

# THE MODERN TERRITORIAL STATE: LIMITS TO INTERNATIONALIZATION OF THE STATE'S RESOURCES

## 2 The monopoly of legitimate force: denationalization, or business as usual?

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As Max Weber and many others in his tradition have argued, the monopoly of the legitimate use of physical force is the core of the modern state. What counts here is not the frequency of the actual use of force but the fact that only the state has the legitimate right to use such force. The military and the police are the most concrete expressions of this monopoly. In recent decades, the use of the military and the police has been subject to external challenges – ‘globalization’ – and new ideas about police and military intervention. Although at an operational level the state retains full control over the actions of the police and military, the conditions for their use are increasingly shaped by institutionalized legitimating ideas.

### **The monopoly of the use of physical force – functions and form**

For Max Weber,<sup>20:54–55</sup> the monopoly of the legitimate use of physical force – henceforth ‘monopoly of force’ – was the feature that distinguished the modern state from all other forms of political organization. It has two elements – the monopoly of the use of force and the legitimacy of its use. The monopolization of the means of force by a single centre is the result of a long evolution. It took centuries for the state successfully to centralise control over the means of coercion against all major rival groups. This monopolization has now become a generalized expectation. A state that is unable to uphold this monopoly is considered a ‘failed state’. With respect to the legitimacy of the use of physical force, this means that only the state has a generally accepted right to use force against its citizens or against other states. Other groups or individuals may use force in exceptional cases, but their use of force is not generally considered legitimate. Except under narrowly defined circumstances, the use of force by actors other than the state is considered a crime. What is more, the criteria for the use of force are defined by the state itself. During the stages of their development, the state’s criteria for the

use of force became increasingly defined by legal rules and controlled by democratic processes. As a result, legitimating criteria for the use of force are not set at will by executives but are linked to the state's *demos*. The *demos*, in turn, is bound by universal human rights norms. These norms, however, are of a very general nature. Specific rules on the use of the means of force by the state vary greatly over time and across countries. But the basic idea that in the Western world the state has exclusive control over the means of force and that the legitimating criteria for its use are developed domestically has remained stable for a long time.

The use of the monopoly of force is not a field of state activity like any other. It penetrates the core of human existence even more than does taxation, since it has the potential to take away people's life and freedom. Historically, it is the first attribute of modern statehood to have emerged in a competitive process against rival forms of political organization.<sup>17</sup> The key function of the monopoly of force is protection against external and internal threats. This takes place in a Hobbesian world of the (potential) war of all against all. In this view, the monopoly of force is most important domestically. It pacifies domestic society and prevents civil wars or high levels of force within society. Whereas, in Hobbes' vision, the price for pacification was authoritarian rule, this price does not have to be paid after the Leviathan has been bound by constitutional rules and controlled by democratic procedures. The monopoly of force is a precondition for the emergence of complex social interactions that rely on interpersonal and intertemporal trust. Many of the institutions and organizations that make modern society so attractive for people living outside the OECD – such as health, transportation and educational systems and modern markets – require the absence of force as a standard prerequisite for action by individuals or organizations.

There is a monopoly of force within the state but not above it. Many observers believe that the world of states is not very far from the Hobbesian state of nature. Although the various schools of thought in international relations arrive at different assessments of its specific extent,<sup>4</sup> it is clear that the actual use of force as a means of policy is much more common in international than in domestic politics in the OECD world, and that it is much less constrained by legal norms or democratic constituencies.

The monopoly of force has developed into two distinct organizational forms: the military and the police. What is important here is not the difference in organizational structure between the two forms but the fact that both operate in different institutional contexts and are generally perceived to be separate policy fields. Research typically focuses on either the military and security policies *or* on police affairs plus internal or home affairs. But in terms of understanding the nature of the state and potential changes in it, both are two sides of the same coin.

In both cases, the normal and legitimate state of affairs is total state control. A state that is unable to uphold its monopoly of control over the army or the police,

and has to accept rival private 'armies' or private 'police forces' on its territory, is considered a failed state. The same is true of complete internationalization or regionalization. A Bavarian, Scottish or Basque army would be as revolutionary as a European army. These kinds of radical changes are not likely to happen in the foreseeable future. But can we therefore conclude that, in the field of the monopoly of force, everything remains as it was? If we distinguish between the *actual use* of the means of force and the *legitimation* of such means, important changes become apparent. They become even clearer when we distinguish between 'classical interstate wars' and 'new wars' in the field of military affairs and 'terrorism' and 'organized crime' in the field of police affairs. These concepts will be explained below.

