The Rule of Law: Undermined and Under Attack

Questioning the State Monopoly on the Legitimate Use of Physical Force

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"The collective power of people to shape the future is greater now than ever before, and the need to exercise it is more compelling."
(The Report of The Commission on Global Governance 1995, p. 1)

Prologue: January 2021

On January 6, a mob storms the Capitol in Washington, incited by the President. The security forces cannot stop it. The Capitol Police are insufficiently prepared and under-staffed; the National Guard are requested, but deployed too late and too hesitantly, although the turmoil and violence are not unexpected. For a moment the state is not able to protect its lawmakers and citizens.

On January 17, Russian opposition leader Alexei Navalny is arrested immediately after his return from Germany to Moscow. Despite the fierce cold and the threats by the Russian government, tens of thousands take to the streets, protesting Navalny's imprisonment. The police are ordered to suppress the demonstrations; they react with brutality to crack down on the protest movement. Thousands are detained.

Throughout January, similar scenes continue in many cities of Belarus. As they have done almost every weekend since the August 2020 presidential elections, people take to the streets to protest against long-time dictator Aleksandr Lukashenko who manipulated the elections.

On January 31, a day before the new Parliament is to meet, Myanmar's military take power from the elected government. Formally, they act within the provisions of the constitution which stipulates a special role for the military. They detain Aung San Suu Kyi, State

Counsellor and de facto head of state, and other Parliamentarians, and declare a one-year state of emergency.

Security forces are called to secure the election of Uganda's long-time President Yoweri Museveni in January 2021. Prior to the election, opposition candidate Bobi Wine said that the military had raided his home. After the election, he is temporarily arrested.

Shops are looted in several cities in The Netherlands. Riot Police clash with protesters for several nights in a row. Masked youth light fires in the streets and leave a trail of destruction to protest against restrictions to contain the Covid-19 virus.

In Brazil, groups from both the political left and right demand the impeachment of President Bolsonaro over his handling of the Covid-19 pandemic, which has killed more than 200,000 people in Brazil.

In New Delhi on January 26, India's Republic Day, thousands of farmers protest against the government's agricultural reform. After two months of largely peaceful protests and negotiations, the farmers storm the city's historic Red Fort, after fruitless rounds of talks with the government.

Meanwhile in Europe, the European Union border control agency Frontex is confronted with investigations for forcefully and illegally exercising pushbacks against migrants seeking asylum in the EU. Refugees and migrants in Greece accuse Frontex of taking part in illegal deportations.

During the last week in January, fighting erupts between Somali federal government soldiers and Jubaland state forces in the South-Western part of Somalia, close to the Kenyan border. People are killed, and the Somalia government insists its neighbour Kenya is behind the tensions.

Despite peace talks between the Taliban and the Afghan government, suicide bombings and strikes by gunmen continue in Afghanistan's capital Kabul as the Taliban carry out their campaign of terror.

The civil war in Libya is not over yet, while the Government of National Accord and the rival government of Field Marshal Khalifa Haftar struggle to hold on to an agreed ceasefire. Military support to both sides from the outside continues, while the two opponents pursue a UN-supported dialogue.

Criminals in Mexico, close to the US border, have consolidated their grip over that region. Continued high levels of violence are unrelenting. Organised crime has corrupted many government officials.

More than 50 pro-democracy activists are arrested in Hong Kong in the first week of January on the basis of the controversial China-imposed 2020 security law. Security agencies coerce Parliamentarians and citizens.

The war in Yemen continues to exert misery on millions of lives. In January, civilians in the Hudaydah district face a growing threat from escalating clashes, with shelling of residential areas endangering thousands.

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These accounts, more or less randomly taken from media reports in January 2021, are by no means a systematic summary. They do not describe an unusual cascade of violence. They could easily be extended by looking at the situation in other countries: from Poland to Turkey, from Bangladesh to Venezuela, from Ethiopia to Eritrea. There are reports about violent conflicts, skirmishes between estranged neighbouring countries, brutality of state security forces and misuse of power, loss of control over territories, distrust and protests of people against their governments, amongst many others. And although the level of seriousness varies and the causes for the conflicts differ greatly, what they have in common is the inability or the unwillingness of states to protect their citizens and exercise the rule of law by legitimate means.

