Report on the New York Conference[1] Insights from the debate

The Spring Conference (March 7-11, 2016) focused on the **relationship between the concept of the monopoly on the use of force and the international order.** Discussions at previous meetings of the Reflection Group strongly problematized the ideal of the "Westphalian" blueprint of statehood and the related "Weberian" notion of the monopoly on the legitimate use of force in light of the heterogeneous and hybrid realities of statehood and security provision in different parts of the world. Yet it is precisely the territorial nation state which is the pivotal reference point of international law and the supposedly fundamental building block of the current international order.

The deliberations so far have led to the clear consensus that, in reality, we rather seem to be witnessing a multilayered system of security provision and the use of force, which is often in strong contrast to the ideal of national monopolies on the use of force dominated by the state and interacting with each other along the lines of international law. The New York conference was therefore intended to shed light on the implications of the changing realities of the relationship between security provision, international law and security architecture.

As in the reports from the previous conferences, we want to recap significant areas of growing convergence in the group that will be important points of reference for its further proceedings and for the final report.

INTERNATIONAL LAW AND THE MONOPOLY ON THE LEGITIMATE USE OF FORCE

NOTHING BUT STATES?

Right at the beginning of the discussion a crucial baseline for future debates was set: states are the only actors recognized under international law which are endowed with the monopoly on the use of force. Yet states are free to domestically organize their security forces in any way they like. While non-state armed actors are therefore not traditional subjects in international law, the UN Security Council nevertheless can and has also addressed these actors directly: in relevant resolutions it has obliged such actors to comply with international humanitarian and human rights law and subjected them (or important individual representatives) to targeted sanctions.

NO LIMITS TO INTERVENTION BY INVITATION?

The baseline for relations between states and non-state armed groups in other states is defined by the so-called "friendly relations resolutions" and builds on the prohibition of "interference in internal affairs". While this obviously limits external actors' discretion with regard to uni- or multilaterally interfering forcefully in the domestic affairs of any other state, this does not preclude a range of practices which have been referred to as "intervention by invitation". There is no straightforward way to limit such practices.

STATES AS BOTH VICTIMS AND PERPETRATORS OF THE PROLIFERATION OF NON-STATE ACTORS

In the course of the discussion, there was also repeated reference to the historic cases of some so-called "liberation-movements" which experienced a certain degree of international recognition (such as observer status at the UN General Assembly) despite putting up a challenge to the territorial sovereignty claimed by already recognized states (colonial powers).

1 This conference report reflects the personal impressions of Marius Müller-Hennig (FES Bosnia and Herzegovina).

In a more general strand of the debate the challenge posed by non-state actors to internationally recognized states was put into perspective: states are not only victims but also perpetrators of the proliferation of non-state armed actors.

INTERNATIONAL LAW IS NOT GREATLY CONCERNED WITH DEGREES OF LIMITED STATEHOOD.

Finally there was also a specific reference to areas of so-called "limited statehood". While there is no arguing about the fact that in some cases the state literally seems to stop at "kilometer four" (from the capital city), this does not in itself represent a problem under international law. Even the potentially grave implications for human rights in situations of contested sovereignty and widespread conflict do not automatically deprive the state of its legal international status: in the traditional understanding of international law and human rights law, the state is obliged to refrain from perpetrating human rights abuses itself. A more progressive understanding of the state's responsibilities, it was argued, is entailed in the concept of responsibility to protect. It not only stipulates that states refrain from human rights violations themselves but also that they must actively protect their population from atrocities; this was discussed separately in more detail later on.

REALPOLITIK AND THE MONOPOLY ON THE LEGITIMATE USE OF FORCE – SECURITY HIERARCHIES

Shifting the perspective from the legal framework for national monopolies on the use of force and non-intervention, the debate then turned to the realities of international security practice. Especially against the theoretical background of a claimed "legal equality of states", it was stressed that states are evidently by no means equal to one another. The international state system is in fact deeply stratified with regard to means of violence and power. To understand the specific security hierarchies which can be seen today, it is important to understand the history and trajectories of state formation in different parts of the world. For a long time after World War II, one participant argued, superpower protection was far more important than UN protection for new states during the Cold War. With the end of the Cold War, however, former superpowers' withdrawal of imperial protection caught states unprepared, especially in Africa.

NEW AND OLD AGENTS OF INTERVENTION

In the internal and transnational conflicts that followed, it was then the UN that often had to step in, instead of the former great powers. Regional organizations from the EU to the African Union also took on responsibility for international intervention. The depth and ambition of such international interventions, some observers conclude, has been increasing until today. As a consequence, it was argued that, in sum, interventions by international institutions have substantially modified sovereignty.

Yet in the last two decades, interventionism and different forms of security delegation in general have also become quite diffuse practices. One participant pointed out that in contrast to high-minded aspirations, France, for example, not only failed to realize "the end of interventionism in francophone Africa" but that, to the contrary, the declaration in question actually heralded the start of a period of increased French interventionism in sub-Saharan Africa.

FAILING STATES, FRAGILE STATES AND NATION BUILDING

Conceptually, the international community over the past two and a half decades has oscillated between two different analytical concepts with regard to conflict, insecurity and intervention:

- one major strand of thought identifies "failing states" as the core challenge and paves the way for securitized responses;
- a second major strand of analysis instead emphasizes the challenges and implications of so called "fragile states" and tends to favor more developmental approaches

Both concepts represent a departure from the problematic aspiration of more ambitious and morally laden "nation building". Yet they also tend to underestimate the relevance of social cohesion and identity politics for a functioning security order. Accordingly they are also negligent (and perhaps even wilfull) in underestimating the necessary long-term time frame for security support/cooperation and the corresponding resources required. This is particularly relevant for the practice of support for security sector reform processes.

SECURITY DELEGATION

In parallel to more or less "internationally driven" intervention as a response to conflict and fragility, there is also a variety of forms of security delegation, as was highlighted repeatedly in the discussion. A distinction was made between forms of security delegation based on the following criteria:
(1) type of security that is delegated: defense or domestic security?
(2) to which type of actor is security delegated: to

other states, non-state/private/commercial actors, or regional organizations?
(3) is the security delegation voluntary or forced?
(4) how comprehensive (e.g. in the South Pacific) or selective (e.g. in the case of Colombia) is the practice of security delegation?

Whenever security delegation works, it can benefit the delegating state significantly if the state can invest substantial resources, which would otherwise be spent on security, on other policies. The core precondition for a functioning security delegation, it was argued, is usually the level of trust between the delegating state and the state/institution, to which security provision is delegated – irrespective of the degree of asymmetry (see criterion 4). That is why delegation to regional or international organizations is not necessarily less problematic than delegation to major powers: viewed from a realpolitik perspective, international organizations are themselves a mere vehicle for the interest-driven policies of major powers. Within those international organizations that are relevant players in the field of intervention and security delegation, it is still the (powerful) states who make the key decisions on intervention/security assistance. The secretariats, ideally representing the institutional "neutrality" of such organizations, usually have only limited room to maneuver in sensitive security policy making. Regional hegemons and major donors usually set the agenda of such organizations or exercise substantial veto powers. Mutual mistrust among member states of international organizations, inspired by realpolitik, also limits their potential to pursue impartial, just and, in the final analysis, also coherent "intervention policies".