### Challenges to the monopoly

In the core states of Western Europe, the prime direction of change is towards internationalization. Privatization, the only realistic alternative, is much more important outside the OECD world than inside it.<sup>14</sup> In order to understand the significance of potential changes, their direction and their impact on the state, it is important to have analytical categories that can accommodate the huge variety of particular processes and events taking place in the field of military and police affairs.

In order to arrive at such an analytical framework, we may distinguish between problem structure and ideas. The underlying theoretical model argues that state actors are responsive to the changing nature of problems, but that the perception of the nature of these problems and the measures to be taken very much depend on systems of ideas. To put it more formally: ideas are intervening variables between problem structure and action.

#### *Problem structure*

We can assume that the monopoly of force is a means to solve functional problems, in other words, a means of governance. Narrowly defined, the problem to be solved is internal and external pacification. Over the last 30 years or so, the two most important causal factors appear to be internationalization and the stronger involvement of societal actors, i.e. privatization.

For many authors, the end of the Cold War represents a watershed in the field of *military affairs*. Before this point, the balance-of-power logic between the superpowers dominated the logic of international conflict. The wars that took place in the decades preceding the end of the Cold War, or, more importantly, the wars that could potentially have taken place but were prevented, were classical interstate wars and in many cases heavily influenced by the underlying rivalry

between East and West. Classical interstate wars are wars fought by regular armies under the tight control of a unified political leadership. They presuppose a functioning monopoly of force. After the end of the Cold War, the nature of conflict changed. Ethnic and nationalist mobilization seemed to replace the rivalry between capitalist democracies and communist systems. In addition, the nature of the actors changed. Regular armies under state control were increasingly replaced by private armies, mercenaries, guerrilla groups and the like. These groups were sometimes ideologically motivated and under the strict control of an undisputed leadership, but more often their internal coherence was rather low. In general, they cannot be considered instruments of a leadership acting strategically in the pursuit of certain goals.

Those bold statements are clearly idealised abstractions from a much more complex reality. However, the trend is clear. Since the end of the Cold War, policy-makers in the OECD world have been faced with, in Mary Kaldor's words, 'new wars',<sup>12</sup> which are characterized by shifting and fluid conflict lines, varying degrees of participation and low degrees of strategic action. Now, there is typically no functioning monopoly of force.

In the field of *police affairs*, organized crime has entered the scene. The very concept of organized crime is rather recent. Although there are still doubts as to whether it describes a clearly defined phenomenon, the concept has come to be widely accepted and used.<sup>6</sup> The new challenge on the agenda is not only that crime is organized, it is also its transnational reach. Criminal organizations increasingly operate across state borders in an attempt to escape state control. One major field of activity is drug trafficking. The second major field of transnational criminal organizations is terrorism. Simply put, in the 1970s, German terrorists attacked German politicians and industrialists in order to change the German political system and appeal to the German public. The same applies to French and Italian terrorists. Contacts between the national groups existed, and West European terrorists went to training camps in the Near East. However, this is very different from the current situation in which the composition of terrorist groups is much more multinational and their operational base almost global.

A further characteristic of the current problem structure is the blurring of the boundaries between the different fields of activity. Terrorists participate in large-scale drug trafficking in order to finance their operations. They are also players in the new wars and use war-torn countries as bases of operations, as do transnational criminal organizations. Based on the outcomes of terrorist actions, large-scale transnational terrorism is now considered an issue of international security and not just of criminal and police affairs. This development, while widely known since 9/11, began even earlier.<sup>21</sup> The strict division between the competencies of the military and the police is becoming more fluid because the current problem structure does not seem to follow this neat distinction.

Finally, states are losing control over their borders independently of the development of transnational crime, conflict, and terrorism. The most important cause of the loss of border control is European integration and the related attempt to create an area without internal borders. Whereas the literature on globalization often considers a state's loss of control over its borders and over what is happening within its territory, a result of social processes beyond state control, or at best an unintended consequence of state policies, the case is different in the EU. Here, the abolition of border controls is an explicit policy goal intended to increase transborder interactions. Conflicts over the desirability of this goal, and over its potential consequences, have led to the formation of the so-called Schengen Group, a sub-system within the EU named after the small city in Luxembourg where the initial agreement was reached. Over the years, the Schengen countries have gradually abolished border controls. By doing so, they have explicitly given away border controls as a traditional means to fight crime, or at least to contain it within a state's borders.

