partner to a hybrid court, but the ICC does constitute something of a home base for many of the practitioners who occupy the international criminal justice circuit. This may help develop a cadre of professionals well trained in navigating fragile state environments. The ICC can help foster agreement on certain standards and practices applied by hybrid courts—at least when they deal with international laws and procedures.

The quality of personnel has been a particular problem in the international policing mission. With the notable exception of RAMSI, most such interventions have suffered from a lack of interest among major powers to take the lead in local law enforcement and contribute the number and caliber of officers needed to lead effectively. The United Nations has tried to build an institutional hub for policing, and to develop and disseminate standards around concepts such as community policing, but it has had limited success. The Police Division and Office of the Police Adviser remain lean, and no adequate standby force (or even standby arrangement) exists. The secretary-general is compelled in each instance to grovel for police contributions, often accepting low-quality national units on terms that compromise UN leverage to hold them accountable for misdeeds.

In other governance areas, international organizations backed by key member states could also develop the competency to serve as lead partners. The World Bank is well positioned to take the lead on ventures addressing corruption in procurement and public financial management practices, such as those proposed unsuccessfully for the Central African Republic and Somalia. As in the case of criminal law, however, international standards and practices regarding corruption will not always be accepted locally.

A central challenge in these rule-of-law domains is that major powers are loath to invest in preparing for state-building interventions *ex ante*, out of concerns for cost and for fear of losing control over whether and how specific missions unfold. This aversion to develop collective state-building capacity reflects powerful states' own aversion to sharing sovereignty. Without stronger collective capability, more pressure falls on states to lead specific initiatives if they are to bear fruit.

The selection of personnel also matters greatly and is closely related to the existence of a supportive domestic coalition and strong international leverage. Appointments of key personnel are among the main mechanisms by which domestic and international partners bolster or undermine a joint venture. Debates over controversial appointees at the ECCC in Cambodia and the Public Prosecutor's Office in Guatemala illustrate the point. When host state elites support a venture, they are apt to appoint reform-minded domestic officials as counterparts to external actors, which helps those reformers build skills and elevate their standing within the domestic system. When external sponsors care enough about the target state to exercise the sources of leverage at their disposal, they are likely to commit resources and better-trained personnel.

Individual actors obviously affect how sovereignty-sharing schemes are implemented—a frequent refrain in interviews with practitioners for this book. High-level political relations between the host state and the intervening parties set boundaries on what is possible, and tilt the playing field for implementation, but individual agents can drive outcomes within that range. A favorable political environment

is no guarantee for success, and an unfavorable one does not necessarily foreclose all avenues for effective work. While sovereignty norms are invoked regularly in high-level discussions and provide important context for the engagement, how arrangements play out in the workplace hinges largely on personal relationships. External actors with reputations for wisdom and respect navigate the normative terrain much more ably than do those seen as imperious and condescending. External actors who give due credit to their national counterparts are much more likely to engender cooperation and mutual respect, as CICIG developed through its close partnership with Guatemala's Public Prosecutor's Office. Similarly, national officials understood to have technical competence and personal commitment to the public interest are more apt than venal or listless colleagues to be seen as the rightful holders of sovereign power.

The degree of domestic support outsiders enjoy clearly affects their performance as well. For domestic officials or civil society leaders committed to the aims of a joint rule-of-law venture, promoting official and public cooperation is crucial. For state officials, this may entail setting incentives for subordinates based on their constructive engagement with international counterparts, as Liberian Ministry of Finance leaders did to help GEMAP function well there. For civil society actors, working alongside a sovereignty-sharing venture can help boost its effectiveness and earn it public support. This occurred in Cambodia, where local NGOs partnered with the ECCC for a wide range of outreach and victim participation functions, as well as for collection of potential evidence.