GREAT POWERS ARE PIVOTAL AND FACE DILEMMAS WITH REGARD TO MONOPOLY ON THE USE OF FORCE

Therefore, it was widely acknowledged that there are significant implications of realpolitik or even geopolitically motivated national security policies for the monopoly on the use of force of states. More specifically, it was argued that the great powers in particular play a crucial, yet also very ambivalent role in maintaining and eroding the international system and its core pillar, the national monopoly on the use of force. This ambivalence is only aggravated, it was argued, by terrorist actors who thrive on such incoherent practices and increasingly target regional and global hegemons.

TRANSPARENCY OR A DELIBERATELY LOW PROFILE FOR SECURITY COOPERATION?

Not only because of this problem, the great powers themselves – and democratically-governed great powers in particular – face a tricky dilemma when it comes to intervention and security delegation. Should they pursue and promote their role as security guarantors openly, or is it advisable to purse such policies rather less visibly? With regard to the United States, for example, it was argued that the US role in the South Pacific was not too visible, despite the explicitly proclaimed overall pivot to Asia. In Africa, the impression is widespread that the US is engaged "all over the place" with regard to security assistance and cooperation, yet the picture is rather fuzzy. Also in the post-Soviet sphere, it was argued, the dynamics of security delegation (and the traditional central role of Russia) appear in flux, in particular after the consequential events surrounding the Ukraine crisis. And while it was not explicitly mentioned in the discussions in New York, it is obvious that the security policy practices of the People's Republic of China fit the overall contemporary picture. Ambivalent and diffuse great power policies in the field of security cooperation obviously quite often aspire to keep a "low profile".

On the one hand, a lack of visibility might appear to be attractive because it means less exposure to public or international criticism for the providing as well as for the delegating state. At the same time, a lack of visibility and transparency can also be seen or "promoted" as a sort of "natural" consequence of a particularly "networked" approach. Indeed, it was argued that contemporary network-centric approaches to security delegation with a low public profile and little transparency might render it anachronistic to speak of "alliances" and "empires", as these concepts no longer adequately represent the contemporary networked and diffused forms of security dependence and relationships that we witness today.

UN-SECURITY COUNCIL AS THE BEARER OF THE INTERNATIONAL MONOPOLY ON THE USE OF FORCE?

From the discussion of great power politics and power asymmetries in international relations, the focus of the discussion shifted to the United Nations Security Council (UN-SC). It was argued that it is perhaps the most prominent example of the institutionalization and judicialization of the asymmetries discussed above. In marked contrast to general international

law, which emphasizes the sovereign equality of states, the status of the permanent members and their powers at the Council were an attempt to reflect the asymmetries in the balance of power at the time of its inception.

IN THEORY A POTENTIAL OVERLORD, IN PRACTICE A PAPER TIGER?

The discussion examined in detail whether the UN-SC bears a sort of embryonic international monopoly on the use of force, taking the perspective of a "domestic analogy"[2]. Indeed, one argument in the discussion stressed that the Council is at least potentially equipped with the institutional prerequisites to establish itself as a bearer of the legitimate monopoly on the use of force in international affairs. According to the wording of the UN Charter, the Council is not only vested with the power to authorize member states to use force (as it has done repeatedly) but also with the power "to take action" (Article 42) by armed forces "placed at the disposal of the Council" (Article 47.3).

It was argued that in practice, however, there seem to be no such ambition on the part of the Council's permanent members for realizing the comprehensive design foreseen in the Charter. Accordingly, it was asked whether the notion of an international monopoly on the use of force, vested in the Security Council, is relevant at all. One conclusion offered was that the Council was a sort of "paper tiger".

THE UN-SECURITY COUNCIL CIRCUMSCRIBES NATIONAL MONOPOLIES OF FORCE BY PEACEKEEPING OPERATIONS…

Yet in a variety of cases, the counterargument went, the UN-SC employed these specific instruments, circumscribing national monopolies on the use of force – however selectively and inconsistently. And in this practice, it was argued, drawing again on a domestic analogy, the council assumed not only an "executive function" but also legislative and judicial functions. Over the course of its existence, the argument went on, we have seen a gradual yet significant expansion of UN-SC powers in practice. Even in the long period of stalemate between the Cold War adversaries in the UN-SC, peacekeeping operations were already deployed by the UN under the authority of the Council. And at the end of the Cold War this practice, which had until then been careful not to transgress the boundaries of national sovereignty and host state consent, became more comprehensive. The most extreme cases of peacekeeping operations illustrating the claimed extension of authority were the Interim Administrations in Timor Leste and Kosovo, which were both deployed under a Chapter VII mandate.

… AND BY AUTHORIZING ARMED INTERVENTION.

Even more profoundly, the Council authorizations for the use of force in the cases of the Iraqi invasion of Kuwait in 1990 and against the Libyan government of Muammar al-Gaddafi in 2011 marked two watershed moments for the Council. Especially in comparison to the contested nature of parallel unilateral interventions without a Security Council mandate – it was argued – it became obvious that while the Council does not hold a monopoly on the means of force, it increasingly seems to hold a monopoly on the legitimate authorization of the use of force apart from self-defense.

Moreover, it was argued that the Council even transgressed its original sphere of competence in that it not only authorized the use of force in interstate conflicts but also in intrastate and transnational conflicts. This became most visible in the establishment of interim administrations, the authorization of PKOs (peacekeeping operations) to protect civilians and the authorization of a forceful intervention against a member state to preempt the risk of imminent mass atrocities. All these gradual extensions of UN-SC legitimized interventions substantially circumscribed the room for maneuver of national governments and accordingly their monopoly on the use of force.

In parallel to this trend of an extension of authorization to use force by the Council, however, countervailing trends were also identified. In particular with regard to the authorization of peacekeeping operations to use force, it was stressed that a combination of obstructive behavior of "host states" and an unwillingness of the UN-SC to forcefully back up missions led to a gradual limitation of room for maneuver for UN operations.

In the further discussion, special emphasis was put on the relationship between the protection of civilians, the responsibility to protect and the UN-SC. It was stressed at the outset that the Council was originally not meant to protect civilians per se but rather to prevent war amongst major powers. It was also stressed that as a political body (in contrast to a legal body) its primary task is crisis management and rapid response to escalating crises.

