to the NPT more specifically. However, while Joyner's understanding of treaty interpretation may not, in itself, be novel, the considered and detailed application of core interpretive principles to a particular treaty (in this case the NPT) will certainly be a valuable point of reference for other scholars who may wish either to consider different treaties in a similar manner or simply to understand the nature of treaty interpretation per se.

As with all Joyner's previous work read by the present reviewer, *Interpreting the Nuclear Non-proliferation Treaty* is extremely well written. Its thesis is presented engagingly and yet simply. The clarity of the writing style is such that the complex arguments relating to treaty interpretation (and the application of these rules to the NPT) are at all times easy to follow and accessible. The conversational tone[24] and flashes of humor employed[25] in the book may admittedly not be to everyone's taste, but, for this reviewer, these stylistic touches —along, of course, with the quality of its substantive thesis—made *Interpreting the Nuclear Non-proliferation Treaty* a joy to read. It is, quite simply, far less "dry" than most academic contributions to the field.

Having said this, an excessive number of block quotations are used in the text. At times it is undoubtedly necessary to quote in full a treaty provision or to set out a long extract from an official state proclamation, particularly in a book such as this one, which requires close textual interpretive analysis. Joyner does, however, on occasion resort to large sections of primary quoted material when not strictly necessary, particularly as some of the materials quoted are reproduced again in full in the book's appendices. This occasional use of unnecessary block quotations is, though, a minor concern, and, while being a little distracting, is not something that notably detracts from the high quality of the writing.

Interpreting the Nuclear Non-proliferation Treaty is an excellent book that sets out a clear thesis and then evidences its claims with significant detail. It originally contributes to our understanding of the NPT, as well as to the inequalities at its core (both in theory and, particularly in the context of the book's thesis, in practice), and to the application of the key rules of treaty interpretation generally. As Mohamed I. Shaker's foreword to the volume correctly indicates, this book is a "well-thought-out study which is original and faithful to the tradition of meticulous interpretation" (p. vii).

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Outsourcing War and Peace: Preserving Public Values in a World of Privatized Foreign Affairs. By Laura A. Dickinson. New Haven CT: Yale University Press, 2011. Pp. xi, 271. Index. $40.

On May 13, 1783, a group of officers of the Continental Army met at Verplanck House in Fishkill, New York, and resolved to form a social organization to commemorate the ideals and fellowship that had marked their service in the Revolutionary War. They named their club after the Roman farmer-general Lucius Quinctius Cincinnatus, who—in the telling of Livy, a Roman historian—was a farmer summoned to duty to conduct a war against a neighboring state. Cincinnatus distinguished himself by laying down his political powers immediately upon completion of the military operations, returning to his farm. The tale resonated with many of the Revolutionary War leaders, notably George Washington, who was soon installed as the society's first head.

While Britain had, in the course of the eighteenth century and in the Napoleonic wars that followed, created the modern model of a professional national army, the Americans were busy shaping something rather different. The Society of the Cincinnati reflected the ideal of a military formed of citizen-soldiers who would come together in times of crisis to defend their country and would disband when the threat was past. As the image of Cincinnatus suggests, they reached far back into models of classical antiquity for guidance.

[24] For example, Joyner notes: "[The NNWS] fear that the new tone of the Obama administration only puts sheep's clothing on the original wolfish idea" (p. 124).

[25] For example, Joyner comments: "I originally intended to entitle this volume *A Holistic Interpretation of the Nuclear Non-proliferation Treaty*. However my editor and other colleagues eventually convinced me that modern associations of the concept of 'holism' with New Age healing and philosophy would likely make this confusing to readers, who might expect a free scented candle with each purchase of the volume" (p. 21).

