

Chapter 5

Reconstructing the Public Monopoly of Legitimate Force

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Introduction

Weak countries lack the means to deal effectively with violent conflict. They are not capable of guaranteeing internal security and their instruments to execute the state monopoly of violence are inefficient or – in the case of failed states – incompetent or non-existent. The central argument of this chapter is that the failure or inadequacy of the state to ensure the state monopoly of legitimate force is a central problem of conflict-prone and post-conflict societies. As a consequence, in order to open a path to peace in such societies it is essential to create or restore a monopoly of force that is not limited to the nation–state.¹

It is claimed, and supported by empirical data, that over the past dozen years, genocides and international crises have declined sharply; internal wars have been in steady decline as has the average number of people killed in conflict.² This positive trend correlates to the internationally felt need to intervene in the sovereign domain of a state if its government cannot provide the most basic state functions or if it commits gross violations of human rights. Violent conflicts demand the attention of the international community since failure to address them is risky, both for the people of that country and for international peace and security. International interventions authorised by the United Nations have intensified since the end of the Cold War, increasingly with the moral responsibility and humanitarian concern in mind to save lives and to prevent gross human rights abuses.³ Yet, the international community intervenes not only for altruistic humanitarian reasons; self-interested political and economic agendas are often hidden behind morally legitimised interventions.

These international interventions suffer from two shortcomings: lack of success in implementation and an absence of democratic legitimacy. Despite many efforts of post-conflict programmes in all corners of the world,

including such diverse countries as Bosnia and Herzegovina, Kosovo, the Former Yugoslav Republic of Macedonia, Haiti, East Timor, Afghanistan, Mozambique, the Democratic Republic of Congo, Liberia and Sierra Leone, the results are often unsatisfactory. Even when UN-mandated peacekeepers intervene on humanitarian grounds, this mandate suffers from a democratic deficit. To be accepted by the population of the country undergoing intervention, such interventions must be legitimate. However, the decisions to intervene, although according to international law and accepted norms, are taken by a highly politicised UN Security Council in which democratic rule, namely the will of the sovereign, is not represented. Stricter criteria are required to avoid the selectivity and arbitrariness of these decisions and to hold the decision-makers accountable. The fact that the executor of the global authority to apply force is not controlled by a legitimised body and operates instead according to the veto of the powerful permanent members of the Security Council de-legitimises its actions. This flaw in global governance is the specific bottleneck and barrier in creating a globally required and democratically legitimised monopoly of force.

The experience of most internationally sponsored reconstruction programmes shows that long-term external engagement is required to establish or re-establish the monopoly of force. However, international programmes are often designed (but also fail) to bring quick results. This chapter questions whether the focus on building primarily state-centric structures is an adequate concept for all post-conflict societies and the only means to overcome their problems.⁴ Instead, a monopoly of force which goes beyond the nation-state and also includes the local, regional and global levels is proposed here.

This proposition is grounded on an empirical–analytical observation and a normative–theoretical concept. The empirical–analytical observation recognises that more and more social forces operate across, below, and above the nation-state. Globalisation and localisation, integration and fragmentation have transformed the conditions for the monopoly of force of the nation–state. While ineffective state structures in authoritarian, transforming, war-torn or post-conflict states vary in form, three common characteristics and structural pitfalls are apparent which increase the risks of tensions and the outbreak of violent conflicts:

- The *security* gap, which is the state’s inability to execute its most basic function and ensure security by exercising the monopoly of force;
- The *capacity* gap, which is the state’s lack of capability to provide the most basic services such as health and education, as well as infrastruc-

ture in key areas such as railways, ports, airports, waterways, mass transit, water and sanitation;

- And, the *legitimacy* gap, which is the state's missing authority to advance basic rights and freedoms, enforce laws and allow for citizens' participation in the political process.⁵

In practical terms it is evident from experience in the major peace-building and reconstruction programmes that security, and with it the legitimate monopoly of force, is a crucial prerequisite to progress.⁶

The normative–theoretical concept is grounded in cosmopolitanism.⁷ The cosmopolitan democratic agenda aims at establishing global governance that is based on democratic, elective, participatory principles and a programme to overcome national sovereignty. At the core of this concept is a belief that the present patterns of global processes of regionalisation and localisation are undermining existing national forms of governance and that alternatives need to be found. Governance needs to be expanded across, between, beyond and below the nation–state level. The cosmopolitan concept is attractive since it envisions a step-by-step development and wants to make use of proven democratic mechanisms. Cosmopolitanism strives to transfer the democratic processes of the local and national level to the international level, so that international decisions are no longer grounded in the traditional pattern of political and economic power. The cosmopolitan concept envisages a post-Westphalian global order, a system beyond the nation-state with overlapping authorities entitled to exercise the monopoly of force.

Without in principle questioning the concept of the monopoly of force of the nation–state, new international norms have emerged which require the international community to intervene. It is therefore argued here that while the nation–state is still an important actor in exercising the monopoly of force, neither the UN at the global level, nor authorities at the regional, national or the local level are by themselves adequately equipped to perform an increased role in executing this monopoly. What is called for is conceptual rethinking and a capability reform, creating or buttressing a division of labour at global, regional, national and local levels.