2 The notion of a "domestic analogy" was most prominently introduced by Hedley Bull in the discipline of international relations theory (Bull, H.: The Anarchical Society. A study of order in world politics, 1977). It basically extends the argument of Thomas Hobbes: in an anarchic international system states would show a similar behavior as individuals in the state of nature. The reference to a "domestic analogy" in the context of the deliberations of the reflection group was not meant to invoke the more complex arguments of some theorists like Bull but rather was employed "intuitively" with regard to the subject of the discussion.

REFORM OF THE UN-SECURITY COUNCIL: THE MORE THE MERRIER?

Finally, the discussion moved on to the perennial question of Security Council reform. The familiar argument that its composition does not reflect the contemporary realities of the international system was reiterated and found widespread support. With regard to reform needs and potentials, perspectives differed, however. While some participants stressed the need to extend membership of the Council in order to make it more representative in all membership categories (and therefore more legitimate), others cautioned that according to collective action theory, more members will automatically complicate Council proceedings. Especially against the background that the Council proved to be a very well-functioning organ capable of dealing with a variety of crises – though obviously not all – despite grave great power conflicts over others, one must be careful not to jeopardize Council action. Another argument picked up the well-known complaint that the Council is increasingly overburdened with the multiplicity of contemporary crises and conflicts. An extension of its permanent members, in this perspective, might help share the burden of the current permanent members by involving emerging powers not yet represented on a permanent basis in the Council.

NO "SEPARATION OF POWERS" AT – AND LIMITS FOR – THE UN-SECURITY COUNCIL?

Another aspect of the reform discussion shifted the attention – also in a sort of domestic analogy – to the aspect of the potential misuse of the powers vested in the Council. The starting point was the issue of sanctions. Especially the practice of targeted sanctions under the Al Qaeda sanctions regime and its "terror suspect list" was critically scrutinized in the debate. The fact that persons are listed there on the basis of information provided by national intelligence services and without any means of judicial review or mechanism for "delisting" was mentioned as highly problematic. In this particular case, a mechanism for review – the establishment of an ombudsman in 2009 – was eventually found. Yet it was stressed that this example highlights the problem of having no institutional form of oversight over the proceedings of the Council, coupled with – at least theoretically – its far-reaching powers. On a different scale, the problem of accountability and oversight was raised with regard to the authorization and implementation of an RtoP (responsibility to protect) intervention by the UN-SC.

RESPONSIBILITY TO PROTECT AND THE MONOPOLY ON THE LEGITIMATE USE OF FORCE

The discussion about the responsibility to protect was directly linked to the preceding discussion about the role of the UN Security Council. It was recapitulated that Responsibility to Protect (RtoP) builds on international law, without being a legal concept itself. The main legal point of reference is the Genocide Convention. One of the most critical open questions, it was argued, is usually seen in the definition of the threshold for "mass atrocities". While it was stressed that this is indeed an important question which points to ambiguities and potential vulnerabilities of the concept of RtoP, from a different point of view this was seen as less fundamentally problematic than is often suggested. The Rome Statute, it was argued, defines genocide, and the practice of the International Criminal Court (ICC) also provides sensible orientation in this regard. The bottom line of the argument was: the definition of mass atrocities is sensitive but "not rocket science". Furthermore, it was stressed repeatedly that it is important to acknowledge that the core rationale of RtoP was never to legitimize intervention but to facilitate prevention.

PRECAUTIONS AGAINST MISUSE OF RTOP

Further arguments were advanced challenging the well-known interpretations and arguments of different types of RtoP skeptics: On the one hand, the point was made that RtoP was endorsed by the international community at the World Summit 2005, which stipulates a UN-SC mandate as the precondition for forceful RtoP interventions. This underlines the point that RtoP does not stipulate a right to intervention but defines a right of populations to be protected from mass atrocities. Yet both in the broader debates as well as in the course of the Reflection Group deliberations in New York, the potential for misuse of RtoP as an excuse for intervention and regime change figured prominently. In this regard, the notion of a corresponding downstream "responsibility while protecting" was discussed intensively in the course of the deliberations. While in itself perhaps not sufficiently refined to provide operational guidance for Council action, this notion of Brazilian origin was widely appreciated in the debate as a means to overcome the unhelpful legacy of the Libyan precedent. Especially if compared to the practice of UN-led peacekeeping operations, RtoP interventions (as in the case of the NATO-led operations against the Libyan government) lack a formal channel of substantial reporting to the UN-SC, resulting in a lack of transparency and influence on the part of the Council, once it has granted a mandate.

HOW TO UNBLOCK THE COUNCIL IN CASES OF LOOMING MASS ATROCITIES?

From the discussion, it seemed that indeed the backlash after the Libyan intervention and the skepticism against double standards and mixed motives for interventions have resulted in a situation where proponents of intervention face an uphill battle to make the case for it. The negative experience provides a perfect pretext for sovereignty-focused UN-SC members to block any form of intervention. This is particularly problematic, it was argued, with regard to the permanent members who by means of their veto-power could block enforcement action even in clear cases of mass atrocities. One silver lining referred to in the debate was the so-called ACT initiative that calls for permanent members to explain any veto they cast and to adhere to a code of conduct to refrain from casting a veto in a case where Council action is meant to prevent mass atrocity crimes.

RAPID REACTION AND PROTECTION PRACTICE

Finally, the discussion moved from the abstract conceptual debate and the decision-making process about RtoP action to the practice of protection. Against the background of the continuing lack of rapid reaction capabilities (both for peacekeeping deployments and for RtoP interventions) one suggestion was to reconsider the proposal to set up a United Nations Protection Service (UNEPS). The suggestion was quickly discouraged however: the abstract idea may be sound, it dates back as far as the 1950s and was further developed after the Rwanda genocide. However, it was argued that despite convincing arguments and the political attention the issue has attracted, we have not seen any kind of progress in this regard. And taking into account the dissolution of the Standby High Readiness Brigade (SHIRBRIG) in 2009 there is no systemic rapid deployment capability on the horizon, even for the less critical UN peacekeeping operations.

The debate about rapid deployment capacities led to a discussion on the differentiation between the political concept of the Responsibility to Protect and the operational concept of protection of civilians by peacekeeping operations. While the difference in concept and principle was well understood and acknowledged in the debate, there was a strong point made that in the end both concepts have "protection" as their core concern. In practice peacekeeping operations are at the forefront of "protection practice" today. And against the backdrop of the fact that the UN-SC is unlikely to mandate any RtoP intervention in the near future, it is likely that it will remain this way. And if peacekeeping remains at the forefront/center of protection practice, it was argued, we need to improve and invest in Peacekeeping.

