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

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I. INTRODUCTION

In February 2000, fighting in south Lebanon between the IDF and the Shiite militia Hesbollah briefly escalated. When Hesbollah attacks killed seven Israeli soldiers in two weeks, the Israeli Air Force responded by striking at civil infrastructure targets in Lebanon. In the aftermath of the Israeli air strikes, an angry Lebanese Prime Minister Selim al-Hoss convened a press conference. He declared, “Israel does not have the right to unilaterally withdraw from the Grapes of Wrath understandings.”1 Israeli officials immediately reacted by justifying the raids as a response to Hesbollah operations launched from civilian areas in violation of the very understandings Prime Minister al-Hoss had just invoked. For several days, political and military leaders of the two countries traded accusations, each charging that the other was violating the Grapes of Wrath Agreement and unilaterally attempting to change its meaning.

Western observers unfamiliar with the intricacies of the conflict in south Lebanon were baffled by these repeated references to the “Grapes of Wrath Understandings,” also known as the “April Agreement.” Indeed, the April Agreement between the governments of Israel and Lebanon is a unique international instrument with no obvious parallels in modern history. The Agreement is a written document allowing the fighting in south Lebanon to take place under limited conditions meant to protect noncombatants. While states have often reached tacit understandings limiting the scope of their warfare (for example, the agreement not to use chemical weapons in World War II2), and explicit agreements on absolute ceasefires (for example, the 1949 Armistice Agreement between Israel and Lebanon3), an explicit convention allowing conflict to continue, albeit under limited conditions, is a true novelty.

If the concept of an explicit agreement setting out rules for the conduct of a hot war is bizarre, then so too is the equally unique mechanism that was established to monitor the implementation of the Agreement—the Israel-Lebanon Monitoring Group. Consider the following scene. On August 23, 1997, in the southern Lebanese town of Naqura, representatives of the governments of the United States, France, Syria, Israel, and Lebanon convened a meeting of the Monitoring Group for the fourth straight day. The group was meeting in order to discuss complaints issued by Israel and Lebanon, who accused each other of breaching the Agreement. Just outside the United Nations compound where the representatives were meeting, Israeli soldiers and Hesbollah forces engaged in an intense exchange of fire. Both forces shot mortars as well as small-scale weapons, and the Israeli Air Force fired at least six air-to-surface missiles in sorties over the area. How is it that parties to a hot international conflict inflicting near daily casualties could meet

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to discuss, not the resolution of the conflict, but rather the continuation of it under jointly-accepted rules of conduct?

Not only is the scenario difficult for the layman to understand, but international legal scholars also have not deciphered the meaning of the April Agreement and its monitoring mechanism. However, as this paper will argue, the Agreement and its accompanying Monitoring Group are, in fact, best understood from the vantage point of the international jurist. With an analysis grounded in international law, what might otherwise appear as an inexplicable and bizarre institution can come to be seen as a legal instrument crafted by rational state leaders to promote public order and the well-being of their constituents. Moreover, under this lens, the Monitoring Group is transformed into a quintessential dispute resolution mechanism that, in addition to allowing the parties to air their grievances by nonviolent means, also offers a much-needed channel for communication between combatants.

A word is in order regarding the approach taken in this study. The analysis of the April Agreement and the ILMG presented here results from an investigative methodology that has come to be known as the New Haven School of jurisprudence. While the understanding of international law and the methods of study adopted by the New Haven School will be displayed more fully in the course of this analysis, it may be helpful at the outset to describe the basic outlines of this approach. For the scholar of the New Haven School, the relevant starting point for an investigation of the April Agreement is an examination of whether the Agreement was in fact law. For scholars outside of the New Haven tradition, the logical point of departure would likely be to ask whether the Agreement was legal. In other words, these scholars would question the extent to which the Agreement comports with principles of international and military law and consider whether the document that was announced to the world on April 26, 1996, should be considered legally valid. They might go on to ask whether the Agreement was legally binding and enforceable through legal action in the event of breach. For the New Haven scholar, by contrast, the important question is not whether the Agreement is legal, but whether it did, in fact, inform the expectations and shape the behavior of the parties to the Agreement. If the parties to the Agreement did treat it as law, then the scholar seeking to understand the nature of the Agreement also must treat it as such. If the scholar is able to certify that the principles ensconced in the communication did serve as de facto norms of law, then she or he must continue the investigation and examine further, among other issues, the exact content of the law, why it was instituted, how it operated, and whether its operation proved valuable on the whole.

