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The Future of the Monopoly of Violence**

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***Abstract***

This paper examines contemporary challenges to the nation-state and critically assesses international interventions in conflict and post-conflict societies. The programmes of the international community aimed at state-building in such situations are considered too narrowly focussed on establishing or re-establishing state-centric institutions. Three factors which challenge the Weberian nation-state are identified: privatization of violence and force, internationalization of the application of force and globalization. Instead of concentrating efforts of post-conflict reconstruction primarily on state institutions and the recreation of a state monopoly of force, a model of a legitimate public monopoly of force is suggested which is based on the local, national, regional and global level. The thesis is that such a model, although it sounds utopian, is more realistic and in line with the international system than the predominant emphasis on the nation-state.

# Challenging the Weberian Concept of the State: The Future of the Monopoly of Violence

Herbert Wulf

*In the last analysis the modern state can only be defined sociologically in terms of a specific means (Mittel) which is peculiar to the state ... namely physical violence (Gewaltsamkeit). (Max Weber)<sup>1</sup>*

*War makes states. (Charles Tilly)<sup>2</sup>*

## Introduction: The Renaissance of the State

The discussion of the role of 'the state' has been revitalized in recent years both in research and in politics. The renaissance of the role of the state took, as its point of departure, the rediscovery by scholars of the agency of the state to shape social and political processes (Evans, Rueschemeyer and Skocpol 1985). This upsurge of interest in the state is manifold and at least four different strands of thought can be delineated:

*Firstly:* One issue of eminent concern is the dissatisfaction with the functioning and effectiveness of the state as an actor or an institution in societies which experience persistent levels of conflict or in post-

conflict societies. Scholars perceive the problems of many developing countries as generated by "the twin pressures of late state making and their late entry into the system of states" (Ayoob 1995: XIII). Since these societies are neither mature nor have fully developed as states, authors described them as 'quasi' or 'pseudo' states, indicating their incomplete formation and possibly emerging process (Jackson 1990). The failure of the state in the non-OECD world has been highlighted in an extraordinary outpouring of studies, many of which use alternative terms such as fragile, collapsed, collapsing, weak, fragmented or high-risk states (Zartman 1995, Rotberg 2004).<sup>3</sup> The notion of the various concepts usually is that the fragility, weakness or weakening of the central state in favour of tribal, ethnic or other local authorities will result in anarchy (Kaplan 1994). Implicitly and often explicitly, reference to an appropriate role of the state is based on the Weberian concept of the state. In Max Weber's political thought the state lays claim to the monopoly of legitimate physical violence within a certain

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<sup>1</sup> „Man kann vielmehr den modernen Staat soziologisch letztlich nur definieren aus einem spezifischen *Mittel*, das ihm ... eignet: der physischen Gewaltsamkeit.“ Max Weber (1919: 506). Translation according to Lassman and Speirs (1994: 310).

<sup>2</sup> Charles Tilly (1985: 170).

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<sup>3</sup> Milliken and Krause (2002: 771) rightly point out that "state failure and state collapse must be distinguished from each other, and must *not* be subsumed under the vague, broad and ambiguous headings of political conflict or civil war. State collapse is different." State maintenance in a weakened or stressed form is seen as the norm while state collapse remains a rare phenomenon.

territory.<sup>4</sup> When scholars argue that a state is fragile or has failed, or when major donors' programmes engage in state-building<sup>5</sup> this is (implicitly) measured against a notion, a hope or an expectation of a state as it should function. While the various terms signal differences in analysis or approaches for fixing the functioning of the state or rebuilding it, they have in common that the state is malfunctioning, not functioning at all or has even collapsed. The classic case often referred to is Somalia but many other societies are also listed as such failed, fragile or stressed states.<sup>6</sup>

*Secondly:* Based on such an analysis of ineffective, inefficient, weak or fragile states, the international community has developed intervention strategies to respond to crisis situations. Major donor countries and their associations like the Organisation for Economic Co-operational and Development (OECD 2005), multilateral institutions like the International Monetary Fund and the World Bank in their post-conflict and poverty reduction programmes (World Bank 2006) and the United Nations in their growing number of peace operations squarely address the role of the state and concentrate their intervention and aid efforts

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<sup>4</sup> I use the term violence and force synonymously. The German term 'Gewalt', used by Weber, does not differentiate between 'force' and 'violence'. When the term state monopoly of force is used it always means its legitimate use. Similarly, when Weber uses the term 'Herrschaft' this can, depending on its context, mean 'rule' or 'power'.

<sup>5</sup> Throughout this paper I use the term state-building. In the relevant literature the term nation-building is also used. Nation-building usually refers to holistic development of a society, especially the creation of a national identity while state-building is directed more at the development of functioning state institutions.

<sup>6</sup> A list of fragile states is presented in an elaborate empirical annual study of The Fund for Peace (2006). The World Bank has set up a task force in 2002 on Low Income Countries Under Stress (LICUS) (World Bank 2006). Eight different types of rankings are summarized by Schneckener (2007, 40-44).

towards building up state-centric institutions. In these programmes the lack or inadequacy of effective and efficient state institutions has been discovered as the main bottleneck in the pursuit of security, peace and development. These barriers can be overcome, it is presumed, by external intervention – in short: by social engineering. Some scholars even offer toolkits for the restoration of state-centric institutions (Dobbins et al. 2007). Most of the large international peace operations or post-conflict reconstruction programmes, like those in Kosovo, East Timor, Afghanistan, the Democratic Republic of the Congo etc., can be classified in this category. They are based on a Western-oriented, liberal-value system which promotes democratization.

Promoting democratization and a liberal market economy has become the lynchpin of most peacekeeping and post-conflict reconstruction programmes. The basic assumption behind this notion is that democratization and liberal market orientation foster peace. However, the academic literature on what should come first, democratic elections to legitimize the central state's government or to first establish the state institutions that can provide basic services, is highly controversial and no clear-cut blueprint for post-conflict reconstruction is available (Baker 2001, Paris 2004). Schneckener (2007) classifies the various approaches of international state building programmes into four categories: liberalization first, security first, institutionalization first and civil society first and argues that none of the four approaches should have an exclusive priority but that liberalization, security, institutionalization and emphasis on civil society should be pursued in parallel.

The focus on the need for efficient and effective institutions in the developing world is not new. In fact, the changing perception

of the state in political institutions resembles a rollercoaster. Modernization theory, especially in the Anglo-Saxon dominated development theory of the 1960s and 1970s predicted optimistically, but incorrectly, that once economic development was initiated it would naturally lead to a liberal market economy and stable polities resembling Western democracies. At a later stage, during the 1980s, the state was predominantly perceived as inefficient, bureaucratic and over-sized. Systematic liberalization and structural adjustment programmes – based on the so-called Washington Consensus – introduced conditionality into development policies. During this period, the state was criticized both for meddling too much in what should best be left to market actors as well as for the state's tendency to make war and trample the rights of individuals (Putzel 2005: 7). The pendulum has now swung in favor of good governance: effective state institutions and a functional and legitimized state are promoted and assisted with aid by the international community (Debiel 2005). While the Washington Consensus of the 1980s threatened with more 'stick', the present policy offers more 'carrot'.

*Thirdly:* Somewhat different from the first two approaches, scholars have concluded that the state is the main perpetrator of violence against its own people. Colombia is perceived as such a state in which the agents of the state are responsible for the majority of cases where violence is exercised illegitimately.<sup>7</sup> Possibly present day Zimbabwe and certainly the Pol Pot regime and the government in Equatorial Guinea fall into this category. Charles Tilly (1985: 169 and 173), while emphasizing that “in no simple sense can we read the future of Third World countries from the pasts of European

countries”, nevertheless clearly underlines that a continuum runs from “bandits and pirates to kings via tax collectors, regional power holders and professional soldiers” who exercise violence on behalf of the state. He defines war-making and state-making as organized crime (Tilly 1990). Of course, it makes a difference, if force is applied ‘legitimately’ – as states normally claim they do – or ‘illegitimate’. But the decisive question is: How is the ‘legitimate’ application of force defined? At the beginning of the state-building process the distinction between ‘legitimate’ and ‘illegitimate’ use of force was not clear. It was a long process and struggle until the nation-state became the monopolist of force.