PEACEKEEPING AND THE MONOPOLY ON THE LEGITIMATE USE OF FORCE

The subsequent discussion illustrated that while the practice of peacekeeping operations becomes increasingly relevant with regard to the understanding of a national monopoly on the use of force, it is perceived as a downstream, technical practice that easily distracts from more fundamental questions about the monopoly on the use of force. This assessment led to some controversial debates in the group. The discussion was informed by two inputs – one on general developments in the field of peacekeeping operations and a second one that illustrated developments using the case of the Horn of Africa.

DON'T CONFLATE PEACEKEEPING WITH ENFORCEMENT OPERATIONS

At the beginning it was recapitulated that whereas traditional peacekeeping operations were deployed during the Cold War in interstate conflict settings, contemporary operations have largely been deployed in intra-state conflict situations that are the outcome of sub-national groups fighting each other, ethnic rivalries, the dissolution of what were once unitary states, and so on. Against this background and from a general perspective, perhaps the most significant proposition was that in conflict situations where the "bad guys" are clearly identified by the international community, the response should be Chapter VII enforcement action. It should be mandated by the Security Council and delegated to a 'multi-national' force either under global auspices or by regional arrangement. It should not be tasked to a UN-led peacekeeping operation. While there are tendencies to subsume all sorts of crisis management operations under one catch-all category, it would instead be important to distinguish precisely between – for example – "Peacekeeping Operations" as understood by the United Nations and "Peace Support Operations" as understood by the African Union.

From this perspective, it would also be particularly important – in contrast to the argument heard before when discussing RtoP – not to mix up RtoP interventions with peacekeeping. And indeed, whereas peacekeeping operations may entail the downstream task of also protecting civilians in post-conflict situations, an intervention halting unfolding mass atrocities

is a totally different scenario, requiring very different military approaches which are not compatible with the concept of peacekeeping. A similar logic, it was argued, would apply to counterterrorism tasks – a suggestion to be heard more often these days. In summary, this argument concluded that the strategically offensive use of force in any scenario is not something a peacekeeping operation should be tasked with.

ELEMENTS AND INSTRUMENTS FOR CONTEMPORARY PEACEKEEPING OPERATIONS

Parallel to this insistence on the distinct concept of peacekeeping, it was admitted from the same perspective that the scope of peacekeeping operations has significantly expanded and to a certain degree perhaps rightly so. For example, the use of intelligence – in the sense of a more comprehensive situational awareness in theatre – might have been a controversial issue during the Cold War. For contemporary complex and multidimensional peacekeeping operations it would be anachronistic to deprive peacekeeping operations of the necessary tools for such situational awareness. With regard to the discussion of the so-called peacekeeping and peacebuilding nexus, it was admitted that both are interdependent yet nevertheless it was cautioned against carelessly conflating these two dimensions: it would probably be inappropriate to link the use of force aspect with peace-building.

All in all, it was cautioned that the concept of peacekeeping should not be extended too far in the direction of offensive combat operations. Rather, it would be appropriate to increase the effectiveness of peacekeeping by passing clearer mandates, equipping operations with more resources, broadening the troop contributing countries' agenda and providing for a rapid deployment capability, probably by establishing standing peacekeeping units.

THE HORN OF AFRICA ILLUSTRATES CONTEMPORARY PEACEKEEPING AND ITS CHALLENGES

In the second input, the current challenges for peacekeeping were illustrated with examples of operations in the Horn of Africa. The wide variety of different types of peacekeeping operations deployed in this region was discussed, ranging from truce observation missions through multidimensional UN-led peacekeeping operations to different forms of hybrid UN/AU missions.

The main conclusions from the example of the Horn of Africa can be summed up as follows:

- there are actually already too many peacekeeping operations deployed in the Horn of Africa that do not have any plausible exit strategy (and it is possible that the number of operations will increase even further)
- the region experiences rather pragmatic approaches to multidimensional mandates, including counterterrorism tasks
- there is an increasing ownership of peacekeeping operations by African states and the number of troop contributing countries is also set to further increase with funds coming from outside the region
- troop contributing countries tend to use deployment to peacekeeping operations for their own geostrategic aims

Especially against the background of the last point, the discussion also referred to the earlier experience of the ECOMOG operation in Western Africa. The lesson to be learned from that example, it was argued, is that it might not always be good to have neighboring states driving a peacekeeping mission.

Another point that emerged from the discussion referred to the use of force in peacekeeping operations: with regard to expanding the use of force through peacekeeping operations it was admitted that if the international community could act in concert, it could also address the risks and threats in theater. Yet, this would still not be the main advantage of peacekeeping. Its core rationale is to deter violence, not to counter violence.

LOCAL/REGIONAL OWNERSHIP OF PEACEKEEPING AND THE LACK OF RESOURCES

Another aspect of the discussion picked up on the issue of local ownership of peacekeeping operations: It was stated that irrespective of "political ownership", African states simply do not have the resources/capacities to implement peacekeeping operations on their own, especially given ambitious mandates including tasks ranging from the protection of civilians through disarmament, demobilization and reintegration to reconciliation and support for the government. Against the background of these requirements, African states are dependent on Western support which comes with conditions. These limitations notwithstanding, the case of Somalia shows that African states at least have the capacity to bring "neglected" conflicts back onto the international agenda through the African Union.

Lastly, the rather bleak example of peacekeeping operations in the Horn of Africa was not meant to deny them any relevance and impact. Even if they are highly deficient in terms of solving conflicts, they still serve a purpose.

TWO OPEN QUESTIONS REMAINED FOR FURTHER RESEARCH

In relation to the previous discussions a first crucial question emerged: Could it be possible that bilateral security assistance and multilateral peacekeeping or state-building operations are functioning as systemic substitutes? Is there a trend towards complicated and somewhat cumbersome "peacekeeping operations" being substituted by politically less sensitive, lower-profile bilateral security assistance?

A second more general question, related to the basic theme of the monopoly of force, referred to the concept of transitional interim administrations – or as it was put more provocatively: "international protectorates". Could it be possible that such missions might be the only realistic option for some territories and communities to develop, despite the international disillusionment with this most intrusive form of peacekeeping operation and the broad reluctance to even reconsider, let alone embark on such a project ever again after Kosovo and Timor-Leste?

TERRORISM, COUNTERTERRORISM AND THE MONOPOLY ON THE LEGITIMATE USE OF FORCE

While it was touched on in the context of peacekeeping operations, the terrorism/counterterrorism nexus was discussed in depth in a separate session. In the opening of that discussion it was emphasized that we often predominantly associate terrorism with failing states and accordingly a supposedly "deficient" monopoly on the use of force. Yet the Western states are not merely the targets of terrorist activity: despite a strong and often well-functioning national monopoly on the use of force, they were also used as a preparing ground and "safe haven" for terrorists in the making. The most prominent example of this is that the terrorists responsible for 9/11 had a footing in Hamburg and completed their flight training in the United States. That horrendous terrorist act, but also the total failure of intelligence services, triggered fear and anger well beyond what happened. It gave impetus to the new dynamic around the terrorism/counterterrorism nexus that has unfolded until today. And fear and anger, it was argued, are not good advisors for shaping security policies. Furthermore, it was stressed that also states themselves might instill a sense of fear in their citizens with extreme constellations where it might be adequate to speak of outright "state terrorism". In the end all of this comes down to the question of trust and legitimacy: how much trust is there in the state and its institutions to handle expanding powers in a civilized way?