However, the general trend of an increased mobility of persons applies to members as well as to non-members of the Schengen Group within the EU. The best illustration of this is the UK, which has consistently refused to participate in the Schengen Group on the grounds that its island location constitutes a natural border that is easy to control. However, with 90 million people entering the country each year (or almost 250,000 every day), the idea of effective border controls appears to be more of a symbolic reference in political discourse than an empirical reality.<sup>16</sup>

### *Ideas*

However, hard facts do not directly influence the behaviour of political actors. Facts do not speak for themselves. They are not even perceived by everybody to the same degree: most of us (happily) do not directly perceive transnational crime or new wars, and many of us are not even indirectly affected by these phenomena. Individual and corporate actors are faced with a complex reality; with an overload of constantly changing factual information. They use systems of ideas in order to sort and interpret this information, to make sense of it and to decide on appropriate strategies. These systems of ideas contain empirical, normative, and symbolic elements.<sup>10</sup>

In the field of *military affairs*, the post-Second World War consensus on state sovereignty and its twin concept of non-intervention is eroding. Although the concept of sovereignty has always been much more a normative concept than an empirical one, or at least more a Weberian ideal type than an inductively generated description of reality, the present debate goes well beyond the usual mismatch of reality with an ideal type. The UN Security Council, the only body that is

entitled by the UN Charter to authorize the use of force against a state, has repeatedly agreed to military interventions by groups of states into the domestic affairs of another state. In a strict reading of the UN Charter, this is clearly prohibited. For this reason, the Security Council has always legitimated such interventions with reference to a reasoning that is acceptable on the basis of the UN Charter, arguing that the conflict at stake constitutes a threat to international peace and security. But were the events in, for example, Somalia, terrible as they were, really a threat to anybody outside the country, as suggested by the reference to *international* peace and security?

The idea which helps both to interpret the significance of many of these new wars and to direct and justify action is the concept of humanitarian intervention.<sup>9</sup> According to this concept, state sovereignty does not have to be respected at any price. Human rights are rising in importance and moving towards equal footing with the norm of state sovereignty. In this view, large-scale violations of human rights justify a violation of the territorial integrity of a state. The concept of humanitarian intervention faces a number of difficulties that were avoided by the older concept of absolute state sovereignty: what is the threshold for an intervention? How can one avoid the abuse of humanitarian intervention for the material or power interests of some states?

Closely linked to the idea of humanitarian intervention is the idea of 'failed states'. As in the case of humanitarian intervention, the concept is still evolving and clear operational definitions that would allow one to establish beyond reasonable doubt that a state is a failed state are still lacking. Basically, failed states are characterized by a lack of governmental authority. A failed state may not even have an operational government. Hence, it can neither enforce internal peace nor assume its international responsibilities. As it is not a sovereign state, humanitarian intervention cannot violate the norm of sovereignty. In the field of military affairs, we are thus witnessing a slow shift from one set of ideas, the sovereignty of intact states and non-intervention in them, to another set, graduated sovereignty of failed states and limited humanitarian intervention in them.

The situation is much less clear in the field of *police affairs*. The development of the police was closely linked to the emergence and development of modern states.<sup>2,13</sup> As a result, police organization and the basic norms governing its operation have taken very different development paths in different countries. Since a low degree of denationalization of the problem structure prevailed most of the time, police systems in Western states developed in parallel but without much interaction. Only with the beginning of denationalization after the Second World War, and its increase since the 1970s, have concepts developed at the international level that started to have an impact on national police systems.

