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## Reviewing Charlotte Ku and Harold Jacobson (eds.), *Democratic Accountability and the Use of Force in International Law*

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unitised exploitation of any such resources.”<sup>5</sup> How could one fail to understand that negotiators would be doing a grave disservice to their countries if they failed to arm themselves with a sophisticated understanding of other arrangements? Otherwise, they run the risk of paying for advantages that should be presumptively theirs anyway.

Pure data are not sufficient, or there would be no need for these volumes; the UN Office of Ocean Affairs and the Law of the Sea, to name one salient repository, already publishes maritime boundary agreements. As Tullio Treves wrote when reviewing the first two volumes of *International Maritime Boundaries*,<sup>6</sup> the work is “much more” than a comprehensive collection of maritime delimitation treaties: “Its strength lies also in its scientific elaboration of this material.” And as Charney’s introduction to volume I (p. xxx) put it, irrespective of whether practice contributes to the formation of norms, “knowledge of techniques used by states to solve their maritime boundary disputes could contribute to the resolution of the remaining disputes.”

The intervening years have certainly confirmed this supposition. Indeed, there have been many more agreements than judgments or awards, and the former constitute a far more impressive body of problems and solutions than may be derived from the vagaries of case law, where so much depends on forensic happenstance—lacunae or treasures of evidence, the personal inspirations or limitations of counsel, proclivities of decision makers, or, indeed, the rigors of pleading with deadlines.

True to past practice, the first part of this volume consists of a series of essays addressing overall trends in practice. After a general contribution by Colson, they deal with resources, navigational and environmental factors in delimitation (Barbara Kwiatkowska), islands and rocks (Victor Prescott and Gillian Tiggs), the legal regime of agreements (Don McRae and Ciss Yacouba), tripoint issues (Coalter Lathrop), and “technical input” in maritime delimitation (Nuno Antunes). Some of these

build on, and may be interestingly contrasted with, previous contributions. Thus, while Kwiatkowska updates her own subject, Prescott/Tiggs and Antunes revert to topics previously treated by others—Derek Bowett and Peter Beazley, respectively. Other contributions from earlier volumes have no correlates here and remain valuable: to take just volume I, Bernard Oxman’s leadoff essay on political, strategic, and historical considerations; Prosper Weil’s and Keith Highet’s pieces on geographic and geophysical factors; Louis Sohn on baselines; and Leonard Legault and Blair Hanky’s contribution on method, oppositeness and adjacency, and proportionality.

The core of this mega-reference work is its presentation and analysis of treaties, which goes far beyond compilation: individual authors are responsible for separate regions and, in addition to producing the texts, analyze them in regional reports. This time, Colson and Smith take responsibility for North and South America, Carl Dundas for Middle America/the Caribbean, Tim Daniel for Africa, Ted McDorman for the Central Pacific/East Asia/Southeast Asia, Prescott for the Indian Ocean, Chris Carleton for the Red Sea/Persian Gulf, Tullio Scovazzi for the Mediterranean/Black Sea, Michael Wood for Northern and Western Europe, Eric Franckx for the Baltic, and Smith and Ashley Roach for the Caspian. It is, of course, impossible to analyze new treaties without putting them in historical and geographical context—and so these authors do just that, and in a manner that makes this work an excellent port of call before steaming off to grapple with the complexities of a new problem.

JAN PAULSSON

*Freshfields Bruckhaus Deringer*

*Democratic Accountability and the Use of Force in International Law.* Edited by Charlotte Ku and Harold Jacobson. Cambridge: Cambridge University Press, 2002. Pp. xxv, 440. Index. \$90, £65, cloth; \$39.99, £22.99, paper.

In their edited collection *Democratic Accountability and the Use of Force in International Law*, Charlotte Ku (executive director of the American Society of International Law when the book was

<sup>5</sup> *Eritrea v. Yemen*, Second Stage, Maritime Delimitation, para. 86 (Perm. Ct. Arb. Dec. 17, 1999), 40 ILM 983 (2001), at <<http://www.pca-cpa.org>>.