In considering whether the April Agreement served as law, one must go beyond the mere recognition that it was formulated as a legal document. As others have noted, just because a communication purports to be law does not

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mean that this is necessarily the case.\textsuperscript{5} Sometimes communications that are presented as law are more properly treated as \textit{lex simulata} or \textit{lex imperfecta}—messages which, for one reason or another, the communicating party deems beneficial to issue in the form of law but which do not carry the necessary “authority signal” or “control intentions”\textsuperscript{6} to make them effective statements of law. As the reader will see, there is, in fact, some sense in which the Agreement served as legal pageantry. The parties to the conflict knew that a certain level of civilian casualties would continue, and they used the legal document and the associated arbitral institution to satisfy their constituents that they would do their utmost to represent both their interests as partisans of the state (to protect their interests in Lebanon) and their interests as civilians (to protect noncombatants). The Agreement also was \textit{soft law} in the sense that the parties knew not only that it would be breached, but also that it was not enforceable in a court of law.

But for all the Agreement’s symbolic function and its softness, it was effective. While civilian casualties continued in the wake of the April Agreement, the parameters of the conflict in southern Lebanon did change under its operation. The parties to the Agreement understood that firing at civilians or firing from civilian areas was now outside the code of accepted behavior and that there would be repercussions from such actions, including sanction by the ILMG and reprisal by the opposing military force. Skeptics might argue that the fact that both sides violated the April Agreement throughout its nearly four years of duration implies that the Agreement did not operate as a norm of behavior. However, the careful observer will note that such violations tested the bounds of the Agreement, establishing it as law. Thus, the policy content of the Agreement continued to exhibit what has been called an “authority signal” and a “control intention.”\textsuperscript{7} Indeed, as this study will demonstrate, the April Agreement did communicate a meaningful prescription to all the parties to the conflict in southern Lebanon, powerfully shaping their expectations regarding the accepted norms of behavior and the implications of deviating from such norms.

Using this legally-oriented analysis, one can begin to make sense of the April Agreement and to understand why the system lasted as long as it did—roughly four years. In a fragile region, with systemic forces driving them towards what would be extremely costly violence, both Israel and Syria were forced to search for a means to keep their conflict under control. The April Agreement between Israel and Lebanon served just this purpose; as the analysis below will demonstrate, it allowed Israel and Syria to continue to joust in the Lebanese arena, but to do so in a controlled manner that would not spiral into all-out war. The prohibition on targeting civilians constrained the respective military forces enough to keep the level of violence within acceptable limits. Furthermore, by reducing civilian suffering, the parties were able to avoid the kind of domestic political pressures that could lead to an Israeli-Syrian war. Facing an intractable and extremely dangerous conflict, the

\begin{itemize}
  \item \textsuperscript{5} Reisman, \textit{International Lawmaking: A Process of Communication}, supra note 4.
  \item \textsuperscript{6} See id. at 113.
  \item \textsuperscript{7} See id.
\end{itemize}
parties to the war in Lebanon turned to the tools of the lawyer, legislating for themselves an innovative and effective instrument. The fact that the Agreement was enshrined in a written and highly-publicized document added to its strength and durability, allowing it to survive the rigorous test it was destined to face in the brutal conflict in southern Lebanon.

Perhaps the most fascinating aspect of this legal system lies in the monitoring mechanism that the parties established to govern its implementation, the Israel-Lebanon Monitoring Group. An analysis informed by the New Haven School explains how this arbitral institution helped enhance adherence to the Agreement. Well aware that breaches of the April Agreement would lead to public sanctioning by the ILMG, the parties had strong incentives to uphold its strictures. Moreover, the monitoring mechanism provided the parties with a micro-arena in which they could take action to satisfy their constituents that they were pursuing their interests, without actually ratcheting up the level of violence in south Lebanon. In this regard, the approach chosen here—that of the New Haven School—proves informative in yet another way. The New Haven scholar recognizes that while the debate in the forum of the ILMG was conducted in terms more familiar to the soldier than to the lawyer, the content of the debate carried legal meaning. While the representatives to the Monitoring Group framed their discussion in terms of the April Agreement and the day-in, day-out events in southern Lebanon rather than principles of international law theoretically codified in legal textbooks, their give-and-take in the specialized forum of the ILMG served to establish the true code of conduct that governed the conflict in southern Lebanon. Most interestingly, this forum for non-violent venting also provided the parties with a channel for direct and confidential communications in which they could keep specific episodes of escalation under control and issue more general signals regarding their shifting and potentially explosive relationship.

