



Geneva Centre for the Democratic Control of  
Armed Forces (DCAF)

Policy Paper - №24

## **Revisiting the State Monopoly on the Legitimate Use of Force**

*Alyson Bailes, Ulrich Schneckener and Herbert Wulf*



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## Preface

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) assists the international community in promoting good governance and reform of the security sector. To accomplish this mission, DCAF conducts research on good practices, encourages the development of appropriate norms at the national and international levels, and provides targeted policy advice to a range of national and international actors. The Centre also assists interested parties by applying practical tools, providing in-country advice and developing assistance programmes that operationalise the norms and good practices identified through policy-relevant research.

Part of this mandate necessarily involves staying abreast of the broader developments in security that will shape DCAF's future work and the security sector reform agenda more broadly. Thus, this publication is directly linked to our contribution to the 7th International Security Forum (ISF) held in Zurich in autumn 2006 where a DCAF-organised workshop assessed the implications of the erosion of the state's monopoly on the legitimate use of force – a trend witnessed increasingly in recent decades and particularly since the end of the Cold War. This paper, which draws on the ISF conference contributions of three noted experts, discusses two key manifestations of this trend – private sector and armed non-state actors' involvement in the realm of security – and explores the possibilities and constraints of reconstructing the public monopoly of legitimate force.

While contributing to a refined understanding of the wider context in which DCAF's work on security sector governance and reform takes place, it is hoped that this publication will also prove relevant to the broader debates on privatisation, statehood and statebuilding.





# The Private Sector and the Monopoly of Force

*Alyson Bailes*

The trend in the early modern history of Europe and America to concentrate the task and the means of making war in the hands of governments representing whole nation-states has been reversed in recent times, and especially since the end of the Cold War. This change has been driven as much by governments' own choices as by any deliberate and concerted invasion of this domain by private entities. In many parts of the developing world it may be correct to see private actors, like insurgents, terrorists and war profiteers, as defying the central government's normal monopoly of force and trying to divide it or steal it away. But in the developed world, governments have been driven to delegate and outsource security functions for much the same reasons as have driven the continuing process of privatization in the purely economic sphere: growth and change in the public authorities' tasks, combined with shrinking budgets. While the demand has grown for states to engage out of their goodwill in international peace missions often far from their own shores, always involving greater per capita costs and often higher technological demands than territorial defence, most states' defence spending has steadily declined and other factors have often hit manpower availability. Calling upon private sector resources to fill the gap through (a) the supply of *ad hoc* supplemental services for overseas deployments and (b) the outsourcing of support functions at home, has been a necessity for many governments and a matter of ideological preference for some.

The most keenly debated result of this trend has been the rise of companies providing active security and defence services, but parallel phenomena have also been developing in the defence production sector, and for longer. Already during the Cold War there was a trend to increasing privatization of productive capacities, often linked with concentration under a few large national or multinational companies. Typically today in the most developed countries, only a specialized minority of products are made as well as used by government, including weapons of mass destruction (for those who have them) at one end of the scale and low-tech, low-value items like ammunition at the other. The bulk of conventional weapons are made and traded by private companies with varying degrees of official share-holding, while the expanding area of provision for homeland security purposes has always belonged to the civil sector. Limits on government financing have also encouraged a variety of new ownership patterns in which the property actually remains with the company throughout, ranging from the *ad hoc* hire of civilian air- and sealift for operations, to the commercial provision of training facilities and even the leasing of large items like helicopters and aircraft. If most of these devices give governments fairly easy means of control, there is a more subtle shift of power inherent in the fact that most of today's scientific and technological breakthroughs applicable to defence are now made in private sector laboratories and are equally applicable to other, civil

industrial uses. Typically, industry is ready to use them before government has understood precisely what security hazards they present, let alone found the appropriate governance solutions: nanotechnology is a current live example causing concern.

This contribution will briefly review the more obvious areas of overlap between public- and private-sector security roles – particularly the business of defence itself – and some other areas of growing business influence and/or responsibility within the wider or ‘newer’ parts of the security agenda. It will conclude with a number of governance solutions available to address the dilemmas of power-sharing between the public and the private sectors.<sup>1</sup>

## **Business and ‘New Threats’**

The dilemmas of power-sharing with the private sector become more complex when we leave the traditional realm of warfare and consider the ‘new threats’ agenda of defence against terrorism and WMD proliferation that has preoccupied so many governments since 11 September 2001. The private sector has at least three roles here: as potential victim, as potential accomplice, and as a potential partner for public authorities in countering these threats at both national and international levels.

To start with, business is clearly the enemy for extreme ideological terrorists like Al-Qaeda and it is no coincidence that their chosen targets on 9/11 included commercial buildings with overwhelmingly commercial inhabitants. Businesses and businessmen are often victims of terrorist methods used in lower-level conflicts where they are particularly vulnerable to kidnapping and extortion. They can also sustain massive losses from the disruption to travel, tourism and other normal economic activity that follows major attacks like those of 9/11 and the London bombings of July 2005, or even major scares like that at Heathrow in August 2006. Last but not least, businessmen can encounter delays, difficulties and extra expense in going about their normal work as a result of extra travel security measures and checks on migration, like those that have been introduced throughout much of the Northern hemisphere in the last five years. If these complications are frustrating for Western businessmen, they have hit far harder again at those from developing countries including some not directly connected with terrorism, such as China.

This is not to say that business is only an innocent bystander: on the contrary, the shadier (‘black’ or ‘grey’) parts of the private economy have done much to facilitate the evolution of modern terrorism and the spread of dangerous technologies. Terrorists benefit from crime, smuggling and corruption as sources of revenue and their funds may be stored by or passed through unscrupulous

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<sup>1</sup> This contribution draws on Alyson J.K. Bailes, ‘Private Sector, Public Security’ in *Private Actors and Security Governance*, eds., by Alan Bryden and Marina Caparini (Münster: LIT, 2006), 41-63.

banks as well as bogus charities. While the larger, earlier transfers of WMD-related materials and technology were made between states, the main dangers today of these capabilities reaching both terrorist and irresponsible state hands come from the operation of what has been called the ‘Wal-Mart’ of nuclear smuggling, combined with the problem of ‘loose nukes’ in the former Soviet Union and elsewhere. In the case of possible terrorist access to chemical and bio-weapons the problem is actually one of the ‘white’ economy, since destructive devices could so easily be put together from substances that are quite legitimately produced and used for many other, ‘peaceful’ purposes. To this can be added the role of the privately managed internet in spreading potentially dangerous information, and that of the privately owned media in giving terrorists the breadth of publicity they need.