The strongest pressure, in terms of norms governing police action, has had to do with problem definitions. Each country has developed highly particular

conceptions of what constitutes a crime and a criminal. The differences among countries are strongest with regard to terrorism – a person might be considered a celebrated freedom fighter in one country and a ruthless criminal in another. Effective international cooperation in combating terrorism does, however, require a definition of terrorism. September 11 constitutes a strong push in that direction and makes it more difficult for individual countries to resist emerging ideas about what is a terrorist or a terrorist attack. The situation is similar in the field of organized crime. As in the field of terrorism, international institutions have constantly worked on more narrowly defining particular types of organized crime, such as drug trafficking. In contrast to the field of military affairs, where one can observe a large-scale move away from a strict interpretation of sovereignty and non-intervention that goes beyond the narrow realm of state executives, conceptual thinking about terrorism and organized crime is largely restricted to civil servants and police experts. As a consequence, the ideas currently discussed are much more tightly coupled to concrete problems and much less bold in the field of police affairs than in the field of military affairs.

### **Changes of the monopoly**

#### *Military*

In order to analyse potential changes in the monopoly of force in the field of military affairs, it is useful to distinguish between classical interstate wars and new wars, including civil wars. Interstate wars are characterized by the predominance of state-controlled military forces. For the realist school of international relations, represented here by Kenneth N. Waltz,<sup>19</sup> interstate war is an existential challenge to the state because its physical survival is at stake. In such a situation, realists claim, states do everything they can in order to assure their survival. The only external influence they respect is superior power. International norms will only be followed as long as states do not perceive them to be against their interests. This is the Hobbesian vision of the war of all against all with no restrictions on the use of force.

The liberal school of international relations acknowledges that norms at the international level are weak when compared with domestic norms, and that they are frequently broken during wartime. However, liberal theorists see the development of the international law of war during the last few centuries as an evolutionary process, in which rights and obligations in the field of warfare have been defined in an increasingly precise and constraining manner. Despite the many breaches of international law, this process of legalization is, on the whole, matched by actual behaviour. If this assessment is true, the use of the monopoly of force is subject to a very slow process of restriction by the international law of war.

As in most other fields of international politics, there has been a strong increase in the institutionalization and legalization of classical warfare since the Second World War. The UN Charter prohibits the use of force except for self-defence. Everybody knows that this norm is often violated. But the effectiveness of a norm cannot be measured exclusively by the degree of compliance with it. The impact of a norm is more usefully measured by the effect it has on behaviour in a broader sense and on the justification discourse. Many states have violated the provisions of the UN Charter. In an era in which information is quickly available at a small cost for citizens, organizations and governments, these violations of generally accepted norms require a particular effort for legitimation. Norm violations may be taken up by social movements, NGOs and domestic opposition groups. It is true that strong states can ignore all this, and it is also true that they have frequently done so in the past. All other things being equal, however, the use of the monopoly of force for interstate war requires greater efforts for legitimation today than a century ago.

This becomes even clearer when we look at more specific aspects of the use of the monopoly of force, namely the use of particular weapons. The non-proliferation regime, the convention on chemical weapons and the ban on landmines, for example, delegitimize the production, possession, or use of certain types of weapons. States are thus no longer free to use the weapons of their choice. Again, states can produce, possess or even use delegitimized weapons, but at a higher cost.

In Europe, the system of norms and institutions regulating the use of the means of force is more concrete and more demanding than the general and universal UN-based system. Article 5 of the NATO treaty stipulates the obligation of all members to help in case of an attack against any one of them, and includes the use of force as a means for doing so. This falls short of the plan for an integrated European army, which failed in 1954, but goes considerably beyond a purely defensive alliance in which members participate on a strictly voluntary basis and are entirely free to determine their policies.

Since the end of the Cold War, security institutions in Europe have changed profoundly. This is true for NATO as well as for the EU. Apart from its traditional function as an organization for collective defence, NATO has developed into a security management institution,<sup>18</sup> an institution that is directed inward. Its main purpose is to ensure that member states will not use force against each other. This is achieved by creating institutionalized ties among the member states at all levels, from broad political statements to exchanges in terms of military strategy and equipment, and to common manoeuvres. As a result, the anarchical international system in the North Atlantic area is slowly being transformed into a much more institutionalized system, where trust and information about other states' capabilities and intentions, and the credibility of their commitments to joint

policies and rules of behaviour is high. States retain ultimate control over the use of their military machinery, but they credibly communicate, both to other states and to their domestic constituencies, that they will not use it against NATO partners.