SECURITIZED SOLUTIONS TO EXTREMIST PROBLEMS SEEM TO AGGRAVATE RATHER THAN DEFUSE THE PROBLEM.

With regard to the Western reaction to the new "terrorist" momentum in the years after 9/11, it was argued that special forces in the military and intelligence were the first instrument to be deployed, as they were immediately available. Yet, the argument proceeded, in implementing counterterrorism the way the West did, it played into the hands of terrorists. The "war on terror", the unilateralist tendencies of the US and the more securitized approaches to the containment of terrorism through increasingly authoritarian solutions all contributed to a broader process of decivilization. Referring to a famous quote by Elias it was argued that a "slow process of divesting politics from moral ground, from universalistic cosmopolitan notions to more primordial kinds of identity" had set in. "We have lost the small decencies of diplomacy". And this broader trend of securitized solutions to terrorist problems not only applied to the practice of internal and external security agencies in the West;with regard to the shaping of policies towards fragile states, also, a shift back to support for repressive and authoritarian governments – applying the logic of the lesser evil – was lamented in the course of the debate. Such approaches rather reinforced extremism and terrorism by betraying the universal values which are repeatedly heralded and championed by the West.

FAILING TO PROVIDE CONVINCING COUNTER-NARRATIVES AGAINST EXTREMISM

In addition to such normative considerations, a different analytical angle highlighted the complexity of the terrorism phenomenon. In particular, the heterogeneity of its causes and the fact that it operates in a context of deterritorialization were stressed. The challenge of addressing terrorism is further aggravated by the fact that many people actively engaging in terrorist activities seem to be motivated by a self-perception that they serve a high and just cause. So far, international efforts have broadly failed to counter these strong narratives effectively. This shortcoming with regard

to convincing counter-narratives weighs particularly heavily as the alternative of deterring terrorism (in contrast to other forms of criminality) seems hardly feasible: terrorists are evidently not easily susceptible to heavy-handed law-and-order approaches. And in comparison to terrorists' very deliberate and targeted recruitment strategies, members of the group argued, such heavy-handed policies appear naively blunt and harsh.

FEW CONVINCING POLICY ALTERNATIVES

Looking for feasible policy recommendations quickly led back to the discussions of the fall conference 2015 of the Reflection Group: The only practical instruments to prevent terrorist acts seem to lie in deradicalization strategies on the one hand and more effective intelligence services keeping up with terrorism on the other – all while remaining consistent in complying with civil and human rights values. To achieve the latter, another reframing of the narrative – it was argued – is needed: traditionally heavy-handed security policies are often seen as strong policies, while championing human rights and civil liberties and defending the limits they impose on infringement of privacy and law enforcement are often derided as "soft" or even "weak policies" in times of a terrorist threat. Yet there was wide-ranging agreement in the group that without such limitations to security services, militarization of society would risk the civilizational foundations of the rule of law and amount to a self-defeating strategy.

FEW INTELLIGENT INTELLIGENCE POLICIES

Following up further on the Mexico debate about the relevance of intelligence services for the monopoly on the use of force, there was some concern in the group that it will be difficult to avoid the pitfalls along the way. At some time, intelligence will fail (again) to prevent a terrorist attack and the public will partially blame the intelligence services. In consequence, this might likely lead to an overreaction, a tightening of security and consequentially further infringements of civil rights and liberties. It was argued that recent experiences indicate an even more problematic development: much anti-terrorism legislation was defended on the ground that these would be merely temporary measures to deal with an imminent threat. Yet, by a sort of "osmosis" they were not terminated and changed their character from a temporary measure to standard legal devices: What was originally deemed "existentially important" to fend off terrorism later also proved useful in the fight against organized crime and finally became completely normalized. This notion was contested in the debate by reference to the civil society pressure to undo the Patriot Act – it is not an inescapable consequence that exceptional counterterrorism precautions become part of the normal framework of rules.

While it was conceded that indeed there was strong and, in the end, effective public pressure to undo the negative fallout of the Patriot Act – triggered by the large-scale militarization of domestic civil policy – it was still noted that not every exceptional provision was undone. However, as one member of the group summed up the core insight aptly: Surveillance and increased competence for counterterrorism is, even under optimal circumstances, highly problematic and sensitive with regard to its consequences for democracy, accountability and the rule of law. Indeed a slippery slope.

THE TRANSNATIONAL DIMENSION OF TERRORISM INCREASES THE DEMAND FOR TRANSNATIONAL COOPERATION

Looking beyond the confines of individual nation states and their reaction to terrorist threats, it was emphasized by the members of the group that just like conflict and crime, terrorism and counterterrorism have become increasingly transnational or – as characterized in a previous part of the discussion – "deterritorialized". It was readily admitted that there had been a transnational dimension to terrorism previously; however, its current transnational dimension and extensions have reached a point where national governments recognize that a national reaction to this threat is systematically inadequate. Accordingly, there is nowadays an increasing interest and demand – for example by Asian states – for transnational counterterrorism cooperation, resulting in increasing cooperation in particular in the domain of intelligence sharing. This practice, however, results in decreasing transparency and oversight since these mechanisms still remain firmly nationally anchored – without corresponding transnational extensions. And it has to be kept in mind that the intelligence domain has only very recently become subject to scrutiny on a national level, with oversight and accountability mechanisms in some states. The expansion of transnational cooperation will obviously increase the gap between executive practice and any form of oversight once again.

TRANSNATIONAL COMPLICATIONS: TERRORISTS, STATE-SPONSORED TERRORISTS OR FREEDOM FIGHTERS?

But even if one could live with the oversight and accountability gap – or take precautions against it – the transnational dimension of terrorism entails another

well-known dilemma: as long as nation states see international relations – and international security policy in particular – as a zero-sum game, there is always the problem that one country's terrorists can easily be seen as freedom fighters or proxies that are "helpful" in asymmetrically balancing more powerful "neighbors" by others. Conversely, there are those cases where one person's freedom fighters were easily labeled terrorists by the state being challenged, with the case of the international community labeling the ANC a terrorist organization being perhaps the most prominent one. This refers back to the underlying understanding of security: if the core understanding of the security that is to be provided by the services of a country is "regime security", it is not difficult to see how "valuable" it can become to label opposition forces as "terrorists" and enlist other states' support in transnational anti-terrorism cooperation, or at least turn a blind eye to repression.