Logically enough, business has been among the range of ‘non-state actors’ that governments and international organizations have targeted with new policy measures aimed at countering transnational threats. The recent UN Security Council Resolutions 1373 and 1540 laid down universal rules to outlaw the private financing of terrorists and the private ownership and trading of WMD-related items respectively. If these steps can be seen as the reassertion of a state monopoly, there are many others that try rather to regulate and limit what businesses can do with the sensitive products and information they are entitled to own. A number of specialized multilateral export control groups have tightened their rules dictating which goods cannot be exported at all and which require special licences, *inter alia* with a view to keeping them away from non-state customers. Within the civil nuclear, chemical, and bio-industries there are efforts to improve the physical and organizational control of sensitive products and information in the interests both of security, i.e. by avoiding wrongful transfer and destructive use, and of general safety, i.e. avoiding the spread of hazardous substances and diseases by accident or carelessness. A further area of activity has been the tightening of safety standards not just on air transport but on the transport of containers and other goods by sea and the management of seaports and harbours; while as a backstop, the USA and like-minded countries have set up the Proliferation Safety Initiative which includes the possibility of stopping and inspecting suspect cargoes on the high seas.

Despite widespread concerns and undoubted inconvenience, the latest evidence suggests that these measures have not had any marked negative effect on trade at least among developed countries, while some measures may even have spurred rationalization and technical advances – as well as also catching a number of non-terrorist wrongdoers (smugglers and criminals). However, their impact on terrorism as such is inherently hard to assess and some statistics (like the amount of funds frozen under UNSCR 1373) are distinctly uninspiring. One problem may be that states repeatedly launched their measures without consultation with business, and sometimes unilaterally *vis-à-vis* each other. Had the private sector been more consistently involved as a partner, it could obviously have advised on ways to achieve maximum effect with minimum disruption, but may also have had some more substantial input as well. Internationally active firms often know a lot

about the milieux that breed and house terrorism, and about the back-alleys of globalization which terrorists move through, as well as about the emerging technologies that most need to be defended against potential misuse. Just as countries can help each other build the relevant security facilities, businesses through their own affiliates or through networking with weaker partners can help build the capacity for compliance on the private-sector side. More broadly, enlightened business operation notably in post-conflict zones should help to ease the frustrations and inequalities that encourage terrorism and popular complicity with the terrorists in the first place. It is good to note that these points have been recognized by way of the positive references to the private sector made in the resolution on counterterrorism strategies adopted by the UN General Assembly on 8 September 2006.

### **Business and ‘Functional’ or ‘Human’ Security**

There are other dimensions that are very relevant for state and human security in which business cannot be seen as an interloper, but rather as the main provider of essential services and the front-line player in dealing with threats and emergencies. The fact is that only a vanishing proportion of the human race today is able to survive on the basis of individual resources and skills: the great majority rely on large-scale utilities like water, energy, and commercial food supply; on collectively provided facilities like communication routes and transport (and increasingly, on the internet); as well as on outside provision of the medicaments, skills and services needed to maintain their health. Rich and poor alike can be hit by epidemic diseases affecting humans, animals or crops, which spread far more rapidly precisely because of the uniquely mobile and interconnected character of today’s societies and trading systems. All can be affected by violent weather and other natural disasters (*vide* the December 2004 tsunami and the Southern USA’s hurricanes of autumn 2005), and all are damaged to varying degrees by slower processes of environmental pollution and exhaustion as well as the knock-on effects of climate change. It is striking that after studying these various vulnerabilities, a comprehensive Swiss study in 1993 reached the conclusion that the single worst disaster for modern Switzerland would be, not terrorists using WMD, but a widespread and sustained electricity black-out. Yet it hardly needs to be stressed that the role of the state in looking after these aspects of human survival and welfare has always been limited and today is more reduced than ever, above all in the rich, developed world, as a consequence of the combined processes of privatization and de-nationalization. Governments and people alike are doubly dependent on private providers: they are vulnerable to the effects when service is accidentally or deliberately disrupted and vital facilities destroyed, but they must also rely largely on private owners and experts to restore normal service.

Since 9/11, the focus on terrorist threats has combined with the general widening of concepts of ‘human’ security to direct public policy attention back towards these fields. There is a growing awareness both of the essentially *transnational* nature of resource flows, vital infrastructure, environmental processes, threats to

public health, and of the complex ways in which threat factors and emergencies in these dimensions can *interact* and aggravate each other. What is common to the various strands of corrective activity now going on in states and international organizations is the increasing effort (a) to anticipate and *prepare* for the potential disaster, by advance planning and ‘hardening’ or improved ‘survivability’ measures, and (b) to conduct *comprehensive* assessments of system vulnerability taking full account of the interlocking nature of different dimensions. Private business itself has been going through a very similar process of developing ‘business continuation’ strategies for a wide range of emergencies, using such means as dispersal of key facilities and provision of back-ups in low-risk locations. It seems more than obvious that the public and private sectors need to cooperate and to coordinate very closely, the more so since governments are just as likely to need the active support of business experts in specific contingencies as *vice versa*. Both sides will share the broad objective of minimizing disruption to normal life and restoring normal service as fast as possible – an important contrast to traditional combat where the aim is rather to divert more and more resources into the abnormal business of war until the enemy gives in. Even in this sphere, however, there are possibly conflicting interests to reconcile: including the questions of whether government should keep certain critical emergency resources under its own control; what special legal powers (including, for example, requisition) it should claim for an emergency short of war; whether to use military forces to provide alternative services or enforce evacuations and curfews; and, how all this can be managed without deliberate or accidental distortions of free-market competition.

