



SUMMARY

Is there a need for new peace and security rules in the twenty-first century?

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This background paper provides orientation from the perspective of the chairs and the organizers for the initial phase of the reflection group. The contribution should be understood as preliminary orientation, whereas the concrete roadmap and conceptual orientation for the reflection group are subject to discussion and agreements at the kick-off conference in Singapore.

1. POLITICAL MOTIVATION: – WHY DISCUSS THE STATE MONOPOLY ON USE OF FORCE?

While large parts of the world live in an unprecedented era of peace and security, the headlines of recent decades from countries like Iraq, Syria, Afghanistan, Ukraine, the DR Congo and many others remind us that a peaceful order is by no means universal or permanent. A range of different forms of conflict and violence threaten human and state security at the local, regional and global levels: organized crime, large-scale violence, lethal use of force by states, rebellions, international rivalries, conventional inter-state wars, civil wars, proxy wars, and military interventions.

The persistence and recurrence of large-scale conflicts and organized violence casts doubt on the effectiveness of political institutions and social norms in the prevention of organized violence. Given that public discussions about peace and security policy are obviously largely driven by current events, practical strategies to deal with the most urgent challenges usually need to be devised fast – and seem to be required ever more frequently. The mostly short-term, *ad hoc* policies that are pursued, such as cease-fire agreements, sanctions against warring parties, delivery of weaponry, and military or so-called humanitarian interventions, however, often have serious long-term consequences for the institutions responsible for the legitimate means of force and violence. And, as a result, fundamental changes have emerged in international law and national security-related rules. This is the case when, for example, governments allow shipping companies to hire armed private security agencies to provide protection against piracy or when »coalitions of the willing« intervene to protect human rights or prevent state terror.

2. THE STATE MONOPOLY ON THE USE OF FORCE: ORIGINS AND IMPACT

In a historical perspective, at least since the end of the Thirty Years' War in the seventeenth century, security in Europe has been conceptualized primarily in terms of the security of states against other states. In addition, one of the central functions of the modern state – besides the provision of welfare and public representation – is the protection of its citizens by means of a functioning state monopoly on the use of force. This presupposes a world with sharply defined borders demarcating distinct territorial jurisdictions administered in relative isolation from other sovereign actors.

In its ideal form, the state guarantees the security of its citizens, both internally and externally. This is the core of what is traditionally been called the state monopoly on force. The emergence of policing as a function of the state has had positive effects, particularly the decline in inter-personal violence (containment of violence). In parallel to the gradually increasing acceptance of the monopoly of force, a converging normative understanding has emerged concerning the *legitimate* use of violence and the importance of personal security. Yet, the practice of the use of force by states in a variety of cases does not live up to such legitimate purposes. States use violence predominantly in three forms: against other states or organized groups in self-defence or aggressively (*warfare*); in predatory or other forms against its own citizens (*state violence*); or exercising its monopoly of the *legitimate* use of force within society (*public order and rule of law*).

However, the perfect model of a state exercising full control over a given territory has probably never been fully implemented. States rarely have tightly closed borders; they interact with neighbouring countries and lack full control over their territory. In a global perspective, extensive implementation of the monopoly of force can in fact be seen as the exception to the rule, applying only in certain states. Nevertheless, a large number of fragile and less-developed states worldwide aspire to a functioning monopoly on the use of force. And, even while security practices in the twenty-first century continue to contradict the underlying ideal of a monopoly on the use of force, the international system is (at least in theory) still based on those assumptions.

3. MAJOR (RECENT) TRENDS AND CHALLENGES

(with serious implications for the notion of a »monopoly on the use of force«)

In the twenty-first century, major changes have occurred in the arena of peace and security policy and new challenges have appeared. The following list

focuses on those trends and challenges which might merit particular attention of the reflection group when discussing the future of the monopoly for the use of force. It will be subject to adaptation depending on the feedback from the reflection group members.

1. Broader concepts of security: At the end of the twentieth century the notion of security was widened. New concepts, such as »human security«, »comprehensive security« and »non-traditional security« were introduced, leading to significant shifts in actual policies, too. While this widening of security concerns remains controversial, there can be no doubt that there has been a general trend to »securitize« a number of issues (such as climate change, epidemics and even economic insecurity). However, even though certain non-traditional threats caused or had the potential to cause substantially greater harm, defence against potential or actual external rivals remained the core concern of security establishments throughout the Cold War. Despite the new attention to non-traditional security concerns, traditional defence-based security has remained central – and might see a renaissance due to the recent strategic tensions between major powers (for example, Ukraine crisis).