SDG 16 AND THE MONOPOLY ON THE LEGITIMATE USE OF FORCE

While the majority of the panels and subsequent discussions in the New York Conference were strongly concerned with peace and security policy in the more narrow sense, the last thematic panel was deliberately intended to broaden the debate, referring to the new Sustainable Development Goals (SDGs). In contrast to their predecessors, the famous Millennium Development Goals (MDGs) the SDGs elevated peace and good governance to one development goal (SDG16) on an equal footing with more traditional development goals related to health, economy, education and so forth. It was admitted in the discussion that the Millennium Declaration (on the basis of which the preceding MDGs were formulated) had already referred to the link between development and conflict. Yet the SDGs for the first time took the next step in operationalizing this insight and transforming it into one of 17 overarching goals. While the inclusion of SDG 16 found praise in the discussion, it was also stressed that it is just one of 17 goals and that the sheer number of goals and subordinated targets (179) raises a question as to how relevant each goal as well as the overall framework might become in guiding practice towards a paradigm shift.

DIFFERENT MOTIVATIONS FOR INCLUDING SDG 16

Irrespective of such abstract concerns with regard to the viability of the SDGs as such, it was stressed that two particular characteristics were remarkable both for the SDGs in general and for SDG 16 in particular. They have been agreed with a "universal reach" and they are people-centered instead of state-centered; both these are important and perhaps even – it was argued – game-changing features. Looking at SDG 16 in particular, a number of conceptual influences were also highlighted that will be important when considering its implications for the monopoly on the use of force:

- Perhaps the most obvious conceptual influence is the liberal peace concept which is still widespread in the UN system;
- Another reason to include SDG 16 was seen in the narrative of failed and fragile states (however discredited it might seem today) and the subsequent focus on the nexus between underdevelopment and conflict which triggered the emergence of the g7+ and the New Deal for Engagement in Fragile States;
- Finally, the human rights, human security and citizen security schools of thought – putting the individual before the state – influenced the framing of SDG 16, something which was particularly pushed by Latin American states

DIFFERENT OBJECTIONS TO THE INCLUSION OF SDG16 MADE COMPROMISE NECESSARY

With regard to the negotiation process of SDG 16 it was highlighted that it was the most controversial goal to be included and part of a long push for integrating peace, security and development. Some actors were concerned that it might be just another step in the subordination of development cooperation to western security/stabilization interests. In this view, it would be another Trojan horse meant to redirect development money towards security, which was already deplored with regard to a previous expansion of OECD-DAC criteria to cover security-related measures. At the same time SDG 16 was also controversial on the ground of sovereignty concerns, as it touched core areas of a state's monopoly on the use of force. Accordingly, it was recognized that the outcome of the goal is a sort of compromise: it is a universal goal focusing on individuals but also countering the transnational effects of insecurity.

FRAGILITY AND REPEATED CYCLES OF VIOLENCE NEED TO BE ADDRESSED

In the course of the discussion there was, however, a widespread sense among participants that fragility and repeated cycles of violence persistently jeopardize development and that it was appropriate that the SDGs include SDG 16. If one wants to help peoples

and states, peace and security cannot be ignored in development strategies. SDG 16 would now allow the prominent hypotheses of the security and development nexus to be tested. And irrespective of the short and medium term impact with regard to development programming on the ground, it was stressed that this goal allows us to have a dialogue on the link between development and security with greater policy and operational relevance.

The inclusion of peace and security in the new development agenda was then discussed again from a specific Latin American perspective. The case of Venezuela, for example, was cited to caution against a simplistic understanding of the poverty-violence nexus: poverty went down while violence (more specifically homicides) went up. Another example referred to was Colombia where development indicators went up for quite some time with violence levels remaining high. However, it was conceded that, irrespective of such countervailing developments, in general more peaceful societies have better chances for successful development for a variety of reasons.

SOBERING EXPERIENCES WITH THE NEW DEAL FOR ENGAGEMENT IN FRAGILE STATES AND LIMITED RESOURCES FOR DEVELOPMENT

In the discussion, the question came up as to how far the development of SDG 16 took into account the (partly sobering) experiences with the New Deal. After all, it was argued, both frameworks put a special emphasis on national ownership and leadership. It was widely conceded that the track record of the New Deal, in which high hopes were placed by the expert community when it was agreed, was not very encouraging. It was further highlighted that we see an increasing number of "norm entrepreneurs" these days. All of this leads to a paradoxical situation: while for example a high degree of consensus and inclusion was achieved with regard to the SDGs, the international systems (and the UN system in particular) to support the implementation of the SDGs are now more fragmented and equipped with less funds than before.

Even beyond this skepticism, whether a fragmented development community might be able to live up to the expectations associated with the SDGs or not, there was some more fundamental criticism to be heard around the table. Despite the reframed narrative with the new focus on "sustainability", some argued, there is a disconnect from the visions and alternative visions of the people. Development as a practice would be focused on simply "keeping the ball rolling" and would turn more towards a form of security practice. However, there were other voices strongly arguing in favor of seizing the chance entailed by the SDGs to move beyond the established paths. Therefore one would have to be more innovative and not just deal with each and every goal individually. Rather the combination of different goals might make the difference; e.g. linking SDG 10 (Reduced Inequalities) with SDG 16 (Peace, Justice and Strong Institutions). Finally, the agreed universality of the SDGs was repeatedly highlighted again as a potential game changer and potential point of entry.

REALITY CHECK ROUNDTABLE

The Spring Conference of the Reflection Group was completed by a roundtable discussion with representatives of the New York expert community at Church Center. Starting with short inputs from members of the Reflection Group, the main aim was to get expert feedback and additional input from outside the group. The discussion was split into two parts for practical reasons, one focusing on the domestic side, the other focusing on the international side of the monopoly on the use of force.

DIFFERENTIATION BETWEEN THE "INTERNAL" AND THE "EXTERNAL" BECOMES LESS PRODUCTIVE

This differentiation itself leads directly to one of the core insights from that discussion: The intuitive and somehow default distinction between inside/outside is no longer adequate (if it ever really was) when discussing the future of the monopoly on the use of force. The discussion showed that there are a variety of relevant cross-references between the internal and the external aspects of the monopoly on the use of force, and against the background of today's security environments it seems next to impossible to neatly separate one dimension from the other.

INTERNATIONAL SYSTEM NOT WELL PREPARED TO COUNTER NON-CONVENTIONAL VIOLENCE

As the discussion was taking place directly opposite the UN compound at East River, it focused quite strongly on the UN system and the way it coped with the changing security environment. It was noted that the blurred distinction between conflict, criminality, violence and terrorism presents a big challenge for the UN as a state-based system. And it was readily admitted that the UN in particular is not well prepared to engage in countering violent extremism and various forms of non-conventional violence.