These remarks hold good for the area of *infrastructure security* where policy work (including private sector consultation) is probably the best developed at present, but a few special issues may be highlighted concerning government powers in other security-related fields, for example:

1. *Cyber-security*: defence against criminal or politically motivated attacks using the internet is almost exclusively in the hands of private experts i.e. because of the strong mainstream resistance to introducing governmental controls in this field; although governments could certainly do more to bring the attackers to book;
2. *Energy security*: high prices and deliberate manipulations, such as those employed by Russia of its supplies to Ukraine in early 2006, have reminded governments of the security imperative to maintain and diversify adequate sources of supply for their nations, a motive that may even lead to engagement in conflict. Yet for a majority of states, not just the ownership but – to a large extent – the primary defence of the actual installations and means of transport (including pipelines) remains in the hands of private companies on a day-to-day basis. Strategic *delivery* routes are more likely to draw state (including military) protection;

3. *Environment*; most environmental damage is done by private companies simply because they now own most of the world's productive capacity, and the role of government is to make standards and regulations protecting the whole of society from excessive damage as a result. However, it is also private business that has developed a growing range of new 'greener' technologies as well as anti-pollution and clean-up techniques. Some of the most promising control strategies have been those that exploit the market's own mechanisms (such as emission permits trading under the Kyoto Protocol);
4. *Public health*; the fear of epidemics and the AIDS issue have focussed attention on the grip that pharmaceutical companies have over development and production of commodities vital for public health, and there is something of a current backlash against exploitative pricing and patenting practices. The idea of government holding strategic stocks of drugs has been revived in the context of 'bird flu'. But renationalizing production on any real scale is no longer an option, hence positive incentives are also needed to get business to produce enough of the right things. Private health service capacity can also add to elasticity so as to better manage with the eventuality of large casualties.

## Generic Solutions

Enough has already been said to show that there is no one-size-fits all solution for establishing the correct public-private sector balance across the whole spectrum of modern security. While most of the challenges call for relatively standardized international responses, some adjustment is needed at the implementation stage for national circumstances and traditions, including for example, different ideologies on state ownership as well as differences of economic development and bureaucratic capacity. Broadly, however, the governance solutions available can be classed under the following six headings (see Table 1):

1. *(Re)-assertion of a government monopoly of ownership or activity or both.* This is an internationally recognized principle for weapons of mass destruction but, at the other end of the spectrum, may make sense in the case of inspectorate and disciplinary functions for critical utilities and services. The main obstacles to extending it to other fields – reclaiming the direct defence and security functions that have been taken over by private actors, let alone reclaiming ownership of vital infrastructures and energy production – are practicality and cost. For developed countries in particular, it will usually be realistic to aim at asserting/preserving a state monopoly of legal *competence, law-making and policy-making*, rather than of ownership and execution.
2. *Legal prohibition of private sector activity in a given field.* This can apply even when government itself does not want to carry out the function (for

example certain manipulations of human biology, or ownership of the means of torture). It could involve, among other things, banning private security companies from the use of deadly force or from usurping functions of judgement and execution, while permitting them to exercise other roles.

3. *Regulation and monitoring of an otherwise legitimate private activity.* This is the single most appropriate and flexible instrument for most problems discussed above and there is nothing inherently anti-business or anti-market about it, since companies are used to operating within multiple frameworks of this kind (including sometimes quite strict codes of non-security-related corporate governance). The challenge is to achieve ‘good’ regulation, i.e. not too much or too little, sufficiently universal or standardized, adequately monitored and enforced – in all of which business itself should be able to help, if properly consulted.
4. *Indirect, ‘market’ methods of control.* One obvious example is that when government gives a contract for any security-related service or supply, it should both choose its business partner on the basis of demonstrated security responsibility, and incorporate all necessary security standards and safeguards into the contract itself. The same applies on a larger scale to decisions to delegate or privatize a whole field of relevant activity. Beyond this, government retains many tools to guide and discipline business indirectly, notably through tax systems, official credits and subsidies where permitted, as well as other aspects of economic management including the general conditions created for travel, trade and investment.
5. *Self-regulation by business.* There are several security-related examples including the so-called ‘Kimberley process’ initiated by the company De Beers for restricting trade in ‘conflict diamonds’, and the growing body of codes of conduct created by or recommended to companies for operating in conflict-prone areas. Professor John Ruggie as Special Representative of the UN Secretary-General on business & human rights presented a report earlier in 2007 on strengths, weaknesses and possibilities of the self-regulation method. Self-policed codes have also been widely advocated for scientists and technicians working in fields important for public health and the control of WMD. While NGOs often query this method, it has shown real results in fields such as Corporate Social Responsibility (CSR); and the CSR story suggests that the critical point comes when a code is so widely recognized that it also influences investors, banks, auditors and shareholders in deciding which companies to endorse. From this stage the market itself ought to work to produce more ‘good behaviour’.
6. *Consultation, dialogue and practical cooperation between public authorities and the private sector.* Such communication is clearly needed even in cases where the state simply seeks to maintain its monopoly. Where ownership and control of security processes will remain divided, it may be extended to include

information exchange and advice at the stage of policy formation and planning, the drafting and updating of rules (as already mentioned), the monitoring of policy implementation, and policy adjustment in the light of experience.

Table 1: **Governance solutions for reasserting the state monopoly on the use of force**

Method	Examples of Application
<b>(Re-)establish state monopoly</b>	Ownership of WMD Safety Inspectorates BUT: Costs
<b>Prohibit business activity</b>	Justice and Execution Deadly Force? BUT: Privatization dynamic
<b>Regulate/limit activities</b>	Private defence/security services Control of financial transfers Export controls Transport and infrastructure safety Environmental impact BUT: Quality of regulation, universality
<b>Steer the market</b>	Smart contracting Economic incentives/disincentives BUT: Competition issues
<b>Self-regulation</b>	'Kimberley process' Conflict-related codes Security/safety codes BUT: Strictness, enforceability, universality
<b>Consultation, dialogue and practical cooperation</b>	

There is, however, a third actor in the story of good security governance, namely *civil society and the people* themselves. It is worth recalling that a state monopoly of force does not itself guarantee state virtue or effectiveness, and legal competence to play a given security role is not the same as legitimacy. Democratic control and accountability are crucial to make sure that the official authorities do not use their powers to oppress their own people or attack others wrongfully, and conversely that the state does not neglect its wide range of contemporary security duties. In this context business can often be seen as part of the concerned society and as a possible source of corrective influences on government: thus, while some US businesses have profited hugely from the Iraq war, many more have complained about its economic effects and about the obstruction of their own freedoms by exaggerated counter-terrorism policies. Equally important, civil society can exert a powerful influence over business, acting through consumer and shareholder choice as well as the more dramatic methods of NGO agitation. It seems a pity



that the kind of campaigns which have tangibly affected business behaviour in the areas, for instance, of CSR, environmental responsibility and trading in furs have not been directed on anything like the same scale against companies that deal irresponsibly in arms or misbehave on private security contracts or fall down on responsible technology control and infrastructure management. The one exception, namely the NGO effort to drive oil and other extractive companies out of conflict zones where they may aggravate the situation, is hard to sympathize with completely since it would be better to train companies to help in conflict prevention as well as reconstruction. In short, if the subject of productive public-private sector interactions in the field of security has received less than its fair share of research and policy work up to now, the potential of the three-way interaction including civil society is even more in need of care and attention.