The list of conflicts underlines the general thesis of this policy brief, that the rule of law is undermined and attacked and the state monopoly on the legitimate use of physical force is almost universally at risk. Certainly, for a variety of different reasons:

- In most Western countries, although not in all, the state represents the social purposes of the political community. In many developing countries, although not all, the state is captured by an individual, family, sect or even party. This affects the claims to legitimacy.
- In many cases, this monopoly on force has never been established or has been lost, particularly in cases of civil war as in Afghanistan, Libya, Syria, Yemen, Somalia, to name only the most obvious cases.
- In some cases, state use of force is viewed as illegitimate, e.g., in Belarus;
- In some cases, while the legitimacy of the government, as such, is not under serious question, legitimacy of particular decisions is questionable, e.g., India's government changing the status of Kashmir.
- In some cases, the state is unable to exercise effective power to maintain control and protect people—at least temporarily, e.g., in the US at the storming of the Capitol—and its legitimacy erodes from failure to use force for legitimate purposes.

The January 2021 situation is by no means unusual. On the contrary, it is an expression of the dire reality in large parts of the world. This can easily be ascertained by looking into well-recognised sources that watch and report on lethal conflicts on a regular basis.[1] The best-known and most systematic collection of data on violent conflicts, the Uppsala Conflict Data Program of the Department of Peace and Conflict, Uppsala University, lists 67 state-based conflicts, 54 cases of non-state violence, plus 31 cases of one-sided violence ongoing in 2019.[2] The Institute for Economics & Peace reports in its Global Peace Index 2020 that "the world became less peaceful for the ninth time in the last 12 years…In the past year 80 countries recorded deteriorations in peacefulness, while 81 recorded improvements" (Institute for Economics Peace 2020). Only in a few cases did the Security Council of the UN mandate peace keepers to intervene in these looming violent conflicts. Currently, the UN operates 12 peace keeping missions, most of them in Africa and the Middle East.[3] They are deployed only when the main parties to the conflict give their consent to carry out the

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[1] For example, International Crisis Group which tracks conflicts worldwide and offers weekly updates. https://www.crisisgroup.org/crisiswatch.

[2] https://ucdp.uu.se/?id=1&id=1.

[3] https://peacekeeping.un.org/en/where-we-operate.

mandated tasks. As for the majority of conflicts, the international community, or some of its most influential players, is not prepared or willing to intervene in order to stop violence, based on UN-authorisation.

The Meaning of the Legitimate State Monopoly on the Use of Physical Force

Taking these current incidents as a point of departure, this policy brief examines contemporary challenges to the legitimate state monopoly on the use of force and its possible future. [4] Principal conceptual issues will be raised that are illustrated by contemporary anecdotal evidence. What are the values and the shortcomings of a legitimate state monopoly on the use of physical force? What does the concept in its ideal form mean and why are these principles questioned and challenged?

The current security environment is extremely volatile, both globally and in many states domestically. It is afflicted by protracted and complex crises and wars in several parts of the world, coercive activities to gain influence or power in regions, re-emerging geopolitical rivalries, atrocities and genocides, the resurgence of autocratic regimes, unprecedented numbers of forced mass migrations and rising death tolls due to terrorist attacks. Domestically, a number of countries face extreme movements that contest the authority and legality of the state. The future of the monopoly on the use of force and the provision of security is questioned. The states' reactions to these challenges cast doubt on both the legitimacy and the effectiveness of existing political institutions and their ability to provide security.

From an historical perspective, security in Europe has primarily been conceived as the security of states against other states, at least since the end of the Thirty Years' War in 1648. The state in Europe became what the German sociologist Max Weber called the monopolist of the legitimate physical violence (Weber 1919).[5] Internally, the private use of violence has been banned with the recognition of state monopoly. In simple terms, state authorities, the law enforcement agencies, especially the police, the military and the judiciary, protect their citizens. No one ought to take the law into their own hands and practice self-justice. This concept is, according to Elias (1994), a major achievement in civilisation. It functioned in developed democracies to certain levels, but certainly not in its ideal form. Although, not characteristic for all states, it is the dominant concept of statehood worldwide. However, it remains in global terms the exception rather than the rule.