A recent intervening factor, questioning the execution of the monopoly of force, is the privatisation of violence. This chapter will explore the ways in which the privatisation of violence is carried out and how the international community reacts to these challenges, and assess the impact on the monopoly of force. This is followed by an analysis of the dilemmas and challenges posed by privatisation from the perspective of security governance. It will then introduce the model of a multi-level public monopoly of

legitimate force and discuss the challenges, barriers and implications of creating such a public monopoly of force beyond traditional national borders. The chapter concludes by summarising these findings and by articulating several policy recommendations.

Privatising and Internationalising Violence

An analysis of contemporary wars and violent conflict reveals at least two new trends: *First*, the number of armed non-state actors engaged in these conflicts has decidedly increased. Armed non-state actors such as warlords, militias, rebels, para-military groups and gangs engage for political reasons or economic gain in these conflicts. At the same time, governments contract more and more private military companies to assist the regular armed forces in wars with the provision of technical or other services or even, in exceptional cases, for combat operations. *Second*, the international community has progressively tried to counter the outbreak and fighting of wars through concerted efforts, if necessary by military means. For more than three centuries, since the Peace of Westphalia, the monopoly of force was held in Europe by the nation-state, a state with a clearly defined territorial space. This concept of the monopoly of force, which served as a model beyond Europe is now fundamentally questioned for a variety of reasons, including the privatisation and internationalisation of violence.

I distinguish between two types of privatisation of violence. Firstly, the *bottom-up privatisation* in which armed non-state actors spread violence, create insecurity and contribute to the failure of states. Many governments are no longer capable of guaranteeing law and order. Their police and military forces are too weak, too corrupt or unwilling to exercise the rule of law and the state monopoly of force. This type of privatisation offers attractive economic gains for non-state actors. Warlords, for example, fight not primarily for political or territorial control but to make an economic living through continued fighting. They are usually well connected into the world economy (or the shadow economy) by exporting resources like diamonds, tropical wood or drugs. From this income they pay their soldiers, serve their clientele and usually find it easy to buy weapons for their forces.

A second type of *top-down privatisation* is based on the outsourcing of police and military functions, purposely undertaken by a number of governments.⁸ Armed forces in many countries have demobilised millions of soldiers since the end of the Cold War. Yet today these forces are increasingly burdened with various deployments in conflict and post-conflict situa-

tions, such as in the Balkans, Africa, Afghanistan and Iraq. The burden on the armed forces leads to outsourcing military functions. The armed forces have consequently come to depend more and more on private military companies for logistic support, training, the repair and maintenance of weapons systems and other military equipment, for the collection of intelligence information, for interrogation of prisoners of war, and for supplying mail, food and clean uniforms. Major corporations are active worldwide in pre-war preparation, in conflict, and in post-conflict reconstruction. At issue is that this development occurs largely outside the control of parliaments and only partially under the control of governments.

Within the concept of internationalisation of armed conflicts I distinguish between two areas which are causally related. There is the general trend in recent years of political decisions to engage in *international interventions*, e.g. military missions of peacekeeping, peace enforcement, peace building or other types of international military or civil-military interventions. As a result, armed forces are operating more and more jointly, as 'Blue Helmets' or within coalitions of the willing or military alliances, which has an effect on the organisation of the military. Such interventions necessitate structural changes within the armed forces. Militaries that were traditionally geared to the nation-state must now orient their structures internationally.

These international interventions suffer from democratic deficits. Lacking legitimacy provides a shaky basis for introducing democratic structures through peacebuilding programmes and are not always desired or accepted by the people of countries subject to such interventions. Legitimacy is the key to stabilising a society and to building peace and creating the conditions for development. However, all external interventions have to cope with the dilemma of a fundamental democratic deficit.⁹ Even when interventions and reconstruction programmes are authorised by the United Nations, the decision to intervene is not based on a democratic decision.

Furthermore, decisions in foreign and security policy, despite noticeable constitutional differences in many democracies, seem to be one of the least democratic policy areas, and the control and oversight rights of parliaments are not very advanced. Rules and regulations do exist nationally in many countries, even though they are often insufficient to comply with democratic norms. However, decisions in most international organisations are not taken democratically and rules and regulations are rudimentary or non-existent.¹⁰ Nationally organised armed forces are usually inadequate to prevent or end conflicts in crisis regions. But considerations of prestige and pride, and national political and economic interest, are a barrier to establishing a truly integrated international armed force. The democratic control of

internationalised armed forces is more complex than of national forces. Tasking private military firms complicates the democratic control even more or can make it impossible in certain situations. However, armed forces tasked with international interventions in the name of the defence of human rights, the promotion of democracy and the prevention or ending of war are only credible if they operate on the basis of effective democratic control.