There can be no doubt that states have applied violence on a larger scale, more efficiently and more effectively since they have endeavoured to monopolize force. The question of ‘legitimate’ or ‘illegitimate’ actions of states is not just of historical interest. With the discourse on so-called ‘humanitarian interventions’ and the ‘responsibility to protect’, it has been elevated to the global sphere. The widely accepted cornerstone of non-intervention in international law is increasingly questioned in the context of the protection of human rights. The International Commission on Intervention and State Sovereignty (2001: section 6) calls the states’ legitimacy into question:

“Rather than accept the view that all states are legitimate...states should only qualify as legitimate if they meet certain basic standards of common humanity...The implication is plain. If by its actions and, indeed, crimes, a state destroys the lives and rights of its citizens, it forfeits temporarily its moral claim to be treated as legitimate...In brief, the three traditional characteristics of a state in the Westphalian system

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<sup>7</sup> I exclude here studies that argue war brings peace and therefore plead for giving war a chance (Luttwak 1999; Herbst 2004).

(territory, authority, and population) have been supplemented by a fourth, respect for human rights.”

*Fourthly:* There is the neo-liberal project to trim down the state to its core functions. This neo-liberal scheme of ‘deregulation’ aims at more efficiency, claiming that the private sector can perform many functions better than the state. This trend of trimming the role of the state to its core competencies has been dominant in OECD member states but is not limited to this group of developed or highly-industrialized countries. The programmes of multilateral organizations like the World Trade Organization (and globalization in general) spill not only over into the non-OECD countries, they are specifically aimed at including all countries into this design of a lean state.

What are the effects of these different approaches regarding the function of the state in conflict-prone and post-conflict societies? It is surprising that the debate on the role of the state does not recognize the stark contrast between the pivotal role that the international community places on building strong state-centric structures at a time of globalization when typical state functions are de-nationalized and the role of the nation-state diminishes.

My reflections on the Weberian state, in the next section of this paper, grow from contemporary concerns. In this paper I will consider the implications of the Weberian ideal-type state for the current model of state-building. Is it justified, particularly in international interventions and reconstruction programmes, to place such an exclusive emphasis on nation- and state-building along the lines of the Weberian model? The Westphalian ideal presupposes a world with sharply drawn borders demarcating distinct, territorial jurisdictions administered in relative isolation from other sovereign actors. However, this perfect

model has never fully materialized. Given contemporary challenges, I shall argue that cross-cutting and intersecting grids at the local, state, regional, and global levels have emerged as has increasing interdependence and globalization. Thus, the nation-state has lost or transferred part of its sovereignty to other entities. Both upwards (to supra-national or multilateral organizations like the EU as well as to private actors like companies and NGOs) and downwards to lower levels (such as local and district associations). So why then the unquestioned emphasis on state-building? Why is the victory of the state *the* best or even the *only* solution to overcome political disorder and peacelessness?

Furthermore, given the poor record of most intervention programmes – measured against these programmes own criteria of short-term success – the question needs to be asked if the whole approach is based on a flawed understanding of the role of the nation-state. This clarification will make it easier to understand the disparities between the theoretical model and the existing challenges. In the last part of this paper, I will suggest an alternative model to the nation-state based monopoly of force, namely a ‘public monopoly of legitimate force’ with a division of labor between the local, national, regional and global level.

## **2. The Weberian Model of the State Monopoly of Force in Today’s World**

The key to the Westphalian modern nation-state is the monopolization of legitimate force (or organized violence). The state in Europe became what Weber (1919) called the monopolist of the legitimate physical violence. Weber quotes Trotsky and agrees with him that “every state is founded on force” (Lassman and Speirs 1994: 310). Already before Weber, political thinkers like

Machiavelli and Hobbes had observed that states try to monopolize violence and that this process of centralization was a driving force in state making. One of the central functions of the modern state – besides the provision of welfare and the representation of its population – is the protection of its citizens or, in modern terms, the guarantee of their security by establishing the rule of law.

In the following section, I will consider how the legitimate use of force can be established, how this relates to governance and the challenges facing the state's monopoly of force as it is described by Weber.

### Legitimacy and Governance

Weber describes the state as “a relationship of rule (*Herrschaft*) by human beings over human beings, and one that rests on the legitimate use of violence (that is, violence that is held to be legitimate)” (Lassman and Speirs 1994: 311-312). He describes three forms of legitimacy to exercise the monopoly of force: There is, first, the authority of ‘the eternal past’,<sup>8</sup> of custom. It is the traditional power exercised by the patriarch, by the patrimonial prince or by elders. Then Weber points to the authority based on the exceptional, personal gift of grace, or charisma. He continues by mentioning specifically the charismatic rule as exercised by religious leaders, the plebiscitarian ruler, the great demagogue and leader of a political party and, interestingly, the warlord. This exceptional personal charisma depends on the personal devotion to, and personal trust in the qualities of leadership of the individual. Finally, the third Weberian category of legitimacy are rationally devised rules, rule by virtue of

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<sup>8</sup> In the German original Weber calls it the ‘ewig Gestrigen’, ringing a more negative connotation than the term ‘eternal past’ (Weber 1919: 507).

‘legality’, by virtue of belief in the validity of legal statute and the appropriate juridical ‘competence’.<sup>9</sup>

A normative postulation, based on the theory of the democratic state, is narrowing the perspective to a single type legitimacy of the monopoly of violence, namely that it should be based on the rule of law and democratic control. This is, of course, by no means a universally established practice. Even established Western states do not always meet the Weberian criteria of a modern state in which the agents of the state exercise a monopoly of legitimate violence over a given territory and population. However, legitimacy is *not* – and Weber's classification suggests so – contingent on a democratic process. Soviet and East European scholars have noted that belief in the legitimacy of the state socialist system was rather linked to the state's provision of general welfare or public goods.

Legitimizing the state through economic development and entitlements to the population is not a viable option in many developing societies since the resources to exercise the wealth and welfare function of the state are lacking. This is one of the root causes for the weakness of states. Some of these societies might perhaps even be electoral democracies in a formal sense, but not substantive. For example states might have an elected government, but one which does not practice good governance. The democratic procedures cast doubt on whether they can be called democratic. More importantly in the context of the discourse on developing societies in general and fragile states in particular, is that one or both of the first two forms of Weber's categories

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<sup>9</sup> One could add to this classification a fourth type of exercising power, the election of a leadership in a one-party system as it was (and in some cases still is) practiced in communist societies in which case the legality is based on the dominance of the party.

of legitimacy might apply: legitimacy of tradition or of a charismatic leader. However, in today's modern state, according to the Western norms and the liberal value system, the first two forms of legitimacy are discredited. The authority to exercise legitimate force in the modern state rests, ideally, exclusively on the legality of the authority belonging to a democratically elected political leadership.

This notion is challenged here as too Eurocentric, too myopic. Traditional leaders, elders or other local authorities have in many cases proven to be efficient providers of security and able to contain violence. Several scholars have forcefully argued that governance is possible without government. Even in countries like Somalia where the central government collapsed in 1991, some provision of security for the people is possible (Menkhaus 2007). For example, during the period when the Islamists were the dominant political force in Somalia in 2006, external observers agreed that the leaders were able to provide some security for the people and to control the warlords. Of course, this concept of society was neither appreciated in Addis Ababa nor in Washington. Thus, the Ethiopian military intervened with US backing to drive the Islamist leaders out of the country. Mason (2005: 38) illustrates in the case of conflict-ridden Colombia that functioning authorities

“can be found above, alongside, and below the state; they intersect national jurisdictions and overlap one another.”

The potential and actual role of traditional, religious or other non-state leaders in conflict mediation and in containing violence highlights the importance of the sub-national and local level. Decision making at the local level might unblock 'gridlocks' that exist at the nation-state level (Mehler 2002: 134). Under extremely dire

conditions during war, as in Somaliland and Puntland, local authorities offered some degree of security. Though not perfect, these services were better than what could be provided by the central state (Debiel 2002: 42).

Secessionist Somaliland, a society not recognized internationally as a state, possesses a government and practices governance. Bougainville, an island in the South Pacific belonging politically to the state of Papua New Guinea, has managed with traditional approaches to solve a long-lasting internal war. Boege (2006) strongly emphasizes both the need for a slow (unhurried) as well as a co-operative approach of conflict solution. In this case, the traditional leaders and the customary means of conflict transformation are accepted by the agencies of the state as equal partners and methods. Menkhaus (2007: 101) calls such societies 'mediated' and Boege (2007: 1-5) speaks of 'hybrid political orders' in which not only a modern state but also traditional non-state actors have a part – both in conflict as well as in conflict resolution and governance.