<sup>6</sup> 88 AJIL 179, 179 (1994).

published) and the late Harold Jacobson advance the broad claim that democracy's spread in the second half of the twentieth century has brought the use of force to heel. History's inevitable forward march, marked in particular by the dramatic developments since the September 11, 2001, terrorist attacks in the United States, has been less than kind to this thesis. Nonetheless, the book successfully delivers on the more earthbound objective of addressing the "failure [in the literature] to examine issues of democratic accountability when military forces are used under the auspices of international institutions" (p. 4). The book fills this scholarly gap admirably. The editors provide a concise, if conceptually limited, treatment of the subjects "democracy" and "the use of force." The book also includes an invaluable mine of data. Most impressively, *Democratic Accountability* contains an unparalleled comparative survey of the use-of-force regimes operating in nine countries. These surveys are the book's significant merits. They overcome the harm done to the project's broader thesis by recent, compelling refutations of the democratic triumphalism that prevailed in the immediate post-Cold War era. The 9/11 attacks and subsequent American policy have posed existential challenges to traditional notions of the use of force and have eroded much of the tentative hold that democratic legitimacy and international law might have been gaining on the use of force.<sup>1</sup>

*Democratic Accountability* must be credited as an ambitious and complex project. It operates along the dual axes of international law and policy, on the one hand, and comparative domestic law and policy, on the other hand. Its subject is the multifaceted issue of "the use of force under international auspices." To complicate matters further, the book seeks to examine the democratic character of the use of force along both the international and domestic axes. This additional consideration

introduces the confounding subject of "democracy"<sup>2</sup> to an already difficult project. The book also collects, as noted above, a series of country reports written by accomplished commentators that concentrate "on the experience of nine democracies," with each having "contributed military forces to operations conducted under the auspices of international institutions" (p. 5). Thus, *Democratic Accountability* merges the disciplines of, inter alia, democratic theory, political science, comparative law and policy, and the international law of the use of force. The book can only survey such an array of subjects and suggest their interconnections. All the same, as a single-volume resource covering so much ground, and supported as it is with an accessible presentation of data in the tables in its appendix, *Democratic Accountability* is bound to form the starting point of more narrowly focused research in the future.

In their introduction to *Democratic Accountability*, Ku and Jacobson make a significant contribution by concisely defining and cataloging the various manifestations of the use of force under international auspices, including: monitoring and observation; traditional peacekeeping; peacekeeping plus state building; force to ensure compliance with international mandates; and enforcement. They give credit to a number of other studies for these classifications, but here they have compressed the studies into an accessible summary, an effort that is enriched by Edwin Smith's contribution (pp. 81–103) to *Democratic Accountability's* introductory materials.

Ku and Jacobson are interested in characterizing the link between democracy and the uses of force as an international matter. They begin their study by conceding much on this point. First, the editors accept that "political theorists regard democracy as a system of governance *within* a state's territorial limits" and that "international problems [are] fundamentally different . . . and not susceptible to the same democratic processes and institutions of governance" (p. 4, emphasis

<sup>1</sup> Considering the unilateralism with which the United States has prosecuted the war in, and occupation of, Iraq, one cannot help but look back with some sadness (and sense of loss) when reading today Ku and Jacobson's declaration that, when invading Afghanistan in 2001 after the September 11 terrorist attacks, the "US government paid close attention to the reactions, not only of its own citizens, but of a diverse global public opinion" (p. 3).