Unpacking the key terms of this concept, 'state', 'monopoly', 'physical force' or 'violence' and 'legitimacy', will allow us to understand the current challenges and their problematic nature.

The 'state': Already before Weber, political thinkers like Machiavelli and Hobbes had observed that states try to monopolise violence and that this process of centralisation was a driving force in state making (Tilly 1985). The Westphalian/Weberian concept rested

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[4] This policy brief draws on the report of a Reflection Group of the Friedrich-Ebert-Foundation, that I had the privilege to co-chair from 2014 to 2017. Friedrich-Ebert-Stiftung (2017).
[5] Quoted and referred to in this text according to the English version by Lassman, Peter and Ronald Speirs (eds) (1994).

squarely on the nation state. But today, the nation state is challenged, and its role has dramatically changed.

From a global perspective, the role of the state has undergone contradictory developments. The state has not only lost its dominant position in economic terms but its pre-eminence as an actor in the use of force has also diminished. Globalisation pushed the state back and the neo-liberal economic project was clearly geared to trim the state to its core functions. The failure of the state in many parts of 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).

At the same time, we have seen a renaissance of the state. Most interventions in conflict situations (be they militarily or non-military) were explicitly carried out with the aim of promoting democracy and state building. But the enthusiastic promotion of democratic state building after the end of the Cold War has waned in light of the dire experiences of the interventions. In addition, the neo-liberal dogma, the dominant economic concept for decades, both for developed and developing economies, is no longer uncontested. The claim of the higher efficiency of the private sector is not only queried today, the experiences of privatisation in many areas are not at all as positive as the outstanding canon of neo-liberal theory maintained. Most recently, the important role of the state was underlined by the Corona pandemic. Apparently, there is a need for state action in crises situations.

The Westphalian ideal presupposes a world with sharply drawn borders demarcating distinct, territorial jurisdictions administered in relative isolation from other sovereign actors. This perfect model has never fully materialised. Contemporary challenges and the cross-cutting and intersecting grids at the local, state, regional, and global levels transformed the Westphalian world by increasing interdependence and globalisation. Thus, the nation state has lost or transferred part of its sovereignty to other entities. Peace researchers stimulated the debate about the relative successes of peace and state formation in some post-colonial states by emphasising the constructive interactions between liberal international and customary local approaches. They call this a hybrid approach to peace, security and justice (Aning, Brown, Boege and Hunt (eds.) 2018).

'Monopoly': This term is an idealisation too. Few states have ever come close to such a monopoly on force. In the Friedrich-Ebert-Stiftung report (2017, p. 3) we wrote: "[E]ven full-fledged states have never enjoyed a complete monopoly on the use of force." Even in European democracies, the Westphalian concept was not a given. Among a number of countries in Europe, Northern Ireland is a case in point. Although established as a democracy and part of the United Kingdom of Great Britain, the monopoly on the use of physical force could not be effectively exercised for decades due to the historically deep-rooted division of the country along religious lines. To stabilise the fragile peace process in that country and to close an agreement, it was important to decommission the tools of violence, namely paramilitary weapons, mostly small arms (Hauswedell and Brown 2002).

Most states never had the capacity to exercise a monopoly. Implementing and applying this monopoly was incomplete by default (a lack of institutional capacity) in many developing countries or the right to use force was and is purposely handed over to non-state actors

(outsourcing through privatisation). Today, a host of actors (e.g., militias, private armies, companies, vigilante groups etc.) compete with each other in the provision of security services. Many of them amass military-style weapons and they fight sometimes with state security authorities or, depending on the circumstance, complement them.

'Physical Force/Violence':[6] A state can use force predominantly in three forms: "… against another state and other organized groups (warfare); it can use violence against its citizens (state violence), or it can wield its monopoly on the legitimate use of force to constrain or reduce the use of violence within society (public order)" (Krause 2009, p. 186). Of course, when state monopoly is applied legitimately, only self-defence and public order are normatively acceptable. The purpose according to this concept is to provide security, not arbitrary application of force as in in the case of state violence.