Where external actors and local counterparts function well together, they may earn a measure of performance legitimacy that can attract further international resources and add to the ranks of the supportive domestic coalition. In some cases, effective implementation of shared sovereignty may lead to replication. Sovereign leaders are more likely to countenance such ventures if they can identify precedents that have met their mandates and advanced incumbent interests. For example, the Siniora government in Lebanon saw the Special Court for Sierra Leone as a useful model. Donors and other external actors will push fragile states to adopt models they regard as reasonably effective, as in the international pressure on Sri Lanka and South Sudan to agree to hybrid criminal courts. Nicholas Koumjian, head of the UN Independent Investigative Mechanism for Myanmar, anticipates that more hybrid courts will take shape, as the reach of the International Criminal Court is limited, and governments will seek forms of accountability that do not require them to relinquish sovereignty.⁵ Public stakeholders will sometimes demand that a weak government emulate joint ventures they deem successful. This is precisely what happened in Honduras and El Salvador as CICIG became a regional lodestar for anticorruption advocates.

However, effective rule-of-law ventures also can elicit antibody responses. Donors and the public may see an anticorruption initiative that brings down venal senior officials as a ringing success, but fragile state leaders are apt to perceive a serious threat. This is an adverse side effect of the gains scored by CICIG in Guatemala. Domestic leaders generally will resist ventures that give real teeth to external actors, or hybrid bodies that could easily turn against them. The closer a proposed intervention comes to the prime levers of official power, such as regularly constituted courts, police forces, and lucrative economic ministries, the more sovereign resistance will arise. These are precisely the points in the system that most need to be addressed if a Weberian rule of law is to take hold.

Geopolitical Trends and the Evolution of Shared Sovereignty

The sovereignty-sharing ventures discussed in this book arose in a post–Cold War global system dominated, at least until recently, by Western liberal democracies. The governments of fragile states generally have delegated sovereign authority only when pressed or encouraged to do so by international coalitions or institutions led by the United States and its major Western treaty allies. At least two major currents in world politics may affect whether and how sovereignty-sharing ventures are designed in the future: the rise of inward-looking nationalist movements in the West, and the burgeoning role of large non-Western powers in global governance.

Shifts in US Foreign Policy

The US government has been the primary force behind most sovereignty-sharing schemes to date. Early ventures took shape during the George H. W. Bush and Clinton administrations. The George W. Bush administration came to office expressing aversion to “nation-building,” but progressively adopted the practice—most obviously in efforts to meet the multifaceted challenges of stabilizing Afghanistan and Iraq. The Bush administration also carried through talks for Cambodia’s ECCC and the Special Court for Sierra Leone, which had begun under Clinton. The Bush administration also led the charge for several sovereignty-sharing ventures including GEMAP in Liberia, CICIG in Guatemala, and the Special Tribunal for Lebanon. This reflected a perceived need to address the problems of weak states decisively, as well as misgivings about the International Criminal Court. The Obama administration remained engaged in each of the ventures it inherited, showing that while party views on many foreign policy issues diverged, sovereignty sharing was not a patently partisan cause.

Criticism of nation building waxed again as the staggering costs and meager success of US-led efforts in Iraq and Afghanistan in particular became apparent. As a presidential candidate, Donald J. Trump stressed his aversion to nation building

abroad; and once elected, he disavowed the practice in Afghanistan. His administration's resistance to investing heavily in the governance of fragile states—and a similar tide of opinion among Republicans and some Democrats in Congress—portended a reduction of US support for sovereignty-sharing initiatives.

Early developments during the Trump administration suggested that, despite the president's rhetoric, the US government would not scale down its involvement in fragile state governance abruptly. Even as Trump insisted in August 2017 that the United States was “not nation-building again” in Afghanistan, he outlined a policy of robust engagement that contained many of the same elements of past US engagement, including aspects of shared sovereignty over Afghan military affairs and associated capacity-building programs.⁶ A week later, US Ambassador to the United Nations Nikki Haley and key members of Congress defended the commissioner of CICIG in Guatemala after he called for investigation into President Jimmy Morales's campaign finances.⁷ A few months later, the US government supported boosting the size of the UN peacekeeping mission in the Central African Republic.⁸ In the most troubled of states or when US core interests are on the line, American policymakers are still apt to demand some control over domestic functions and to seek to refashion key local institutions.