II. HISTORICAL BACKGROUND

Israel first began to intervene militarily in Lebanon in the 1960s in response to ongoing guerrilla attacks on the residents of northern Israel. Palestinian guerrilla groups, nominally under the control of the Palestine Liberation Organization (PLO), increased their activity in southern Lebanon following their expulsion from Jordan during the 1971 Black September campaign. Israel responded to cross-border attacks with strikes by the Israel Defense Forces (IDF) against guerrilla groups in southern Lebanon.

The first large-scale Israeli operation in Lebanon came in 1978, in the aftermath of a bus hijacking by Fatah terrorists that resulted in the death of thirty-seven Israeli civilians. The IDF launched Operation Litani, a sweeping ground incursion up to the Litani River, a major east-west demarcation line in southern Lebanon, in an attempt to clear guerrilla groups out of the area. In response to the Israeli incursion, the United Nations Security Council passed two resolutions which to this day remain fundamental points of reference for all parties involved in Lebanon. Resolution 425 called for Israel “immediately to cease its military action against Lebanese territorial
the aftermath of Operation Litani, Israel withdrew its forces from southern Lebanon, and began to give increasing support to an allied Christian militia, the South Lebanon Army (SLA), in the hope that it would be able to control the region as a proxy force. This aid program proved to be the origin of a wider Israeli foreign policy aimed at controlling a strip of land abutting the Israeli border as a "security zone" in order to provide a buffer between Israel's northern residents and armed Lebanese groups.9

Sporadic violence continued until 1982, when, in response to escalating attacks, the Israeli government decided to launch a major military offensive to wipe out the Palestinian guerrilla forces in southern Lebanon. The IDF launched Operation Peace for the Galillee and drove all the way to Beirut, successfully forcing the PLO to leave southern Lebanon. In 1985, the Israeli government decided to pull the IDF back, but Israeli soldiers remained in the strip of territory contiguous to the northern border of Israel so as to safeguard Israeli control over this security zone. From 1985 to May 2000, the IDF, together with the SLA, controlled the security zone in an attempt to keep guerrilla forces from threatening civilians in northern Israel.

The period from 1985 until Israel's complete withdrawal from Lebanon in the spring of 2000 was characterized by a constant background level of violence, including both large- and small-arms fire between the IDF and the SLA on one side and Hesbollah on the other. Israeli infantry troops and armored units played a kind of cat-and-mouse game with Hesbollah forces, each laying ambushes for the other and hoping they would be the first to open fire on surprised enemy forces. Meanwhile, Hesbollah artillery units fired on fortified Israeli positions in south Lebanon and were in turn answered by Israeli artillery positions along the Israeli border.

While Hesbollah is the party that actually plays out the conflict with the IDF and the SLA in southern Lebanon, Syria is the real power with whom Israel contends in that arena. The Syrian and Israeli governments, locked in their own state of war and their own territorial dispute, have been acting out their conflict through proxy in south Lebanon for the past thirty years.10 Syria claims important military and economic interests in Lebanon and has tried to use the violence in southern Lebanon as a lever by which to push Israel to bargain on a withdrawal from the Golan Heights.11 While Hesbollah receives

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9. For an account of how Israel's support of sympathetic forces in southern Lebanon led to the emergence of the security zone, see Beate Hamzrachi, The Emergence of the South Lebanon Security Belt (1988).


much of its funding and training from Iran, Syria wields significant control over the organization and has shown an ability to ratchet its level of violence up or down according to its perceived interests. Syria dominates Lebanon politically and has an estimated 40,000 troops stationed in the country to ensure ongoing control.

In the late 1990s a growing death toll of Israeli soldiers serving in Lebanon exerted domestic political pressure on the Israeli government to completely withdraw Israeli troops from that country. Ehud Barak was elected Israeli Prime Minister in May of 1999, after running on a platform committed to withdrawal from Lebanon within one year of assuming office. Barak fulfilled his campaign promise in May of 2000, when Israeli troops completed a swift move back across the Israeli border.

III. PRELUDE TO THE APRIL AGREEMENT

The Agreement reached between Israel and Lebanon in April of 1996 was not the first attempt by the two sides to keep the conflict in south Lebanon under control by means of a legal convention. Indeed, in order to fully appreciate the April Agreement and its relative success, one must consider it in light of previous attempts at controlling the conflict in south Lebanon through understandings among the various parties.