'Legitimacy': Weber describes the state as "a relationship of rule (*Herrschaft*)[7] by human beings over human beings, and one that rests on the legitimate use of violence" (Lassman and Speirs 1994, pp. 311-312). He describes three forms of legitimacy to exercise the monopoly on force: custom (kinship), charisma (exceptional personal gift of leaders) and legal-rational (based on law and state institutions) which he identified with modernity. This legally based concept with organised force is the dominant notion today. It rests on the idea that the state derives its legitimacy from the consent of the governed who in turn accept no non-state use of force. Critics have characterised this view as too Eurocentric and too myopic.

Challenges

Major changes in peace and security policy have taken place with the growing globalisation during the end of the twentieth and the beginning of twenty-first century. Among them are broader concepts of security like "human security" and "comprehensive security", responsibility to protect, interventions in cases of weak and failing states, privatisation and commercialisation of the use of force, terrorism and transnational organised crime as a direct challenge to a state monopoly on force, protests against state authorities and repression of demonstrators and protesters, blurring tasks between security authorities in domestic and external security, the predatory misuse of force by states, etc. In order to systematise the challenges to the traditional concept of the monopoly on force, this policy brief will look at four different areas, partly global, partly domestic, that seriously challenge the state monopoly on the use of force:

1. Refocusing from state to people: The failure of states in providing security and the trend to intervene in such cases;

2. Globalisation and the diminished role of the state in providing security: The growing importance of non-state actors;

3. Misuse of force: Out of the barrel of a gun: The failure of states to legitimately apply force and the abuse or predatory use of force by states;

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[6] The German term 'Gewalt', used by Weber, does not differentiate between 'force' and 'violence'.
[7] When Weber uses the term 'Herrschaft' this can, depending on its context, mean 'rule' or 'power'.

4. Privatisation of force: From above (outsourcing force and tolerating non-state violence actors) or from below (citizens take the law into their own hands, practice self-justice or apply another than state law, like local customary law or, for example, the Sharia).

Refocusing from state to people

Both *realpolitik* and a shift in emphasis of normative principles led to a changing approach in addressing violent conflicts, particularly wars. From decolonisation, to the role of the Non-Aligned Movement to today's global diffusion of power towards emerging new powers, such as China, Brazil, India and South Africa or other regional powers, the previous Western dominance of setting global standards and rules has vanished. The shifting normative considerations have led the international community in the aftermath of the Cold War to progressively try to respond to massive outbreaks of lethal violence and wars through concerted UN-mandated interventionist efforts, and if necessary, by military means. The number of international interventions authorised by the UN intensified in the 1990s with consideration of moral responsibility and humanitarian concerns in order to save lives and to prevent gross human rights violations.

Over the course of several decades, the focus on security in the post-World War II order expanded the Westphalian criteria for establishing a legitimate state monopoly by an important aspect: human rights. The 1948 Universal Declaration of Human Rights was complemented by the development of human rights concepts in the 1990s. The Human Development Report (UN Development Programme 1994) and the Responsibility to Protect (R2P) which the UN member states agreed to in the 2005 World Summit[8] were instrumental in this trend. The human rights principle, although still controversial until today, moved centre stage in international politics.

This had implications for the application of physical force. It, *firstly*, juxtaposed the state-centred security with the security of the people. The UN Development Report introduced this change by stating:

> For too long, the concept of security has been shaped by the potential for conflict between states. For too long, security has been equated with the threats to a country's borders...For most people today, a feeling of insecurity arises more from worries about daily life than from the dread of a cataclysmic world event (UN Development Programme 1994).

And *secondly*, it questioned the *carte blanche* legality of states. The International Commission on Intervention and State Sovereignty stated in its Supplement to the Report on "The Responsibility to Protect" (2001, section 6):

> 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

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[8] UN World Summit Outcome. A/RES/60/1. **Resolution** adopted by the General Assembly on 16 September 2005.

legitimate...In brief, the three traditional characteristics of a state in the Westphalian system (territory, authority, and population) have been supplemented by a fourth, respect for human rights.

In other words, the protection of human rights is the litmus test for the legitimacy of states' application of force.