In particular, they looked to Aristotle's *Nicomachean Ethics*. Aristotle had distinguished between citizen-soldiers, motivated by a desire to maintain their own freedom and inspired by concerns for the safety and well-being of their fellow citizens, and mercenaries, moved by a desire to gain fame and earn a fortune. In his view, only the citizen-soldiers exhibited true courage and were reliable, whereas mercenaries were the first to run away when their on-the-spot calculus suggested that defeat was more likely than victory. In the Revolutionary War, Washington and his colleagues respected the professionalism of the British soldiers, but they also believed that Aristotle's analysis was vindicated by their own experience. Moreover, during the war, they attempted to turn their notion of a citizen-soldier, according to which the well-being and fair treatment of the common man was a prime concern, to their ideological benefit. As the war wound through its final years, they scored some success with this view, measured particularly in successful recruitment from the ranks of enemy prisoners of war. At the end of the war, they sought to institutionalize the concept.

The process of such institutionalization has remained somewhat problematic down to the current day. It was unsurprising that many of the Founding Fathers had ambiguous-to-hostile views about the notion of a professional military. Instead of career military men, their first model supported individuals who blended military careers with public service, farming, and learned professions. Indeed, the early days of the republic were marked by sharp conflict over the desirability of a standing army, though at least by the time of the War of 1812, this controversy seems largely to have been resolved in favor of a professional military.

After two world wars fought on the basis of a national consensus and a socially unsettling conflict in Indo-China, the U.S. military model changed yet again. The nation opted for a relatively large standing army characterized by high levels of professionalism; the draft was dispensed with in favor of voluntary service. This new model was also marked by ever-increasing reliance on technology. The model of the citizen-soldier, motivated by an ideal of national service, nevertheless has sat near the heart of the country's military doctrine.

But that model is now in the process of a remarkably radical and largely unchronicled transformation. Although some journalistic efforts have sought to expose the rise of the hundred-billion-dollar private security contractor industry in recent years, Laura Dickinson's *Outsourcing War and Peace: Preserving Public Values in a World of Privatized Foreign Affairs* stands alone as the first serious engagement of this development at the level of law and legal policy. Dickinson is the Oswald Symister Colclough Research Professor of Law at the George Washington University Law School, and her book promises to "closely examine[] the impact of our growing use of contractors on . . . core public values" (p. 3). It does a remarkably thorough and evenhanded job, at once critical and resigned to the fact that this "privatization is likely to be a fact of life for twenty-first century military activity" (*id.*).

Over the course of the last twenty years, the U.S. military footprint has undergone a transformation arguably more radical than any of the changes that preceded it—and also far less remarked upon. The current change relates to the use of military contractors. They have, of course, been present in every conflict, starting with the boat-makers contracted to help Washington ferry his soldiers across the Delaware in December 1776.

In the 1990s, the Cold War was at an end, and pressure mounted for a "peace dividend" in the form of reduced military spending (p. 32). At this point, contractors began to intrude steadily into what had been viewed as "core military functions," such as intelligence gathering and analysis, interrogations, and even perimeter security for installations in a combat zone. Dickinson points to the leadership of Secretary of Defense William Cohen as a turning point. As she relates:

> Caught between escalating price tags for weapons systems and political pressure to cut costs in the post-Cold War era without weakening the military's capabilities, Secretary Cohen turned to the private sector for advice. During the summer of 1997 he assembled a committee that included leading executives

> from private industry to offer their wisdom about the road ahead. (P. 31)

Not surprisingly, Cohen's business moguls advised him strongly to slice the defense budget pie somewhat differently: in each succeeding budget, a bigger share would be available for contractors. "[D]ownsize, compete, and outsource" became the watchwords of the day (p. 32).

According to Dickinson, the process of reallocation to contractors was dramatically escalated under Cohen's successors, Donald Rumsfeld and Robert Gates. In 2000, the Pentagon spent roughly $133.2 billion on contractors, but by 2008, that figure had grown to $391.9 billion, an almost threefold increase. Functions performed by contractors were also dramatically expanded. Throughout the last century, contractors had been deeply involved in essential activities directly related, for instance, to war-planning, developing, and testing weapons systems and military vehicles. During the Iraq war, contractors were increasingly tapped to provide ancillary services—to relieve uniformed military of the need to cover duties related to housing, sanitation, and food services—so that the military could refocus on core activities more directly related to combat. As the military grew more reliant on technology to establish its superiority, the role of contractors naturally grew, but it soon came to invade even the most essential military areas. Through the years of the Iraq conflict, contractors took on such "core military functions" as interrogating suspects, performing intelligence analyses, and furnishing the perimeter security for forward-operating bases. New regulations authorized contractors to carry firearms and to operate other weapons systems and to dress in combat fatigues, rendering them difficult to differentiate from the uniformed military.