Israel and armed Palestinian groups in Lebanon sought to control their conflict through cease-fire arrangements as early as 1981. In July of that year, the cycle of violence between the PLO and the IDF escalated into the “War of the Katyushas,” an exchange of military attacks which was halted by an Israeli-PLO cease-fire agreement brokered by U.S. Assistant Secretary of State Philip Habib. This ceasefire was broken by Operation Peace for the

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13. This domination, first sanctioned by the Taif Accords of 1989, is now supposedly legally supported by the Lebanon-Syria Treaty of Co-operation, signed on May 20, 1991. Article 1 of the Treaty reads: The two states will work to achieve the highest level of co-operation and co-ordination in all political, economic, security, cultural, scientific, and other fields in a manner that will realize the interests of the two fraternal countries within the framework of respect for their individual sovereignty and independence and will enable the two countries to use their political, economic, and security resources to provide prosperity and stability, ensure their pan-Arab and national security, and expand and strengthen their common interests, as an affirmation of the brotherly relations and guarantee of their common destiny.


14. The Katyusha is a Russian-made World War II rocket with a low level of accuracy. It has been a weapon of choice for Hesbollah, used to inflict damage on metropolitan targets in northern Israel. W. Michael Reisman, The Lessons of Qana, 22 YALE J. INT’L L. 381, 384 n.13 (1997).

Galilee and the Israel-Lebanon War of 1982-85, which also involved several failed cease-fire agreements between Israel and armed forces in Lebanon.\(^{16}\)

While this dynamic of repeated, failed Israeli-Palestinian cease-fire arrangements is of interest for the present purposes, even more important is the over-arching dynamic of the Israeli-Syrian dialogue in Lebanon from the 1960s onward. In the spring of 1976, during a particularly sensitive period of posturing between Israel and Syria, the two states recognized that they could mutually benefit from reaching an understanding concerning accepted behavior in Lebanon in order to avoid all-out war. Signaling to one another through public statements to the media, military maneuvers in the field, and explicit messages sent through Washington, Israel and Syria established a system of “red-lines” under which behavior within the specified limits would not be taken as cause for war. The redlines limited the size of forces either side could deploy in Lebanon, stipulated the type of weapons they could use in the arena, and circumscribed geographic boundaries beyond which the forces were not to move. Although it did undergo several periods of significant stress and did evolve over time, the red-lines system survived and preserved a relative level of tranquility in Israeli-Syrian relations until the outbreak of the Israel-Lebanon War in 1982.\(^{17}\)

After the war, once again needing to avoid a costly military confrontation, Israel and Syria rebuilt the red-lines system.\(^{18}\) As was the case with the pre-war red-lines system, the postwar red-lines system has not proven entirely stable, and Israel and Syria have had to tacitly or explicitly bargain on new understandings at several critical junctures. Because Syria has often employed Lebanese armed elements as a proxy for its own military forces in its struggle against Israel in Lebanon, these codes of behavior have often regulated the actions of these other groups, rather than those of Syria and Israel alone.

The most relevant understanding for the purposes of this Article was the one reached between Israel and Hesbollah in July 1993. That code of behavior governed Israeli-Hesbollah interactions in the period leading up to the 1996 Agreement. In July 1993, in response to an escalating spiral of violence in south Lebanon, Israeli Prime Minister Yitzchak Rabin authorized an offensive by the IDF in an attempt to weaken Hesbollah’s military capabilities and its standing among the civilian population of the area. As has often been the case, the deterioration in the Lebanese arena was tied to developments in Israeli-Syrian relations.\(^{19}\)

\(^{16}\) See, e.g., EVRON, supra note 10, at 145-46.

\(^{17}\) See id., passim.

\(^{18}\) Id. at 170-74.

\(^{19}\) Itamar Rabinovich, the Israeli Ambassador to Washington and the official who led the Israeli delegation to Israeli-Syrian peace talks at the time, has pointed out the ever-present connection between the Israeli operation and Israeli-Syrian relations. He writes:

In considering the pros and cons of such an operation, Israel was not held back by the prospect of an adverse effect on the negotiations with Syria. If Syria believed that by offering passive or indirect support to [Hesbollah] it was acquiring greater leverage over Israel, let it be reminded of the facts of the underlying military balance and of the risks inherent in Syria’s Lebanese policy. The feeling in Israel that Syria was stoking the fire in south Lebanon was reinforced by the fact that Ahmad Hibril and his
Operation Accountability, seven days of coordinated air, naval and artillery strikes, resulted in widespread damage and sent residents of south Lebanon fleeing northward.\textsuperscript{20} The offensive abated when Secretary of State Warren Christopher was able to broker a ceasefire between Israel and Hesbollah, apparently through understandings with Syria and Lebanon.