This had consequences for international interventions. Interventions, if they take place against the will of the government, 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. There exists a potential tension between the principles of state sovereignty, expressed in the UN Charter on the one hand, and the special protection of individual and collective human rights on the other. Many governments, most outspokenly so in China, watch carefully that nobody treads on what they consider "domestic affairs". Accepting R2P in 2005 signified a shift from non-intervention to interventions for the protection of people and a shift from unilateral to UN mandated interventions. Thakur (2013, p. 62)[9], rightly points out: "The choice therefore is not *if* intervention, but *whether* an intervention will be ad hoc or rules-based, unilateral or multilateral, and divisive or consensual." The tendency to acknowledge the status of human rights as an international rather than an inner-societal topic gained force. This was also the result of negative experiences with non-intervention (in the case of the 1994 genocide in Rwanda) and unauthorised intervention (in the case of the 1999 NATO bombing in Kosovo).

Implicitly, this led to questioning the traditionally accepted principles of non-interference and correlates to the 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 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. R2P expressed the desire to change the terms of the debate by concluding that it was not a question of a 'right to intervene' but of the 'responsibility to protect'. This meant, in fact, changing the focus from the security of the state to the security of people. But R2P interventions should not be undertaken arbitrarily; they needed to be based on certain threshold criteria, namely: just cause, right intention, the military as last resort, proportional means, reasonable prospects of success and the right authorisation.[10]

The post-Cold War world order was not a straightforward trend to reinforce the liberal and humanitarian principles of human rights. This order was also based on military and economic power as illustrated by the many interventions without UN authorisation, the supply of militias with weapons, the invention of the term 'pre-emptive war' etc. (Schulenburg 2021). The enforcement of humanitarian motivated interventions within the scope of the United Nations is confronted with a series of problems, particularly the partiality and selectivity of the Security Council in mandating or refusing interventions.

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[9] Ramesh Thakur was a member of the International Commission on Intervention and State Sovereignty (ICISS) that laid the conceptual ground work for R2P.
[10] Of course, the "just war theory" also stated that war would only be morally justified under certain criteria. It is no surprise that the R2P criteria were criticised as was the just war theory.

Double standards and inconsistent decision-making are not unusual in that body. Moreover, the phenomenon of unilateral interventions conducted without a UN mandate has by no means come to an end, as documented by the war in Syria, among many other examples.

The major test for R2P, with disastrous results, came in 2011 with the UN-authorised intervention in Libya. UN Resolution 1973 mandated NATO countries to use of all necessary measures to protect civilians. At first, the military intervention proved successful since it stopped Gaddafi's army and thus prevented a massacre of civilians. But NATO overinterpreted the authorisation by "targeting Gaddafi directly in a transparent effort at regime change" (Thakur 2013, p. 70). The results can still be seen today: the civil war in Libya continues even a decade after the intervention and the UN still struggles to moderate a cease fire between the warring parties. The Libya intervention fuelled reservations against R2P, especially among many developing countries, who are often the target of interventions, but also China and Russia, who as Permanent Members of the Security Council had never been enthusiastic about R2P. Libya proved both the possibilities as well as the limitations of interventions to protect the people.

Globalisation and the diminished role of the state in providing security

National boundaries have become increasingly contested and porous due to the processes of globalisation. Many actors are able to operate outside the boundaries dictated by the logic of territoriality. Conceptually and in reality, the state has lost of some of its functions. International exchange in economics, trade, finances, communication and culture and advances in technology have generated and reinforced this process.

"Transnational security risks, such as climate change, and challenges to state authority, like multinational corporations, international criminal cartels, and terrorism, cannot be adequately addressed by individual states alone" (Friedrich-Ebert-Stiftung 2017, p. 8). The other side of this process is fragmentation with numerous and different types of actors. The opening up of societies to the globalised economy has resulted not only in liberalised markets and potential for growth but also in severe social disruption and unrest, including job losses, interference in local markets, increased inequality and mass migration. Many individuals and groups especially in developing countries have turned to operations in the informal or shadow economy, ranging from reliance on the Diaspora, to moonlighting, to clearly illegal transactions such as smuggling, corruption, black market dealings, warlordism, drug dealing and trafficking in humans and weapons. Wars are not only fought between states. Intrastate wars are more frequent than interstate wars. Currently, most violent conflicts in the world are between armed forces of states and non-state armed actors who are politically or criminally motivated. They almost always rely on external support. This points to the fact that not only NGOs but also warlords act locally and think globally.