Still, shifts in US domestic politics and foreign policy affected American support for at least one key sovereignty-sharing arrangement. Most striking was the muted US response to the Guatemalan government's moves in 2018 to terminate CICIG, which previously enjoyed bipartisan support in Washington. Notably, the US turn away from CICIG was led by was Senator Marco Rubio (R-FL), a professed internationalist. Trump administration officials also complained more stridently than their predecessors that the United Nations infringes on American sovereignty, as when the other fourteen members of the Security Council voted to condemn the move of the US Embassy to Jerusalem.⁹ Both the administration's defense of strong national sovereignty and its greater evident tolerance of authoritarian governance suggest a greater likely receptivity to Westphalian claims by fragile states—at least those with favorable ties to Washington. Given the realignment of the Republican and Democratic parties in recent years, changes in presidential leadership or legislative control will not necessarily result in a return to the status quo ante.

Tectonic Shifts and the Rise of the BRICS

Another relevant tectonic shift is the emergence of non-Western providers of international assistance, whether bilaterally from rising powers like China or multilaterally from institutions like the New Development Bank and the Asian Infrastructure Investment Bank. These give the governments of fragile states additional options, and diminish the bargaining leverage of the Western powers. In some cases, this will likely

help reluctant sovereigns secure aid without ceding domestic authority. This dynamic has helped Sri Lankan leaders ward off international proposals for a hybrid criminal court to address civil war atrocities; Western diplomats have had limited sway in a country with close ties to both China and India.¹⁰ The government of South Sudan similarly may benefit from a burgeoning relationship with Beijing as it seeks to hold proponents for a hybrid court at bay.

In other cases, the rise of the BRICS and other non-Western powers may make sovereignty sharing more likely by helping governments negotiate joint ventures as alternatives to fully international control. Fragile state authorities may share sovereignty to head off pressure for proceedings of the International Criminal Court, for example, or to avert Chapter VII peace enforcement interventions. The Extraordinary African Chambers in Senegal are an illustration of this logic, as African governments sought a regional solution to avert Belgian exercise of universal jurisdiction.¹¹

The idea of sharing sovereignty grates against the BRICS' long-standing defense of Westphalian sovereignty and noninterference. Credible state consent can vitiate these concerns, but the governments of the BRICS and many other non-Western powers remain deeply skeptical of uninvited interventions. Russia has been a relatively stalwart defender of Westphalia beyond the borders of the former Soviet Union, notwithstanding its serial infringements on the autonomy of its post-Soviet neighbors.¹² India continues to contribute widely to peacekeeping missions, but approaches principles such as the responsibility to protect (R2P) with great caution.¹³ South Africa accepts the concept in principle, but laments its selective implementation and its imposition by strong states against weak ones.¹⁴

Despite such reservations, emerging powers sometimes have been drawn into the exercise of sovereign functions as they seek to exercise leadership in addressing threats to international security. Brazil's most noteworthy engagement has come in Haiti, where it played a lead role for the first time in a complex UN peacekeeping operation: the UN Stabilization Mission in Haiti (MINUSTAH). MINUSTAH was a Chapter VII mission created to address civil unrest and conflict in Haiti following the 2004 coup against President Jean-Bertrand Aristide. It involved peacekeepers deeply in Haitian domestic security. The decision to exercise leadership in MINUSTAH was contentious in Brazil, which had long eschewed Chapter VII missions in deference to Westphalian norms.¹⁵ Brazilian officials sought to emphasize the consensual aspects of the mission, arguing that only part of the UN Security Council resolution that created MINUSTAH was based on Chapter VII.¹⁶ Still, the mission engaged Brazilian personnel in unprecedented policing roles that domestic and regional critics saw as a derogation of principle.