The number of contractors deployed to theaters of conflict as a percentage of the total force has also shifted dramatically. During the Vietnam War, the ratio between contractors and uniformed military deployed to the region was about 1:60. By the time of the Clinton-era Balkans conflict, the ratio had changed to roughly 1:5. However, in the Iraq war, the contractor count grew steadily until it reached rough parity with uniformed military, and then, in the late phases of the Afghanistan conflict, the number of contractors in military theater operations actually came to exceed the number of uniformed military deployed there.

In the last years of the presidency of George W. Bush, congressional inquiries into issues surrounding contractors grew, and senators, including Barack Obama of Illinois, challenged the increasing reliance on contractors and threatened to push back. Obama's election in November 2008 was not, however, followed by either a meaningful shift in policy or even a deceleration in the process of surrendering uniformed military roles to contractors: "[A]ll evidence so far indicates that the Obama administration will rely on contractors at least as much as the administrations that preceded it. A recent report counts approximately 240,000 contractors in Iraq and Afghanistan employed by the [Department of Defense] alone as of the end of 2009" (p. 39).

Dickinson takes a deep look into the process and substance of contracting as it evolved during these years. She documents what may be a textbook case of the phenomenon described by sociologists as institutional capture. Just as policymakers at the Pentagon were moving to heavier reliance on contractors, the Pentagon gutted its contract drafting and oversight capacity, leaving itself with severely weakened abilities to conduct negotiations and monitor contractors for performance. At the same time, the Pentagon insisted that contractors would be under the guidance of their contract authority, generally removed from the supervision of local military commands. One other aspect of Department of Defense (DOD) contracting was almost inexplicable. Government contracting had been quite onerous in requiring compliance with law: for instance, employees had to certify that they did not use drugs, that they were bound to observe a dizzying array of federal regulations, and that they were required not to create a hostile work environment. But with the outset of the Iraq war, legal compliance concerns disappeared with respect to the most fundamental matters. Dickinson points out that of "the sixty Iraq contracts publicly available as of 2005, none apparently contained specific provisions requiring contractors to obey human rights, anticorruption, or transparency norms" (p. 75). However, under

the Geneva Conventions, the United States was obligated to ensure that forces it deployed in a theater of war were trained to comply with, were subject to oversight under, and were held accountable for violations of international humanitarian law. The contracting process failed to take account of this requirement. Dickinson notes that, by the end of 2007, military contracting for Iraq and Afghanistan had shifted its procedures and began to take account of legal compliance obligations that included U.S. and host country law, as well as the laws of armed conflict in newly issued contracts.

The disappearance of legal compliance provisions corresponded to a period of unprecedented and hugely embarrassing contractor lawlessness. Internal studies laid the blame for much of the most serious abuse at the Abu Ghraib prison facility at the feet of mysterious contractors who knew of and incited the abuse but so far have faced no accountability for their roles. Contractors were also linked to numerous cases in which civilians (including other contractors) were murdered, raped, robbed, assaulted, and falsely imprisoned, but these cases rarely resulted in investigation and almost never in prosecution.

Indeed, it is hard to see this accountability failure as some simple oversight. To the contrary, as Dickinson reports, something close to a formal policy of impunity existed, as is best demonstrated by Coalition Provisional Authority Order No. 17.[1] Issued by L. Paul Bremer on June 27, 2004, his last day as America's proconsul in Baghdad, the order granted contractors serving the United States full immunity from Iraqi criminal law. It was invoked repeatedly to block Iraqi investigations of allegations of murder, assault, and other violent crimes involving contractors. In comparison, the United States Department of Justice (DOJ) made little or no effort to exercise its criminal jurisdiction over such cases. The DOJ responded to congressional demands for an explanation of its failure to act either with silence or with suggestions that, in spite of the Military Extraterritorial Jurisdiction Act and other legislation, questions persisted about its jurisdiction.