One particular point of reference in the debate was the High Level Independent Panel on Peace Operations, which published its final report in summer 2015. It testified to the problems experts have in taking into account the changing security environment and world order. Peace operations still remained very state-centered i.e. concerned with stabilizing states. Yet, it was argued, not only peace operations but also international organizations need to be enabled to deal better with non-state actors. It was suggested that more local knowledge (in contrast to functional knowledge) would be helpful in this regard. This notion was contested immediately: the counter-argument stressed that there is already quite a lot of local knowledge in the systems. The main question would be how to identify which local knowledge would be important in order to come to accurate assessments of where violence stems from, for example.

IS THE SITUATION INDEED NEW OR JUST MORE OF THE SAME?

Coming from the particular challenge the UN faces in dealing with a supposedly dramatically changing security environment, the discussion quickly took up a well-known thread of the international security policy discourse, asking: are these threats and trends indeed all that new? Especially when taking the perspective of the Reflection Group's topic – the notion of a monopoly on the use of force – there was widespread skepticism as to whether the discrepancy between a neat theory of state sovereignty and the "messy" reality is really that new. Indeed, one participant argued that even the frequently-heard assessment that World War II marked the peak of the dominance of the state monopoly on the use of force does not withstand scrutiny: already back then, militias and other semi-regular and irregular forces were present and highly relevant in the theatres of conflict. However, more importantly, one participant emphasized that we should rather ask why such a discrepancy (assuming that it is not that new) now results in more violent practices.

Basically, it was argued, wherever a state does not live up to its protection and security responsibilities, security is organized in different forms; either by the people themselves, by commercial security providers or by the intervention of external actors. This led back to a notion that was repeatedly stressed by some members throughout the Reflection Group's deliberations: there seems to be no such thing as "ungoverned spaces".

INTERVENTION AMBIGUITIES AND THE MONOPOLY ON THE LEGITIMATE USE OF FORCE

The topic of intervention – both by the international community as well as unilaterally – also received much attention in the course of the roundtable debate. A widely shared assumption was that externally driven solutions to security problems are frequently not sustainable. Yet at the same time it was conceded that dogmatic non-intervention in turn will not be the solution either. Indeed, it might at times not be realistic or adequate, since many of those conflicts which are labeled as "internal" by some parties concerned might indeed have serious implications and interconnections that stretch beyond national borders. Obviously the same applies in reverse to purely internal conflicts that are deliberately described as international ones by interested external actors. Accordingly, it was emphasized that the labeling of situations is in itself a most relevant decision, for which there are no widely agreed definitions at hand. This thread of the debate led to the call for a more stringent framework for intervention. However, such a framework has to function both ways: not only defining the preconditions for intervention, but also enabling the international community to refrain from intervention.

LEGITIMACY VS. DOUBLE STANDARDS

In the course of the debate about a new framework for intervention, the aspect of legitimacy quickly came to the fore. Especially the use of force by permanent members of the United Nations Security Council (exemplified by the example of the 2003 invasion of Iraq by the United States) led to the crucial question: how the UN can deal with challenges posed by permanent members of the Council? This discussion linked to the previous discussion of security hierarchies during the Reflection Group conference and indeed seems to point to a core concern: if a public monopoly of force is still desirable to a certain degree, how can the international architecture tame the temptation of its most powerful members to seize their comparative advantage in terms of hard power and apply double standards? And this not only applies to the general distinction between a legitimate intervention and an illegitimate one. It also applies to the way in which such intervention is implemented. Again, the example of the United States was highlighted: While the attack of 9/11 rendered a forceful US reaction highly legitimate at first, the way it was implemented (for example: Guantanamo) eroded the original legitimacy for intervention.

PEACEKEEPING AND POST-CONFLICT RECONSTRUCTION

The discussion also looked at less controversial forms of international intervention such as UN-SC mandated peacekeeping operations and post-conflict reconstruction and peacebuilding efforts. Not surprisingly, the distinct mismatch between UN-SC mandates, available resources and what needs to be done on the ground was deplored at the outset. In particular it was stressed that in practice there is a need for the primacy of politics while still, all too often, the use of force is overemphasized and attracts the most attention. Furthermore, the fact was emphasized that these sorts of engagement are often pursued by a variety of actors whose actions are frequently not well coordinated. Indeed, it was argued by one participant that it is not helpful to have more actors involved on the ground or in diplomatic efforts; however, realistically this plurality currently has to be factored in.

With regard to the monopoly on the use of force and the frequently-discussed trend of privatization/commercialization of security, it was furthermore highlighted that the Department for Peacekeeping Operations is indeed investing significant resources in PSMCs. The reason was also elaborated: in a context where not many states are willing to deploy military and/or police peacekeepers, PSMCs are needed to fill those gaps.

Another strong complaint focused on the dominant "silo approach" to engagement in post-conflict contexts, which would be especially counterproductive in deteriorating security environments. At the same time, it was emphasized that national post-conflict reconstruction may be a unique opportunity to reestablish the relationship between society and the state, legitimizing a monopoly on the use of force. However, there was a caution against being overly optimistic: we are facing many situations where we most likely will not see a new social contract being negotiated on the basis of which a state can be established that effectively protects its people. It was pointed out that, in the final analysis, the concept of the "state" has had a long conflictual relationship with the concept of "society". Especially with regard to the monopoly on the use of force, it was argued that, originally, the state's instruments of force were not primarily invented to secure people, but to check and restrict people.

Finally, and linked to the previous point, there was also a discussion about the relevance of the most intrusive forms of peace operations, namely those that are mandated to establish an interim administration. The cases referred to were Timor Leste and Kosovo. Despite a quite critical assessment of the advantages and disadvantages of such types of operations, it was also argued in this context that the international community needed to retain the skill-sets required for such operations.

RECIPIENTS AND MISSIONARIES OF THE PARADIGM OF A STATE MONOPOLY ON THE LEGITIMATE USE OF FORCE

A key point made in the course of the roundtable discussion complained that all references to "the state" are too generic. It has to be acknowledged that, in the international community, some states function as "recipients of a paradigm", while others act as "missionaries of the state paradigm". However, especially when considering different types of states, it would be absolutely crucial to acknowledge the general and specific history of state formation – an argument that also surfaced in different forms throughout the deliberations of the group and accordingly found strong resonance around the table. However, it was also widely conceded that one should not discard the template of Western-type states with a monopoly on the use of force. It is indeed helpful to take those foreign templates seriously and "borrow" some design features in processes of state formation and post-conflict reconstruction sensibly, but one should not simplistically copy or indeed impose them.

With regard to the missionary states of the concept of monopoly on the use of force it was highlighted that they are fighting a lost battle. They themselves have opted for the wide-ranging commercialization of security after the end of the Cold War. This is partly for a very short-term motivation: to keep security personnel employed. For recipient states, however – particularly those in Africa – these parallel processes of calling for a strong state monopoly on the use of force while fostering commercialization is even more disturbing. These states, it was argued, were often not yet living up to their responsibility to provide security for their citizens and were still developing in that direction when commercialization already started trickling in.

