



## **2nd lecture (Wednesday 8<sup>th</sup> March 2017): The privatisation of international organisations**

### ***Outline***

1. Traditional phenomena
2. New scale and new phenomena
3. Full privatisation: INTELSAT
4. Public-private partnerships
5. Procurement by international organisations
6. Private Military and Security Contractors (PMSCs) hired by the UN
7. IO-specific legal problems of privatisation
  - a) Which law governs the contracts?
  - b) Contractors' legal obligations
  - c) Risk of escape into private law
8. Human rights obligations of IOs engaged in privatisation
  - a) Notably IFIs when imposing privatization programmes
  - b) The international character of IOs and non-discrimination obligations
9. Attribution of breaches of international law by contractors to the IOs
10. Immunity of IOs for *acta iure gestionis*?
11. Conclusions

### ***Main message***

The engagement of IOs with the private sector takes different forms ranging from procurement to outright dereliction of public functions to private firms. IO – private sector partnerships are sought notably in the field of development and humanitarian action in order to exploit the private sector's capacity for innovation, its financial resources, and flexibility. The ensuing legal problems are similar as the ones arising in domestic privatisation. On top, the IOs' international character triggers intensified diversity-obligations in outsourcing. There is the danger of an evasion of the IO into private law which is at the same time a flight from international law into domestic law. This evasion notably concerns human rights obligations of IOs. However the exact scope of human rights obligations of IOs and the rules on attribution of contractors' action to them are not fully clear. The extensive immunity of IOs before domestic courts widens the accountability gap.

### ***Key documents for lecture 2***

UN GA, "Outsourcing practices" (UN Doc. GA Res. 55/232 of 16 Feb. 2001).

UN GA, "Enhanced cooperation between the UN and all relevant partners, in particular the private sector", Report of the Secretary-General (UN Doc. A/70/296), 6 Aug. 2015.

United Nations: "General Conditions of Contract: Contracts for the provision of goods and services", rev. April 2012.

United Nations Procurement Manual, Revision No. 7, 1 July 2013.

UNOPS Procurement Manual, Revision No. 5, 1 May 2014, Sustainable Procurement Practice Group.

ECJ, *Ledra Advertising v. Commission and ECB*, ECLI Eu C 2016, 701, C-8/15 P, 20 Sept. 2016.

On Private Military and Security Services contracted by the UN

United Nations Department of Safety and Security (UNDSS), *Guidelines on the Use of Armed Security Services from Private Security Companies* (8 Nov. 2012), with Annex A "Model Statement of Work"; Annex B "Model Contract".

UNDSS, United Nations Security Management System: Security Policy Manual, Chapter IV: "Security Management", Section I: "Armed Private Security Companies" (8 Nov. 2012).

*International Code of Conduct for Private Security Service Providers* of 9 Nov. 2010.

International Code of Conduct Association — *Articles of Association* (2013).

***Key reading for lecture 2***

Geneviève Burdeau, "Les organisations internationales: Entre gestion publique et gestion privée", in: Jerzy Makarczyk (ed.), *Theory of International Law at the Treshold of the 21st Century – Essays in Honour of Krzysztof Skubiszewski* (The Hague: Kluwer 1996), 611-624.

Åse Gilje Østensen, "In the business of peace — the political influence of private military and security companies on UN peacekeeping", *International Peacekeeping* 20 (2013), 33-47.

Lou Pingeot, *Contracting Insecurity: Private Military and Security Companies and the Future of the United Nations* (Bonn: Global Policy Forum 2014).

Elisabetta Morlino, "International Public Procurement", in: Sabino Cassese (ed.), *Research Handbook on Global Administrative Law* (Cheltenham: Elgar 2016), 82-106.