[1] *At* http://www.iraqcoalition.org/regulations/20040627_CPAORD_17_Status_of_Coalition_Rev_with_Annex_A.pdf.

The Nisoor Square incident of September 16, 2007—with which Dickinson's book opens—provides a telling case. Seventeen Iraqi civilians were killed that day by a Blackwater security detachment, which was not protecting anyone but which used lethal force when an automobile backfired. Two separate U.S. government inquiries concluded that the shootings were unjustifiable homicides. Yet, even as the event captured newspaper front pages around the world and Congress pressed for action, the DOJ's resistance to doing anything was palpable. One congressman, emerging from a briefing arranged by the deputy attorney general, told this reviewer that the DOJ lawyers testifying did not sound like professional prosecutors sworn to uphold the law but, instead, like some criminal defense lawyers trying to test arguments against bringing charges in the first place. Four years later, no U.S. actor has been held to account in the matter, and the prosecutorial handling of the existing cases has seemed suspiciously incompetent.

The ultimate importance of the accountability issue was brought home in October 2011, when the Iraqi government scuttled the Obama administration's efforts to negotiate a status-of-forces agreement (SOFA) that would allow U.S. forces to stay on in Iraq beyond the December 2011 deadline. The sticking point? Iraqi authorities stated that in view of their unsatisfactory experience with U.S. government accountability for the conduct of U.S. forces and contractors in Iraq, they could not accept the immunity provisions contained in the proposed SOFA.

The failure of wartime accountability mechanisms is clearly at the core of the contractor dilemma. Dickinson develops this point in several different ways, but none is more compelling than her interviews of uniformed lawyers with the Judge Advocate General's Corps (JAG) who served in Iraq and Afghanistan. These lawyers present compelling firsthand narratives and note that lethal incidents involving contractors like the one at Nisoor Square "happened frequently," even though they rarely received such prominent public attention (p. 177). Another stated, "Contractors don't care, and they don't stop and ask questions" (pp. 177–78). These incidents might have been

homicides under Iraqi criminal law, and they would also have been clear violations of binding rules of engagement issued by the military command. However, the existing formal contracting structure placed the contractors beyond the effective reach of the military command. Even if follow-up on a lethal incident occurred, "the worst that would happen to a civilian contractor . . . would be that he'd be sent back home" (p. 179). In such cases, more often than not, the offending contractor would be back in Iraq under a different contract within months since no system existed to screen out the offenders.

The JAG narratives provide a very powerful look into how contractor impunity undermined the authority of the military command and worked against the core of what quickly turned into a counterinsurgency mission in which winning the confidence and support of the civilian populace was a top priority. Fostering the confidence of the civilian populace in the military's commitment to building the rule of law and a stable government was understandably difficult when the employees of some contractors grabbed headlines for murder and mayhem. Moreover, it also furnished a demoralizing counterexample to the troops, who were trained to obey the rules of engagement (ROEs) and understood that they faced swift punishment for any infraction: contractors performed similar functions and treated the ROEs with contempt, but their violations went unpunished. Even more disconcerting, the contractors were often performing the same functions for more than twice the pay drawn by uniformed soldiers.

Dickinson concludes her work with a sweeping set of recommendations that reveal a deep constructive engagement with the shortcomings that she found. She starts with what may be the most profound problem: violations of international humanitarian law and human rights norms. Dickinson follows up on a survey of self-regulatory efforts by various industry organizations by recommending that governments, international organizations, and nongovernmental organizations join in the process of clarifying best practices for contractors—a need that is particularly acute for security contractors. She also notes that actual accountability standards are key, arguing that U.S. federal courts should exercise jurisdiction to address cases involving gross violations of international human rights and humanitarian law. On this score, Judge Laurence Silberman has issued an opinion for the District of Columbia Circuit in *Saleh v. Titan Corp.*, finding a qualified immunity for contractors of the sort given to service personnel.[2] The Supreme Court declined to review the decision. This judicially created rule, harshly criticized by international humanitarian law scholars, serves to dramatically reinforce the impunity paradigm.