When the existence of such structures and their importance in managing daily life is recognized, it becomes clear that the top-down state-building approach according to the Western model cannot be the only answer to provide security, to peace-building and state-making. The decisive factor for a peaceful, or at least a less violent, future within these 'hybrid political orders' is that 'traditional' non-state and 'modern' state actors are integrated and that they govern co-operatively. Political authority must be exercised in an accommodative manner and not in competitive or confrontational ways. Examples of hybrid societies in which traditional and modern state institutions co-operate are Bougainville and Somaliland, while large parts of Afghanistan and Iraq are hybrid but confrontational. Brown (2007), in



her study on several Pacific Islands, warns against the view ‘through alarmist lenses’ of the ‘failing states’ concept and presents an abundance of sources of resilience in these island-states with a mesh of ‘indigenous traditional’ and ‘introduced modern’ governance structures. Characteristically many of such societies are located somewhere in between the co-operative and confrontational approach. Often the agents of the state (in whatever rudimentary form they might exist) and the non-state authorities ignore each other. This is, of course, not an effective format of governance.

In societies where power or the use of force is not as centralized as in modern states, *ad hoc* governance might be practiced by (traditional) political authorities at the local or sub-national level. These might be elders, religious leaders or even warlords. These localized politics are often violent, as the presence of warlords in conflict-prone states has demonstrated. However the leadership of traditional or charismatic leaders has often functioned as a positive mechanism to prevent violence or avert disintegration of a society. The closeness to the local space is likely to promote realistic and bottom-up decisions; local leadership and public institutions are generally ascribed greater legitimacy than a distant central state. Their familiarity with the history and root causes of a conflict in their region facilitates their role in mediating between belligerent groups and, furthermore, allows the various stakeholders to participate in the solution of problems. Conflict moderations at the local level have their strengths and weaknesses. The fact that they are better suited to the local situation allows them to offer inclusion and participation. Yet the authorities, particularly in traditional societies, often disregard the essentials of democratic rule and might not be in conformity with Western standards of human rights. Local elites are

not by definition less arbitrary in their political decisions than central state authorities.

Menkhaus (2007: 83) concludes:

“However vulnerable these local systems of governance are, they have the added advantage of enjoying a high degree of legitimacy and local ownership, something that cannot be said of the inorganic, top-down state-building projects associated with national reconciliation conferences that have not only failed but have undermined local politics in the process, leaving the country worse off than before.”

Many attempts at building modern central states’ institutions are castles built on sand. Local structures in conflict-prone societies are often too weak to find a solution to end a conflict. However, the opposite might also be the case, namely that solutions can only be found by grounding them on local mediation.<sup>10</sup>

But as indicated above, today, the liberal-value and legally based concept seems to be the dominant notion to react to crises situations in what is perceived as fragile states. The widely accepted wisdom in academic and political debate regarding the maintenance of stability in such states lies in the development of democratic institutions and a liberal market economy which ensures economic and social development (Goldstone and Ulfelder 2005: 10).

The emphasis on the need for local ownership in the process of transformation of conflict, in development programmes and in state-building is – conceptually –

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<sup>10</sup> A note of caution on what ‘traditional’ leadership or ‘customary’ power might mean is appropriate. Practically all societies have been influenced by colonization and or by globalization, including custom and tradition.

uncontested. But what happens when theory meets practice? How often do international donors, both governments and NGOs, realize the goal of local ownership? One of the reasons this may be neglected is the self-interest of many of these organizations. There is some hubris that international organizations or donors are the decisive factors in most reconstruction projects. Further, it is typical within war-shattered and conflict-endemic societies that those groups capable of taking local ownership of a transformation process, are either difficult to find by the international donors, or have a limited capacity to participate. The international community tends to go ahead with their programmes in such situations, usually with good intentions, but regardless of the potentially detrimental effects on the indigenous structures. Local ownership is pushed aside by pressing ahead with the internationally sponsored programmes to create state-centric institutions.

What began on a broad front in the period of decolonization continues in the present. The United Nations promoted the European state-building process to the world as a whole. It is usually imposed on emerging societies in a top-down approach, irrespective of the need for widespread, community legitimation. This also occurs in the absence of *legitimation-through-material-wealth* and welfare entitlements, which were dominant during the European state-building process.

Tilly (1985: 185-186) points to an important difference in the process of state-building in Europe and in the developing world, which appears in military organization.

“European states built up their military apparatuses through sustained struggles with their subject populations and by means of selective extension of protection to different classes within those

populations. ... To a larger degree, states that have come into being recently through decolonization or through reallocations of territory by dominant states have acquired their military organization from outside, without the same internal forging of mutual constraints between rulers and ruled.”

What is often missing in developing countries and especially in fragile states is the agreement which emerged in the European state-building process of constraining the rulers and making them subject to courts, parliaments and the withdrawal of funds. It is no coincidence therefore that the new states possess powerful, often unconstrained military apparatuses which act like a (strong) state in the (weak) state and seize power through military coups or indirect rule. When wealth and the welfare entitlements, which act “as a powerful glue that binds citizens to their state” are lacking, fragility is a constituent part of that society (Milliken and Krause 2002: 760).

### **Undermining the State Monopoly of Force**

Weber defines the state as “that human community which successfully lays claim to the *monopoly of legitimate physical violence* within a certain territory”, this territory being another of the defining characteristics of the state. The specific feature of the present is that the right to use physical violence is attributed to any and all other associations of individuals only to the extent that the *state* for its part permits this to happen. The state is held to be the sole source of the ‘right’ to use violence (Lassman and Speirs 1994: 310-311).

From this Weberian notion of the state several conditions of a functioning state and the intensification of state power can be

delineated (Kaldor: 1997, Tilly 1985: 181, Ayoop 1995: 22-23).<sup>11</sup>

First, the expansion and consolidation of the territorial domain, the actual *war-making*, in eliminating or neutralizing the external rivals. This entails the eradication of private armies, the establishment of regular, state-controlled professional armed forces and the creation of a centralized state system with organized war-making activities.

Second, the internal pacification and the maintenance of order in the territory, or the *state-making* which involves eliminating rivals inside the territory, and establishing durable instruments of surveillance and policing for control within the territory.

Third, protection of the people, the *security function*. This is achieved by establishing the rule of law and the representation of the people, including the establishing of courts and assemblies.

The fourth function on which the first three depend is the acquisition of the necessary means by *extracting resources* from inside or outside the state (taxations, levies, customs duties etc.). This entails establishing a state apparatus, a rational state bureaucracy with fiscal structures. The impetus to carry out this function is the centralization and monopolization of the means to exercise force.

What is the relevance of these factors in today's state-making and conflict-prevention efforts? How close do nation-states come to this ideal-type and how distant are developing societies? What trends challenge the Weberian concept? It is argued in this paper that three trends: the privatization of force, the internationalization of military functions and globalization, pose such fundamental challenges to the Weberian state, that there is a need for a post-

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<sup>11</sup> The authors have used different ways of classifying the various criteria.

Westphalian concept of the monopoly of violence.<sup>12</sup>

### *Privatizing Force*

A recent trend in many countries, both in developed as well as developing countries, is the privatization of violence and security. I distinguish between two different types of privatization: *bottom-up* through warlords, militias, rebels, para-military groups, gangs and organized crime and *top-down* through outsourcing of traditional military and police functions to the private sector, intentionally undertaken by a number of governments (Mandel 2001).<sup>13</sup> The privatization of violence and security, whether by default bottom-up or via a deliberately planned top-down approach, is a fundamental challenge to the state monopoly of force. The Weberian concept of the 'state monopoly of force' entails, as shown above, the elimination of private armies and the disarmament of other armed non-state actors.

The bottom-up violence can be seen as re-emerging 'customary local' orders of violence. The state-monopoly of force is the modern application of force and the top-down privatization of force could be classified as post-modern. The 'customary local' and post-modern privatization of violence and security reverses a centuries-old development of establishing a legitimate modern state monopoly of violence by disarming citizens in the process of state-building. The new trend undermines and

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<sup>12</sup> This section draws on a previous publication of the author (Wulf 2005).