It remains unclear which states or groups were party to the unwritten understanding and exactly what it stipulated, though all parties made clear that it was aimed at protecting civilians from military fire. Israel's then Deputy Chief of Staff, Amnon Lipkin Shahak, has since reportedly told the Knesset Foreign Affairs and Defense Committee that the understandings "were reached with the United States, which talked with Syria, which talked with Hesbollah, which again talked with the Syrians, who again talked with the Americans, who reported back to us."\textsuperscript{21} In addition to the agreement to spare civilians, the understanding seems to have contained a geographic element whereby Israel promised not to make pre-emptive strikes north of the security zone. An Israeli Knesset member who was among those briefed by Prime Minister Rabin was quoted by the Israeli press as saying:

The Prime Minister made it clear Israel can only attack north of the security zone under two conditions. First, if Hesbollah violates the accord by firing Katyushas at the Galilee. In this case, Israel is not bound by any restrictions. Second, Israel can only strike north of the security zone... if hit first...."\textsuperscript{22}

organization (the Popular Front for the Liberation of Palestine-General Command), Syria's distinct protégés, had joined the fray.


\textsuperscript{20} Reports varied, but most international sources placed the number of Lebanese killed between 110 and 130 with an estimated 450 wounded. Agence France-Presse reported 127 Lebanese killed. \textit{Ceasefire is Basis for Talks with Beirut, Damascus, AGENCE FRANCE-PRESSE}, Aug. 2, 1993, LEXIS, News Group File. The \textit{Jerusalem Post} placed the figure at 114. The Israeli government claimed that the death figures included fifty to eighty Hesbollah fighters. Two Israeli civilians and one IDF soldier were killed by Hesbollah fire. David Makovsky, \textit{Dispute on Whether Cease-Fire Limits IDF, JERUSALEM POST}, Aug. 2, 1993, at 1.

\textsuperscript{21} Qol Yisra'el (Israel), Chief of Staff Discusses Lebanon, Hamas Attacks, Closure, Apr. 3, 1996, FBIS-NES-96-065, available at http://wnc.fedworld.gov. Itamar Rabinovich recalls the events in the following way:

At the week's end Secretary Christopher increased his efforts at obtaining a cease-fire, and at the end of a long night during which he communicated on the telephone with Rabin (through Dennis Ross and myself) and with Asad (through Foreign Minister Shara), an end to the fighting and a new set of rules were agreed upon.

\textbf{Rabinovich, supra} note 19, at 103. According to a \textit{Washington Post} article, Iran was also indirectly involved in the negotiations. Its correspondent reported, "The cease-fire was brokered by Secretary of State Warren Christopher in phone calls to the leaders of Israel, Syria and Lebanon and through indirect contacts with Iran, Hesbollah's chief sponsor." David Hoffman, \textit{Israel Halts Bombardment of Lebanon, WASH. POST}, Aug. 1, 1993, at A22. The late Syrian President Hafez al-Asad publicly denied that Syria was party to the agreement, stating at a press conference, "We know that an understanding was reached between the two sides in 1993, and Syria was not a party to it. The said understanding provides that the resistance in [south Lebanon] would not rocket northern Israel while Israel would not bombard civilians or civilian targets." \textit{MID EAST MORROW}, Apr. 3, 1996, on file with author. But Rabinovich maintains, "The Hariri [Lebanese] government was a party to the oral agreement, but the real guarantor of Hesbollah's good behavior was Syria." \textbf{Rabinovich, supra} note 19, at 103.

\textsuperscript{22} Makovsky, \textit{supra} note 20, at 1. The same report explained the understanding as stipulating that if Israel does retaliate north of the security zone, its fire must be directed only at the source of the instigating attack.
These descriptions of the understanding may very well be accurate but they have been disputed by high-ranking Israeli officials. Furthermore, then Deputy Foreign Minister Yossi Beilin told reporters that the understanding was a verbal arrangement "without articles and without details." For the three years following the July 1993 understanding, Israel and Hesbollah continued to fight daily with the expectation on both sides that each was to avoid firing upon civilians. Nonetheless, civilians were frequently harmed by the fighting in the region, as they were either inadvertently hit by projectiles aimed at military forces or purposely targeted. Modern military weapons are so powerful in their infliction of damage that civilians several hundred meters from an intended target can be maimed or killed inadvertently. The problem was especially acute in south Lebanon where Israeli forces operating weapons with mass fire-power often came under attack from irregular forces in or near populated areas. While one might distinguish between purposefully firing at entirely civilian targets and deliberately returning fire to the source of an attack from inside a populated area, both forces responded to violations of the understanding by firing on civilian areas of the other country. Despite, or perhaps because of, these forceful responses to perceived breaches, the understanding held in place as a set of rules of engagement until April 1996.