The control of traditional nation states over their territory was much tighter than that of states in the globalised world. While in the classic period of the nation state, states were striving for full control of their territory, globalisation points in the opposite direction: open borders, liberalised markets and multilateral regimes rather than state control. However, the Covid-19 pandemic, particularly during the first months, demonstrated the weak points and the bottlenecks of highly interdependent economies.

In conclusion, globalisation diminished the role of the state in providing security and the growing importance of non-state actors (big companies, NGOs, armed or non-armed non-state actors) requires a reformed system of security provision.

Misuse of force: Out of the barrel of a gun

Many critics of the concept of the state monopoly on the use of force point to the fact that all too often states misuse force or abuse power. In other words, states apply lethal violence illegally (by violating their own laws) or illegitimately (by violating humanitarian norms). This is exactly what the R2P concept addressed: the misuse or predatory use by states, rendering them as illegitimate. Examples of such failures are manifold and several of such violations have been mentioned in the opening section of this paper. Looking back into history, the names and places of major episodes of mass killings by states and their security forces in the last century are depressingly familiar, as Krause (2009, p. 192) points out: "Turkish Armenia, Stalin's Soviet Union, the Holocaust, China's Cultural Revolution, Uganda, Cambodia and Rwanda." Although not necessarily in the same gloomy proportion, misuse of force continues until now and extra-judicial state violence is widespread. This is often below the level of outright military coups as most recently in Myanmar. In many cases, the state preys systematically on its citizens; in other cases, authoritarian regimes try to hold on to power and use their security agencies, often with brutal force or other means of coercion. This demonstrates the double-edged nature of state power (Krause 2009, p. 200): the legitimate public use of force versus the illegitimate misuse. It calls to mind Mao Zedong's famous verdict: "Political power grows out of the barrel of a gun", but force can also be used in a civilising process.

Social control by the state need not necessarily be implemented by applying physical force. Technological development (especially surveillance technology, artificial intelligence and cyberspace) has added a new dynamic. Probably the most advanced in these techniques is China. In the report of the Friedrich-Ebert-Stiftung (2017, pp. 23, 25), we described an appalling scenario, an elitist and repressive Orwellian World. But we added that technological developments could have contradictory effects. Technology can be a tool for repression; it can also function as a liberator. In many places in the world, we can observe that protests against repressive governments rely on functioning social media. The flip side is that these media channels are used to organise unlawful and threatening activities, as, for example, the storming of the Capitol in Washington. A worrisome development is big data companies' liberty to decide, largely without public control, who is no longer accepted in their social media. This was the case in the US after the rampage at the US Capitol and similarly after the military coup in Myanmar. Of course, we like to see hate speech or glorification of violence disappear from the media. But the decision about what is covered by free speech and what is unlawful should not be left to economically powerful entrepreneurs. They censor arbitrarily and inconsistently.

In an ideal world, the state acts as a neutral intermediary or mediator, offering an unbiased position between competing social and economic actors. But when governments abuse their power, they cannot pretend to rely on the consent of the governed. Occasionally, governments trade their power for political ends, for example, to support terrorists, criminals or other armed groups in pursuit of regional or geopolitical aims. "Often,

fundamental norms and values are sacrificed in the name of 'stability'. Authoritarian regimes have become 'strategic partners' to global or regional powers in their struggle against terrorism. 'Counterterrorism' is also invoked to suppress or limit legitimate political opposition" (Friedrich-Ebert-Stiftung 2017, p. 12).

Privatisation of physical force

A trend during the last two or three decades is the privatisation of security provision. Mandel (2001) distinguished between two different types of privatisation: *bottom-up* through warlords, militias, rebels, para-military groups, gangs, death squads, child soldiers and organised crime and *top-down* through outsourcing of traditional military and police functions to the private sector, intentionally undertaken by governments. The privatisation 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 on force. The Weberian concept entails eliminating private armies and disarming other armed non-state actors.