Privatising violence and international peace support missions are part of, and a reaction to, what have become known as the 'new wars'.¹¹ The two trends of privatisation and internationalisation are closely related. The two forms of privatisation, however, are different in principle, and partly contradictory, since privatisation in violence markets is exercised bottom-up through non-state actors, while outsourcing is a government planned top-down process. In many countries the state's inability to establish internal security or maintain domestic law and order creates the space in which organised crime and warlords can emerge to fill the security vacuum. As a consequence, people who can afford it seek to organise their own security without having to resort to under-funded, incompetent or corrupt state authorities. Private security and protection of property has become a booming market in many urban centres. Some 2,000 private security companies currently operate in Kenya and large sections of the population rely on them. Similarly, it is estimated that security companies in Nigeria employ in excess of 100,000 people; these services have become a major part of the economy to protect residential and commercial areas and especially the oil industry.¹² Those who cannot afford such services either have to live with insecurity or might themselves resort to violence in their fight for survival. Zones of asymmetric security have emerged, or rather zones of insecurity for the poor and zones of relative security provided for people and their wealth by private companies.

Privatisation of violence – a trend which reverses a centuries-old development of disarming of citizens in the process of nation-building – undermines and fundamentally challenges the legitimate monopoly of force. Furthermore, international interventions and the internationalisation of the armed forces have an effect on the monopoly of force as well, since decision-making on intervention and the use of force takes place at the international level. Despite the fact that delegating the monopoly of legitimate force (at least partially) to the private and/or the international sector is pursued consciously, the notion of the monopoly of legitimate force itself, which rests first and foremost on the nation-state, is currently not being systematically re-conceptualised.

A variety of factors has led to outsourcing military tasks to private companies, including the reduction of armed forces, their limited capabilities to cope with ever more high-tech weapons, the intensified demand for interventions and emergency aid, the demands of the 'war on terror' and, last but not least, the dominant concept of the 'lean state'.¹³ Given that both the trends to intensified international intervention and to privatisation of violence are here to stay, the question will need to be asked what the future of the state monopoly of force is going to be.

Security Governance and Democratic Control of the Monopoly of Force

The practice of outsourcing military functions is part of the effort to create more efficient armed forces. But this notion also has an inherent danger since a central function of the state, the monopoly of force, could be damaged or endangered.

At the global level the monopoly of force is completely lacking. A generally accepted, globally practiced monopoly of force does not exist and the weakness and impotence of the UN Security Council in the case of the 2003 Iraq invasion is demoralising evidence of this fact. The UN Security Council already has a monopoly to *authorise* the use of force at the global level, although the UN was never given the necessary means – like the capacity to implement sanctions, a police force and armed forces – to exercise this authority. At the global level, a system of a legitimate monopoly of force is possible only, given the continued existence of states, within a system of collective security. This is already reality in embryonic form in as far as the Charter of the UN stipulates that all its members refrain in their international relations from the threat or use of force, except in cases of individual or collective self-defence against external aggression. The prohibition to use force and the authority of the UN to use force, of course, do not constitute a monopoly of force at the global level.

The deployment of private military companies complicates the situation further and is not without tension. Pursuing two at least partially competing principal objectives creates friction. The public good 'security' and the private good 'economic gain' can be in competition with each other or even be contradictory. Therefore, privatising public goods has certain limitations. Private military firms are specialised and offer professional services that are used in wars and violent conflicts. Yet, companies (like states) might be reluctant to engage in providing security or preventing war by military means if there exists too high a risk of losing the companies' assets in such

conflicts. However, the opposite may also be the case and companies' business interests might function as conflict accelerators. The deployment of private companies has a profound impact on how the state monopoly of force is exercised and controlled. An important consideration must be that these companies are currently not accountable to parliament or the public – neither in the country that contracts them nor in the country where they operate. While the government is held accountable by parliament, private companies are responsible only to the shareholder and client. This is precisely the reason why some governments want to make use of private companies. For example in the United States, congressional restrictions on the use of the armed forces in operations like the anti-drug campaign in Colombia, have stimulated government decisions to circumvent such restrictions by contracting private military companies.

Hiring privately organised troops and companies which provide operational support can result in mutual dependencies between client and contractor, and even the danger that conflicts might be deliberately extended in the bilateral interest of such contracts. In such a situation it is not clear which state tasks can be implemented, who decides upon them, and how decisions are taken as to the way in which the monopoly of force (which, strictly speaking, is no longer a monopoly) is carried out. Contractors seem to create their own demand or at least have an influence on the demand for security services, when security is purchased commercially.

The following figure summarises the arguments both for and against the privatisation of military tasks presented in research and the media and by the companies themselves. In all seven categories summarised in this table controversial opinions are raised and contradictory empirical evidence regarding the usefulness or the danger of contracting private military companies is available. The economic results of the private military sector are not entirely convincing. Within the military the deployment of private military firms is controversial while in peacekeeping and humanitarian interventions private military firms have had no real opportunity yet to demonstrate their claimed effectiveness. In international crises, their services are questioned regarding sustainability in ending conflict. Within the military, the question is raised if the superior technology employed by the private sector is really available when needed and governments have reason to worry that disreputable private sector operators might compromise the contracting governments. There seems to be agreement that the existing laws at the international level are insufficient to control these companies and since national laws are lacking in most countries, companies operate in a legal grey zone. Ways in which such regulation may be possible are, however, controversial.