The July 1993 understanding dissolved when the violence in south Lebanon spiraled into a major Israeli military offensive in April 1996. Between March 4 and April 10, an increased level of operations on both sides resulted in the deaths of seven Israeli soldiers, three Lebanese civilians and at least one Hesbollah fighter, and the injury of sixteen Israeli soldiers, seven Lebanese civilians and six Israeli civilians. While Hesbollah attacks on Israeli soldiers stationed within Lebanon fell within the rules established in July 1993, they placed substantial domestic political pressure on the government of Prime Minister Shimon Peres. Peres was facing what he knew

23. Makovsky's report pointed out that these interpretations of the understanding were at variance with then Chief of Staff Ehud Barak's public insistence that the understanding did not restrict the Israeli military's freedom of action north of the security zone. See id. Likewise, Ma'oz describes the regime as an understanding between Israel, Syria and Lebanon "whereby Damascus and Beirut undertook to prevent the launching of Katyusha rockets from Lebanon into Israel (although not against the Israeli-held security zone in southern Lebanon). Israel undertook not to attack Lebanese civilians in the course of its military actions against Hesbollah targets." MA’OZ, supra note 10, at 235. Interestingly, Rabinovich’s account does include a geographical provision: "At the core of the understanding were an undertaking by Hesbollah not to launch rockets against Israel and a matching commitment by Israel not to fire into villages north of the security zone unless fired upon from within a village. There was no undertaking to spare the security zone, and increased pressure on it could be expected." RABINOVICH, supra note 19, at 103.

24. Ceasefire is Basis for Talks with Beirut, Damazus, supra note 20.


would be an arduous election battle against the Likud Party’s Benyamin Netanyahu on May 29. Peres had assumed office upon Yitzchak Rabin’s assassination in November 1995. Lacking both an electoral mandate and the proud military record that many Israeli political leaders have stood upon, Peres knew that Netanyahu, a former member of one of the IDF’s most elite units and brother of a military hero, would make national security a major issue in the upcoming campaign. A series of suicide bombings by the militant Palestinian faction Hamas exacerbated the Israeli political situation and added pressure for Peres to take a strong military stand. When Hesbollah increased its cross-border Katyusha rocket attacks, Peres reacted with a powerful Israeli offensive.

By unleashing Israel’s naval, air and artillery power across southern Lebanon, Peres hoped that the operation code-named Grapes of Wrath would achieve what Operation Accountability had attempted to accomplish three years earlier. Once again, Damascus was in many ways the real intended audience of the signals being sent by Israel—the operation was aimed at coercing Syria into clamping down on Hesbollah activity in southern Lebanon.27

From the start of the operation, Peres sought to craft a new set of understandings more favorable to Israel. Reports have since indicated that his original hope was to achieve a full ceasefire, including a prohibition on attacks on Israeli soldiers in Lebanon. Peres was ready to pledge that if the ceasefire held for nine months, Israel would begin negotiations for a complete withdrawal from Lebanon.28

Peres’s negotiating stance and the entire situation in south Lebanon changed dramatically with the events of April 18, 1996. Responding to Hesbollah mortar fire on Israeli ground troops, Israeli artillery fired on the vicinity of a United Nations Interim Force in Lebanon (UNIFIL) compound in the village of Qana. More than 100 Lebanese civilians who had sought refuge in the compound were killed and many were wounded in the attack.29 Israel immediately came under severe international criticism and Peres was forced to find a way to extricate himself from the quagmire of the operation only six weeks before the election.

On April 20, two days after the Qana incident, Secretary of State Christopher flew to Damascus to begin a week-long session of shuttle diplomacy to bring the escalation to an end. Christopher was not alone in his

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27. Israeli Ambassador Itamar Rabinovich points out the connection between the Syrian-Israeli relationship and these developments in Lebanon. He writes:

At the core of the operation lay the notion that Israel could achieve at least some of its goals by exerting pressure on the government of Rafiq Hariri [of Lebanon] through destroying some economic targets and through causing the population in the south to flee to Beirut. Hariri would then be expected to use his influence with Damascus to change its own conduct.

RABINOVICH, supra note 19, at 231.


diplomatic efforts. Russian Foreign Minister Yevgeny Primakov, Italian Foreign Minister Susanna Agnelli, Spanish Foreign Minister Carlos Westendorp, Irish Foreign Minister Dick Spring and French Foreign Minister Herve de Charette also flew to the region to consult with state leaders.\textsuperscript{30} The United States and France apparently each offered their own proposals to end the fighting.\textsuperscript{31} It remains unclear which countries and groups took part in the negotiations. Christopher appears to have done most of his mediating with Asad and Peres, only traveling to Lebanon to meet with Prime Minister Hariri once a deal was basically made.\textsuperscript{32} On April 26, 1996, after a full week of shuttle diplomacy, Secretary of State Christopher announced the achievement of a new written agreement between the governments of Israel and Lebanon.