The causes and motives for the top-down outsourcing of military or police functions to private companies are manifold, for military, economic, political and ideological reasons. There are push and pull factors. After the end of the Cold War, which led to the decommissioning and demobilisation of millions of military personnel, decommissioned soldiers were looking for alternative jobs and there was demand for security services by weak or besieged governments but even more so by the allied forces fighting in Afghanistan and Iraq. The neo-liberal concept of the 'lean state' focused also on security, a core of state functions. Another reason for sending private military companies into military engagements abroad is public criticism at home or internationally (Singer 2003; Wulf 2005). This is still valid today as demonstrated by Russian military firm Wagner in Syria and Libya. State authorities can than claim, at home or in international forums, that their own armed forces are not involved. And companies are, in contrast to the armed forces, not accountable to parliaments. A driver of this process is the desire to circumvent legal liability. Literally thousands of new military service companies emerged during the last decades. Security skills are now offered 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.

Numerous non-state actors are involved in bottom-up privatisation of violence, either to defend themselves from attack (often threatened minority groups), to topple a government (often combined with separatism or as a military coup), simply to enrich themselves (like warlords) or to pursue political or ideological aims (as in the attack on the US Capitol). These groups contribute to state failure in many countries or they challenge existing state security agencies. Warlords, for example, fight not primarily for political or territorial control but to make an economic living through continued fighting. State failure and inefficient and corrupt government institutions, the military, police and judiciary, lead to burgeoning crime and instability. It becomes increasingly difficult—and in critical cases impossible—to maintain law and order. In this situation, more and more people turn to privately organised protection as a solution. The bias of police often contributes to protest against the state security apparatus. The result of the activities of armed non-state actors is widespread insecurity. In certain cases, however, they might be the only guarantee for

security of neighbourhoods and their people when predatory state security agencies threaten the population.

Especially in developing countries, it is often the lack of capacity, the inability of the security institutions that leads to the bottom-up privatisation of force, further undermining legitimate state force. But such groups establish themselves in developed democracies too as the many armed factions in the United States testify. Often their members are former law enforcement personnel. In the US there exists a very fundamental problem with the recognition of the state monopoly on the use of force. The famous Second Amendment gives US citizens the right to bear arms. Many in the US interpret this constitutional article as an invitation to take the law into their own hands and not to wait for the law enforcement agencies. An estimated 393 million firearms are in the hands of private individuals (Karp 2018). Gun owners, and not just the ideologically stubborn and misguided National Rifle Association, claim that carrying guns is a constitutional right of the citizens of the United States. People want to organise their protection themselves and feel responsible for their own security. The state is not trusted to guarantee the protection of its citizens. The conservative dogma that government always does more harm than good is widely accepted. The so-called 'deep state' is not only called an evil by conspiracy theorists; in general, there is an aversion to state institutions and regulations.

In addition to these two trends of top-down and bottom-up privatisations, we find in some countries customary traditional groups who reserve for themselves the right to apply their customary laws, including the use of force (Aning, Brown, Boege and Hunt (eds.) 2018). This approach can collide with the dominant concept of state formation, but there are also cases where these two different concepts amalgamate in a fruitful cooperation.

The Bumpy Ride to Security and a Rules-Based Legitimate Public Use of Force

The Westphalian concept constituted an important civilisational progress. It is essential to safeguard this advancement wherever it functions well. But the major challenges described above seriously question the future of the traditional nation state-based concept on the use of physical force. This concept is in many places and for a number of reasons not fully functional. The analysis of the different pillars of this traditional concept makes it abundantly clear that a fundamental reform is required. Of course, it is easier to point out all the deficiencies, problems and the hindrances for its functioning than to design and establish effective alternatives. Without being able to provide a fully developed concept for an alternative, a few norms can be derived from the above analysis to portray the direction of a needed reform. I will argue that a viable concept must look beyond the nation state, overcome the notion of a monopoly, clarify what is legitimate and explain the purpose.

1. *Security by whom for whom?* One of the central issues of the application of force is what the use of force is supposed to achieve. With the state no longer as the exclusive centrepiece and with the focus on people, the primary aim must be the security of the people. Security should be conceptualised as a public good. This reflects the changing relationship between states and their citizens. Security agencies are responsible to the people for how security is provided.