# Armed Non-State Actors and the Monopoly of Force

*Ulrich Schneckener*

In the modern world, the state – at least in theory – has to fulfil a dual function with regard to political order: first, the state organizes and guarantees public order domestically within a defined territory; second, all states together constitute the international system and, thereby, the global order. Ineffective, weak, failing or failed states – which can be subsumed under the rubric of *fragile statehood* – tend to undermine both functions and cause problems at the national, regional and global levels. Many post-colonial (or post-Soviet) states are unable to provide basic public functions and services *vis-à-vis* their citizens and are incapable of performing their duties and responsibilities as members of the international community. In other words, fragile statehood poses challenges not only for governance internally, but also for any form of regional or global governance.

The lack of legitimate and effective security governance in many parts of the world makes it difficult to contain and prevent the spread of transnational security problems such as terrorism and organized crime. A major challenge for security governance, however, is posed by activities of a variety of armed non-state actors who undermine the state's monopoly of the use of force. In extreme cases they may even replace the state and its security apparatus, at least at a sub-national level. This poses a number of questions to be discussed in this contribution: <sup>2</sup> Who are armed non-state actors and how can they be categorized? To what extent do they affect security governance in general and state-building efforts in particular? And how can and should the international community deal with these actors?

## Categories of Armed Non-State Actors

First, we need a better understanding of armed non-state actors. Generally speaking, *armed non-state actors* are 1) willing and capable to use violence for pursuing their objectives; and 2) not integrated into formalised state institutions such as regular armies, presidential guards, police or special forces. They therefore 3) possess a certain degree of autonomy with regard to politics, military operations, resources and infrastructure. They may, however, be supported or used by state actors whether in an official or informal manner. Moreover, there may also be state officials who are directly or indirectly involved in the activities of armed non-state actors – sometimes because of ideological reasons, but not

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<sup>2</sup> This contribution draws on Ulrich Schneckener, "Fragile Statehood, Armed Non-State Actors and Security Governance," in *Private Actors and Security Governance*, eds., by Alan Bryden and Marina Caparini (Münster: LIT, 2006), 23-40.

seldom due to personal interests (i.e. corruption, family or clan ties, clientelism, profit).

The following typology identifies the most important and most frequently encountered armed non-state actors and highlights their distinguishing characteristics.

1. *Rebels* or *guerrilla fighters*, sometimes also referred to as *partisans* or *franc tireurs*, they seek the 'liberation' of a social class or a 'nation'. They fight for the overthrow of a government, for the secession of a region or for the end of an occupational or colonial regime. In that sense, they pursue a political – mostly social-revolutionary or ethno-nationalistic – agenda, and view themselves as 'future armies' of a liberated population. According to the doctrine of guerrilla warfare, guerrilla fighters depend on the local population for logistical and moral support. In reality, however, the most significant support comes from foreign governments or various non-state actors who provide safe havens, weapons, equipment and know-how.
2. *Militias* or *paramilitaries* are irregular combat units that usually act on behalf of, or are at least tolerated by, a given regime. Their task is to fight rebels, to threaten specific groups or to kill opposition leaders. These militias are often created, funded, equipped and trained in anti-guerrilla tactics (counter-insurgency) by state authorities. Nevertheless they often evade government control and, in the course of a conflict, develop their own agenda.
3. *Clan chiefs* or *big men* are traditional, local authorities who head a particular tribe, clan, ethnic or religious community. They have usually attained their positions according to traditional rules, whether by virtue of their age and experience, ancestry or personal ability to lead the group. Often, they control a certain territory which may range from a few peripheral villages or settlements to larger regions. Most chiefs or big men also command an armed force recruited from members of their tribe or clan.
4. *Warlords* are local potentates who control a particular territory during or after the end of a violent conflict. They secure their power through private armies and benefit from war or post-war economies by exploiting resources (such as precious metals, tropical timber, commodities or drug cultivation) and/or the local population (for instance, through looting or levying 'taxes'). In so doing they frequently capitalize on transnational ties and links to global markets. Warlords are a typical product of long-running civil wars.
5. *Terrorists* aim to spread panic and fear in societies in order to achieve political goals, be they based on left- or right-wing, social-revolutionary, nationalistic or religious ideologies. They are organized in a clandestine way, most often in small groups and cells, sometimes also in larger

transnational networks (in particular Al-Qaida or Jemaah Islamiyya). Typical tactical means include kidnapping, hostage-taking, sabotage, murder, suicide attacks, vehicle bombs and improvised explosive devices.

6. *Criminals* are members of Mafia-type structures, syndicates or gangs, as well as counterfeiters, smugglers or pirates. Their core activities may include robbery, fraud, blackmail, contract killing or illegal (mostly transborder) trade (e.g. in weapons, drugs, commodities, children and women). Organized crime in particular seeks political influence in order to secure its profit interests, and uses means such as bribery, targeted intimidation or murder.
7. *Mercenaries and private security companies* are volunteers usually recruited from third states who are remunerated for fighting in combat units or for conducting special tasks on their own. They can serve different masters, ranging from the army of a state to warlords who promise them rewards. While traditional mercenaries are banned under international law, modern private security or military companies usually act on a legalized and licensed basis. They have professionalized and commercialized the business of providing combatants, trainers or advisers, or other forms of operational or logistical support, and are contracted by governments, companies or other non-state actors.
8. *Marauders* by contrast are demobilized or scattered former combatants who engage in looting, pillaging, and the terrorising of defenceless civilians during or after a violent conflict. They display a relatively low level of organizational cohesion and move from one place to another.

Most of these armed non-state actors share two common features. First, by using violent means they do not attach great importance to the distinction made by international law between combatants and non-combatants. In contemporary conflicts, especially intra-state ones, the distinction between combatants and non-combatants is increasingly blurred. Second, since the 1990s one can observe a process of transnationalization; most groups and organizations increasingly operate via transnational networks and transnational ties, thereby gaining new room to manoeuvre. Transnationalization not only facilitates the interlinking of war or post-war economies with cross-border smuggling routes and global 'shadow' markets, it moreover fosters the transmission of political agendas and ideological propaganda that are disseminated through international supporters (such as diasporas or exile communities, third states or NGOs) and the international media.