<sup>2</sup> "One of the difficulties one must face at the outset is that there is no democratic theory—there are only democratic theories." ROBERT A. DAHL, A PREFACE TO DEMOCRATIC THEORY 1 (1956).

added). This view is supported by the few commentators on democratic theory with whom Ku and Jacobson briefly engage in their introduction. Dahl, Held, and Keohane are reportedly skeptical of the democratic potential of the international order (pp. 10–11). This concession depends on a conventional model of democracy that, by its nature, is centered on the nation-state. Martin Nettesheim has noted a similar circularity in discussions about the democratic deficit in the supranational European Union: “This [nation-state] model [of democracy] serves as the standard against which the democratic character of the EU . . . is measured. On the basis of such an approach, it is easy to come to the conclusion that the EU has a ‘deficit in democracy’.”<sup>3</sup>

But this view of democracy and the international order is a bit too superficial. For example, I read Held to be less skeptical of the prospects for a cosmopolitan democracy—and, thus, less beholden to the conventional nation-state model of democracy—than Ku and Jacobson suggest.<sup>4</sup> It is a disappointment that the book’s expansive agenda demands that, at least with respect to conceptualizing the theoretically charged subject of democracy, it relies on a narrow and conventional definition; in the process, it neglects much interesting work in the field that directly confronts the challenges posed by internationalization, cosmopolitanism, and globalization.<sup>5</sup> Following this

narrow approach to democratic theory comes at the expense of Ku and Jacobson’s obvious interest in internationalizing the subject of the book.

The second concession to the domestic, rather than the international, priority of their study comes when Ku and Jacobson note in their introduction that a literal *international* use of force has been precluded by the failure of the UN Charter’s Article 43 regime. Instead, they are forced to consider what are essentially domestic uses of force pursued “under international auspices.” Of course, even this form of military engagement has been relatively rare, though increasing dramatically in significance since the end of the Cold War.

The book’s neglect of two significant developments of the last decades, in favor of its focus on international uses of force, further confounds the position that the editors stake out for the project. The first is the shift that occurred during the Cold War era toward intrastate conflicts and civil wars. The second is the more recent shift toward the privatized and often asymmetrical use of force, especially with respect to international terrorism. These prominent, contemporary manifestations of force do not fit neatly into *Democratic Accountability*’s scheme and are excluded.

Considering their view that the international order is inherently undemocratic, and considering that the use of force primarily has remained a domestic matter, albeit now increasingly sanctioned by international institutions, it is surprising that Ku and Jacobson nonetheless marvel at the scholarly community’s “failure to examine issues of democratic accountability when military forces are used under the auspices of international institutions” (p. 4). With these concessions, one might have asked what there was to study.

All of the above requires that the editors turn their attention to the democratic makeup of domestic law and policy regarding the use of force—for that, given their intellectual perspective, proves to be a truer measure of democratic

<sup>3</sup> Martin Nettesheim, *Developing a Theory of Democracy for the European Union*, 23 BERKELEY J. INT’L L. 358, 359 (2005).

<sup>4</sup> It is true, as Ku and Jacobson point out (p. 11), that Held views the existing international infrastructure as inadequate to the task of promoting and sustaining democracy as an international matter. But he sees the way out. See DAVID HELD, *DEMOCRACY AND THE GLOBAL ORDER* 265–86 (1995); DAVID HELD, *MODELS OF DEMOCRACY* 335–60 (2d ed. 1996); David Held, *Cosmopolitanism: Ideas, Realities and Deficits*, in *GOVERNING GLOBALIZATION* 305, 317–20 (David Held & Anthony McGrew eds., 2002).

<sup>5</sup> Jürgen Habermas, in particular, has forged a new democratic theory in response to the growing significance of the supranational European Union. His theory of discursive democracy imagines a European public sphere that transcends the traditional base of democratic governance—namely, the nation state. See JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND*

*DEMOCRACY* (William Rehg trans., 1996); JÜRGEN HABERMAS, *THE POSTNATIONAL CONSTELLATION: POLITICAL ESSAYS* (Max Pensky ed., 2001); Jürgen Habermas, *Why Europe Needs a Constitution*, *NEW LEFT REV.*, Sept./Oct. 2001, at 5, 14, 17. Habermas is optimistic that such features can be achieved at the supranational level in Europe.

influence on the use of force. To this end, the editors have assembled the impressive collection of country reports.