The administration of Luis Inacio Lula da Silva argued that an interest in international leadership required Brazil to engage. Lula's foreign minister said, "The

maintenance of peace has a price,” and that nonparticipation would bring “exclusion from the decision making process or worse, dependency in relations to other states or regions.”¹⁷ His statement hinted at two of Brazil’s motives: its bid for a permanent seat on the Security Council and for a larger leadership role in Latin America. Some in the region hoped that Haiti would demonstrate the possibility of Latin American and Caribbean solutions to area challenges, obviating the need for US intervention.¹⁸

China has been active in several peacebuilding operations featuring shared sovereignty. The first international head of administration at the ECCC in Cambodia was Chinese, and Chinese police and peacekeepers have operated extensively in Timor-Leste, Liberia, the Democratic Republic of the Congo, South Sudan, and elsewhere.¹⁹ The Chinese government’s frequent defense of Westphalia has not prevented it from supporting or acquiescing in intrusive interventions to manage certain threats to human security, and Chinese officials have seen participation in multilateral missions as a means to normalize and legitimate a stronger international leadership role.²⁰

As China’s strategic and economic engagement expands in sub-Saharan Africa and other regions wracked by civil conflict and governance failures, peacebuilding and rule-of-law interventions may also advance Beijing’s interests in safeguarding Chinese citizens, investments, and local political partners. Deep Chinese involvement gave rise to an important experiment in Zambia, the second largest recipient of Chinese investment in Africa. In late 2017 the government commissioned a small number of Chinese nationals as police officers—an unprecedented step. That move was quickly reversed after a nationalist outcry. A former Zambian presidential spokesman called their appointment an “insult” that violated the constitution and said, “When we see a uniform of the police, it signifies our identity. It signifies our sovereignty. How would we be feeling to see a police officer and be saluting a Chinese [national] in our own country?”²¹

Over time, as China’s material and political interests in fragile states rises, it will almost certainly play a larger peacebuilding role. Chinese nationals may come to wield sovereign authority related to core rule-of-law functions, even if their approach to the rule of law differs considerably from the prevailing Western understanding of the concept. In some fragile states, Chinese officials may come to advocate for consent-based delegation agreements as alternatives to forms of intervention that would undermine Westphalia more directly.

In one highly controversial case, China has already indicated a willingness to challenge conventional sovereignty. In late 2017, the deeply indebted Sri Lankan government signed a ninety-nine-year lease handing the strategically important port of Hambantota to China—a lease much like the ninety-nine-year British lease extracted from China for Hong Kong in the late nineteenth century. Critics inside and outside Sri Lanka flayed the deal as a violation of sovereignty.²² This striking turn of

events illustrates the possibility that China and other longtime defenders of strong Westphalian norms may behave quite differently as power equations and national interests change. The Hambantota deal also raises the dangerous prospect of a reversion to practices in which external powers appropriate sovereign territory without investing substantially in local capacity to govern it. This represents the line between shared sovereignty and neocolonialism.

Regionalization and Shared Sovereignty

An important variant of sovereignty sharing has emerged in which regional organizations or neighboring states partner with national institutions. This has long occurred in the domain of peacekeeping; since World War II, thirteen different regional organizations have organized a total of sixty-five regional peacekeeping missions, largely in Africa.²³ Some of these have involved significant formal or informal delegation of domestic authority, as in Sierra Leone, Somalia, the Solomon Islands, Mali, and the Central African Republic. Some recent ventures feature sovereignty sharing in other domains, as in the Extraordinary African Chambers in Senegal and the OAS-backed mission to fight corruption and impunity in Honduras. To some extent, these have been efforts to deflect intervention by external powers—an aim captured by regional mantras such as “African solutions for African problems.” The same rationale has informed efforts to endow the proposed African Court of Justice and Human Rights with competency to hear cases against individuals accused of genocide, crimes against humanity, and other crimes within the ICC’s jurisdiction.²⁴

Partners from surrounding regional states offer important potential advantages. They may arrive with more local knowledge than external actors from further afield, including language facility and an understanding of domestic laws and institutions. Regional actors may also share certain normative values, such as a common “security culture” prioritizing forms of security different from what those outside the region would prioritize.²⁵ This may confer greater legitimacy upon regional actors.²⁶ They may face similar resource constraints and other challenges. For all of these reasons, they may be able to demonstrate practices and suggest reforms that are more realistic, appropriate, and consonant with local preferences.

