2nd lecture (Wednesday 8th 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, “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.
UNOPS Procurement Manual, Revision No. 5, 1 May 2014, Sustainable Procurement Practice Group.

On Private Military and Security Services contracted by the UN

Key reading for lecture 2
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.