PROBLEMS WITH PRIVATE/COMMERCIAL SECURITY PROVIDERS

The issue of private/commercial security providers was discussed in further detail and stressed as one particularly relevant factor with regard to the future of the monopoly on the use of force. At the center of the concerns with regard to PMSCs is the issue of accountability. It was argued that there is no clear

chain of command and in conflict zones PMSCs can even come from various "home" countries. The comparison between state security forces and PMSCs in the US was particularly intriguing: whereas the military can court-martial soldiers, it cannot do so with "contractors". And whereas countries are obviously under a duty to enable victims of human rights violations to have judicial redress, private military contractors in the US so far enjoy "immunity". Indeed, it was further argued that there is no binding international regulation for private security providers and the US is accordingly shifting from a system of theoretical accountability (soldiers, court-martial) to a system of no accountability (private security operators). And beyond this circumnavigation of legal accountability, the use of private and military contractors is also instrumental in reducing public scrutiny of the tasks to which they are assigned. As the sometimes highly problematic work of such contractors is seen as a service that is provided voluntarily and remunerated accordingly, it avoids the sort of public debate that would emerge if state personnel were deployed to perform these tasks. Thereby it operates to shift the burden away from society.

One counterargument with regard to the lack of accountability of commercial security providers pointed to the international code of conduct for PMSCs which theoretically should fill that gap. However, it was complained that the codes that are in place are industry-led and still voluntary. Especially in comparison to the model of a legitimate state monopoly on the use of force under the rule of law, it was argued, such form of regulation is insufficient.

Beyond the aspect of accountability and regulation, it was also highlighted that the critical discussion about the role of PMSCs often focuses on those actors that carry a gun. This is problematic, since in terms of systemic impact, the commercial business of risk assessment may perhaps be as relevant even if less visible.

Finally, two further aspects were taken up. Arguments in favor of employing PMSCs often emphasize efficiency, as they are supposedly less costly than state security personnel. This argument, however, neglects the fact that the training of this personnel often is paid by the state, since they are recruited from among former police and military personnel. And indeed, it was argued that they are often better paid than soldiers/police officers.

It was emphasized that even if the efficiency dimension were to favor commercialized security provision, it would still be the case that the crucial basic relationship between citizens giving resources to states and receiving security in return is dissolved by private security. This would eventually result in a situation where everyone is only equally secure if he/she can pay the same amount for security. And in such a case one would have to live with "islands of security", one participant concluded.

SHARED CONCERN: SURPLUS OF SECURITY PROVIDERS

It also became apparent in the discussion that, in addition to other factors, the surplus of former servicemen and women in post-conflict situations is pivotal when it comes to the emergence of non-state security providers. And while everyone in that context immediately thinks of private military and security providers, it was emphasized in the debate that people with the respective "qualifications in violence" not only end up as contractors but also in organized crime and extremist groups like ISIS.

Accordingly, another core insight from the roundtable discussion is that the issue of ex-combatants in post-conflict situations must command the highest attention.

INTERNATIONAL LAW AND OTHER FORMS OF REGULATING SECURITY ACTORS

Aside from the discussion about different types of security actors and practices, there was also a discussion about international law and other forms of regulation that might circumscribe the state monopoly on the use of force. At the outset, one participant stated that any state's legislation is subject to compatibility with international law. In a conflict, this means that international humanitarian law has to be followed; moreover, human rights law is binding on all states all the time. Yet international humanitarian law does not prohibit non-state actors from engaging in hostilities. However, it was stressed that the respective state in which or against which contractors are being employed does not have to treat such contractors as combatants.

When it came to international legal authorities and the monopoly on the use of force, the discussion briefly turned to the role of the International Criminal Court (ICC) and the International Court of Justice (ICJ). Both have jurisdiction over areas that are of pivotal relevance to the legitimate state monopoly on the use of force, with the ICC having jurisdiction over mass atrocities and the ICJ – amongst others – over the crime of aggression. Both, however, are highly susceptible to criticism on the ground of selectiveness. And indeed,

one participant emphasized the systemic consequences if the international crimes in question (aggression and atrocities) prevail or spread – which is more likely if they go unpunished. At the same time, it was recalled that a strict and dogmatic interpretation of law in the specific cases currently under discussion involving African countries might entail grave implications for local populations. All of this reminds us, as one participant observed, of the old "peace vs. justice" controversy which should have been more or less resolved by now: both are necessary!

MANAGING SECURITY SPACES?

Concluding the discussion, the following question was raised: if we agree to dispense with the fallacy of perfect monopolies on the use of force and accept the reality of a multiplicity of actors, how could such a security system be ordered and what role would we ascribe to the state? The immediate suggestion was to focus on the state's role of managing security spaces/services, not necessarily providing security itself. This idea found considerable resonance, suggesting a role for the state as a kind of "referee" in the security arena. While intuitively appealing, however, such a managerial vision of the state was also seen critically. One concern might be that such a managerial vision of the state's role entails many normative implications that are associated with the language used: it recalls the terminology of "new public management". In this sense, it would have some connotations of a liberal/neoliberal understanding of state and society which are probably not universally appealing. Another problem, it was argued, is that in the current international system there is simply no way to practically redress the inherent state focus. The United Nations at its core is a state-based organization.

It was highlighted that, in practice, there are some cases where states such as, for example, Namibia, have indeed formulated and legislated a security policy framework that also acknowledges the existence and role of non-state security providers. Another participant agreed, but pointed to the fact that such formal frameworks exist in a variety of post-conflict countries such as Nigeria, Somalia and the Central African Republic. Yet these frameworks are mostly very superficial.

REFLECTION GROUP MONOPOLY ON THE USE OF FORCE

The Reflection Group »Monopoly on the use of force 2.0?« is a global dialogue initiative to raise awareness and discuss policy options for the concept of the monopoly for the use of force. Far from being a merely academic concern, this concept, at least theoretically and legally remains at the heart of the current international security order. However it is faced with a variety of grave challenges and hardly seems to reflect realities on the ground in various regions around the globe anymore. For more information about the work of the reflection group and its members please visit: http://www.fes.de/de/reflection-group-monopoly-on-the-use-of-force-20/?

IMPRINT

Friedrich-Ebert-Stiftung | Global Policy and Development
Hiroshimastr. 28 | 10785 Berlin | Germany

Responsible
Bodo Schulze | Global Peace and Security Policy
Phone: +49-30-269-35-7409
Fax: +49-30-269-35-9246
http://www.fes.de/GPol/en

Contact
Christiane Heun | Christiane.Heun@fes.de

FRIEDRICH EBERT STIFTUNG