2. *Upholding the norm of the state's responsibility to provide security.* Although many states are incapable and others are unwilling to provide security for their citizens, the norm should be upheld, as established in the R2P documents: states are responsible to provide protection.

3. *People's security as the norm and the states' sovereignty*. The vision of people's security is contingent upon effective and accountable provision of security. We have not reached the point where people's security is universally accepted as a norm. It should not be juxtaposed with the definition of state sovereignty. It is not either people's security or sovereignty. The responsibility to protect requires a revision of the notion of sovereignty which includes people's protection. The security of people is no longer a purely internal matter.

4. *Rules-based, not power-based security.* Of course, the notion of people's security requires a normative framework in which the use of force has a purpose beyond upholding the integrity of the state or the power of a government. What is presented as 'rules-based' is not always according to the prescribed norms. The absolute absence of random, arbitrary, illegal state or privatised violence must be the basis. Such a concept restricts the use of force and makes it rules-based (in spirit and practice) instead of power-based; in other words, legitimate.

5. *The state as an actor.* Given the present international order, the state remains, despite all its flaws, for better or worse, a key actor to provide security. Even the UN is an organisation of member states which sets common standards for global security. This does not mean that the state must be the sole provider of security. Non-state actors can also be recognised as legitimate security actors.

6. *Recognising the diversified (fragmented) security providers.* The nation state alone is no longer equipped and mandated to guarantee the rule of law and provide security. In the real world there exist numerous non-state actors that provide or damage security. The problem is not that they are "non-state". Difficulties with these groups always arise when they are unregulated and uncontrolled. While the state needs to recognise non-state security providers or delegate tasks to them, it is responsible to its citizens for how security is provided.

7. *Organising the use of force:* 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 their use is organised (if private actors are regulated or if customary and state authorities find a modus vivendi). At present this development of privatisation has occurred largely outside the control of parliaments or the public and is—if at all—under the control of the executive.

8. *More nuanced than a monopoly on force*. Consequentially, considering the various actors in security in the world today, we can identify multiple layers of authority governing the use of force, from the local to the state, to the regional and global level, including non-state actors.

9. *Control of the security sector and public scrutiny:* The use of force flows from citizen expectations and their participation in the political process (including public control over the security sector). The use of force must be based on the consent of the governed.

     Security agencies—state or non-state, local, regional or global—should not act in secrecy. Transparency and public scrutiny are required to hold them accountable.

10. *Authorisation at the global level.* Authorisations of intervention with military force at the international level need to be rules-based too. The UN, as the highest organ for peace and security in the world, is the obligatory agency for such authorisations.

Of course, in today's world, we are far away from the establishment of such a system that applies force legitimately, is rules-based, is publicly controlled and aims at the protection and security of people. The most ambitious and accepted proposal for reform since the end of the Cold War in this area has been R2P (at least in principle, not in practice). But the results of that reform are mixed as described above. That does not mean that the concept had too many flaws. On the contrary, it is a well-constructed concept with clear criteria for implementation. But coherent application failed due to the obvious clash of interests among the UN member states, particularly the big powers. The often-requested reform of the UN Security Council produced no results at all. The five Permanent Members of this body have prevented any reform with their veto power. Thus, the UN Security Council remains until today a relic of the early years of the post-World War II order.

To cope with the most serious challenges in the area of peace and security we cannot just wait to see what happens next. Instead, norms for peace and security need to be upheld and processes for their application should be started. Such a process can, of course, only be gradual. Looking at the political realities, we can observe that we live in a world with a range of different political systems. They are based on their histories and cultural and social experiences. We may not like some of them. But there is no global blueprint for a liberal democratic order. What is not acceptable, though, is the abuse of power, as it is still all too common in many countries of the world.

To reason about the future of the application of force and how the Westphalian concept develops is not just a theoretical question. The alternative is either a progressive liberal vision with rules-based, restricted, and publicly controlled use of physical force or the more pessimistic concept of arbitrary, ad hoc, power-based, often authoritarian application of force by discredited governments without the legitimacy of the governed.

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