## Characteristics of Armed Non-State Actors

Despite these similarities, from an analytical point of view, four criteria in particular bring the differences between these types into relief (see Table 2):

1. *Change versus status quo orientation:* Some armed non-state actors seek a (radical) change of the status quo; they demand a different government, a different political system, the secession of a region, a new world order, etc. By contrast, other groups – whether driven by their own interests or instigated by those in power whom they serve – aim at securing and consolidating the status quo. The former position applies to terrorists as well as rebels and guerrilla fighters, whereas the latter applies to warlords and criminals who generally seek to secure their achieved political and economic privileges. The same is often true for clan chiefs and *big men*, in particular when they are integrated into the political system by means of co-optive rule or neo-patrimonial structures. The prototypes of a status quo movement, however, are militias or paramilitary organizations, respectively, who are deployed to protect the rule of a regime or the dominance of particular groups. Mercenaries or marauders, by contrast, behave rather opportunistically; sometimes they may serve the interest of status quo forces, while at other times they may challenge them.
2. *Territorial versus non-territorial aspirations:* Both guerrilla movements and warlords, in principle, aim at the conquest and – if possible – the permanent control of territory. Mercenaries are usually employed for similar purposes. Clan chiefs are usually also connected to a particular territory or region. Terrorists, on the other hand, might have territorial ambitions (e.g. the creation of their own state); however, they are neither willing nor able to conquer territory and defend it by military means. The same applies to criminals and marauders if one neglects the control of town districts or villages. Militias include both variants. Some (especially large) militia organizations are capable of securing or reconquering territory from rebels, whereas other units are assigned special tasks apart from territorial control, such as the persecution of dissidents.
3. *Physical versus psychological violence:* Rebels and guerrilla movements pursue their goals by using physical violence. Their aim is to weaken their opponent's military strength, defeat him or force him to surrender, and subsequently take his place. Terrorists, by contrast, often employ psychological techniques. In between these two extremes, other armed non-state actors are to be found: clan chiefs or mercenaries use primarily physical violence in order to defeat opponents, while for marauders and criminals the threat and use of violence is often merely a means of intimidation. Finally, militias and warlords are rather ambivalent with regard to the type of violence they use; depending on the group itself and the general circumstances, they make use of both forms of violence.

4. *Greed versus grievance*: Whereas guerrilla movements, militias, clan chiefs, *big men* and terrorist groups pursue – at least rhetorically – a socio-political agenda for which they need economic resources, the reverse usually holds true for warlords and criminals. They are primarily interested in securing economic and commercial privileges. Political power and public office as well as the use of violence serve economic interests. In that sense warlords and criminals are not ‘apolitical’ actors; yet their motivation for joining the political struggle for power is different from that of other political actors. Similarly, mercenaries and marauders pursue primarily economic gains.

Table 2: **Types of armed non-state actors**

	<b>Change vs. status quo</b>	<b>Territorial vs. non-territorial</b>	<b>Physical vs. psychological use of violence</b>	<b>Political vs. economic motivation</b>
<b>Rebels, Guerrillas</b>	Change	Territorial	Physical	Political
<b>Militias, Para-militaries</b>	Status quo	Territorial Non-territorial	Physical Psychological	Political
<b>Clan chiefs, Big men</b>	Status quo	Territorial	Physical	Political
<b>Warlords</b>	Status quo	Territorial	Physical Psychological	Economic
<b>Terrorists</b>	Change	Non-territorial	Psychological	Political
<b>Criminals, Mafia, Gangs</b>	Status quo	Non-territorial	Psychological	Economic
<b>Mercenaries, PMCs/PSCs</b>	Indifferent	Territorial	Physical	Economic
<b>Marauders, ‘sobels’</b>	Indifferent	Non-territorial	Psychological	Economic

Clearly, this characterization is based on ideal-types. In reality numerous grey zones exist, since groups sometimes undergo transformation in the course of a conflict. Rebels, *big men* or marauders, for instance, turn into warlords; militias or warlords may degenerate into ordinary criminals; criminals become involved in terrorist networks and vice versa; militias, rebels or warlords increasingly employ terrorist methods, and so on. In many cases hybrid forms integrate features of different ideal types, such as the Tamil Tigers in Sri Lanka, the FARC in Colombia or Maoist rebels in Nepal. These organizations not only control significant territory but continue to launch terrorist attacks nationwide. They employ physical as well as psychological violence and pursue far-reaching economic interests.

Nonetheless it does make sense to hold onto these distinctions, because they allow us to make statements regarding the extent to which particular groups or individuals correspond to these ideal-type categories. More importantly, in order to analyse the transformation of a particular group, criteria which distinguish one situation from another are necessary. This exercise not only has international legal and sociological implications, but is also relevant for practical policy purposes

since it may be helpful for developing hypotheses as to which actors are more or less likely to be integrated into state-building efforts.

## Options for ‘Spoiler Management’

Generally speaking, armed non-state actors can be seen as classical spoilers or trouble-makers for state-building efforts, which refers to the strengthening, reform/transformation and/or reconstruction of state structures and institutions. They have hardly any interest in consolidating statehood since this would inevitably challenge their position. More capable state structures would limit their room to manoeuvre and opportunities to pursue their political and/or economic agendas. Some of them, such as militias or rebels, would face disarmament and, eventually, dissolution. Others like warlords, guerrilla fighters or terrorists would be forced to transform themselves, i.e. to become political forces or to integrate into official state structures, while criminals, mercenaries or marauders would simply lose economic profits. Therefore, they are more likely to challenge than to support any steps which would strengthen *security governance through government*, i.e. the (re-)establishment of the state’s monopoly of the use of force.

This behaviour can be observed in almost every international intervention which aims at state-building, ranging from Bosnia and Kosovo to Haiti, Afghanistan and the Democratic Republic of Congo. In these cases, the international community is confronted with the following dilemma: on the one hand, state-building activities have to be implemented in spite of the vested interests of these armed actors in order to achieve positive results in the long run. On the other hand, progress in the area of security is often only possible if at least the most powerful of these actors can be involved in a political process which would grant them political influence (e.g. posts in an interim government) and certain economic and financial privileges which, in turn, could undermine the whole process of state-building. In other words, armed non-state actors are not only part of the problem, but must sometimes also be part of the solution. In particular with regard to the pre-established para-state structures of warlords, rebels, *big men* or militias, the question is whether it is possible to use these structures as temporary solutions and building blocs for reconstructing statehood, or whether this would simply increase the risk that they would be strengthened and legitimised so that the establishment of the state’s monopoly of the use of force becomes even less likely. In other words, those actors who have in theory the greatest potential for state-building and security governance are also the ones who can mobilise the greatest spoiling power. Moreover, the international community runs the risk of sending the wrong message (‘violence pays’) by granting too much power or privilege to armed non-state actors who have already benefited from war and shadow economies. This may not only trigger increasing demands by these actors, but also seriously harm the credibility and legitimacy of external actors *vis-à-vis* the general public.

