has been analysed by Inge Govaere. In "Beware of the Trojan Horse: Dispute Settlement in (Mixed) Agreements and the Autonomy of the EU Legal Order" (ch 9), Govaere argues that the reasoning of the Court of Justice would be aimed at safeguarding the autonomy of the EU legal order from being affected by dispute settlement mechanisms created under international agreements in favour of the EU's own procedures.

The assessment of mixed agreements would not be complete without raising the issue of the international responsibility for mixed agreements. Adopting an inductive approach to international law, Pieter Jan Kuijper discusses the case law of international courts including the *Behrami and Saramati* decision of the European Court of Human Rights (ECtHR, joined cases *Behrami and Behrami v. France*, Application No.71412/01, and *Saramati v. France, Germany and Norway*, Application No. 78166/01, 2 May 2007) and the *Draft Articles on the Responsibility of International Organizations* of the International Law Commission. Kuijper not only encourages the EU to take on the challenge to organise itself with regard to the responsibility for mixed agreements, but he also suggests that this could positively influence the general law of the responsibility of international organisations.

Mixed Agreements Revisited addresses the multitude of practical and legal challenges mixed agreements create when they are negotiated, concluded, implemented and interpreted. The variety of perspectives with which the phenomenon of mixity is addressed, including amongst others academic scholars, practitioners, judges, the view from European institutions, European member states as well as third party countries enhances awareness of the complex nature of mixity and highlights the interconnectedness of many unresolved questions that have not lost their relevance after the entry into force of the Treaty of Lisbon. Like its predecessor 28 years ago, *Mixed Agreements Revisited: The EU and its Member States in the World* is therefore likely to become an indispensable guide to mixity for scholars, practitioners and students of EU external relations.

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PRIVATE SECURITY, PUBLIC ORDER: THE OUTSOURCING OF PUBLIC SERVICES AND ITS LIMITS. Ed by Simon Chesterman and Angelina Fisher
Oxford: Oxford University Press (*www.oup.com*), 2009. xiv + 247pp. ISBN 9780199574124. £70.

Privatisation has been a central theme of public policy worldwide since the 1980s and, in this new age of austerity, seems likely to remain so. This edited volume concerns what might be regarded as the extreme instance of privatisation: outsourcing of military and security functions to private companies. Extreme, first, because it impinges upon the state's monopoly over the legitimate use of force and hence strikes at the core of what most people would regard as its basic function: to provide collective security. Secondly, it involves particularly high risks, not merely of inefficiency, lack of accountability, corruption and subversion of public policy, but also serious human rights abuses and even threats to security itself. Although the book focuses primarily on the United States, both supply and use of private military and security services are global phenomena, driven by common pressures to reduce the size of armed forces following the end of the Cold War, and sometimes also by the desire to avoid full accountability for military actions.

There have been occasional high profile controversies involving private military and security companies (PMSCs), such as Sandline's role in supplying arms to Sierra Leone in breach of a UN embargo, and Blackwater's involvement in prisoner abuse and civilian deaths in Iraq. Mostly, however, privatisation of military and security functions has occurred below the political and regulatory radar. Unlike other privatised functions, increased reliance on PMSCs has not been accompanied by new regulatory regimes, either domestic or international. Indeed, the most substantial regulatory efforts to date have resulted from self-regulation.

Outsourcing of military and security functions has also largely been ignored in academic discussions of privatisation. This book seeks to remedy that by situating PMSCs within the broader context of private actors performing public functions, and addresses three sets of questions, which supply its organising structure: (1) How do PMSCs fit within that broader context, and what implications does this have for the possibility of holding them to account? (2) What lessons can be learned from other cases of privatisation? (3) Should there be limits on governments' ability to outsource traditional "public" functions?

Part I opens with an interesting and wide-ranging essay by Michael Likosky exploring the history and contours of what he terms the "privatisation of violence" in both military and civilian contexts. He argues that to devise effective means of accountability for PMSCs requires an understanding of how they resemble other forms of privatisation, which in turn suggests embracing a broader approach to accountability, including market and political, as well as legal mechanisms. The other chapters in this part do, nevertheless, focus on legal accountability. Olivier De Schutter asks whether international law obliges PMSCs' "home" states to control their activities, particularly by allowing domestic courts to adjudicate claims for violation of international norms, while Angelina Fisher considers whether PMSCs can and should be held legally accountable in the territories in which they operate. Both conclude that there are significant accountability gaps, especially to the extent that liability is premised upon a close relationship between corporations and states.