Table 5.1: Arguments for and against deployment of private military companies

Area	Pro	Contra
Economics	Companies work more cost- effectively	Evidence for their cost-effectiveness is rather weak Business practices of the companies are not very transparent Real cost of military missions is blurred through outsourcing
Military	Troops can concentrate on core missions Companies are more flexible and are quicker to deploy Synergies between companies and the armed forces are created	Dependency of the military on firms Companies are unreliable on the battle-field The <i>just-in-time</i> method is not suitable for war-fighting Additional tasks for the military to protect contractors
Peacekeeping and humanitarian intervention	Quick reaction of companies in response to crises Quality of UN missions increases Protection of humanitarian actors Caution of deploying national troops	Responsibility of the international community for protection is delegated Dubious firms are legitimised by the UN
International crises	Stabilisation of collapsing states Engaging the private sector in post-conflict reconstruction	Continuation of conflict in the interest of companies Companies might damage the foreign policy of their home country Distinction between civilians and military disappears Companies act as proxies of their government
Technology	Better know-how of companies	Technology is not available in critical situations
Policy	Governments can reduce the presence of their forces by hiring companies	No democratic control of companies States should have to guarantee security Complicated civil-military balance is disturbed
Law	Companies operate under government licence Codes of conduct regulate business practices	Lacking legal regulation of company deployment Hard to prosecute companies and employees for criminal acts or violations of human rights Geneva Convention (combatants/non-combatants) is undermined

Source: Wulf, H. *Internationalizing and Privatizing War and Peace*. (Basingstoke: Palgrave Macmillan, 2005) 63–64.

Given the fact that security governance at the global level exists only in rudimentary form, that a global monopoly of force is lacking and that new, largely unregulated actors engage in international crisis situations, it is no surprise that international interventions, nation-building programmes and re-creation of state institutions are faced with a number of serious problems.

First: A fundamental issue is that the existence of central states is taken as given. Obviously, this is not necessarily the case and some conflicts have been exacerbated in the process of state-building.

Second: The legitimacy to carry out interventions is weak. Reconstruction programmes are not always desired or accepted by the people of the country experiencing international intervention. Neither are the decisions for an intervention democratically legitimised.

Third: Intervention and reconstruction are usually implemented because of humanitarian concerns of the international community. At the same time, however, veiled behind these aims to prevent or end conflict, provide peace and enable development, there is also the ambition of some powerful members of the international community to exert political influence and advance their own economic interests.

Fourth: Interventions and reconstruction programmes are often given unclear mandates and suffer from notorious coordination problems involving the external donors. Competition between them leads to failure and waste of scarce resources.

Fifth: It is usually the case, almost by definition in situations where reconstruction is undertaken under international auspices, that the local structures are weak. The emphasis on the need for local ownership in the process of transformation of conflict is – conceptually – uncontested.¹⁴ But what happens when theory meets reality? Often, international donors, both governments and NGOs, violate this supposedly guiding principle of local ownership.

Sixth: International donors often treat peace-threatening crises as short-term problems which have to be solved as soon as possible. While this is understandable considering the humanitarian consequences of inaction, experience in many post-conflict societies has proved that the conflicts have deep-rooted causes which do not disappear quickly.

The fundamental nature of these difficulties leads to the conclusion that there are no easy solutions. Looking at the various experiences in peace-keeping, conflict resolution, post-conflict reconstruction and state-building, a common feature in all of these cases is the lack of a legitimate monopoly of force. It is assumed therefore, that the nation–state focus is too narrow to establish or re-establish such a monopoly.

The Need for a Multi-level Public Monopoly of Force*Globalisation and the Erosion of the Nation–State*

The concept of the state monopoly of force entails the elimination of private armies and the disarmament of other armed non-state actors who want to take the law into their own hands. However, this notion is challenged in many parts of the world, primarily by bottom–up privatisation, but it is questioned also by top–down privatisation. While the internationally accepted norm of a state guarantee for the public good of ‘security’ still exists, its implementation in reality is at present not possible.

The state monopoly of force is also challenged by another development. The idea of the undisputed national entity no longer exists as national boundaries have been increasingly broken down or lowered due to the general trend of globalisation. Many actors today operate outside the boundaries dictated by the logic of territoriality. Economics, politics and culture are increasingly de-nationalised.¹⁵ Conceptually and in reality the state is being emptied of some of its functions. A logical consequence of the weakening of the nation–state is the need for multiple layers of authority over the monopoly of force. Such a new agenda breaks with conventional accounts of the monopoly of force concept in which the nation–state is conceived as the sole appropriate agent.