<sup>13</sup> Privatization of security is not limited to the military alone. It is pursued in many countries in other security areas too, especially in police and judiciary services. This aspect, though of relevance, is not specifically addressed in this paper. Top-down privatizing is also called outsourcing. In the United States privatizing in legal terms actually means the sale of government assets while outsourcing describes contracting a service. In this paper I use the terms interchangeably.

fundamentally challenges the process of establishing a legitimate state monopoly of force.

Many governments in developing countries, particularly in fragile states, are no longer, or have never been, 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. Further, the activities of non-state actors can either directly or implicitly threaten sub-state groups with violence. The result of the economic and political activities of the non-state actors is widespread insecurity. As a consequence of this insecurity other private actors, especially private military and security companies, are increasingly hired by governments, international organizations, businesses or individuals to carry out tasks previously

undertaken by the armed forces and the police (Cilliers and Mason 1999, Lilly 2000, Musah and Kayode 2000, Lock 2001, Singer 2003). While the internationally accepted norm of a state guarantee for the public good of ‘security’ still exists, its implementation is not always possible. This does not mean that states no longer play a role in wars and conflicts; for private actors are often fighting over the very political control and power of the state itself. 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.

The different processes and forms of violence and the application of force in customary, modern and post-modern societies is schematically illustrated in Figure 1.

**Figure 1: Organization and Application of Force**

<b>status</b>	<b>customary local orders</b>	<b>modern</b>	<b>post-modern</b>
<i>state</i>	weak, fragile	nation-state	globalized
<i>process of force application</i>	bottom-up privatization of violence	legitimate state monopoly of force	top-down privatization of force
<i>forms of violence and application of force</i>	intra-state war, warlordism, para-military violence, organized crime	disarmament of non-state actors	outsourcing of police and military functions to private security and military companies, continued existence of national forces
<i>regulation of conflict</i>	customary local conflict mediation	rule of law, courts	rule of law, courts, largely unregulated private actors of violence

Numerous new companies have emerged which offer military and security services. The order books of the companies are full and still growing now that military budgets are increasing. Many international

interventions have resulted in serious personnel bottlenecks in the armed forces. Private contractors are booming as a consequence of the Iraq War and its aftermath. Many of them face serious

recruiting problems since not enough former Special Forces with experience in combat are available. This affects the quality and training of contract personnel.

To profit from the growing market, companies regularly hire personnel who are not up to the task or who have a dubious service history.

The causes and motives for the top-down, post-modern privatization, the outsourcing of military functions to private military companies are manifold and sometimes overlapping. At least eight military, economic, political and ideological reasons for this type of privatization can be identified:<sup>14</sup>

- over-capacities of the armed forces after the end of the Cold War which led to the decommissioning and demobilization of millions of soldiers;
- a shortage of specialized troops in the various international interventions of armed forces;
- changes in war fighting and the use of modern equipment which cannot be maintained by the armed forces without the back-up services of companies;
- demand for security services by weak or besieged governments;
- demand for protection by agencies engaged in international interventions and emergency aid;
- intensified demand for armed forces in the ‘war against terror’;
- public critique of employing troops in wars far from home;
- the neo-liberal concept of the ‘lean state’ that aims to curtail many state

activities, including the sensitive areas of military and police functions.

Private firms are seen by the promoters of the privatization as an alternative in upholding public order if the state has insufficient security forces at its disposal. In addition, private actors are attractive to governments, since they are only paid for the services they deliver; a standing regular army or police force, whether deployed or not, always costs resources that might be scarce. Military and police skills are now offered on a contract basis in the global market. Experts for almost any military or police job can be contracted. Hence, economic power can now be more quickly transformed into military power. The Weberian criterion, the creation of regular professional armed forces, is not principally questioned. National armed forces continue to exist, although their personnel strength has been drastically reduced and numerous functions are outsourced to private companies.

In defending or promoting outsourcing of military functions, the most common argument used is economic in nature. According to the dominant economic theory, the market is better qualified to handle these functions and carry them out more efficiently than the armed forces themselves. But the private sector still needs to produce the empirical evidence that it can contribute to solving some of the budgetary difficulties of the defense sector and, at the same time, provide the expected security. The actual economic results of privatization of military functions in the United States and in the United Kingdom – the two countries most advanced in their outsourcing efforts – illustrate that the enthusiasm for privatization is not justified. The evidence of the experience shows that often more gains in efficiency are promised or hoped for than are actually delivered (Wulf 2005: 185-192).

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<sup>14</sup> A more detailed elaboration in Wulf (2006: 13-15).

To be quite clear, the delegation of traditional state functions to non-state actors is not *per se* problematic. The crux of the issue is not who exercises force (public or private actors) but how the application is organized (if private actors are regulated and controlled) (Brauer 2007). At present this development of privatization occurs largely outside the control of parliaments or the public and is – if at all – under the control of the executive. But even governments are often unaware of what military companies are doing on or close to the battlefield (Schreier and Caparini 2005, Wulf 2005: 56-59).

### *Internationalizing Force*

The international community has progressively tried to respond to outbreaks of violence and wars through concerted interventionist efforts, and if necessary, by military means. The number of international interventions authorized by the UN has intensified since the end of the Cold War with considerations of the moral responsibility and humanitarian concerns taken into account, in order to save lives and to prevent gross human rights violations. It is claimed, and supported by empirical data, that the number of genocides and international crises has declined sharply in recent years; internal wars have been in steady decline as has the average number of people killed in conflict (Human Security Centre 2005). The United Nations High-level Panel on Threats, Challenges and Change (2004: 33) stated:

“In the last 15 years, more civil wars were ended through negotiations than in the previous two centuries in large part because the United Nations provided leadership, strategic co-ordination, and the resources needed for implementation.”

This positive trend correlates to the internationally perceived need to intervene

in the sovereignty of states if governments cannot provide the most basic state functions or if they grossly violate human rights.

The international interventions call into question the sovereignty of the nation-state as it is perceived by the Weberian concept. Intervention signifies an intrusion into the inner dealings of a nation. This is done with the intention to change or retain the political power structures in that nation. There exists a potential tension between the principles of state sovereignty and equality among nations expressed in the UN Charter on the one hand, and the special protection of individual and collective human rights on the other. Article 2(7) of the UN Charter stipulates that

“nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.”

Yet, the UN Charter also demands the protection of human rights in accordance with the Universal Declaration of Human Rights. The primacy of political sovereignty and the principle of non-interference were given the highest status at the United Nations until the end of the Cold War. The prevailing opinion was based on the assumption that the consensus gained through the Peace of Westphalia in 1648 concerning the absolute sovereignty and equality of states served as the basis for international order. Dissolution of this consensus, it was believed, would have resulted in anarchic power struggles.

However, already during the Cold War, and much more so after its end, the tendency to acknowledge the status of human rights as an international rather than an inner-societal topic gained force. Implicitly this led to questioning the absoluteness traditionally accepted under the principle of non-interference. Gradually (and often reluctantly) governments accepted certain

limitations on their conduct out of a growing respect for human rights (MacFarlane 2002: 34).

The publication of the *Agenda for Peace* in 1992 in which preventive diplomacy, peace building and peacekeeping measures in post-conflict situations were underlined, expresses well the enhanced self-confidence of the United Nations. Western governments, having promoted democratization and human rights protection as official goals of their foreign policies, were hesitant to reject interventions when tabled in the name of democracy and human rights. The high number of deaths inflicted by wars coupled with an increasing number of refugees as well as changes in the nature of warfare and its consequences, led to the promotion of humanitarian aspects including requests for 'humanitarian intervention'. At the beginning of this new development, Security Council resolutions highlighted the exceptional character and the uniqueness of the situation (humanitarian necessity in the intervention in Somalia in 1994, and the preservation of democracy in Haiti 1994 were emphasized) in order to avoid creating a binding precedent for future interventions.<sup>15</sup> However, the Security Council increasingly justifies resorting to military means by stating the necessary protection of human rights, preservation of democracy, ending of civil wars, or safeguarding the survival of refugees – thus referring to humanitarian concerns.