Part II has an explicitly comparative focus. Daphne Barak-Erez locates the privatisation of military functions at the extreme end of a continuum of security-related public functions, notably policing and prisons, many of which have been privatised for some time. Alfred Aman's chapter then focuses specifically on the lessons to be drawn from prison privatisation in terms of the limits of outsourcing policies, while Mariana Mota Prado considers the difficulties of ensuring effective regulation of PMSCs in light of regulatory experience in privatised infrastructure sectors. In a particularly illuminating chapter, Rebecca DeWinter-Schmitt examines the potential for effective self-regulation by PMSCs by comparison with self-regulation in the apparel industry; an industry which, like PMSCs, operates in a globalised market in which states have largely forfeited any regulatory role. Part III, finally, explores three extreme cases which, it is suggested, represent the limits of outsourcing policies: Jacqueline Ross discusses the use of private informants in criminal cases; Simon Chesterton considers the role of private contractors in gathering and analysing intelligence; and Chia Lehnardt examines the growing involvement of PMSCs in United Nations peacekeeping operations.

In truth, the question of limits preoccupies most of the contributors to this volume. This is unsurprising. The legitimacy of privatisation depends upon the appropriateness and effectiveness of the alternative governance regimes that are available, and these essays provide ample evidence of the very severe accountability and regulatory challenges that PMSCs pose, with few concrete suggestions as to how they might be overcome. Unfortunately, clear answers as to where the limits of outsourcing should be drawn are similarly elusive. In their conclusion, the editors suggest that legal accountability concerns militate against outsourcing where secrecy and the potential for abuse operate together, as in the cases of intelligence and police informants, while political accountability demands require the formulation of government

policy to remain in government hands, and would prohibit privatising the conduct of hostilities. Nevertheless, as they and other contributors acknowledge, the question of what functions should remain public is ultimately political rather than conceptual.

So far, politicians have been unwilling to set clear limits to privatisation. US legislation prohibits outsourcing of "inherently governmental" functions, but this remains undefined. The UK's Deregulation and Contracting-Out Act 1994 does identify specific functions that cannot be contracted-out under its provisions, but the list is very narrowly drawn and, interestingly, does not expressly include military functions. It is, of course, still possible that privatisation might be deemed unacceptable in particular cases. Nevertheless, on the evidence presented in this book, it seems unlikely that outsourcing military and security functions will cease any time soon. The political reality appears to be that domestic audiences do not care enough to press for change, even in the face of revealed abuses, while international organisations are too weak to do so, and anyway, subject to the same pressures as states to engage in more and more operations with insufficient personnel. In fact, the strongest moves to distinguish legitimate from illegitimate activities have come from within the industry itself, but there must be serious doubts about the adequacy of self-regulation in this regard. In conclusion, this book casts valuable light on a neglected aspect of privatisation. However, it might have been more successful in advancing understanding of its general themes if the contributors had made more reference to the highly sophisticated, but largely non-US, theoretical literature on privatisation, regulation and accountability that already exists.

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Jan Klabbers, Anne Peters and Geir Ulfstein, THE CONSTITUTIONALIZATION OF INTERNATIONAL LAW

Oxford: Oxford University Press (*www.oup.com*), 2009. xx + 393 pp. ISBN 9780199543427 (hb). £63. ISBN 9780199693542 (pb). £24.99.

There has been no shortage of publications on the constitution of the international community, or on the constitutionalization of international law or of specific "sectors" of international law (e.g. trade law) for that matter. Any number of international documents, sets of documents, or sets of rules has been claimed as constituting the international (legal) community, from the United Nations Charter to *jus cogens* norms to the judicialisation of international trade law to human rights obligations. And, to make matters worse (or at least more confusing) various understandings and conceptions of the terms "constitution" and "constitutionalization", not to mention "international community", have been offered. As a result, it becomes hard to disagree with a contention that x or y is the "constitution of the international community", when "constitution" is understood in this way and "international community" in that. All this on top of more or less cognate projects to demonstrate the emergence of a global administrative – rather than constitutional – law.

In the midst of this burgeoning discussion on the potential existence of an international constitutional order, the book by Klabbers, Peters, and Ulfstein seeks to sketch what shape the constitutionalization of international law might possibly take (rather than showing definitively what the constitution of the international community is). In this, the tone of the book is decidedly normative, setting out what *should happen* for international law to become constitutionalized. Constitutionalization represents, in the authors' view, an appropriate (if not