The Westphalian ideal presupposes a world with sharply drawn borders demarcating distinct, territorial jurisdictions administered in relative isolation from other sovereign actors. This perfect model has never fully materialised. In today’s world cross-cutting and intersecting grids at the local, state, regional, and global levels have emerged.¹⁶ As a result of increasing interdependence and globalisation, the nation–state has lost or transferred part of its sovereignty to other entities: from the top (supra-national or multilateral organisations as well as private actors like companies and NGOs) and down to lower levels (such as local and district associations). However, at the same time, there was also a re-nationalisation process visible in many post-communist countries which had to restructure state institutions and build domestic capacity, and in certain cases build state institutions from scratch.

At the global level, the dominant role of the nation–state is challenged both conceptually through global governance and institutionally through the ever-increasing number of multilateral regimes. Regionally, probably with the exception of the EU, there are only weak signs of state sovereignty functions being delegated to regional bodies. The picture is different below the

state level: in many regions of the world, local constituencies and traditional authorities within federalist structures are authorised to exercise public regulatory functions. There is a trend towards a multiplicity of authority among public institutions and more and more functional areas that were previously part of state functions are taken over by private citizens and private organisations.

The Model of a Multi-level Monopoly of Force

The reconstruction of the monopoly of force is not just about re-establishing a central *state* monopoly of force. A more holistic approach is necessary to establish rules and regulations for the use of force. It is proposed here that the concept of global governance and the establishment and enforcement of international norms require a *public monopoly of force* at all levels of governance – at the local, national, regional and global levels. A segmented, but carefully crafted public monopoly of force with a clear division of labour should be based on at least the following four levels of authority:

- The *local* level, with federalist structures or other traditional forms of shared authority, which offers proven forms of regulating violence with the inclusion of ‘zones of peace’ and ‘islands of civility’;
- The *national* level, with credible and accountable institutions of organised force and good governance;
- The *regional* or sub-regional level, with regional organisations engaged in providing security and facilitating peace beyond the various national boundaries; and
- The *global* level, through the United Nations, with accepted international principles and agreed norms and with a legitimate authority to intervene for the protection of people.

The intention of proposing such a model is to overcome the narrow Westphalian-type territorial fence, the national space. Given the globalised world, with porous or non-existent national borders, with failing or collapsed states and with asymmetric zones of insecurity, the future lies not necessarily in the re-establishment of a nation–state monopoly, but rather in a multi-level public monopoly of force. Such a multi-level legitimate public monopoly comes closer to the present reality of the international system since it addresses the different levels of political decision-making.

Besides the daunting practical difficulties, such a system is faced with two conceptual problems: First, how shall the four different levels be legiti-

mised, given the acute deficit in democratic processes at all four levels? Second, how must authority be apportioned at the different levels to avoid disputed sovereignties, and how can cooperation and a division of labour between these segmented authorities function?

A multi-level monopoly is, precisely speaking, an oligopoly since the powers of a monopoly need to be shared between authorities. Oligopolies are faced with the prospect of competition and conflict. When one authority encroaches on another, this necessarily means a loss of authority for one actor and gain for another. To create the suggested multi-level public monopoly of force as an efficient and functional instrument, and avoid a ruinous zero-sum game, a set of agreed rules is a precondition. Only if the system functions is there a chance to move from the present situation of the breakdown of the monopoly of force in many parts of the world to establishing a legitimate public monopoly of force.

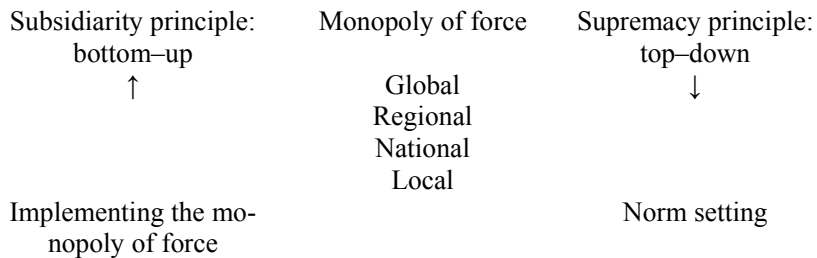
Cosmopolitanism could provide a normative framework. Cosmopolitanism emphasises diversity and multiculturalism; it is centred on the idea of collective human security and a wide spectrum of cross-cultural understanding to resolve conflict and sustain peace non-violently.¹⁷ The introduction of a multi-level public monopoly of force would imply creating a normative and institutional framework of world order in which authority is not simply imposed from the top.¹⁸

Two crucial functional principles (graphically illustrated by the Table below) should provide the basis. First, the monopoly of force should be exercised according to the *subsidiarity principle*. In a bottom-up approach the lowest level should be the starting point and only when the local level is not capable or cannot be tasked with exercising the monopoly of force should the next level up be entrusted with this mission. This concept is, for example, exercised in many federal states where a federal authority (or even local community) executes policing functions. The central state (the nation-state) will only become involved if the task goes beyond the local level or if the instruments of legitimised organised violence at that level prove to be incompetent or inadequate. If the nation-state level is ill-equipped or incapable of exercising the monopoly of force, the regional organisation would be tasked, for example, with preventing trafficking in humans, drugs or weapons. This would leave the UN as the highest authority to ensure peace and security only as a last resort.