IV. THE APRIL AGREEMENT

On April 26, 1996, Secretary of State Christopher, standing alongside Prime Minister Peres in Jerusalem, announced the achievement of the written

\textsuperscript{30} Though not within the scope of this Article, one should note the fascinating intricacies of the intense diplomacy that took place over the course of this week. For Secretary of State Christopher’s perspective on the diplomatic process, see U.S. Department of State Office of the Spokesman, Interview of the Secretary of State Warren Christopher on The Newshour with Jim Lehrer (PBS Television broadcast, Apr. 30, 1996), available at http://www.state.gov.

\textsuperscript{31} In a radio interview on April 23, State Department Spokesman Nicholas Burns explained the American proposal as an attempt to “strengthen [the 1993 understanding] by putting it into writing, by clearing away some of the ambiguities that did exist in that 1993 Agreement.” Interview with Nicholas Burns, Morning Edition (National Public Radio broadcast, Apr. 23, 1996), available at 1996 WL 2814555. In this regard, an Israeli lawyer involved in the drafting process has reported that “each of the sides remembered different things as to what had been understood in 1993.” Interview with anonymous Israeli government lawyer (Dec. 14, 2000). Some reports have speculated that the American proposal included a provision for a full cease-fire leading to an Israeli withdrawal. See, e.g., JABER, supra note 25, at 195. The French proposal was reportedly based on U.N. Resolution 425, supra note 8, and called for a complete Israeli withdrawal from Lebanon. In the kind of power politics one can expect from the United States and France, diplomats from the two countries competed to some extent in vying for the right to claim any successful cease-fire as their own achievement. One can hear some of this rivalry reflected in the statements of State Department spokesman Nicholas Burns over the course of the diplomatic efforts. On April 18, he noted, “There are others who are acting along these lines, most notably the French government. And we are working with the French, we congratulate the French in their effort. I can’t say that their proposals are exactly consistent in all respects with ours, but I think the spirit of those proposals is exactly consistent . . . .” Transcript: U.S. Department of State Press Briefing with Nick Burns, U.S. NEWSWIRE, Apr. 18, 1996, available at 1996 WL 5620792. On April 23, Burns more boldly announced, “I think that the United States has now made itself the sole negotiating channel among Syria, Lebanon and Israel. France is present in the region in the form of its foreign minister. It’s largely been supportive of the United States. I don’t believe that France will, in the end, be the country that negotiates this. I think that will remain with the United States.” Interview with Nicholas Burns, supra. Once a cease-fire was achieved, de Charette conceded in a television interview that his efforts had “provoked a certain irritation, notably for the Americans.” Remarks, MIDDLE EAST REP., Apr. 27, 1996, [hereinafter Remarks] at 4.

\textsuperscript{32} One should note that Christopher did include a wider array of Arab leaders in early stages of the diplomacy efforts, consulting with Egyptian and Saudi Arabian leaders. Christopher Widens Consultations over Israel-Lebanon Crisis, AGENCIE FRANCE-PRESSE, Apr. 17, 1996, available at 1996 WL 3839832. Hesbollah leader Sheikh Hassan Nasrallah met with Syrian officials and announced a set of pre-conditions for a cease-fire on which his group insisted. However, Middle East analysts have speculated that Lebanon and Syria would not permit Hesbollah to participate in the negotiations for their own self-interested motivations. The Lebanese government may have wanted to retain more control over the outcome than Hesbollah, and Syria may have been trying to keep Iranian influence over the situation to a minimum. See Joseph Matar, Out of Favor, JERUSALEM REP., Sept. 19, 1996, at 36; Remarks, supra note 31, at 9.
but unsigned Agreement. Prime Minister Hariri stood with Foreign Minister de Charrette as he simultaneously made the same announcement in Beirut:

The United States understands that after discussions with the Governments of Israel and Lebanon, and in consultation with Syria, Lebanon and Israel will insure the following:

1) Armed groups in Lebanon will not carry out attacks by Katyusha rockets or by any kind of weapon into Israel.

2) Israel and those cooperating with it will not fire any kind of weapon at civilians or civilian targets in Lebanon.