This model also offers the benefit of encouraging collective action to manage problems that spill across borders and affect the region as a whole. Regional actors may have sufficient self-interest to stay engaged for sustained periods of time, which will often be necessary if sovereignty-sharing ventures are to help develop stronger indigenous institutions. Unlike distant great powers, which have global interests and commitments and are apt to refocus on other crisis flashpoints as they arise, neighbors may be more apt to see a state’s governance gaps as continuing priorities. Regional ventures may also have legitimacy advantages in areas of the world where the great

powers have track records of exploitative or ineffectual intervention, and nearby governments or regional bodies are more trusted.

Despite these selling points, regionally rooted sovereignty-sharing arrangements carry important hazards. They often reflect not just regional willingness to engage, but external interest in passing the buck. Neighboring states and regional bodies sometimes lack the resources and capability to provide effective services.²⁷ For the same reason, they may also lack the leverage to hold domestic partners to the terms of agreement. These problems have long been apparent in African Union peacekeeping missions, and are apt to trouble interventions in other sectors as well.

The strong self-interests that motivate neighbors to intervene may incline them to seek outsized influence over domestic politics in the target state. This can be particularly problematic when ethnic, religious, or racial groups cut across Westphalian boundaries, and neighboring states are seen to come to the aid of their kin at the expense of other elements in the target state population. Perhaps most importantly, the “understanding” that regional actors can bring can easily merge into a form of complicity with the prerogatives of the host state government. In this regard, regional sovereignty sharing becomes a way to profess accountability while avoiding a mechanism that would subject the government to it.

Radical New Concepts

The struggle to address governance shortfalls in fragile states continues to generate new ideas. Some have argued in favor of expansive or even wholesale transfers of sovereign authority where political leaders are unable to govern effectively or are uninterested in prioritizing the public good. For example, the scholar Mahmood Mamdani has advocated for an “African Union trusteeship” backed by the United Nations in South Sudan. “The simple fact is that the very political and institutional foundation for the existence of a state . . . has yet to be forged,” he argues, necessitating a “second transition” toward independent sovereign statehood.²⁸ The international law scholar Richard Albert argues that Haiti should amend its constitution to “renounce the power of self-governance,” and assign it for an extended period to a country like Canada “that can be trusted to act in Haiti’s long-term interests.”²⁹ While far-fetched and normatively toxic, that proposal reflects the sense of frustration and desperation that infuses the international policy discourse surrounding some fragile states.

In recent years, one of the most controversial concepts has been the proposal for “charter cities.” Paul Romer, then a professor at Stanford and later chief economist at the World Bank, introduced the idea in a 2009 TED Talk. Romer argued that struggling governments could boost development and public welfare by signing over swathes of “uninhabited” land to a guarantor nation with stronger governance institutions. That guarantor could establish and oversee a special zone where investment

could occur outside the framework of ailing host state institutions.³⁰ The idea sparked enthusiasm in some circles as a possible means to develop prosperous enclaves that could spread wealth and opportunity, as Hong Kong and Dubai have in their neighborhoods. The proposal for weak states to sign over territory to foreign states also brought a torrent of criticism, largely on anticolonial grounds. The first leader to embrace the idea, Madagascar's President Marc Ravalomanana, was forced from office after leasing a large tract of land to the Korean firm Daewoo and announcing plans for a charter city, which his domestic opponents denounced as treason.³¹

A variant of the idea nevertheless gained traction in Honduras, a country with dire poverty rates and the highest per capita murder rate in the world. The Honduran model replaces foreign guarantor nations with private foreign firms and individuals. After a false start in 2012, when the Honduran Constitutional Court declared an initial charter city scheme unconstitutional, the Honduran government enacted a 2013 law allowing "employment and economic development zones" (ZEDEs) that constitute independent jurisdictions with their own laws, courts, and police forces. The government has since signed more than ten memoranda of understanding with private investors, and is considering proposals for a further twenty ZEDEs across the country.³²

Under the 2013 law, ZEDEs are overseen by the Committee for the Adoption of Best Practices (CAMP), composed of foreign and Honduran members. The original CAMP included twenty-one members, but by 2017 it had been downsized to seven Hondurans and five internationals who meet periodically in Miami. Among other things, the CAMP holds the power to approve regulations and recommend judges. A subset of its members comprise a five-person permanent commission to oversee the zone's affairs, which from day to day are managed by a Honduran technical secretary appointed by the CAMP. Special courts could include foreign jurists, and decisions are to be appealable to international courts.