In addition, NATO has specified the terms and conditions for the use of military forces in cases that do not fall under the category of defence proper. This development is a response to the denationalization of problems such as new wars and failed states, the proliferation of weapons of mass destruction, and transnational terrorism. Although NATO members are free to use their military in cases not covered by these types of 'out-of-area' operations, this is unlikely to happen, especially for member states without a tradition of military intervention. In areas where they believe unilateral action to be ineffective, member states have formally pooled their sovereignty in the field of military power. A pooling of a part of the monopoly of force is synonymous with the joint exercise of these powers within an institutional framework. It is not to be confused with delegation. In the case of delegation, states temporarily or permanently surrender certain powers to an independent institution. In the case of the monopoly of force, this would amount to the creation of a supranational European army under a single command and political leadership. Such a situation is far away, if at all realistic. But in order to ascertain changes in the legitimation, control and exercise of the monopoly of force, it is useful to think in terms of a continuum instead of clearly defined alternatives.

The EU is moving in the same direction by restricting its activity to the field of new security issues.<sup>8</sup> Its justification for this follows the standard pattern in international cooperation: states cooperate when they are unable to solve perceived problems alone. However, this cooperation is not ad hoc but strictly rule-based. The conditions and forms of the use of the means of force are precisely defined. EU member states thus have jointly defined criteria for the use of the means of force in some areas. These norms legitimate the use of force by referring to specific circumstances and suggesting concrete measures while delegitimizing others. The institutions that the EU has developed in order to deal with military affairs only pool sovereignty, they do not delegate it. Nevertheless, they release the use of force from complete state control.

Two unresolved issues remain with respect to legitimating the use of force on the international level. The first is the debate between those who prefer it to be regulated on a case-by-case basis, either by decisions of the UN Security Council or with reference to specific international treaties, and those who advocate a universal law compelling intervention (*jus cogens*), which specifies the rights, or even the duty, of states to intervene in particular cases irrespective of Security Council decisions or explicit treaties. Those who argue for a decisionist approach and for a strong role for the UN Security Council advocate a precautionary

principle against the misuse of force for anything other than humanitarian purposes. If a resolution authorizing the use of force finds a majority in the Security Council, including the five veto powers, it is unlikely to be motivated by particularistic national interests. The proponents of a *jus cogens* of intervention share this concern about the misuse of force, but do not believe the solution to this problem lies in making decisions dependent upon the interests of Security Council members alone.

The second issue is the question of universal versus regional legitimation. Universal legitimation means legitimation by the UN Security Council. The advantage of this solution is its universal acceptance and the strong bias against misuse. The disadvantage is the danger of non-decision. China's reluctance towards intervention in Kosovo may have been motivated by a simple calculation of egoistic interest – avoiding a precedent for Tibet – with no relationship to the issue at hand. Regional organizations, such as NATO, are more homogeneous and closer to the events. They may be better informed and more efficient in decision-making. They may also be able to express a regional normative consensus. However, the development of regional subsystems of legitimate intervention creates the danger of this subsystem being dominated by the interests of one or a few powerful states.

### *Police*

In the field of police affairs, important changes have occurred since the 1970s. These changes relate both to changes in the real world and to changes in the realm of ideas. Both factors have led to substantial changes in the way states use the police. This must be viewed in a broader context. Functional incentives for cooperation have existed for many decades. Criminals have tended to escape prosecution by using the exit option and hiding in other states. Criminals who have been both able and willing to organize such an escape, and to shoulder the high costs associated with it, have usually been of a different type than local thieves. Transnational crime is a costly activity. It only pays off if the rewards are considerable and the costs acceptable. This is the case, for example, with terrorism and with activities yielding very high profits, such as the drug trade. Without wanting to push an economic explanation of transnational crime too far, it is clear that transnational crime is comparatively hard to situate and difficult to classify. It is, in any case, not a broad phenomenon but by and large restricted to certain types of activities, which have not dramatically changed over the decades.

Formalized cooperation in the field of police affairs has rather a long history. Interpol was founded as early as 1923.<sup>1</sup> It is a prototype of the organization one would expect in a situation where states want to retain as much freedom of action

as possible without foregoing the advantages of international cooperation. Interpol was and is an organization with a low profile, dominated by technical expertise and devoted mainly to the exchange of information. It does not restrict the rights or the ability of states to act unilaterally or through channels other than Interpol. From the perspective of Western states, its universality – most of the world's states are members – is not only an asset but also severely restricts the potential for more intensive cooperation. This is because cooperation in a field that is closely linked to civic liberties and constitutional issues seems inconceivable in an organization in which a large part of the members do not even meet basic democratic standards. In addition, the heterogeneity of membership and the ensuing diversity of preferences have made cooperation difficult.