The second principle is based on *supremacy*, on a hierarchy of authority. Norm-setting takes place as a top-down process. International norms prevail over regional, regional over national and national over local levels. The UN has higher authority than regional organisations, the region is placed

higher than the national level and the national level has prevalence over the local level. Given the realities of conflict-prone and war-torn societies, not all four levels will actually be functional, but the multi-level approach is designed precisely for such situations where one of the four levels is lacking or incompetent, namely, to compensate for the partial or prevent the complete breakdown of the monopoly of force.

Table 5.2: Establishing the multi-level monopoly of force



Conceptually, the division of labour along the lines of subsidiarity and the supremacy principles is clear. In practice, however, tensions over exercising the authority are foreseeable. This model, however, suggests a method to include bottom-up concerns rather than pursue an ‘OECD-country-club’ approach which has experienced insurmountable difficulties in practice. The suggested model is of course not easy to implement. All of the four levels experience shortcomings. The local level in many societies is haunted by corruption, dominated by criminal networks and suffers from weak public institutions; a functioning civil society is often non-existent. The central state level, although usually still considered as the most important agent in exercising the monopoly of force, is at present incapable in many countries. Regional organisations are often too inept to perform their missions, not just because of a lack of capabilities but more so because of deep-rooted political differences amongst their members and the unwillingness of most states to devolve sovereignty functions to the regional body. Although they are recognised as potentially important actors in maintaining peace, conceptually they are somewhat overlooked in the emphasis on the UN as the highest authority and the nation-state with its still important feature of state sovereignty.

At the global level, the UN's activities are often heavily biased and contested. International norms are often selectively applied because the double standards of members prevail. Conflict regions are not only assisted with

crisis prevention programmes but all too often they are at the same time at the mercy of the dominant intervening powers.

The suggested multi-level public monopoly of force would be difficult to implement, and pitfalls and shortcomings at each of the four levels could be enumerated. However, in many circumstances where security is lacking, a holistic approach would offer solutions to problems commonly encountered in currently prevailing approaches. The weakness at one level (for example at the national level) could be compensated for by the level below (at the local level) or above (the regional level). Compared to the present difficulties in implementing international post-conflict programmes, this multi-level public monopoly of force promises to tackle the root causes of some of the difficulties of weak states.

Implementing the Multi-Level Public Monopoly of Force

Establishing the suggested multi-level public monopoly of force requires an institutionalised division of power between the different levels.

The local level – federalism and traditional conflict resolution mechanism: The relationship between the local level and a central government can best be described as a federal system. Federalism is considered to be a seed-bed of democracy, as it allows for more participation and accountability, stimulates civil society, adds channels of access for political participation, broadens sources of legitimacy, widens citizenship by institutionalising multi-ethnicity and provides for sub-national competition, thus stimulating local self-governance, innovation and efficiency. However, federalism can also preserve sub-national authoritarianism, promote rule along ethnic instead of democratic lines, foster regional disparities, undermine the rule of law, and facilitate the rise of demagogues rather than encouraging democracy.¹⁹ The closeness of local leaders to the local space and their knowledge of traditional conflict regulation are likely to promote realistic, bottom-up decisions. Their familiarity with the history and root causes of a conflict in their region facilitates their role in mediating between belligerent groups and allows the various stakeholders to participate in solving problems.²⁰ Even war-torn societies are also populated by citizens who form ‘zones of peace’ and ‘islands of civility’.

The national level – institution-building: Notwithstanding the intensification of globalisation, the quest for global governance, international norm building and the growth of global civil society, the international political sphere remains decidedly state-centric – even though its importance is gradually diminishing. But, at the same time, many states are unable to fulfil

their security and governance function effectively. To properly establish and control the agents of the state monopoly of force, a legitimised government with functioning state institutions is required. It is an extremely difficult task to democratise a society and build effective state institutions where democracy has no tradition and where state institutions scarcely exist.

The regional level – increasing responsibility and capacity: Regional organisations should have an immediate interest in promoting peace since civil wars normally affect neighbouring countries through spill-over and destabilisation. The experiences in Europe and Asia have facilitated the prospects for a more active and expanded responsibility of regional organisations. The United Nations has continued to emphasise since the 1990s the special importance of regional organisations in promoting and facilitating peace and stability within their respective regions.²¹

In reality, however, most regional organisations have no convincing record of peace missions to justify such expectations. Given their present structure, institutions such as the African Union (AU), the Organisation of American States (OAS), the European Union (EU), the Association of SouthEast Asian Nations (ASEAN), the Organisation for Security and Cooperation in Europe (OSCE), Organisation of the Islamic Conference (OIC) and others are not in a position to apply the monopoly of force effectively. Regional organisations suffer from four weaknesses which need to be overcome in order to establish a functional multi-level monopoly of force: contested sovereignty and a lack of delegating traditional nation–state authority to a regional body; overlapping responsibilities and competition among regional organisations; fundamental political differences and lack of common values which lead to inaction; a lack of capacity to execute sanctions or to project force.