Problematically, the law includes no provision for the transfer of authority from the CAMP to the local population, and many constitutional provisions protecting civil rights and liberties do not apply. The governing rules and structures remain vague and nontransparent. Concerns abound that the ZEDEs will simply cater to foreign business interests and give little voice to the resident population. Romer himself has criticized the Honduran scheme on this basis.³³ Critics also fear that the special zones will drain much-needed revenue and human capital from frail state institutions, leaving those entities even less apt to provide effective services to the majority population. They worry that criminal organizations could use semisovereign spaces to flourish.³⁴ Moreover, the ZEDEs offer a means for a corrupt entrenched elite to accumulate more wealth and power by grabbing land and auctioning it off to wealthy

private interests—a process that could cause conflict in an already violent country. As of mid-2020, the first ZEDE was nearly set to open.

While it may be possible to design “charter cities” that offer stronger protections for local residents and less scope for abuse, the Honduran example is a powerful reminder of the dangers that can arise in sovereignty sharing. If new modalities of shared sovereignty appear to be designed more to exploit fragile states than to assist them, normative skepticism of transfers of domestic authority will only increase.

Is Partial State Building Possible?

Modern experience with ambitious state-building projects generally has not been encouraging. To the extent that sovereignty-sharing arrangements replace more expansive forms of neotrusteeship, they can be seen as a partial form of state building. The question is whether sovereignty-sharing arrangements will succeed in helping to construct stronger states. Michael Ignatieff has warned against the dangers of what he calls “nation-building lite,” a practice that tries to marry great powers’ sense of entitlement to global governance and the principle of self-determination.³⁵ At the heart of his critique is the notion that too shallow and brief a dive into domestic governance will fail to produce institutions that can survive. Simon Chesterman echoes this concern more provocatively, arguing that the problem even with transitional international administrations is not that they possess a colonial character, but that they are “not colonial enough.”³⁶ Unless institutional reforms have time to take root, the impact of interventions is apt to be short-lived.

The analysis in this book suggests that while sovereignty-sharing ventures sometimes do manage to plug holes in governance, they have met with less success in building indigenous capacity and seldom have been able to deliver deep-seated, durable reform. Relative success in shared sovereignty generally has meant improved short-term service delivery, but domestic reforms of modest scope or questionable durability. This can be said of the Special Court for Sierra Leone, RAMSI, and GEMAP in Liberia. Even the many reforms introduced by CICIG in Guatemala may be unsustainable, now that the commission is gone.

Although governments have blessed these interventions, pressure to hand back authority has led most of these ventures to be relatively short-lived. In each case, external actors have helped to improve systems during the period of shared sovereignty, and have left better-trained personnel in place; but those domestic institutions and individuals operate within systems in which preexisting incentive structures remain largely intact.

Institutional gains in one area are compromised if related elements of governance are not addressed. Policing ventures will be undermined severely, for example, if reasonably evenhanded and effective prosecutors and judges are not in place. In any

given society, certain key nodes are better suited than others as intervention points through which to pursue better service delivery and broader organizational change. In Guatemala, for example, CICIG proved able to function quite effectively, despite its position in between a compromised police force and a troubled judiciary. Even in that case, however, the absence of seismic change in most state institutions augurs poorly for a successful exit. The conditions under which “islands of excellence” can form and have positive knock-on effects is thus a crucial area for further study. Partial state building is not quite an oxymoron; but it is a daunting task, given the dependence of each targeted institution on other links in the chain.

If targeted interventions prove unsustainable without broader systemic reform, one might conclude that only a more expansive and multidimensional form of shared sovereignty would do—in essence, a return toward neotrusteeship. Sovereignty-sharing arrangements could thus become a form of quicksand, pulling international actors into deeper and less consensual involvement in domestic governance. That road has been traveled, often without much success. Neotrusteeship is very costly, normatively problematic and disfavored, and prone to abuse by interested foreign states or domineering international administrators. Moreover, it may only be practicable politically in relatively small territories or countries in which great powers have extensive strategic interests. Neither neotrusteeship nor expropriation of sovereign authority is a promising path forward.