Terrorism has proved to be a particularly difficult case. On the one hand, terrorism has long been regarded as a phenomenon that concerns more than one state. Politically motivated assassinations of politicians have affected states in their roles as states. The goal of terrorists is the destruction of the prevailing political order in a given state. Hence, they are the incarnation of the public enemy. Given the high stakes involved, terrorists have tended to move across state boundaries, and in recent years we have seen a quantitative and qualitative increase in the degree of transnationalization. The fact that terrorists have often been supported directly or indirectly by other states that shared their hostility towards the political systems of the target state has made international cooperation particularly difficult.

From the perspective of the individual states that are victims of terrorist activities, international cooperation is necessary in order to fight terrorism effectively. First and foremost, this requires agreement among cooperating states on a definition of terrorism. Joint action against terrorism can only be effective and legitimate on the basis of such a commonly agreed problem definition. However, arriving at such a universally agreed general definition has proved to be extremely difficult. The story begins with an effort undertaken by the League of Nations in the 1930s<sup>5</sup> and continues to the present day. The heterogeneity of state preferences has often led to irreconcilable positions, particularly in the 1970s, when – in addition to the East–West conflict – the Third World had a strong political role and tended to object to proposals by Western states. As a result, cooperation has proceeded in an ad hoc manner, often in the aftermath of a major terrorist attack. This ad hoc cooperation has not resulted in an incremental emergence of a more general definition of terrorism, but in finding majorities for the endorsement of international action against terrorism on a case-by-case basis.

The situation is different in the field of drugs. Consensus about the nature of the precise definition of the threat has been easier to achieve. As a result, there now exists quite a comprehensive drug control regime under the auspices of the United Nations.<sup>3</sup> This regime not only defines the nature of the problem, and thus

legitimizes police action, it also delegates authority over monitoring and control to UN bodies. As in the case of terrorism, there is no general definition of drugs. Unlike the terrorism case, however, this lack of a universally agreed upon general definition does not lead to deadlock because cooperation can proceed on the basis of a list of incriminating substances that can easily be amended.

The relative weakness of universal international cooperation in the field of police affairs and the widely shared perception of an increase in transnational criminal activity in the broadest sense, have led to the emergence of regional cooperation within Europe. Here, the trend is one of rapidly increasing scope and depth of international cooperation. More permanent patterns of cooperation started in the 1970s on a purely intergovernmental basis, explicitly outside the framework of the European Union treaties. The groups established – TREVI, the Pompidou group, and others – started off as arenas for information exchange and informal policy coordination among police experts. The nature of their proceedings was so confidential that little serious empirical research is available. Often, these groups were considered police conspiracies against citizens' rights.

The situation changed with the Maastricht Treaty, which came into force in 1993. Police affairs were now part of the formal Treaty structure and an officially acknowledged agenda of the EU. As a matter of fact, this area has proved to be one of the growth areas of European policy-making since the 1990s. It became further institutionalized in subsequent intergovernmental agreements. In several steps, the European Police Office (Europol) became operational.<sup>15</sup> This institutional growth has started to affect the exercise of the monopoly of force in the member states in important ways.

At first glance, Europol is not much different from Interpol. Both organizations are mainly concerned with information exchange. However, the intensity of cooperation within Europol is much higher than within Interpol. The amount of information exchanged and the quality of the information is much higher. Europol, which cooperates in justice and home affairs in general, is faced with the same problems as Interpol regarding cooperation in a broader international framework: its member states differ greatly in terms of the definition of crimes, the principles and content of penal law, the patterns of police organization, and the rights of citizens in relation to the police. A centralized monopoly of force at the EU level is not even on the horizon. Europol is not equivalent to the US FBI in that it has no executive power. Only the police forces of a member state can arrest citizens of that state. What, then, is the significance of the enormous amount of legislative and policy-making activity in this area in the last decade? How can it be explained?

In order to understand the changes happening to the monopoly of force in the field of police affairs in the EU member states, it is important to avoid a zero-sum logic between the EU level and its member states. Powers and competencies acquired by European institutions are not necessarily lost to the same degree by

the member states. In the EU, the state monopoly of force is becoming embedded within an increasingly dense set of institutions.