The editors' conceptualization of democracy is disappointing for reasons other than that it detracts from their clear interest in internationalizing their subject. Democracy, Ku and Jacobson assert, requires only the promotion of the rule of law and the dependence on majority rule as a principle for decision making. In their introduction Ku and Jacobson explain that "[a]lthough some states had some democratic characteristics for centuries, the development of democratic governments is a product of the twentieth century. The trend accelerated sharply with the fall of the Berlin Wall in 1989 and the collapse of communism in the Soviet Union in 1991" (p. 7). Repeating the statistics that fueled the "end of history" movement at the start of the 1990s,<sup>6</sup> Ku and Jacobson note that in "1987, there were fewer than 70 democratic states; by 2000, 120 states had governments that *by broad criteria* could be called democratic" (*id.*, emphasis added).

The editors' definition of democracy is adequate for the purpose of getting on with their project: making some kind (any kind?) of democratic diagnosis of the use of force. However, their embrace of such a limited and formal definition suggests Susan Marks's critique of "low intensity democracy."<sup>7</sup> The editors' anemic definition of democracy<sup>8</sup> implicates them in the twofold mis-

take of viewing the revolution in governance that followed the end of the Cold War as (1) genuinely democratic and (2) the final and complete ascendance of the democratic model. Marks has effectively challenged both assumptions. First, she argues that "low intensity democracy," of the kind invoked by Ku and Jacobson may not be democracy at all. It neglects a "long tradition of democratic thought, carried forward in the second half of the twentieth century through such concepts as 'participatory democracy', 'strong democracy', 'discursive democracy', 'deliberative democracy', and 'communicative democracy'." Instead, "low intensity democracy" primarily serves as a vehicle for advancing and entrenching global, liberal economic conditions to the advantage of the wealthy Western nations and global capital. Second, Marks argues that "low intensity democracy," far from ushering in the stable governments meant to preside over the end of history, instead "builds . . . highly fragile structure[s]" that are susceptible to tensions resulting from unresolved political and economic strains.<sup>9</sup>

I recognize that *Democratic Accountability* is not the forum for exploring in greater depth the complexities of democratic theory and the broader array of models of democracy.<sup>10</sup> But the editors fail to acknowledge that there have been challenges to

undemanding standard is set with regard to more far-reaching objectives, such as enhancing respect for human rights, social justice, and *civilian control of the military*." *Id.* at 53 (emphasis added).

<sup>9</sup> *Id.* at 54–59.

<sup>6</sup> FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (1992).

<sup>7</sup> "Low intensity democracy" is one of a number of phrases that have been coined to highlight the relative formality of this conception of democracy. Others include 'cosmetic democracy' and 'façade democracy', as well as expressions which eschew reference to democracy altogether." SUSAN MARKS, *THE RIDDLE OF ALL CONSTITUTIONS* 53–54 (2000) (citing Barry Gills, Joel Rocamora, & Richard Wilson, *Low Intensity Democracy*, in *LOW INTENSITY DEMOCRACY: POLITICAL POWER IN THE NEW WORLD ORDER* 3 (Barry Gills, Joel Rocamora, & Richard Wilson eds., 1993), and WILLIAM I. ROBINSON, *PROMOTING POLYARCHY: GLOBALIZATION, US INTERVENTION, AND HEGEMONY* (1996)).

<sup>8</sup> "A conception of democracy tends to prevail . . . in which certain institutions—above all, the holding of periodic multiparty elections and the official separation of public powers—are taken largely to suffice. A signally