The reasoning became that the international community should not only be allowed to intervene in cases of gross violations of human rights, such as genocide and ethnic cleansing but should in fact be obliged to do so. The Secretary General of the UN, Kofi

Annan, called for a reinforcement "of the international norm of intervention for the protection of civilians" (Annan 1999: 82). The International Commission on Intervention and State Sovereignty (2001), established by the Canadian government, addressed the two mutually exclusive principles of non-interference and intervention on behalf of human rights. The Commission expressed its desire to change the terms of the debate, arguing and concluding that it was not a question of a 'right to intervene' but of the 'responsibility to protect'. The Commission suggested that military interventions needed to be based on certain threshold criteria, namely just cause, right intention, the military as last resort, proportional means, reasonable means and the right authorization.

In his report, *In Larger Freedom*, the UN Secretary General takes up this issue in 2005. While arguing that there is a need for strengthening the sovereignty of states to enable them to provide the security of its citizens, he also made it clear that:

"the international community should embrace the 'responsibility to protect', as a basis for collective action against genocide, ethnic cleansing and crimes against humanity." (United Nations, Secretary General 2005).

He emphasizes that the United Nations needs to become more, not less, actively engaged. This principle was accepted when the September 2005 World Summit of the United Nations called

"for the acceptance of a universal principle of the responsibility to protect civilian populations from crimes against humanity when governments are unwilling or unable to do so." (United Nations 2005).

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<sup>15</sup> These were the first UN Security Council Resolutions mandating the use of force which argued on the basis for protection of human rights and maintenance of democracy.

This liberalist internationalist claim is an attempt to codify international legitimacy for new interventionist norms. This can only happen at the expense of the nation-state. The pendulum has clearly swung from an emphasis on non-interference towards interventions in defense of human rights.

But the enforcement of liberal and democratically motivated humanitarian interventions within the scope of the United Nations is confronted with a series of problems. The United Nations Security Council has mandated interventions selectively which can only be understood by recognizing the power politics operating within this body. Furthermore, the UN is a hybrid system of an intergovernmental organization which does not function according to democratic rules and at the same time acts as the highest authority on questions of war and peace which promotes the establishment of democracy and liberal values through its interventions. This inherent tension makes it an organization in need for reform. Moreover, the phenomenon of unilateral interventions conducted without a UN mandate has by no means come to an end, as the NATO intervention in Kosovo and the Iraq War sufficiently document. Moreover, the UN member states do not provide enough financial and human resources to enable the UN to perform all of the peace building and peacekeeping tasks that they are called upon to fulfill.

In addition to the emergence of new international norms on intervention and its fundamental effects on the role of the state, a second consequence of the policy to intervene is of importance, namely the effects on the structure of the armed forces. Decision-making about their deployment gradually shifts from the national to the international level. A certain degree of internationalizing armed forces is due to the international orientation of UN peace operations, of coalitions of the willing and

emerging supra-national forces such as in the EU. Despite the fact that these forces are still organized nationally, their missions and their engagement with other troops go beyond national borders. There is an inbuilt tension between the international tasks and the national organization of the military. Given the actual missions of the military and the gradual shift of decision making towards the international level, national armed forces are an anachronism.

Precisely because the military possesses the instruments of ultimate power, it is highly important to regulate its legitimacy, civilian control and accountability. Yet it is exactly owing to military requirements that the military is the least democratically structured organization in most countries. The conduct of the military in situations of armed conflict and its command chain structure collides directly with the concepts of liberty and individuality (Kohn 1997: 141). Expert studies offer a plethora of systematic analyses on the institutionalization of democracy in nation-states. Likewise, the literature on global governance hosts many future-oriented publications, yet the democratic control of the armed forces and the question of responsibility in international operations are poorly researched (Ku and Jacobson 2003, Born and Hänggi 2004).

While many nation-states possess elaborate and systematic doctrines for military operations containing clear delimitations of competencies and responsibilities, similar regimes on the international level are almost completely lacking for UN peacekeeping missions concerning the civilian control of military operations and responsibilities for norm compliance. For military operations conducted under the auspices of the UN the requirement prevails that military commanders are responsible to civilian authorities – mostly the UN Secretary General. The Security Council authorizes missions, yet the armed forces are



responsible to their respective national authority. Moreover, it has become common practice that those units operating under UN command touch base regularly with their national superiors.

International democratic control of the armed forces has not developed in parallel to the international military interventions and the reorganization of the forces. A culture of accountability for the decision-makers is glaringly absent. Democratic control, if exercised at all, takes place at the national level as in the past but not internationally. Accountability and democratic control of internationally implemented interventions is – as a rule – more complex and complicated than national deployments. The question is, whether the exclusively nationally-oriented democratic control of the armed forces – conceptually as well as practically – serves the purpose of multinational missions or if this control is no longer sufficient and needs to be reformed? Truly internationalized military institutions and structures are still not very common. Born and Hänggi (2004) correctly point out the democratic deficit in international and regional organizations as well as in the national context. They speak about a ‘double democratic deficit’ in decisions about war and peace – nationally and internationally.

### *Globalization*

The concept of the monopoly of force, which served as a model beyond Europe is not only questioned by the privatization and internationalization of force. The state monopoly of force is also challenged by the development that an undisputed national entity no longer exists. National boundaries have become increasingly contested and porous due to the processes of globalization. Many actors are able to operate outside the boundaries dictated by the logic of territoriality. Conceptually and in reality, the

state is being emptied of some of its functions.

Globalization and the ensuing erosion of the nation-state are a fundamental challenge to the efficacy of state-orientated monopoly of force inasmuch as globalization leads to denationalization and promotes the relocation of authority, from the nation-state to supra-national actors. Although wars might be manifest at the local level, the political economy of armed conflicts has effects on whole regions and conflicts are fuelled from beyond national borders. Market liberalization, deregulation and neo-conservative economic agendas have contributed to a freer flow of goods and services, including the financing of wars.

The opening up of societies to the globalized economy through liberalization programmes, structural adjustment or transition policies, has resulted not only in liberalized markets and potential for growth but also in severe social disruption and unrest, including job losses, decreased production and increased inequality. As a result, many individuals and groups have turned to operations in the informal or shadow economy, ranging from reliance on support from relatives or clan members in the Diaspora, to moonlighting, to clearly illegal transactions such as smuggling, corruption, black market dealings, warlordism, drug dealing and trafficking in humans and weapons. The partial integration of some societies into the world economy has led to cross-border spillover of violence and economic and military spin-in effects. Outside funding, cross-border sanctuaries for combatants, external reservoirs of violence and military inflows of finance, personnel and weaponry are now important components in wars (Reno 2000). Duffield (2001) has called wars that are fuelled by and rely on such external factors ‘network wars’. This term points to the fact that not only NGOs but also warlords act locally and think globally.

The Weberian criterion of a state's control over a given territory has probably never been fully implemented. The European nation-states never had tightly closed borders; they had interactions with neighboring countries and did not possess full control over their territory. However, their control over the territory was much tighter than that of states in the globalized world. While in the classic period of the nation-state, states were striving for full control of their territory, globalization points into the opposite direction: open, porous borders, liberalized markets and multilateral regimes rather than state control.

In conclusion, the major impact of privatizing and internationalizing military functions and of establishing new norms for international interventions is an elementary change in the application of force and the role of the military in its relation to the nation-state. Globalization has changed the basic concept of the nation-state. In most cases national governments alone can no longer take decisions regarding war and the use of force. Interestingly, concepts of state-building for conflict-prone states 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.

Given the challenges within a globalized world, the concept of legitimate monopoly of force with its orientation towards the nation-state needs to be reformed. I propose a shift from the *state* monopoly of force to a multi-level *public* monopoly of force based on the local, the national, the regional and the global level.

### 3. The Need for a Multi-level Public Monopoly of Force

A logical consequence of the weakening of the nation-state and its inability to institute the monopoly of force is the need for a

different format to exercise force aptly and according to agreed norms. It is suggested here that the multiple layers of authority which already exist are integrated into a system of shared 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.<sup>16</sup>

#### A Conceptual Framework for a Multi-level Monopoly of Force

The reconstruction of the monopoly of violence is not just about re-establishing the central *state* monopoly of force and the respective institutions. A more holistic approach is necessary to establish rules and regulations. It is important to consider both the internal and external linkages between different authorities claiming to have the right to exercise force. A system of a segmented, but carefully crafted public monopoly of force with a clear division of labor should be based, in a kind of a 'matryoshka' system, on the following four levels of authority:

- the local level, which might consist of federalist structures (in developed states) or traditional or indigenous forms of shared authority (based on clan, kin or religion) in less developed countries. The local level offers proven forms of leadership, of exercising authority and of regulating violence. Even in war-torn and conflict-prone societies, zones of governance can be found;
- the national level, with credible and accountable institutions of organized force and good governance;
- the regional or sub-regional level, with regional organizations engaged

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<sup>16</sup> This section draws on Wulf (2006).

in providing security, moderating and safe-guarding peace agreements and facilitating peace beyond the various national boundaries; and

- the global level, through the United Nations, and including accepted international principles and agreed norms.