2. Privatization and commercialization of the use of force: There are two different forms of privatized security:

a) Warlords, organized crime, militias, rebels, local vigilante groups and even youth gangs and child soldiers have increasingly turned to organized violence for political or economic reasons. This *bottom-up privatization of violence* results from the state's failure to guarantee security and establish public order.

b) By contrast, *top-down privatization*, in the sense of the outsourcing of judicial, police and military functions to private companies, is deliberately planned and implemented by some governments. Typically state clients of commercialized security provision are governments that – inspired by neo-liberal arguments – hope to make the security sector more cost-effective.

Bottom-up privatization seizes on a situation where the *state is unable* to enforce its monopoly on the use of force, whereas top-down privatization occurs where the *state is unwilling* to impose its monopoly on the use of force itself and therefore delegates the task to private actors, often without the necessary public oversight mechanisms.

3. Intervention in cases of deficient or contested monopolies of force: In weak and failing states and in many post-conflict situations, the state lacks a functioning monopoly on the use of force. The interna-

tional community has tried to respond to outbreaks of violence and wars through concerted intervention, where necessary by military means. The number of international interventions authorized by the UN has increased, driven by a mixture of considerations ranging from moral and humanitarian concerns (see RtoP) to regional and global peace and security (or in a different framing: »stability«). However, the results have varied, and the UN, regional organizations and individual states have been criticised for both intervening (for example in Libya) and for not intervening (Rwanda and Srebrenica).

4. Terrorism as a direct challenge to a state monopoly of force: Terrorism is an asymmetric form of conflict, and is not new per se. The threat of terrorism on a global scale is, however, a recent phenomenon and a challenge to the public guarantee of personal security. The UN and a number of affected states (particularly but not exclusively the United States) have been working actively for over a decade to combat the threat of international terrorism. Their counter-terrorism measures have, however, at best produced ambivalent results. Counter-terrorism often remains a vague and nebulous concept, sometimes with its own negative consequences for human rights and international law.

5. Blurring of responsibilities between security authorities: Together with counterterrorism and the fight against transnational organized crime, the interventions of recent decades have led to a blurring of responsibilities and tasks between security authorities in a number of countries. In international interventions (from UN peacekeeping to stabilization operations under various flags), the military is now more often employed to serve functions that would otherwise be considered policing (»constabularization of the military«). In other contexts, police contingents have been equipped and deployed in ways that resemble a military rather than a police posture (militarization of police).

6. The intransparent side of the monopoly of force – intelligence agencies gain in power: One inevitable side effect of counter-terrorism has been a widening of powers and an increase in resources for intelligence agencies. Additionally, concerns about – and tendencies for – encroachment into personal privacy have significantly increased.

7. Technological game-changers for the monopoly of force: Recent and expected breakthroughs in battlefield automation raise the question: can we expect the emergence of security provision from a distance (by remote control). And how should we deal with it? Unmanned weapon systems such as drones and the

ability to monitor fighting from afar in real time are not just technical changes. They challenge existing international law (for example, the extra-judicial killing of suspected terrorists using armed drones). But developments in other fields of technology also hold the potential to disrupt traditional patterns of security provision (for example, in cyberspace).

8. Predatory abuse of a strong monopoly of force:

Finally, in addition to the above mentioned challenges – which have become particularly relevant more or less recently – one other challenge remains as relevant as ever: the predatory or repressive use of such a monopoly of force. Here, the monopoly of force does not primarily serve the interests of all citizens but the status quo with regard to economic rents and political power of elites. In extreme cases it might even be a prerequisite for mass atrocities.

All these organizational, social, technological, legal and economic manifestations relate to the above-mentioned three forms of violence of the Westphalian state (warfare, state terror against citizens, and protection of public order). Thus, the traditional monopoly on the use of force is called into question and is in need of reform or, perhaps, even a new approach.

4. NO UNIVERSAL BLUEPRINT FOR (RE-ESTABLISHING NATIONAL SECURITY ARCHITECTURES

Despite far-reaching changes in what security should encompass and whose security we are actually talking about, it is still the nation-state that is ascribed primary responsibility for providing security. Yet in practice, the role of the state has undergone contradictory developments. On the one hand, the state has lost its dominant position in the world economy and has in parallel seen its pre-eminence in the use of force diminished. The state is no longer in a position to respond adequately to a variety of challenges coming up with increased globalization on its own. Globalization has pushed the state back and the neo-liberal paradigm that has dominated for the past two decades is clearly designed to prune the state back to its core functions.