<sup>10</sup> See generally HELD, *MODELS OF DEMOCRACY*, *supra* note 4; AREND LIJPHART, *PATTERNS OF DEMOCRACY* (1999); ROBERT A. DAHL, *DEMOCRACY IN THE UNITED STATES: PROMISE AND PERFORMANCE* (1996); see, e.g., HABERMAS, *BETWEEN FACTS AND NORMS*, *supra* note 4; HABERMAS, *THE POSTNATIONAL CONSTELLATION*, *supra* note 5; DEIRDRE M. CURTIN, *POSTNATIONAL DEMOCRACY: THE EUROPEAN UNION IN SEARCH OF A POLITICAL PHILOSOPHY* (1997); JOHN S. DRYZEK, *DISCURSIVE DEMOCRACY* (1990); JOHN S. DRYZEK, *DELIBERATIVE DEMOCRACY AND BEYOND* (2004); *DELIBERATIVE DEMOCRACY* (Jon Elster ed., 1998); *DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS* (James Bohman & William Rehg eds., 1997); L. ALI KAHN, *A THEORY OF UNIVERSAL DEMOCRACY: BEYOND THE END OF HISTORY* (2003); WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* (1996).

democratic messianism from the start.<sup>11</sup> At the very least, the editors' view fails to recognize the nuanced and various forms of "democracy" that emerged after the end of the Cold War. Significantly, time has now proven Marks's second critique correct. Many of the "new democracies," especially in the former Soviet satellites, have descended into illiberal or authoritarian governance. Elsewhere, I have raised questions about whether the newly independent states should have been placed in the democratic column in the first place, arguing that majority-rule plebiscites, often leading to the territorial exclusion of racial, ethnic, and religious minorities upon the creation of new states, represented only a perilous democratic birth at best.<sup>12</sup> Considering the democratic deficiencies plaguing many "new democracies," their classification as such was made possible only by invoking "broad," forgiving criteria in the manner that Ku and Jacobson do in their introduction. It is hard to see what the editors gain from this strategy. First, they overstate the number of countries that resolve use-of-force issues, at least presumptively, in a democratic fashion. Second, by overstating the number of "democracies" in this way, the editors accept formal, but superficial, manifestations of democracy as proof of their thesis.

Among the book's introductory materials, Lori Damrosch's contribution is remarkable for its optimism. She notes a historical trend toward the constitutionalization of the use of force, and within that trend she emphasizes parliamentary accountability via oversight, budgetary control, public debate, and, in some cases, formal approval. This notion of parliamentary accountability might be a better characterization of the book's thesis than the one provided by Ku and Jacobson—who, indeed, borrow it for their introduction: "In the closing decades of the twentieth century, there was a general trend 'toward subordinating war powers to constitutional con-

trol,' including 'greater parliamentary control over the decision to introduce troops into situations of actual or potential hostilities'" (p. 12).<sup>13</sup> Damrosch has been exploring this subject for more than a decade, and her influence on *Democratic Accountability* is clear; the narrower question of parliamentary accountability receives concentrated attention throughout the nine country reports.

The country reports are *Democratic Accountability*'s true achievement. Well-written, accessible surveys prepared by knowledgeable commentators, the reports are an exceptional comparative resource. They place at hand a treatment of each state's constitutional law with respect to the use of force. And in a nod to the editors' internationalization thesis, the reports at least consider the "interface" between international institutions and domestic regimes for the use of force, with specific attention to the impact that the former have on the latter.

The country reports, for all their utility, provide inconclusive support for the editors' thesis that there is an increasing parliamentarization of the use of force. Several of the reporters note such a trend in their respective systems, but not without some qualification. Fen Osler Hampson, for example, notes that in Canada, "[a]t the domestic level, in both peacekeeping and peace enforcement operations, the trend is towards more frequent consultation with parliament by the government on Canadian troop deployments" (p. 152). This parliamentary role is limited to consultations, however, and is not mandated by the constitution. Instead, Hampson's report reveals a political culture in which entrenched support for international peacekeeping operations, coupled with limited parliamentary decision making in the field of military affairs, raises questions about the depth of parliamentary accountability for Canada's use of force. Knut Nustad and Henrick Thune, commenting on Norway, report that the

<sup>11</sup> ALEX CALLINICOS, *THE REVENGE OF HISTORY: MARXISM AND THE EAST EUROPEAN REVOLUTIONS* (1991); Alex Callinicos, *Liberalism, Marxism, and Democracy: A Response to David Held*, 22 *THEORY & SOC'* 283 (1993).