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

There are, of course, daunting practical difficulties of implementing a multi-level public monopoly of legitimized violence regulation. Besides problems of implementation, such a system is faced with two conceptual problems: How shall the four different levels be legitimized, given the competitive format of legitimation and the acute deficit in democratic processes at all four levels? Further, how must authority be apportioned at the different levels to avoid disputed sovereignties and guarantee a functional division of labor between these segmented authorities?

A multi-level monopoly is an oligopoly since the powers of a monopoly need to be shared between authorities at the different levels. This is the topical background to the vociferous arguments about proposals not to touch the sovereignty of the nation-state versus the 'responsibility to protect' as well as the competition in many hybrid political

orders between customary and state authorities. This rivalry or even antagonism can create friction or violent conflict. Oligopolies by definition are faced with the prospect of competition which might evolve into dysfunctional structures. A system of multiple authorities is likely to produce competition between the different authorities and incompatibilities among different levels of legitimacy. When one authority encroaches on another, this inevitably means a loss of authority for one actor and gain for another. To avoid a ruinous zero-sum game, clear and accepted rules for the legitimation must be spelled out. To create the suggested multi-level public monopoly of violence as an efficient and functional instrument, a set of agreed rules is a precondition. Otherwise the system will be bogged down in fights over competencies on who exercises the various powers. The system must function smoothly for there to be a chance to move away from the present situation of a destabilized or distorted monopoly of force in many parts of the world, towards establishing a legitimate public monopoly of violence.

What would a set of agreed rules look like? The introduction of a multi-level public monopoly of force requires creating a normative and institutional framework of order. However, such a system cannot function if introduced top-down. Mason (2005: 48) in her study on authorities in Colombia concludes:

“Authority is not something imposed from the top down which consenting behavior then ratifies. Rather, it is a social and political relationship based on interests, norms, identities, and ideas, continually being reproduced and modified through the everyday, shared expectations, and causal logics of individuals and communities.”

Two crucial functional principles (illustrated on the following page in figure 2) should provide the basis. *First*, the monopoly of violence should be exercised according to the *subsidiarity principle*, that is, 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 the mission. This concept is, for example, exercised in many federal states where a federal authority (or even local community or counties) executes police functions. Very seldom is this principle applied in societies with viable traditional leadership and parallel existing centralized administrative and legislative organs, mainly because traditional leadership is perceived as pre-modern, out-dated or ineffective.

In developed systems the subsidiarity principle prioritizes local and federal levels of authority, the function of the police and judiciary, rather than the nationally oriented armed forces. The central state will only become involved if the task goes 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 task is delegated to a regional or sub-regional organization. Typical examples for such a role at the regional level include the capacity to facilitate a peace accord or to prevent the trade in humans, drugs or weapons. Regional organizations already have, according to the UN Charter, such a function. However, in practice they are often not equipped to fulfill

their role, as I shall detail below. 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 top-down, whereby international norms prevail over regional or sub-regional, regional over national and national over local levels. The UN has higher authority than the regional organizations, the region is placed higher than the national level and the nation-state has prevalence over the local level. Political thinkers like Hobbes and Rousseau have already pointed to the fact that agreement on such norms is extremely controversial. This has not changed and is demonstrated regularly in the UN Security Council.

The violent conflicts and wars that are occurring are a striking illustration that not all four levels will actually be functional and cannot be expected to exercise their foreseen role in this model effectively and efficiently. The multi-level approach is designed precisely for such situations where one of the four levels is lacking or incompetent. The authorities at the other levels are intended to practice damage control by compensating for a dysfunctional level, thus preventing the partial or complete breakdown of the monopoly of violence. It is argued here that the multi-level approach will not accumulate problems, but that the weakness at one level (for example at the national level) can be compensated for by the level below (at the local or federal) or above (the regional or sub-regional level).

**Figure 2: Establishing a Multi-level Monopoly of Force**

subsidiarity principle: bottom-up	<i>monopoly of force</i>	supremacy principle: top-down
↑	global	↓
	regional	
	national	
	local	
<i>exercising the monopoly of force</i>		<i>norm setting</i>

Conceptual considerations and numerous practical reasons can be listed to demonstrate how difficult it is to establish such a system as all four levels experience shortcomings.

At the local level there is often a disconnection between the customary, traditional leadership and the state which has often been introduced without observing the already existing institutions. Often, local leadership has emerged as a consequence of failures of the state authorities to deliver the state functions to the population. Many societies face multiple challenges, they might be marked by corruption, dominated by criminal networks, suffering from weak public institutions and a functioning civil society may be non-existent. Indigenous (subsistence and informal) economies are not sufficient to sustain the livelihood of the people and they are threatened by international economic developments.

The central state level, although usually still considered as the most important agent in exercising the monopoly of force, is presently incapable in many countries.

The regional organizations 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 recognized by the UN as

potentially important actors in maintaining peace, conceptually they are somewhat overlooked in-between the UN as the highest authority and the nation-state with its salient feature of state sovereignty. In Asia, for example, an accepted regional organization with full membership of all states of the continent does not even exist. In other continents or regions, the organizations suffer from a lack of legitimacy as well as from weak or underdeveloped capacities to exercise a public monopoly of force.

At the global level, although the UN is the highest authority on peace and security, its activities are often heavily biased and contested. International norms are selectively applied because double standards of members prevail. Conflict regions might be assisted with crisis prevention programmes but all too often they are at the mercy of the interests of the dominant powers.

**Establishing a Multi-level Legitimate Public Monopoly of Force**

The debate about the failure of states and the lack of security in almost all post-conflict situations signifies the high priority for the creation of a monopoly of force. It is specifically promoted by the proponents of a ‘security first’ approach. Despite all the anticipated difficulties that the implementation of a multi-level public

monopoly of force will encounter, the proposal suggests an avenue out of the present crisis.

There are a few basic principles that need to be observed to make such a concept viable: In *legal* terms this public monopoly of force must be based on the rule of law. Interventions in whatever form and at whatever level must be based on clear and legitimized norms. In *political* terms it must be clear that military intervention is not an alternative to diplomacy, negotiations and conflict mediation or moderation. This was indisputably spelled out in the 1992 Agenda for Peace, although since then often violated. Despite the claim of governments, it is questionable that the military has been used as a last resort, when political and diplomatic measures have failed. It seems that the cry for military intervention in crises often comes before other means have been applied. *Militarily*, if the aim is to control violence, force may have to be applied. The criteria for the use or non-use of force needs to be clearly established in order to find an appropriate and effective compromise between the applications of massive firepower and doing nothing (Kaldor 1997). *Economic* reconstruction is a means to make societies (not necessarily the nation-state) function again. If these efforts, under the label of state-building, in practice consist only of economic liberalization in the international community's protectorates by reinforcing the old clientele structures and siphoning off scarce resources – then the continuation of fighting or re-emergence of conflict and the dissolution of a fragile peace can be expected (Pugh 2004). *Culturally*, it is necessary to rethink norms for interventions and the conditions for sustainable peace. Cosmopolitan policies and practice should be the guiding principle, offering participation to citizens in political decision-making and emphasizing diversity, rather than uniformity.

### *The Local Level: Multiplicity of Authority and Hybridity*

The foundation of the suggested multi-level public monopoly of violence is an institutionalized division of power between the different levels. This relationship can best be described, in the case of developed states, as a set of constituent governments variously denominated as states, regions or provinces. Such an established and widely accepted system of power sharing does not exist for societies with strong indigenous leadership based on customs, but it is essential for the survival and a peaceful future of such societies that a political order is found to coexist with the 'hybridity' rather than trying to overcome it by suppressing the traditional way of life.

The opinions in political theory and practice on the usefulness of federalism and even more so on 'hybridity' are divided. Federal or hybrid structures are seen as causing too much diversity or too much unity, too much regionalism or too much centralism and a constant competition between centrifugal and centripetal forces is debated.