The global level – norm setting and global governance: The functioning of the international system, and with it the multi-level monopoly of force, depends on the enhancement of international norms. The UN is a hybrid system of an intergovernmental organisation not operating according to democratic rules and at the same time acting as the conscience of the international community and the highest authority on questions of war and peace. This inherent tension makes it an organisation in need of reform. However, despite these organisational and conceptual insufficiencies and despite the gap between theory and practice of international norms, there is no realistic alternative to the UN.

The prohibition against the use of force, enshrined in the Charter of the UN, of course, is a different matter from a monopoly of force at the global level. In theory, UN members enjoy an inherent right to individual or

collective self-defence under international law. As is well known, the practice of collective self-defence is different. It is not the provisions and obligations of international law but rather political opportunity and power politics that are the decisive criteria for intervention. Thus, the concept of a responsible 'international community' is still far from being a reality. The lack of global governance is the specific bottleneck and barrier in creating the globally required and democratically legitimised monopoly of force.

Conclusion

Practical experience from recent peacekeeping missions and post-conflict reconstruction programmes have underlined that the failure or inadequacy of the state to ensure the monopoly of legitimate force is a central problem in societies haunted by violent conflict and wars. Both security and democratic deficits need to be addressed in order to find alternatives to the destabilising situation in many societies at present. Experience in recent years illustrates the pivotal role that the international community places on building strong state-centric structures at a time of globalisation when typical state functions are de-nationalised and the role of the nation-state diminishes. Interestingly, concepts of state-building and nation-building have re-emerged now, though the increase of global threats as well as intra-state violent conflicts and wars make concepts of national security appear outdated.

A recently emerged and strengthened intervening factor of importance is the privatisation of violence. Armed non-state actors have contributed to insecurity and intensification of conflicts. At the same time the use of private military and security companies in wars and conflicts has increased dramatically. The privatisation of violence is a trend of great concern since it questions the idea of security being a public good and transforms it into a commercial and marketable product. Military resources are now offered on a contract basis in the global market. Experts for almost any military job wait to be called. Economic power can now be more quickly transformed into military power than in the past.

As a consequence of the weakening of the nation-state, a broader based monopoly of force is required to facilitate the stabilisation of societies. The governance tasks are too complex for single nation-states to handle, especially those states that are in crisis or have emerged from conflict.

Three politico-legal areas of great importance for the future development of peace and security and the regulation of force need to be considered:

First: the regulation and the strict legal control of private military companies to overcome the legal grey zone in which they currently operate. The regulation of companies can be addressed at different levels, ranging from a reformed Geneva Convention, to registration and licensing of companies, as is done for example in arms export regulation, to international transparency and verification methods.²² To ensure a public monopoly of force, steps need to be taken to improve regulation of the private security and military companies at the international and global level. The established and endangered monopoly of force must be reformed in order not to leave the internationalisation and privatisation of war and peace to market forces or uncontrolled non-state actors.

Second: overcoming the democratic deficit. At the national level parliaments can use their legislative function and budgetary powers as an important and effective instrument to strengthen their role in influencing or preventing executive decisions. While this is not uncommon with regard to the deployment of troops, contracts with military firms and the deployment of contract personnel is hardly on their agenda. However, the established, albeit often inadequate, control mechanisms at the national level are more complicated when international missions are involved. Although the UN organisation can operate out of humanitarian concerns and moral obligations and intervenes on the basis of international law and emerging norms, it suffers from a democratic deficit and power politics which are due to its structure as an intergovernmental organisation.

Third: overcoming the security deficit and reforming the state monopoly of force. Reconstructing the monopoly of force should not be geared primarily to creating or re-establishing efficient institutions at the level of the nation–state. This chapter proposes a carefully crafted division of labour in exercising the monopoly of force at the global (UN), regional (regional organisations), nation–state and local level. This proposal is made both because of practical experiences with a reduced nation–state function and an increased role of the UN as well as on the basis of conceptual considerations to establish democratically legitimised interventions. Probably the weakest factor in this multi-level approach is the regional level because of continued political disagreement over state sovereignty, overlapping responsibilities of regional organisations, political differences within the regional organisations and a severe lack of capacities.

One might dismiss the proposal of a multi-level monopoly of force as unrealistic and utopian. Yet the present fundamental assault on the Westphalian nation–state system is so far-reaching that alternatives need to be considered. This has been recognised *de facto* by the creation of transitional

administrations or UN protectorates, but conceptually, peacebuilding is still considered as a hopefully short-term transition to establishing a functioning nation–state. The proposed multi-level monopoly of force does not require more military force; on the contrary: if the suggested authorities at the various levels are to provide security to the people who need it, less militarised conflict solutions seem desirable.