Dickinson does not view litigation as the only path for remedy. She also sees some promise in the possibility of a privatized grievance mechanism attached to an accreditation regime for contractors. She examines the domestic examples provided by the health-care industry and, to a lesser extent, private-prison accreditation (which is, however, industry dominated), to show how accreditation might work on the front end (certifying that companies meet certain benchmarks of quality, such as rigorous human rights training and internal ombudspersons). This thoughtful alternative is important, especially because government commentators complain that national security concerns militate against a federal-court vetting of such cases. The specific reasons that such commentators advance tend to focus on the need to maintain the secrecy of the extraordinary renditions program and the use of "enhanced interrogation techniques," a rationale that evaporated when the Obama administration outlawed both.

Nevertheless, the U.S. obligation to compensate victims of serious torts like torture could be met through a variety of other approaches that Dickinson does not address. One option is the commission of inquiry model used by Canada for Maher Arar, a Canadian citizen sent by U.S. authorities to Syria where he was tortured. Arar was generously compensated by the Canadian government, which acknowledged its fault.[3] The

[2] Saleh v. Titan Corp., 580 F.3d 1 (D.C. Cir. 2009), *cert. denied*, 131 S.Ct. 3055 (2011).

[3] *See, e.g.*, Ian Austen, *Canada Reaches Settlement with Torture Victim*, N.Y. TIMES, Jan. 26, 2007, *available at* http://www.nytimes.com/2007/01/26/world/americas/26cnd-canada.html.

still greater fault of the U.S. authorities remains both unacknowledged and uncompensated, however. Another would be a bilateral claims settlement process or a U.S. administrative process with authority to fix and settle claims on an *ex gratia* basis (without acknowledging liability on a formal level). However, to date, U.S. officials have aggressively asserted novel and often quite strained immunity theories to bar federal court suits while failing to offer any sort of alternative redress. These statements have placed the United States on the wrong side of its obligation under the Convention Against Torture[4] to afford redress to victims of torture.

Government enforcement, as opposed to private action, may be a much larger and more politically sensitive issue. The Iraq war period was marked by a stark divide. With respect to the military justice system, the number of court-martials and nonjudicial punishments meted out for service personnel seems broadly in keeping with U.S. experiences in prior conflicts. By comparison, a near-complete systems failure occurred with respect to violations involving contractors. No investigators on the ground believed that they had authority to look into the matters, and no reserve of prosecutors had the experience or powers to make decisions to press charges. The available evidence suggests a failure of political will, not a shortcoming in statutes and resources. Nevertheless, Dickinson takes aim first at the grant of jurisdiction, writing that the Military Extraterritorial Jurisdiction Act should be expanded "to apply to all contractors accused of committing federal crimes" (p. 191). She also notes that the DOJ should be required to "establish a dedicated office for investigating and prosecuting criminal cases involving contractors abroad" (p. 192). This recommendation seems warranted from two perspectives. First, the DOJ was notoriously lethargic in recognizing its responsibilities in this area, suggesting that a congressional mandate is warranted. Second, the number of contractor personnel involved is now the equivalent of a medium-sized U.S. city (about 250,000–300,000 persons at present), and this total provides a reasonable measure for staffing and resourcing.

Dickinson also endorses the notion that the military should use its new authority to prosecute contractors under the Uniform Code of Military Justice (UCMJ).[5] While I agree with Dickinson's analysis and recommendations, the prosecution of civilian contractors under the UCMJ raises a series of complex and tricky issues under the U.S. Constitution that might have been explored and developed in the book in more depth, especially given that these concerns are likely to steer the Pentagon's use of its new jurisdiction over contractors.

Attention to the process and substance of DOD contracting is a strong suit of this book, and Dickinson's recommendations turn, not surprisingly, to this issue in some detail. She argues that public agency contracts should explicitly incorporate public law standards into their terms, a point that is particularly important as applied to security contractors being dispatched to zones of conflict but relevant to virtually all contractors. She also notes that contract monitoring and coordination should be a higher priority, with performance benchmarks and self-evaluation requirements. She places value on independent accreditation and the need for third-party beneficiary provisions. Dickinson does not, however, address the subcontractor dynamic, which may be highly consequential in such circumstances. Obviously, the tenor of the legal relationship with the ultimate employee may be important for several reasons, including jurisdiction. Moreover, particularly with respect to security contractors, representations concerning training and aptitude and the absence (or at least disclosure) of prior disciplinary issues are significant. In sum, the contractual model needs to be structured carefully with concerns about training, oversight, and enforcement in mind. The culture of impunity, which wrought such damage in the Iraq war, needs to be eradicated.