These diverse political powers can be seen as a seedbed of democracy and participative politics, which can broaden legitimacy, limit the 'terror of the majority', widen citizenship by institutionalizing multi-ethnicity and providing for sub-national competition, thus stimulating local self-governance, innovation and efficiency. The counter-argument assumes that sub-national authoritarianism is preserved, rule along ethnic instead of democratic lines are promoted, regional disparities are fostered, the rule of law is undermined, and the rise of demagogues is facilitated (Heinemann-Grüder 2005). The empirical experience offers results to support both of the divergent positions.

Devolution of political authority requires shifts of responsibility which might also include the monopoly of force. For

advocates, decentralization, similar to federalism, is seen as a positive mechanism to prevent violence or avert disintegration of a society. It is asserted that the proximity to the local space is likely to promote realistic and bottom-up decisions. As I argued above, political solutions at the local level have their strengths and weaknesses. Central governments frequently react with centralization measures to control or overcome politicized heterogeneity or regionalist movements. This can easily result in a disconnection between the state institutions and the every-day life of the people (Brown 2007). Opponents to decentralization and federal systems point out that local leadership frequently proves as violent and authoritarian as their counterparts at the national level. The misuse of power which can occur at the central state level, can happen locally as well. Delegation of power to the lower level can help to ameliorate conflicts but can also lead to their exacerbation if the local authorities are not impartial in conflicts over group rights (Mehler 2002). The subsidiarity principle mentioned in this section above calls for decentralization.

To complicate matters further, often the central state is manipulated by strongmen in the capital with excessive top-down control from the centre and abuse of public offices but only limited authority at the local level. It would seem that strengthening the local level, if properly legitimized, could counterbalance the focus on the central government. In Sierra Leone, for example, at the end of the civil war, the chiefdoms were reinstalled and entrusted with additional authority to devolve power. The difficulties in the division of labor between the jurisdiction of local councils and chiefdoms became quite evident and turf wars were imminent. Critics of this policy complain that these chieftains were created by the colonial powers and are now deeply resented

by their rivals. It still remains a considerable challenge to consolidate a complex administrative network of liberal democratic and traditional administrative structures – two levels of administration which have not coexisted (Albrecht 2005). In contrast, in Afghanistan for example, the problem is the lack of a monopoly of force at the central state level. State structures scarcely exist and for centuries the rulers of Afghanistan did not manage to extend their rule beyond a few urban centers. The development still suffers from a clientele network of regional and local warlords in parallel alliances of convenience and competition. Violent conflicts and wars arising from erosion or disintegration of the state are but one side of the coin. The other side is that the very emergence of the nation-state has contributed in many cases to violence or has disrupted traditional local pre-state/or hybrid mechanisms for conflict management. Wars and large-scale violence have arisen as a result of state formation, as for example in today's Sudan where century old conflict management mechanisms had previously been used (Deng 2000).

#### *The National Level: Institution-building*

The nation-state still has an important role to ensure security, especially at the end of conflict, but, at the same time, many states are incapable of fulfilling that function effectively. Despite the predicted demise of the state and the dire experiences with weak or fragile states, it is still national governments which remain critical in international relations, whether it is a decision to fight war, intervene in conflicts, to arm or disarm. International policy remains decidedly state-centric – even though its importance is gradually reduced.

Provision of security has been described as the priority function of the nation-state in post-conflict societies. However, looking at the record of central governments' decisions

in post-conflict situations, the results are at best mixed. 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 build effective state institutions where such institutions have no tradition and where competing authorities exist. There seems to be consensus that, when the international community intervenes, the military operations are usually the easiest part, while the rebuilding of state institutions and successfully fostering governance are as difficult as ensuring a sustainable peace.

The supporters of a policy of 'democracy first' argue that no efficient state institutions can be established if a culture of accountability within decision-maker spheres is absent and if the government is not appropriately legitimized. Civil conflict and governance issues such as corruption, abuse of power, weak institutions and lack of accountability, corrodes states from within. State failure undermines governance and adds to communal, national and regional instability. The proponents of the concept of 'institution-building first' argue that war-shattered societies will not be able to establish democracy instantly and that an externally imposed democracy will not be accepted at once. Usually, both of these concepts overlook and do not appropriately take into account, that external interventions do not take place in a vacuum but that local structures exist and that some of them are viable structures of authority. In addition, the shock therapy which usually accompanies the reconstruction and democratization programmes includes market oriented economic reform which can exacerbate rather than ameliorate conflicts by stressing free market competition and thus driving the trends towards societal inequality – at least in the short and medium term.

A central thrust of this paper is the argument that too much attention in recent peace building reconstruction programmes is focused on the national level, precisely because the national space no longer is the exclusive state authority. Hence, reconstruction programmes and particularly the creation or re-establishment of the monopoly of force needs to be addressed not just at the state level but beyond and below. This is particularly the case for peacekeeping operations. Woodhouse and Ramsbotham (2005: 142) argue that peacekeepers should be released from an overly state-centric control system. They address this chiefly with regard to the policy of sending states and highlight that for each peacekeeping mission the UN depends on the decisions of the governments of the UN member states. Instead, the peacekeepers should be answerable to a more transparent, democratic and accountable institutional arrangement based on a permanent military volunteer force recruited directly among individuals predisposed to cosmopolitan rather than patriotic values. This is what the authors call a post-Westphalian or democratic peacekeeping – peacekeeping that is not solely focused on the nation-state as the main actor.

#### *The Regional Level: Increasing Responsibility and Capacity*

Regional organizations should have an immediate interest in promoting peace since civil wars normally affect neighboring countries through spill-over and destabilization. In cases of conflict, regional bodies have the strongest vested interest in formulating an immediate response to contain the problem. Regional organizations can play an important role in addressing security threats and are well placed to monitor peace agreements and produce early warnings of a crisis. Reform proposals to that regard have been made (United Nations General Assembly 2000). The experiences in



Europe have facilitated the prospects for a more active and expanded responsibility of regional organizations. Since the 1990s the United Nations has continued to emphasize the importance of regional organizations in promoting and facilitating peace and stability within their respective regions. Because of the proximity of regional organizations they can function as a continental or sub-continental forum to de-escalate tensions, mediate conflicts and promote a comprehensive regional approach for cross-border issues (UN General Assembly 2001: 31).

In reality, however, most regional organizations have no convincing record to justify such expectations. Given their present structure, institutions such as the African Union (AU), the Organization of American States (OAS), the European Union (EU), the Association of South East Asian Nations (ASEAN), the Organisation for Security and Co-operation in Europe (OSCE), the Organization of the Islamic Conference (OIC), the Pacific Islands Forum (PIF) and others are not in a position to apply the monopoly of violence effectively. In recent years several regional organizations have started to take over responsibilities for the promotion of peace. The EU, the OSCE and the AU have all carried out security interventions in recent years.<sup>17</sup> Early warning mechanisms have developed and enabled regional organizations to monitor critical developments. Regional institutions can also mediate among parties to a conflict. Yet, among the ASEAN member states, the discussion on regional security is only in its emergence. The experience in East Timor has illustrated that peacekeepers, which were mainly recruited from the region were able

to launch a largely successful peacekeeping operation. This was, however, a coalition of the willing under the auspices of the United Nations since no regional organization was capable of taking over the responsibility.

Regional organizations suffer from four weaknesses which need to be overcome to establish a functional multi-level monopoly of force:

*Contested sovereignty:* The concept of the function of regional organizations with respect to the sovereignty of nation-states remains in many cases contested. Usually states refuse to transfer functions to the regional body. Delegating traditional nation-state authority to a regional body is jealously guarded and opposed by most governments. Most regional bodies stress their character as intergovernmental organizations that might cooperate and pool resources, but nevertheless their members refrain from relocating governmental authority to the regional body. This presents a barrier for an enhanced role for ASEAN. Similarly, the AU policy of international peace missions is, despite some change, still strongly influenced by the predecessor's (Organization of African Unity, OAU) heritage of non-intervention into the internal matters of its members.