Clearly, there are no satisfying answers to these questions. Considering past experience, context-specific, flexible arrangements in dealing with armed non-state actors will always be necessary. However, more broadly speaking, the international community has in principle a number of options for ‘spoiler management’. Depending on the type of actor and on the local situation, one or a mix of the following strategies might be appropriate:

1. *Negotiating a political settlement*: At the negotiation table, facilitators or mediators aim at persuading the armed actor in question to refrain from the use of force and to abandon maximalist positions. Usually, pros and cons of possible solutions have to be exchanged, incentives and disincentives have to be taken into account and a compromise acceptable for all sides must be found. Often arguing and bargaining strategies (including cost-benefit analysis) are combined in order to achieve a positive outcome. This scenario applies mainly to groups with a clear political agenda and which are strongly tied to a defined constituency (e.g. tribe, clan, ethnic group, political party). The most likely cases, therefore, are clan chiefs, *big men* or classical rebel leaders; in some instances local terrorists or warlords may also be part of such a process, in particular when they seek to transform into more political figures.
2. *Socialisation*: In the context of established institutional arrangements (e.g. electoral system, modes of power-sharing) and through political practice, spoilers are successively socialised into accepting certain norms and rules of the game. Armed non-state actors undergo processes of collective learning which may change their strategies and, eventually, their preferences and their character. This medium- to long-term strategy may work again primarily for those armed actors with political ambitions who have to address certain long-term expectations of their followers.
3. *Bribery*: Spoilers are induced to cooperate or silenced through the offering of material incentives, i.e. economic resources or well-paid posts. This strategy is politically and normatively questionable, however, in some cases it is indispensable for getting a peace- and state-building process started at all (for example Afghanistan). In particular, profit-driven actors such as warlords, criminals, mercenaries or marauders have often been receptive to such a strategy.
4. *Amnesty*: No less problematic from a normative point of view is granting amnesty for certain crimes and actions committed by non-state actors. This step, however, could work under certain circumstances as a precondition and an incentive to end violence. Generally, amnesty would be part of a larger political package and may not be applied to every crime or every group member. It might be especially attractive for groups who are aware of their weaknesses and for leaders who are willing to opt for a different political career.



5. *Containment and marginalisation:* This strategy aims at systematically containing the political and ideological influence of armed non-state actors. The idea is to isolate them from actual or potential followers and their constituencies as well as to marginalize them. For this scenario to work, political elites and societal groups need to build a broad consensus not to deal with these actors and not to react to their violent provocations, but to continue an agreed peacebuilding process. This approach is a potentially viable option in the case of rather weak or already weakened actors such as smaller rebel groups, terrorists or marauders.
6. *Fostering splits and internal rivalries:* Another option aims at fragmenting and splitting armed groups between more moderate forces and hardliners. This can be achieved by offering secret deals to some leading figures or by involving them in a political process which would encourage them to leave their group or to transform it into a political movement. The strategy, however, can result in the establishment of radical fringe and splinter groups which may be even more extreme than the former unified group. This kind of fragmentation process can often be observed within rebel or terrorist groups.
7. *Coercion:* Finally, international actors may use coercive measures, including the use of force. Typical instruments are military or police operations aimed at fighting or arresting members of armed groups; the deployment of international troops in order to stabilise a post-war situation; or, the implementation of international sanctions (e.g. arms embargoes, no-fly zones, economic sanctions, freezing of foreign assets, travel sanctions, war criminal tribunals) which could harm the interests of at least some non-state actors, in particular para-militaries, rebel leaders, warlords and clan chiefs.

As indicated, all these methods have their downsides. In particular, they imply that the international community has to be prepared to make ambivalent decisions, to risk backlashes and failures and to put up with normative dilemmas. Moreover, the international community must be willing to invest political capital, resources and time into efforts to co-opt, transform or weaken armed non-state actors. However, all three are difficult to sustain. First, the international community – and in particular the UN Security Council – tends to focus primarily on cases of emergency and crisis which may have effects on regional and international security. If the situation has calmed, if a war has formally ended, high-level political attention will usually be absorbed by new crises despite the fact that state-building processes need long-term political support. Second, military, economic and personal resources are limited and demand exceeds supply. Moreover, the mobilisation of resources is directly linked to the question of political commitment. Third, external actors have the inherent problem that their mandates, budgets, programmes or projects are limited in time and scope. Local actors know and take advantage of this. In particular those powerful actors who

do not have an interest in giving up their privileges will pursue all kinds of delaying and obstructive tactics because they know that time is on their side.

In spite of the dilemmas, difficulties and obstacles outlined above, the alternative of staying out of war-torn societies and ignoring problems of fragile statehood is neither realistic nor desirable. Ultimately, disengagement means risking a dramatic worsening of the situation in fragile states, thereby making crises and the spread of armed non-state actors more likely. This would not only lead to additional humanitarian disasters, but create tangible security problems and governance failures – at the local, regional and global levels.

# The Future of the Public Monopoly of Force

*Herbert Wulf*

This contribution starts from the identification of the following four – partly linked – trends which all undermine the state monopoly of the legitimate use of force: first, the privatisation of violence and security; second, international interventions; third, globalization; and fourth, fragile or even failing statehood.<sup>3</sup>

First, a recent trend in contemporary conflicts is the privatization of violence – for example, from the bottom up through war lords, militias, rebels, para-military groups, gangs and organized crime. 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 violence.<sup>4</sup> Privatization also takes place top-down through outsourcing of traditional military functions to the private sector, the intended result for a number of governments.<sup>5</sup> Military skills 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. This reverses a centuries-old development of establishing a legitimate state monopoly of violence by disarming citizens in the process of nation-building. The privatization of violence and security undermines and fundamentally challenges the legitimate monopoly of force. 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.

Second, the international community has progressively tried to counter the outbreak and fighting of wars through concerted efforts, including if necessary, military means. The number of international interventions authorized by the UN has increased since the end of the Cold War, more and more with the moral responsibility and humanitarian concern in mind to save lives and to prevent gross human rights violations. These international interventions (and the resulting internationalization of armed force) have an effect on the monopoly of violence as well, since the decision-making on intervention and the use of force takes place at the international level.