Finally, Dickinson looks at the disjointed relationship between contractors and military command

[4] Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Dec. 10, 1984, S. TREATY DOC. NO. 20-100 (1988), 1465 UNTS 85.

[5] The 2007 Defense Authorization Act amended Article 2(a)(10) of the Uniform Code of Military Justice to permit the exercise of jurisdiction over civilians accompanying an American military force engaged in contingency operations.

structures, which was highlighted so effectively by the military lawyers that she interviewed. She advocates an important role for the JAG in training contractors and overseeing their performance in the field, and she stresses the importance of contractors being integrated into the military command structure in a way that enhances command authority.

To some extent, the lack of accountability for contractors may be seen as a contemptuous reaction to lawyers and a sense that their rules get in the way of contractor efficiency by imposing counterproductive constraints. To this criticism, Dickinson offers a well-measured rejoinder. She demonstrates the need for legal accountability and explains the role that it plays in reinforcing the authority of a military command, together with discipline and morale. Yet she also makes clear that if contractors cannot be trained, subjected to oversight, and held accountable as required by legal norms, then they are not likely to play a constructive role in future missions. It may thus be true that contractors are "here to stay" in international military operations. But whether contractors make a successful contribution still depends on resolution of the current accountability crisis.

Dickinson's book will serve as an invaluable resource for future lawyers and policymakers addressing the growing reliance on private security contractors. She has an uncanny eye for spotting issues in the making, and she has developed thoughtful legal solutions. At present, her *Outsourcing War and Peace* is the definitive work on this subject.

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Human Rights and Climate Change. Edited by Stephen Humphreys. Cambridge, New York: Cambridge University Press, 2011. Pp. xx, 348. Index. $99, £59.

Human Rights and Climate Change: A Review of the International Legal Dimensions. By Siobhán McInerney-Lankford, Mac Darrow, and Lavanya Rajamani. Washington DC: World Bank, 2011. Pp. xii, 145. $20.

Most international lawyers are familiar with the dialogue between environmental protection and human rights. The 1994 Ksentini Report,[1] prepared under the auspices of the UN Human Rights Commission, forcefully argued that all persons have the right to a secure, healthy, and ecologically sound environment. Even if the independent human right to an adequate environment has not been widely endorsed, we have often successfully witnessed it invoked derivatively (to property, health, family and home life, and even the right to life itself) against polluting activities in various international and regional human rights courts and quasi-judicial bodies. The use of international human rights discourse to protect the environment has also become commonplace in national judicial avenues, and literature on the topic is extensive.[2]

Against this backdrop, the passage of time has been necessary to address climate change as a human rights issue. In retrospect, it seems logical for human rights to cover climate change: the thinking underlying the connection between the environment and human rights is premised on the notion that the enjoyment of human rights is fundamentally dependent on the functioning of our ecosystems. As expressed in 1997 by then International Court of Justice Vice-President Christopher Weeramantry in his separate opinion in the *Gabčíkovo-Nagymaros Project* case, "The protection of the environment is likewise a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself."[3]

Very recently, scholars, institutions, and even some intergovernmental organizations have begun to pay attention to the relationship between human rights and climate change. Why? We know that the current climate change regime is failing,

[1] UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Final Report Prepared by Fatma Zohra Ksentini, Special Rapporteur, UN Doc. E/CN.4/Sub.2/1994/9 (July 6, 1994).

[2] For a recent work, which includes interesting national cases, see DONALD K. ANTON & DINAH L. SHELTON, ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS (2011).

[3] Gabčíkovo-Nagymaros Project (Hung./Slovk.), 1997 ICJ REP. 7, 88, 91 (Sept. 25) (Weeramantry, J., sep. op.), *available at* http://www.icj-cij.org/docket/files/92/7383.pdf.