<sup>12</sup> Russell A. Miller, *Self-Determination in International Law and the Demise of Democracy?* 41 *COLUM. J. TRANSNAT'L L.* 601 (2003).

<sup>13</sup> Quoting Lori Fisler Damrosch, *Is There a General Trend in Constitutional Democracies Toward Parliamentary Control over War-and-Peace Decisions*, 1996 *ASIL PROC.* 36–40.

Foreign Policy Committee, which comprises government and parliamentary officials, “is illustrative of an important feature in Norwegian foreign policy—the prominent consultative role played by the parliament” (p. 163). But this role is not a sign of the Norwegian government’s willingness to grant the parliament a role greater than that of consultant regarding the use of force. Military affairs in Norway, they explain, are a royal prerogative exercised by the government. In any event, Nustad and Thune have faint praise for the democratizing effects of the Foreign Policy Committee. “[T]he most striking feature of the Committee,” they complain, “is its lack of transparency” (*id.*). Bakhtiyar Tuzmukhamedov’s description of the determinative role played by the upper house of the Russian parliament in the decision to deploy forces internationally also cannot be regarded as strong evidence of a trend toward parliamentarization. Tuzmukhamedov notes “that the Federation Council has never refused to give consent to a request for authorization of a foreign deployment” (p. 278). Georg Nolte, in his report on Germany, describes the most frequently invoked, and probably the most dramatic, example of a potential trend toward parliamentarizing the use of force. He explains that in 1994, in its decision in the *Military Deployment* case, the German Federal Constitutional Court “interpreted the *Grundgesetz* [Basic Law] to require every ‘armed operation’ (*bewaffneter Einsatz*), meaning every use of the armed forces that entailed the possibility of their involvement in armed clashes, to be approved by the *Bundestag*” (p. 237). This “courageous” (p. 243) democratization of the use of force must, nonetheless, be qualified on several points. First, it is a constitutional innovation with a unique foundation in German history and culture. For this reason it only cautiously should be characterized as part of a global trend. Second, many of the details surrounding the issue of the use of force complicate the Federal Constitutional Court’s seemingly clear rule. For example, in the face of an emergency, the chancellor retains the authority to deploy forces without parliamentary approval. That contingency might further confound the rule if an emergency action is concluded before the *Bundestag* is able to vote. The “[r]ight of initiative”

(p. 245) also remains with the chancellor; parliament can neither order the government to use force nor demand the cessation of the use of force. Nolte concludes his report on Germany by stating that it “is too early to draw any firm conclusions in terms of democratic accountability from the legal structure” (p. 251) of the German Federal Constitutional Court’s 1994 decision.

The Canadian, German, Norwegian, and Russian country reports provide only equivocal evidence of the posited trend toward the parliamentarization of the use of force, and the remaining country reports seem to disprove the hypothesis altogether. Ramesh Thakur and Dipankar Banerjee, reporting on India, note that “[w]ithin the generally supportive policy framework set by the government, the decision to participate in any specific operation lies more with the bureaucracy than with the elected representatives of the people. Debates in parliament are rare and muted” (p. 189). Surprising for the apparent difference identified between Germany and Japan on this issue—despite their similar post–World War II histories—Akiho Shibata explains that “[a]s long as Japan’s participation is within constitutional and [pre-ordained] legislative parameters, that decision is, in principle, within the discretion of the executive” (p. 219). Reflecting the strong presidential model of France’s Fifth Republic, Yves Boyer, Serge Sur, and Olivier Fleurence explain that “[i]n reality, . . . the National Assembly and the Senate have limited control” (p. 294); “the question of democratic accountability in France is not principally one of legislative involvement” (p. 298). The United Kingdom’s parliamentary tradition, although the opposite of the French presidential model, nonetheless similarly prefers the executive (in this case the prime minister) in use-of-force decisions. This preference is a by-product of the British system’s minimization of the separation of powers, which makes the prime minister, supported by his or her parliamentary majority, the chief legislative figure in addition to being the executive. Nigel White observes that in “the United Kingdom, one of the oldest democracies, [the tension between democratic accountability and the sovereign’s use of force] is becoming increasingly apparent, though the