Notes

- ¹ This chapter is based on recently published research by the author. Wulf, H. *Internationalizing and Privatizing War and Peace*. (Basingstoke: Palgrave Macmillan, 2005). The concept of a public monopoly of force has been further developed by the author in an occasional paper for DCAF. Wulf, H. ‘Good Governance Beyond Borders: Creating a Multi-level Public Monopoly of Legitimate Force’. *DCAF Occasional Paper, no.10* (2006).
- ² Human Security Centre. ‘The Human Security Report 2005’. Vancouver, p.1. URL: <<http://www.humansecurityreport.info/index.php?option=content&task=view&id=28&Itemid=63>>
- ³ ‘A More Secure World: Our Shared Responsibility’. New York: Report of the High-level Panel on Threats, Challenges and Change (2004).
- ⁴ For the different terms of institution-, state- or nation-building, peacekeeping, peace enforcement or peace building, reconstruction or post-conflict programmes, see Hänggi, H. ‘Approaching Peacebuilding from a Security Governance Perspective’ in A. Bryden and H. Hänggi (eds), *Security Governance in Post-Conflict Peacebuilding* (Münster: Lit Verlag, 2005) 3–19.
- ⁵ Commission on Weak States and US National Security. 2004. ‘On the Brink: Weak States and US National Security’. Washington. DC: Center for Global Development. URL: <http://www.cgdev.org/doc/books/weakstates/Full_Report.pdf>
- ⁶ Bryden, A., and Hänggi, H. (eds) *Security Governance in Post-Conflict Peacebuilding* (Münster: Lit Verlag, 2005).
- ⁷ McGrew, A. ‘Democracy Beyond Borders?’. In Held, D. and McGrew, A. (eds) *The Global Transformations Reader* (Cambridge: Polity Press, 2000) 405–419. Held, D. *Democracy and the Global Order* (Cambridge: Polity Press, 1995).
- ⁸ The terms bottom–up and top–down are used by Mandel, R. ‘The Privatization of Security’, *Armed Forces & Society*, vol. 28, no. 1 (Fall, 2001), 129–151. Privatization of police functions, although an important development in many countries, is not the focus of this chapter.
- ⁹ Brzoska, M., and Heinemann-Grüder, A. ‘Security Sector Reform and Post-Conflict Reconstruction under International Auspices’ in Bryden, A. and Hänggi, H. (eds) *Reform and Reconstruction of the Security Sector* (Münster: Lit Verlag, 2004) 121–142.
- ¹⁰ Born, H. and Hänggi, H. (Eds.) The ‘Double Democratic Deficit’. (Aldershot: Ashgate, 2004). Ku, C. and Jacobson, H.K. (eds) *Democratic Accountability and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003).

- ¹¹ Kaldor, M. *New and Old Wars, Organized Violence in a Global Era* (Cambridge: Polity Press, 1999).
- ¹² Abrahamsen, R., and Williams, M.C. 'The Globalization of Private Security. Country Report: Nigeria'.
<<http://users.aber.ac.uk/rbh/privatesecurity/country%20report-nigeria.pdf>> Abrahamsen, R., and Williams, M.C. 'The Globalization of Private Security. Country Report: Kenya'.
<<http://users.aber.ac.uk/rbh/privatesecurity/country%20report-kenya.pdf>>
- ¹³ For details of the different motives see Wulf, H. *Internationalizing and Privatizing War and Peace*, op. cit.
- ¹⁴ Caparini, M. 'Enabling Civil Society in Security Sector Reconstruction' in Bryden, A. and Hänggi, H. (eds) *Security Governance in Post-Conflict Peacebuilding* (Münster: Lit Verlag, 2005) 69–91.
- ¹⁵ Zürn, M. *Regieren jenseits des Nationalstaates. Globalisierung und Denationalisierung als Chance* (Frankfurt am Main: Suhrkamp, 1998).
- ¹⁶ Mason, A. C. 'Constructing Authority Alternatives on the Periphery: Vignettes from Columbia', *International Political Science Review*, vol. 26, no. 1 (2005) 37–54.
- ¹⁷ Held, D. op. cit.; McGrew, A. op. cit.; Woodhouse, T., and Ramsbotham, O. 'Cosmopolitan Peacekeeping and the Globalization of Security'. *International Peacekeeping*, vol. 12, no. 2 (2005) 139–156.
- ¹⁸ Mason, A. C. op. cit., p.48.
- ¹⁹ Mehler, A. 'Dezentralisierung, Machtteilung und Krisenprävention'. In Debiel, T. (ed). *Der zerbrechliche Frieden* (Bonn: Dietz Verlag, 2002) 121–140.
- ²⁰ Zartman, I. W. (ed). *Traditional Cures for Modern Conflicts. African Conflict "Medicine"*. (Boulder, Co: Lynne Rienner, 2000); Böge, V. *Muschelgeld und Blutdiamanten. Traditionale Konfliktbearbeitung in zeitgenössischen Gewaltkonflikten*. (Hamburg: Schriften des Deutschen Übersee-Instituts, 2004).
- ²¹ United Nations General Assembly. 'Prevention of Armed Conflict. Report of the Secretary-General'. A/55/985 and S/2001/574, 7 June, 2001. New York, p.31
- ²² Schreier, F., and Caparini, M. 'Law, Practice and Governance of Private Military and Security Companies' Geneva Centre for the Democratic Control of the Armed Forces. Occasional Paper, no. 6 (2005), Geneva.