Third, the concept of the monopoly of violence, which served as a model beyond Europe, is not only challenged by the privatization and internationalization of

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<sup>3</sup> This contribution draws on three publications by the author: *Internationalizing and Privatizing War and Peace* (Basingstoke: Palgrave Macmillan, 2005); *Good Governance Beyond Borders: Creating a Multi-level Public Monopoly of Legitimate Force*, DCAF Occasional Paper No. 10 (Geneva, DCAF, 2006); "Reconstructing the Public Monopoly of Legitimate Force," in *Private Actors and Security Governance*, eds., Alan Bryden and Marina Caparini (Münster: LIT, 2006), 87-106.

<sup>4</sup> I use the terms monopoly of violence and monopoly of force interchangeably. By definition, the term means the legitimate use of force.

<sup>5</sup> The terms bottom-up and top-down privatization are used by Robert Mandel, "The Privatization of Security," *Armed Forces & Society* 28, no. 1 (Fall 2001), 129-151.

conflict. The state monopoly of violence is also confronted by the new reality that an undisputed national entity no longer exists. National boundaries have been increasingly broken down or lowered due to the general trend of globalization. Many actors today operate outside the boundaries dictated by the logic of territoriality. Conceptually and in reality the state is being emptied of some of its functions.

Fourth, failing or fragile states 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 and – in the case of failed states – incompetent or non-existent. 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.

Against the backdrop of these four trends, the concept of the state monopoly on the legitimate use of force, as it has developed over the last centuries especially in Europe, needs to be reformed. 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 in which the nation–state is conceived as the sole appropriate agent of violence. In this contribution, a proposal is made into what direction such a reform process could proceed. The legitimate monopoly of force should not be limited to the nation-state but should be based on the local, national, regional and the global levels.

## **Global Security Governance and the Monopoly of Force**

At the global level no monopoly of violence exists. The UN Security Council already has a monopoly power to *authorize* the use of force at the global level, although the UN was never given the necessary means to exercise this authority, such as the capacity to implement sanctions, a police force and armed forces. The UN Charter's stipulation 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 and the authority of the UN to use force, of course, is different from a monopoly of force at the global level. Even when UN mandated peacekeepers intervene on humanitarian grounds, this mandate suffers from a democratic deficit. The decisions to intervene, although made according to international law and accepted norms, are taken by a highly politicized and undemocratic UN Security Council. Stricter criteria for when to intervene and when not to 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 legitimized body and operates instead mainly according to the veto of the powerful permanent members de-legitimizes its actions.<sup>6</sup> This deficiency in global governance acts as a

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<sup>6</sup> Dieter Senghaas, *Zum irdischen Frieden* (Frankfurt/M.: Suhrkamp, 2004), 59.

bottleneck and a barrier to the creation of the democratically legitimized monopoly of violence that is globally required

Furthermore, decisions in foreign and security policy, despite constitutional variations among democracies, seem to be one of the least democratic policy areas, and the control and oversight rights of parliaments are not very advanced. Decisions in most international organizations are not taken democratically and rules and regulations are rudimentary or non-existent.<sup>7</sup> Nationally organized armed forces are usually inadequate to prevent or end conflicts in crises. Considerations of prestige, pride, and national political and economic interest, are a barrier to establishing a truly integrated international armed force. The democratic control of internationalized armed forces is more complex than that of national forces. However the 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.

## **The Need for a Multi-Level Public Monopoly of Force**

The Westphalian ideal states monopolising the means of force 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 materialized. In today's world cross-cutting and intersecting grids at the local, state, regional, and global levels have emerged.<sup>8</sup> As a result of increasing interdependence and globalization the nation-state has lost or transferred part of its sovereignty to other entities: towards the top (to supra national or multilateral organizations as well as private actors like companies and NGOs) and towards the lower levels (such as local and district associations).

### ***The Model of a Multi-Level Public Monopoly of Force***

The proposal of a multi-level monopoly of force is grounded on an empirical-analytical observation and a normative-theoretical concept. The empirical-analytical observation recognizes that more and more social forces operate across, below, and above the nation-state. The normative-theoretical concept is grounded on cosmopolitanism.<sup>9</sup> 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 regionalization and localization – are undermining existing national forms of governance and that

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<sup>7</sup> Hans Born and Heiner Hänggi, eds., *The 'Double Democratic Deficit'* (Aldershot; Ashgate, 2004); Charlotte Ku and Harold K. Jacobson, eds., *Democratic Accountability and the Use of Force in International Law* (Cambridge, UK: Cambridge University Press, 2003).

<sup>8</sup> Ann C. Mason, "Constructing Authority Alternatives on the Periphery: Vignettes from Columbia," *International Political Science Review* 26, no. 1 (2005), 37-54.

<sup>9</sup> David Held, *Democracy and the Global Order* (Cambridge. Polity Press, 1995).

alternatives need to be found. The cosmopolitan concept envisages a post-Westphalian global order, a system beyond the nation-state with overlapping authorities entitled to exercise the monopoly of violence.

Without principally questioning the concept of the monopoly of violence 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 local levels are adequately equipped to perform an increased role in executing the monopoly of force. What is called for is a conceptual rethink and a reform of capability to create or buttress a division of labour of the monopoly of violence at the global, regional, national and local levels.

The reconstruction of the monopoly of violence is not just about re-establishing the central *state* monopoly of force. A more holistic approach is necessary to establish rules and regulations for the use of force. This includes 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:

1. *The local level:* with federalist structures or other traditional forms of shared authority, which offer proven methods of regulating violence with the inclusion of ‘zones of peace’ and ‘islands of civility’.
2. *The national level:* with credible and accountable institutions of organized force and good governance.
3. *The regional or sub-regional level:* with regional organizations engaged in providing security and facilitating peace beyond the various national boundaries.
4. *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.

Besides the daunting practical difficulties of implementing a multi-level public monopoly of legitimized violence regulation, such a system is faced with two conceptual problems: First, how shall the four different levels be legitimized, given the acute deficit in democratic processes at all four levels? Second, how must the authority be apportioned at the different levels to avoid disputed sovereignties, and how can co-operation and a division of labour between these segmented authorities function?

A multi-level monopoly is technically 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 ruinous competition, a set of agreed rules is a precondition for success.