weight of constitutional practice still concedes considerable latitude to the executive in making such decisions" (p. 300). Finally, Michael Glennon is openly skeptical of the supposed parliamentary trend with respect to the United States. "If anything," he argues, "the trend in the United States has been toward less accountability of the executive to the legislature, not more" (p. 344).

It is also necessary to remark that the country reports suffer from an unfortunate omission that is mandated by the project's focus on a few democratic countries. I accept the limits of space and coherence that bedevil any such comparative project. But the incredible utility of the nine surveys collected in *Democratic Accountability* pleads for the addition of others. Especially considering the present geopolitical climate, it would have been of great interest to know what domestic legal and political processes operate in the decision to use force in, inter alia, Brazil, China, Egypt, Ethiopia, Israel, Jordan, Pakistan, Poland, South Africa, and Uruguay. With the exception of Israel, these countries are top-twenty troop contributors to UN peacekeeping missions. Brazil, Israel, Poland, and South Africa are diverse and well-established democracies, presenting distinct systemic and contextual issues of certain comparative interest.

There is also a compelling argument to be made that efforts devoted to the study of accountability regarding the decision to deploy soldiers are better focused on nondemocratic states. In such countries, including the many African ones that contribute to the use of force under international auspices (including missions of the United Nations and regional organizations), the risk of illegitimate uses of force and their accompanying consequences for the human rights of those countries' citizen-soldiers is exponentially greater than in the democracies considered in the book; the citizens of those countries lack the ability to check use-of-force decisions via the democratic process.

*Democratic Accountability* acquits itself nobly, most significantly by presenting the comparative law community with its remarkable country reports. I take some exception to the way that the editors conceptualize the constituent elements of their thesis and particularly would have preferred

a more thorough and creative treatment of democracy. Tragically, time has not borne out the book's broadest claim. Rather than seeing more democratic and parliamentary authority over the use of force, the few short years since the book's publication have been ones of marked decline. I say "tragically" because I share the conviction that use-of-force decisions increasingly must come to be legitimated by democratic processes. Certainly, it is not the editors' fault that history seems to have set back that agenda. To their credit, with *Democratic Accountability* we have the impressive mandate as scholars and policymakers to press forward with the effort to achieve that goal.

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*The Constitutionalization of the World Trade Organization: Legitimacy, Democracy, and Community in the International Trading System.* By Deborah Z. Cass. Oxford, New York: Oxford University Press, 2005. Pp. xxvi, 266. Index. \$115, £60, cloth; \$39.95, £20, paper.

Nonlawyers must surely be surprised to see how we lawyers get all worked up when the words "constitution" or "constitutionalization" are mentioned. To use, or not to use, the C-word was at the heart of many legal discussions on the recently rejected constitution for Europe (or, more correctly, *Treaty Establishing a Constitution* for Europe). In the context of that other, global project of economic integration—the World Trade Organization (WTO)—similar debates are raging, albeit at an earlier stage of development.<sup>1</sup> As Miguel Maduro points out, in the European context we have moved from talking about a "process of constitutionalization," to questioning whether such a process represents a European "constitution" (does Europe *have* a constitution?), and then on to discussing whether Europe requires a formal constitution (does Europe *need* a constitution?).<sup>2</sup> In the WTO, in contrast, we are, for the

<sup>1</sup> For the most recent sample, see Symposium: *WTO 'Constitutionalism'*, 3 EUR. J. INT'L L. 623 (2006) (with articles by Jeffrey Dunoff and Joel Trachtman).

<sup>2</sup> Miguel Poiares Maduro, *The Importance of Being Called a Constitution: Constitutional Authority and the*