On the other hand, we have seen a renaissance of the state. Most interventions in conflict situations are carried out with the explicit aim of state-building. This focus emerged from the notion of failing or fragile states and post-conflict countries. According to the associated concept of state-building, state institutions capable of performing basic functions, including provision of security to citizens, must be established. Since the early 1990s, the international community has

mobilized enormous resources to stabilize weak and failing states, end violent conflicts, and build resilient institutions.

In the realm of peace and security the most important and popular tool for institution-building is security sector reform. Its rationale is that reforms of the armed forces, police, and judiciary are key to stabilizing societies in order to safeguard peace, establish the rule of law and enabling sustainable development. But this process has at best produced ambivalent results – and in many cases it has failed. Why was it not possible to contain violence and provide security? Is it justified to place such an exclusive emphasis on nation- and state-building along the lines of the UN Charter model? A number of reasons have been stressed repeatedly in expert debates about these questions. First and foremost, critical scholars (often from European backgrounds) have argued that the concept of a nation-state exercising the monopoly of force is generally too Eurocentric. Another critique is directed against the actual practices-of state building, which are often externally driven and not locally owned. Furthermore, policies are perceived to be rather inconsistent at times, for example when broad privatization of security is pursued in parallel with state-building and security sector reform.

While the debate is ongoing, a number of insights seem straightforward. It appears undisputed, for example, that there are no universal blueprints for legitimate and resilient security architectures. In addition, even in fragile and failed states, there is hardly ever a complete vacuum with regard to security. Indeed, thoroughly assessing the potential and actual role of traditional, religious and other non-state leaders in containing violence has proven crucial. Their potential highlights the importance of the sub-national and local levels of security provision, which may appear vulnerable or weak, but often possess great legitimacy and local ownership.

5. NATIONAL MONOPOLIES AND INTERNATIONAL ORDER IN TIMES OF GLOBALIZATION?

The many transnational challenges (see also section 3) – like terrorism, organized crime, and climate change – are issues that obviously cannot be tackled at the national level alone. Therefore, a monopoly of force that is still based exclusively or largely on the nation-state seems anachronistic. Globalization has profoundly changed patterns of governance and interaction. Crosscutting and intersecting networks and connections at local, state, regional, and global levels

have emerged, along with increasing interdependence. The nation-state has lost or transferred aspects of sovereignty to other entities. Both upwards (to supra-national or multilateral organizations like the European Union, but also to private actors like corporations and NGOs) and downwards to lower levels (such as local and regional government).

Yet, the international order and its norms and rules still are based on the notion of sovereign states exercising exclusive monopolies of force within their jurisdiction. Of course, the international system of rules and norms is by no means without its own contradictions. The concept of collective security, envisioned in the Charter of the UN with the Security Council as the designated guarantor of peace and security, was never fully implemented. The active role of the UN in the realm of peace and security is all too often forestalled by conflicting interests of the permanent members of the Security Council. Additionally, the tension between the principle of state sovereignty, as expressed in the UN Charter, and the special protection of individual and collective human rights is of particular relevance in this regard. The concept of the Responsibility to Protect (RtoP) is an attempt to address these inherent tensions in the extreme cases of genocide, ethnic cleansing and crimes against humanity. While affirming the continued relevance of national sovereignty and non-interference as building blocks of the international order, RtoP (re)interprets the concept of sovereignty as entailing a certain responsibility to protect citizens. Where a state gravely fails to fulfil this responsibility, the concept aims to codify modes of international intervention, but even more strongly emphasizes the need to enable states to fulfil these responsibilities themselves. However, the concept of RtoP remains contested and a gaping rift persists between theory and practice of use of force, between non-intervention and sovereignty as cornerstones of the international legal order.

6. CONCLUSION: POTENTIAL IMPLICATIONS FOR THE REFLECTION GROUP

A) Four overarching questions to inform the deliberations of the reflection group

In the original brief outline of the idea for the reflection group it is argued, that there is a need to reconsider the notion of a state monopoly on the use of force and reflect on how the security sector and security provision should look in the twenty-first century. To contribute to the narrative on the future of the monopoly on the use of force and the security sector, four overarching questions should inform the debates:

1. What conceptual and normative understanding

can we agree on as a starting point for this debate (Human Security, Comprehensive Security, etc.)? Can we define criteria for the legitimate use of force?