Alternatively, one might conclude that sovereignty-sharing arrangements generally are not well suited to catalyze deep-seated institutional reform, and should focus exclusively on stopgap service provision. Outsiders can deliver useful public services in some domains, and even a temporary Band-Aid may be a valuable contribution to the host state and the international community. Most hybrid tribunals have been designed in this way, to focus on handling complex cases without much formal programming to build capacity and reform the local judiciary.

This model is highly problematic, however. Domestic consent to sovereignty sharing in the judiciary, law enforcement institutions, and agencies engaged in managing corruption almost always hinges on expectations of material support and capacity building. Failure to provide such support can jeopardize local buy-in. Failure to couple that support with a reform agenda can jeopardize donors’ willingness to foot the bill. In addition, stronger national institutions are usually keys to a mission’s exit strategy. Hybrid courts can sometimes sidestep this challenge by delimiting a special tribunal’s jurisdiction and using the completion of cases rather than indicia of domestic capacity to justify an international withdrawal. In other domains, it is more difficult to imagine an exit strategy that is not predicated on evidence, or at least the plausible fiction, that local institutions are ready to exercise full authority.

The aim of strengthening state institutions will and should remain, but the goals for such efforts should be realistic. Building national capacity and driving reforms is difficult for foreign aid programs in general, and not the strong suits of most sovereignty-sharing arrangements. External actors seldom if ever can implant major and sustainable institutional change if domestic elites are uninterested. Yet they can impart certain useful skills and practices, set positive examples of professionalism, and establish better systems and routines, particularly when those systems pertain to relatively technical functions that do not jeopardize elite interests in the short run. These improvements need not be dramatic to help set the stage for more effective governance in the future.

In each of these areas, lessons from past practice can help external actors provide the types of skills that are most useful to domestic actors, and systems that have a better chance of survival. Domestic governance actors are not the only ones who face unhelpful incentives; external actors are often ineffective in strengthening host state institutions because they gain little professionally or financially from doing so. Like other forms of official development assistance, sovereignty-sharing ventures would benefit greatly from donor-side reforms that incentivize better knowledge and systems transfer. This, like the changes needed in host state domestic systems, is much easier recommended than accomplished.

Sovereignty sharing in fragile states is fraught with challenges, whether it emerges from arm-twisting or from more cooperative partnerships. It nevertheless will remain an important feature on the international policy landscape. When external actors can help provide markedly better services for a time while helping domestic institutions grow modestly—or at least not retarding their growth—shared sovereignty may well be justified. It is thus a concept and practice worth understanding well.

Notes

Introduction

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Chapter 9

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In fragile states, domestic and international actors sometimes take the momentous step of sharing sovereign authority to provide basic public services and build the rule of law. While sovereignty sharing can help address gaps in governance, it is inherently difficult, risking redundancy, confusion over roles, and feuds between partners when their interests diverge.

In *Sovereignty Sharing in Fragile States*, John D. Ciorciari sheds light on how and why these extraordinary joint ventures are created, designed, and implemented. Based on extensive field research in several countries and more than 150 interviews with senior figures from governments, the UN, donor states, and civil society, Ciorciari discusses when sovereignty sharing may be justified and when it is most likely to achieve its aims. The two, he argues, are closely related: perceived legitimacy and continued political and popular support are keys to success.

This book examines a diverse range of sovereignty-sharing arrangements, including hybrid criminal tribunals, joint policing arrangements, and anti-corruption initiatives, in Sierra Leone, Cambodia, Lebanon, Timor-Leste, Guatemala, and Liberia. Ciorciari provides the first comparative assessment of these remarkable attempts to repair ruptures in the rule of law—the heart of a well-governed state.

John D. Ciorciari is Associate Professor of Public Policy and Director of the Gerald R. Ford School's Weiser Diplomacy Center and International Policy Center at the University of Michigan.

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