These institutions legitimate state action in practically all relevant fields of transnational crime, including terrorism and drugs. This has led to a convergence of views on what the crimes in question are actually about and may, over time, lead to a convergence of approaches towards these issues within member states. Concrete action has also been undertaken. With the creation of 'joint investigation teams', EU member states have an instrument that allows intensive cooperation among two or more member states, even at the operative level, but falls short of allowing 'foreign' police forces to act autonomously on a given member state's soil. The European Arrest Warrant is in the process of being implemented in a number of member states. Like joint investigation teams, the European Arrest Warrant falls short of an automatic permission for courts or police forces in one member state to act in another. The significance of the European Arrest Warrant lies in the fact that in the decision about whether or not somebody is to be arrested and sent to another signatory country, political discretion is much reduced in favour of a legal examination of the case. The scope of the European Arrest Warrant is defined by a list of offences and, as in the case of the UN drugs regime, this list can be amended rather easily. As a result, member states are finding their discretionary powers gradually reduced.

In sum, cooperation in the field of police affairs is much more intensive in the EU than within the UN. This may not be surprising, as the former is much more homogeneous than the latter. But why do we find cooperation at all in an area that touches the core of the democratic constitutional state and reduces state autonomy in this field?

The first reason is the classical explanation for international cooperation. Faced with increasing problems of border control and policy externalities, states choose to cooperate. They pool sovereignty, or delegate it to independent institutions, in order to increase policy efficiency. In the case of the EU, the rise in transboundary criminal activity is not only an external factor beyond the control of EU member states, it is to a large extent the result of the explicit decision to eliminate borders within the EU. Thus, cooperation in police affairs looks like a classical case of spillover: integrationist steps in one policy field create externalities and pressures for integration in other areas.

Second, this spillover logic may have been supplemented by prevailing ideas about how to construct a European political order.<sup>11</sup> The German government in particular has for some time argued that, in its view, the EU should not be restricted to market-making institutions, but also possess competencies in the field of military and police affairs. The British and French governments have been much less enthusiastic about European cooperation in the field of police affairs. However, the Commission's concept of creating an area of freedom, security and

justice, as part of a larger strategy to supplement the internal market with something closer to citizens' concerns, was acceptable to them. The Commission thus served as a facilitator of potential agreement by providing concepts that made a solution acceptable to all participants.

Without entering into too much speculation about the future of police cooperation in the EU, it seems safe to state that the present trend is towards increased institutionalization and increased legalization, propelled by concerns about democratic accountability and the protection of fundamental rights.

### Conclusion

Within the OECD world, there is no alternative institution to the state as the holder of the monopoly of force. Internationalization – and privatization, which has not been covered here – have an impact on the state's monopoly of force, but do not fundamentally challenge it. Are we thus still living in the ideal-typical Weberian state, with globalization changing everything but the monopoly of force? Such a conclusion would be premature. Instead, a number of summary observations may be made.

First, the monopoly of force is not *transferred* to international institutions but increasingly *embedded* within such institutions. What is new, with respect to earlier periods, is both the scope and the depth of this embeddedness.

Second, as a consequence of this process of embedding, the conditions for the use of the monopoly of force and the legitimating reasons for its use are increasingly *determined* by *international* institutions. States are slowly losing their autonomy for justifying the use of the monopoly of force.

Third, the loss of autonomy with respect to legitimating the use of the monopoly of force must not be confused with a loss of autonomy in its actual use. Within the OECD world, the police and military are *still under the tight control of the state*.

Fourth, the *actual use* of the police and military is increasingly characterized by the search for efficient and, simultaneously, autonomy-preserving *forms of intergovernmental cooperation*. When compared with supranational institutions of market integration in the EU, the level of cooperation in the field of police affairs – and to a lesser degree in military affairs – seems weak. When compared with the ideal of exclusive control over the police and the military, it is quite far advanced. The concerns of some groups and political parties about democratic control and the protection of fundamental rights are an indication that this assessment is also shared in political discourse.

In the long run, we might, relying on Norbert Elias, interpret this process as a part of the grand civilizing process.<sup>7</sup> In this view, the increasing embeddedness

of the state into an institutional framework it cannot exclusively control would be a sign of progress. But this discussion is beyond the scope of this article.

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