2. Is the notion of a monopoly on the use of force by a public security sector still empirically relevant, and how has the form of the public security sector changed in contrast (or even contradiction) to the ideal of a public monopoly on the use of force?
3. Do we have the right institutions to cope with new challenges and threats? Are there alternative (new, old or hybrid) forms of security provision? Which criteria of legitimacy do they fulfil?
4. Is a monopoly on the use of force still something that should be aspired to, and if so, what should it look like? Or do we need a substantially different form of security (instead of a gradual reform of the existing approaches)?

B.) Differentiating between two levels

In addition to these four overarching questions, the arguments assembled in this background paper suggest a systematic differentiation between two relevant domains in the deliberations and in the outputs of the reflection group (see also sections 4 and 5):

- On the one hand, such visions and policy recommendations need to provide guidance on how nation-states – as constituent elements of the international order – as well as subnational and non-state actors could and should achieve security provision. Practically: what would a SSR that includes the subnational local level (including non-state actors such as traditional leaders, civil society, NGOs etc.) look like?
- On the other hand such visions and policy recommendations need to incorporate the consequences that a reframing of the notion of a monopoly on the use of force might entail for the international order. Moreover, they must also provide guidance on how international norms can be defined, rules and institutions adapted, in order to reflect the changes in the character of the constituent elements, namely the nation-states (practically: how can the international order be adapted to changing security practices?).

7. FIXING THE POINT OF DEPARTURE – WHOSE SECURITY AND SECURITY PROVIDED BY WHOM?

For the deliberations of the reflection group it will be important to conduct the discussions on a shared

conceptual and terminological basis. Otherwise we risk talking at cross-purposes, which will be counterproductive for arriving at shared conclusions and policy recommendations. Against the background of the arguments advanced in this paper, the following aspects should be clarified during the kick-off workshop:

- **Whose security** are we talking about? Do we need to refer only to the classic notion of state-centric security, or is the idea of human security widely acceptable as a point of departure? If so, which version of human security do we want to refer to: »freedom from fear« (only) or »freedom from fear and from want«?
- How contested is the **notion of RtoP** as a fundamental limitation on the state monopoly on the use of force? Is the concept straightforward in the context of our discussions, or does it remain ambiguous, for example with regard to the line between assisting a state to live up to its responsibility to protect (which might call for strengthening a state's monopoly on the use of force) and the »responsibility to react« where a state fails to live up to its responsibility? In case of a humanitarian intervention, is there also a »responsibility while protecting« and a »responsibility to rebuild«?
- What do we understand by the term **security sector**? Only executive branches of government? With or without justice and corrections? Or does it also include the legislative? Civil society?
- How do we see the **interaction** between the concept of a **national monopoly on the use of force** with concepts such as **collective security**, **common security** etc? Is it undisputed that the latter are built upon and derived from the former? Or has the importance of the latter (concepts of international security) superseded the overriding logic of the former (state monopolies on the use of force, non-intervention, sovereignty)?
- Is a **public monopoly** on the use of force still a viable option or has the privatization of the use of force (bottom-up and top-down) outdated

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REFLECTION GROUP MONOPOLY ON THE USE OF FORCE

The Reflection Group »Monopoly on the use of force 2.0?« is a global dialogue initiative to raise awareness and discuss policy options for the concept of the monopoly for the use of force. Far from being a merely academic concern, this concept, at least theoretically and legally remains at the heart of the current international security order. However it is faced with a variety of grave challenges and hardly seems to reflect realities on the ground in various regions around the globe anymore. For more information about the work of the reflection group and its members please visit: http://www.fes.de/GPol/en/security_policy.htm

THINK PIECES OF THE »REFLECTION GROUP MONOPOLY ON THE USE OF FORCE 2.0?«

The Think Pieces serve a dual purpose: On the one hand they provide points of reference for the delib-

erations of the reflection group and feed into the final report of the group in 2016. On the other hand they are made available publicly to provide interested scholars, politicians and practitioners with an insight into the different positions and debates of the group and provide food for thought for related discussions and initiatives worldwide. In this sense, they reflect how the group and selected additional experts »think« about the topic and hopefully stimulate further engagement with it.

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