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Article Abstracts

Clashing Behavior, Converging  
Interests: A Legal Convention  
Regulating a Military Conflict

Adir Waldman 249

*This Article examines a unique experiment in international law. In April 1996, Israel and Lebanon publicly announced an Agreement that would allow the hot military conflict between the Israel Defense Forces and the Lebanese militia Hesbollah to continue, but would bind the forces to an explicitly agreed-upon set of rules intended to protect civilians. Moreover, a special commission, the Israel-Lebanon Monitoring Group (the "ILMG"), would be established to handle complaints regarding violations of the Agreement. Israel and Lebanon abided by the April Agreement from the time of its inception in April 1996 until Israel's withdrawal from Lebanon in May 2000. During this four-year period, the ILMG met 103 times to resolve 607 complaints of violations of the April Agreement. Employing a methodology rooted in the New Haven School of jurisprudence, this Article studies the April Agreement and the monitoring mechanism as a system of law. The Article seeks to explore why the parties were driven to agree on such an exceptional convention and to explain how the Agreement and the Monitoring Group satisfied the converging interests of warring parties.*

After/word(s): 'Violations of Human  
Dignity' and Postmodern International  
Law

Barbara Stark 315

*"Never again!" was the *crie de coeur* of the world leaders after World War II. "Never again" would they tolerate death camps, mass graves, or other crimes against humanity. Several genocides later, however, the phrase has become ironic. Innumerable international as well as national laws have been enacted, but they have failed to stop the carnage. This was the subject of a recent symposium in the *American Journal of International Law*, which assembled some of the leading minds in international law to analyze the problem from seven different perspectives. Postmodern International Law (PIL) was not among them. As this Article explains, the omission of PIL was fitting because PIL did not fit. PIL eschews the often esoteric language of international law in order to reach a broader audience, including those who "violate human dignity" and those who harbor the violators. In addition, PIL is skeptical about the kind of totalizing theory encouraged by the symposium format. Rather, PIL situates the problem in the spatial and historic contexts of globalization.*

*These are the contexts—fragmented, chaotic, transient—in which the law must function. If law is to function effectively, as the late Yale law professor Robert Cover explained, it must be accompanied by violence, by the political will to impose the law through force. Political will in turn depends on stories that breathe life into the law and give it meaning. Political will has been elusive on the international level, in part, because the modern story that began with Nuremberg is no longer compelling. This Article explains how the modern story lost its luster and why the difficult, complex, and even contradictory stories of PIL are more likely to generate the political will necessary to address violations of human dignity in a postmodern world.*

Patent Rights and Local Working  
Under the WTO TRIPS Agreement: An  
Analysis of the U.S.-Brazil Patent  
Dispute

*Paul Champ and Amir Attaran* 365

*A recent WTO dispute between the United States and Brazil revives an issue that was not definitively resolved in the TRIPS agreement, i.e., the legality of local working requirements for patents. For centuries, states have required patentees to manufacture—or “locally work”—inventions patented in their territory as a means of achieving economic development and technology transfer. In past treaties, countries have agreed to provide compulsory licensing as the remedy for “failure to work”. During the TRIPS negotiations, the parties advanced several options for the future of local working provisions. Unfortunately, the final agreement was essentially arbitrated on that issue, and the understanding of the respective parties regarding local working remained unclear.*

*Ultimately, the Brazil case was settled for political reasons, but the U.S. reserved its right to re-litigate the issue and has warned that it will “aggressively engage” any other countries that seek to utilize local working. Thus, it is inevitable that the legality of local working will continue to be questioned. This Article analyzes the historical rationale of local working requirements, the treatment of local working in the travaux préparatoires of the TRIPS Agreement, and the canon of treaty interpretation, in order to ascertain whether local working is or is not legal under the TRIPS Agreement. The Article concludes that it is, and that the interpretation proposed by the U.S. constitutes a significant normative departure from international practice that is unsupported by the text or travaux préparatoires of the TRIPS Agreement.*