*Overlapping responsibilities:* The division of labor among regional organizations is unclear and competitive. This is especially the case when geographically overlapping organizations exist, such as the EU, OSCE and NATO in Europe; the AU and ECOWAS, the Southern African Development Community (SADC), the Intergovernmental Authority on Development (IGAD) in East Africa and the OIC in Africa; similarly ASEAN and the OIC in the Middle East. Even in cases of largely overlapping memberships as within the EU and NATO the role of these two organizations in cases of crises has been far

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<sup>17</sup> In addition, the North Atlantic Treaty Organization (NATO), not being a regional organization but a military alliance with global reach, has also intervened, at present most prominently in Afghanistan.

from clear and their division of labor highly controversial as the Kosovo war in 1999 demonstrated, or as can be gathered from the continuing debate and competitive behavior regarding ISAF and Enduring Freedom troops in Afghanistan.

*Fundamental political differences:* Many regional organizations lack common and fundamental values that are fully accepted by all members. Often a compromise, addressing emergencies, wars and other regional concerns, is based on the lowest common denominator, resulting in inaction or mere lip service of the regional body. In contrast to the EU, for example, no other important regional organization includes only democratic member countries. The work of the Organization of American States (OAS) has time and again suffered from fundamental political differences within the organization, which often found its expression in the distrust of the dominant economic and military power of the United States. The AU is occasionally still forced into inactivity in violent conflicts because of the lingering political differences among the members. The conflict within the SADC during the 1990s concerning procedures of the military intervention of its members in the DRC was not resolved for many years. While some governments wanted to intervene militarily and did so, others insisted on using diplomatic means only (Berman and Sams 2000: 175).

*Lack of capacity:* The final weakness is the absence of adequate institutions to implement decisions, for example to execute sanctions, and the lack of military muscle to project force if required in a crisis situation. The lack of military power might even be an asset since it forces regional organizations to get more active and efficient in preventive diplomacy. Lack of strong military forces can prevent policy makers from hastily resorting to military interventionist means. Even in the EU which has undertaken efforts

to build up its own military capacity, it is accepted wisdom that not many more troops than the number at present could be deployed in the various peacekeeping missions. ASEAN, with virtually no peacekeeping facilities of its own, is a case in point too. A recent example is Africa: in Darfur, by August 2004, when the killings of civilians were still at a very high level, there were fewer than 300 AU soldiers in place to guard an estimated 1.5 million Darfuris driven from their homes by government-backed militias. Only by mid-2005 the AU peacekeeping forces had increased to 3,000 troops. Requesting coalitions of the willing to do the job instead of a regional organization is a typical reaction in a situation of incapacity of the responsible regional bodies. *Ad hoc* coalitions can bridge or circumvent the gap when a lack of agreement within regional organizations appears. The disadvantage is that such coalitions can only be formed on an ad hoc basis. This makes long-term commitments difficult or impossible and adds to the problem of legitimizing a peace force when members of the regional organization object to an engagement.

The balance sheet of the regional organizations' experience in peace keeping is no reason for optimism. In practice, regional organizations have proven that they are almost as awkward and inflexible as the UN themselves; practical measures often fail or are forgone because of a lack of political agreement. Old traditional and historical antagonisms and differing attitudes continue to exist.

To prevent the misuse of interventions by regional organizations it would be necessary to strictly follow the logic of the norm supremacy principle described above. Norm setting needs to take place from top to bottom, with the UN as the decisive authority. This is already practiced in part, for example, by the South African

government who has made its participation in peace missions contingent upon a mandate from the UN or the AU. This rule should be applied as a universal standard.

### *The Global Level: Norm Setting and Democratization*

United Nations activities and programmes are not neutral. As long as they are subjugated by the dominant economic and military powers they serve primarily as a tool for problem-fixing or band-aid solutions for the existing world system, even though such peace operations and humanitarian interventions might be morally justified. The functioning of the international system, and with it the multi-level monopoly of violence, depends on the enhancement of international norms - a world order in which nation-state sovereignty is limited in accordance with the existence of a higher-level executive authority in addition to regionally and globally accepted legal norms. The above mentioned deficiencies of the UN – namely its hybrid system of being an intergovernmental organization which does not operate according to democratic rules and at the same time acts as the conscience of the international community, as well as being the highest authority on questions of war and peace – require fundamental reforms. Despite these organizational and conceptual insufficiencies and despite the gap between the theory and practice of international norms, there is no realistic alternative to the UN.

Decisions to assist a member state or to intervene on humanitarian grounds are presently taken selectively – *à la carte*. It is not the provisions and obligations of international law but political opportunity and power politics which constitute the decisive criterion in the world of state power. Thus, the concept of a responsible ‘international community’ is still far from being a reality.

The UN Security Council already has a monopoly to *authorize* the use of force at the global level. This, however, is not the same as a monopoly of force. A lack of capability is but one part of the problem. In addition, the UN suffers from a fundamental conceptual flaw. The executor of the global authority to apply force is not controlled by a legitimized body and operates instead according to the veto of the powerful permanent members. This de-legitimizes its actions. This deficiency in global governance is the specific bottleneck and barrier to creating the globally required and democratically legitimized monopoly of violence.

Reform of the UN has been suggested at various levels, most of them aimed at an improving the organization’s efficiency, as well as its peacekeeping and peace building capability. Other suggestions aim at changing the membership of the UN Security Council to represent the present global power relations rather than those of 1945. Suggestions for true democratic reform however are mainly discussed among academics and NGOs, but not seriously among the member state governments.

It is obvious that the UN capacity to guarantee peace, if necessary via military means, could be greatly improved through technical, organizational and financial reforms, which is less ambitious than the level of reform called for by an elementary democratization of the UN. For example, the suggestion of standby contingents for peacekeeping would enhance the flexibility of the UN and allow for quicker reactions in times of crisis.

## **Conclusion**

One might dismiss the proposal of a multi-level monopoly of violence as unrealistic and utopian. The idea of such a model is to find an alternative to the eroding state

monopoly of force. As argued in this paper the future lies not necessarily in re-establishing a nation–state monopoly, but rather in a multi-level public monopoly of violence. A multi-level legitimate public monopoly of force is more in line with the present day international system which is no longer primarily a nation-state system. 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* at the local level by the emergence of leadership in severe situations of fragile states and at the global level by the creation of transitional administrations or UN protectorates, but conceptually, peace building is still considered as a hopefully short-term transition to establishing a functioning nation–state. This perspective is too narrow.

What is required is a paradigm change – which is reflected in the various reports on the ‘responsibility to protect’ – that neither a strong and sovereign nation-state nor the UN with its intervention capacities are the only primary institutions to solve problems of insecurity and violent conflict. Both the local level and the regional level need to be seriously involved in conflict prevention, conflict mediation and post-conflict reconstruction. International (and in many cases national) law must accommodate the suggested division of labor between the local, national, regional and global level. The governance tasks are too complex for single nation-states to handle, especially those states that are in crisis or have emerged from conflict.<sup>18</sup>

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<sup>18</sup> One aspect not further considered here is the need for an effective regulation of private military companies to overcome the legal grey zone in which they presently operate. This includes the prevention of certain security tasks, particularly the actual fighting, which should remain the prerogative of the

There is a need to continue to develop international norms so that interventions are no longer based on arbitrary decision making at the UN Security Council. Even when UN mandated peacekeepers intervene on humanitarian grounds, this mandate suffers from a democratic deficit. The decisions to intervene, although according to international law and accepted norms, are taken by a highly politicized UN Security Council in which democratic rule is not represented. Stricter criteria for when to intervene are required to avoid the selectivity and arbitrariness of these decisions and to hold the decision-makers accountable.

There is a need to 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 labor in exercising the monopoly of force at the global (UN), regional (regional organizations), nation-state and local level is needed. At the same time there is a need for strengthening the enforcing capacities of the ‘legitimate monopoly of force’ at some of the suggested levels. At present, most of the capacities are concentrated at the nation-state level; the UN has to beg national governments for the deployment of forces when a crisis arises even after the Security Council mandates a peacekeeping operation. The problem is even more prevalent at the regional level.

The movement towards creating new international norms for intervention in the name of ‘protection of human rights’ and the occasional establishment of UN protectorates, as for example in Kosovo, illustrate that the traditional nation-state monopoly of violence is not universally viable. However, this basic challenge to the

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public sector and a taboo for private military companies.

Westphalia nation-state system has not yet led to the conceptual formulation or practical establishment of an alternative system. The suggestion for a legitimate multi-level public monopoly of force, with a division of labor between the different levels and acceptable and agreed norms for the application of force, is intended to be a contribution to conceptualizing such an alternative.

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