Two crucial functional principles (graphically illustrated by the figure below) should provide the basis for successful cooperation. First, the monopoly of violence 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, higher level be entrusted with this mission. This concept is exercised, for example, 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 is relevant beyond the local level or if the instruments of legitimized organized 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 organization 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, but only as a last resort.

The second principle is based on *supremacy*, on a hierarchy of authority. Norm setting should happen in a top-down process. International norms would prevail over regional, regional over national and national over local norms. The UN would have higher authority than regional organizations, the region is placed higher than the national level and the national level would prevail over the local level. Given the realities of conflict-prone and war-torn societies, not all four levels would 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 3: **Establishing the multi-level monopoly of force**

Subsidiarity principle: bottom-up	Monopoly of force	Supremacy principle: top-down
↑	Global	↓
	Regional	
	National	
	Local	
<b>Implementing the monopoly of force</b>		<b>Norm setting</b>

Despite the fact that there are shortcomings at each of the four levels, in many circumstances where security is lacking, a holistic approach such as this would

offer solutions to problems commonly encountered in prevailing approaches. Theoretically the weakness of one level (for example at the national level) could be compensated for by the level below (at the local level) or above (at the regional level). Compared to the present difficulties in implementing international post-conflict programmes, this multi-level public monopoly of force promises to better tackle the root causes of some of the difficulties caused by weak states.

### ***Implementing the Multi-Level Public Monopoly of Force***

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

*The local level – federalism and traditional conflict resolution mechanisms:* The relationship between the local level and a central government can best be described as a federal system. Federalism is considered to be a seedbed of democracy, as it allows for more participation and accountability, stimulates civil society, adds channels of access for political participation, increases the sources of legitimacy, and broadens citizenship by institutionalizing multi-ethnicity and providing 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 taking power rather than encouraging democracy.<sup>10</sup> The closeness of local leaders to the local space and their knowledge about traditional conflict regulation are likely to promote realistic and 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.<sup>11</sup> Even war-torn societies are also populated by citizens who form ‘zones of peace’ and ‘islands of civility’. However 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 national level – institution-building:* Notwithstanding the intensification of globalization, the quest for global governance, international norm-setting and the growth of global civil society, the international political sphere remains decidedly state-centric, even though its importance is gradually diminishing. Nevertheless, at the same time, many states are unable to fulfil the security and governance function effectively. To properly establish and control the agents of the state monopoly of force, a legitimized government with functioning state institutions is required. It is an extremely difficult task to democratize a society and build effective state institutions where democracy has no tradition and where state institutions scarcely exist.

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<sup>10</sup> Andreas Mehler, “Dezentralisierung, Machtteilung und Krisenprävention,” in *Der zerbrechliche Frieden* ed., Tobias Debiel (Bonn: Dietz Verlag, 2002), 121-140.

<sup>11</sup> William Zartman, ed., *Traditional Cures for Modern Conflicts. African Conflict “Medicine”* (Boulder, Co: Lynne Rienner, 2000); Volker Böge, *Muschelgeld und Blutdiamanten. Traditionale Konfliktbearbeitung in zeitgenössischen Gewaltkonflikten* (Hamburg: Schriften des Deutschen Übersee-Instituts, 2004).



*The regional level – increasing responsibility and capacity:* Regional organizations should have an immediate interest in promoting peace since civil wars normally affect neighbouring countries through spill-over and destabilization. The experiences of Europe and Asia have increased the prospect of a more active and expanded sphere of responsibility for regional organizations. Since the 1990s the UN emphasized the special importance of regional organizations in promoting and facilitating peace and stability within their respective regions. In reality, however, most regional organizations have no convincing record of peace missions to justify such expectations. Given their present structure, regional organizations are not in a position to apply the monopoly of force effectively. They suffer from four weaknesses: contested sovereignty including a lack of traditional nation–state authority delegated to them; overlapping responsibilities and competition among regional organizations; fundamental political differences and a lack of common values which leads to inaction; and finally, 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 violence, depends on the enhancement of international norms. The UN is a hybrid system: an undemocratic intergovernmental organization which also acts as the conscience of the international community and the highest authority on questions of war and peace. This inherent tension makes it an organization in need of reform. However, despite these organizational and conceptual insufficiencies and despite a gap between the theory and practice of international norms, there is no realistic alternative to the UN. At the global level, the UN's activities are often heavily politicized and contested. International norms are often selectively applied because the double standards of members prevail. Regions in conflict are not only assisted with crisis prevention programmes but all too often find themselves at the mercy of the dominant intervening powers.

One might dismiss the proposal of a multi-level monopoly of violence as unrealistic and utopian. The intention of proposing such a model is to overcome the narrow, Westphalian-type, territorial fence of the national space. In the context of a globalized 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 re-establishing a nation–state monopoly, but rather in a multi-level public monopoly of violence. A legitimate, multi-level public monopoly of force comes closer to the present reality of the international system because it addresses different levels of political decision-making. The present fundamental assault on the Westphalian nation-state system is so far-reaching that alternatives need to be considered. This has been recognized *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 required to provide security to the people who need it, less militarized conflict

solutions seem possible. What is required, however, is a change of international (and in many cases national) law to accommodate the suggested division of labour between the local, national, regional and global levels.

## Policy Implications and Recommendations

The governance tasks implied in this analysis are too complex for lone nation-states to handle, especially those states that are in crisis or have emerged from conflict. Three political and legal areas of importance for the future development of peace and security and the regulation of force need to be considered:

1. *Establish strict legal regulation of private military companies:* This is necessary to overcome the legal grey zone in which such forces presently 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 the case for example in arms export regulation, to international transparency and verification methods.<sup>12</sup>
2. *Overcome 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 barely on the agenda. However, the established, albeit often inadequate, control mechanisms at the national level are more complicated when international missions are involved. Although the UN organization can operate out of humanitarian concerns and moral obligations, and intervenes on the basis of international law and emerging norms, its structure as an intergovernmental organization makes it vulnerable to a democratic deficit and the manipulations of power politics.
3. *Overcome the security deficit and reform 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. Instead a carefully crafted division of labour in exercising the monopoly of violence at the global (UN), regional (regional organizations), nation-state and local levels is needed.

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<sup>12</sup> Fed Schreier and Marina Caparini, *Law, Practice and Governance of Private Military and Security Companies*, DCAF Occasional Paper no. 6 (Geneva: DCAF, 2004).





### **Geneva Centre for the Democratic Control of Armed Forces (DCAF)**

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