3) Beyond this, the two parties commit to insuring that under no circumstances will civilians be the target of attack and that civilian populated areas and industrial and electrical installations will not be used as launching grounds for attacks.

4) Without violating this understanding, nothing herein shall preclude any party from exercising the right of self-defense.

A Monitoring Group is established consisting of the United States, France, Syria, Lebanon and Israel. Its task will be to monitor the application of the understanding stated above. Complaints will be submitted to the Monitoring Group. In the event of a claimed violation of the understanding, the party submitting the complaint will do so within 24 hours. Procedures for dealing with the complaints will be set by the Monitoring Group.

The United States will also organize a Consultative Group, to consist of France, the European Union, Russia and other interested parties, for the purpose of assisting in the reconstruction needs of Lebanon.

It is recognized that the understanding to bring the current crisis between Lebanon and Israel to an end cannot substitute for a permanent solution. The United States understands the importance of achieving a comprehensive peace in the region. Toward this end, the United States proposes the resumption of negotiations between Syria and Israel and between Lebanon and Israel at a time to be agreed upon, with the objective of reaching comprehensive peace. The United States understands that it is desirable that these negotiations be conducted in a climate of stability and tranquillity.

This understanding will be announced simultaneously at 1800 hours, April 26, 1996, in all countries concerned. The time set for implementation is 0400 hours, April 27, 1996.33

The text of the Agreement is rather straightforward in its wording and its demands from the parties. Nonetheless some nuances do deserve comment, especially in regard to what distinguishes this agreement from its predecessor. First, and perhaps most obviously, the Agreement is a written memorandum that was publicly announced and widely distributed. Not only could there now be no question among the parties themselves as to the provisions of the Agreement, but civilians in both Israel and Lebanon as well as interested parties anywhere in the world would know what the two governments had pledged.34

33. The Agreement was published in various media forums, and its English text has always appeared in a form substantially identical to the version quoted here, which was taken from the New York Times. N.Y. TIMES, Mideast Accord: Restricting the Violence in Lebanon, Apr. 27, 1996, at A8.

34. In hailing the Agreement, President Clinton made clear the importance he attached to the fact that this was a written accord. He announced, “Because it is in writing, this Agreement will be less likely to break down than the informal agreements that had been in place since 1993.” Remarks, supra note 31, at 3. Likewise, the State Department’s Special Middle East Coordinator, Dennis Ross
As is the nature with international written agreements, the parties crafted the text with extreme care and political guile. One should note, for example, that France, despite active engagement in the diplomatic process, is not mentioned as a party to the understanding itself, though France is included in the Monitoring Group that was established to oversee the implementation of the accord. The memorandum is written as an understanding on the part of the United States that Lebanon and Israel will undertake to ensure various conditions. Therefore, unlike the 1993 understanding, under which it was never entirely clear which parties were bound (Syria? Lebanon? Hesbollah?), the 1996 accord is an agreement between two specific state entities. Syria’s importance as the controlling force in Lebanon is signaled with the notation that the understanding is made “in consultation with Syria,” but the Agreement itself, as far as it bound any particular parties, bound only Israel and Lebanon.

The first two provisions in themselves comprise the basic 1993 convention. Hesbollah will not fire into metropolitan Israel, and Israel and the SLA will not fire at civilians in Lebanon. As did the earlier oral understanding, this accord honors international law in its protection of noncombatants. Article 33 of the Fourth Geneva Convention declares, “Reprisals against protected persons and their property are prohibited.” Article 51(6) of Protocol I declares, “Attacks against the civilian population or civilians by way of reprisals are prohibited.”

One should note that while there may or may not have been a geographic provision in the 1993 understanding, there is no such element in the 1996 Agreement. While attacks by the IDF on Hesbollah targets north of the red-line may have continued to carry special meaning for all of the parties involved in the conflict, the formal text does not afford such attacks any special relevance.

The third provision is a new and important innovation from the 1993 understanding. Now, not only can civilian areas not be targeted, but they also cannot be used as launching grounds for attacks. This provision honors international law in its prohibition of using civilians to shield military objectives, and it meets Israel’s concern that since 1993 Hesbollah forces had been exploiting the Israeli commitment not to strike civilian targets by launching attacks on Israeli troops from civilian areas in Lebanon. Moreover,


37. See id. arts. 51(7), 58(b).
the concern was especially pertinent to the 1996 negotiations in light of the incident at Qana, which Israel insisted would not have occurred had Hesbollah forces not fired from the vicinity of the UNIFIL compound.38

The fourth provision, which reserves the right of self-defense of all parties, is a recognition, and perhaps a sanctioning, of the fact that the fighting in south Lebanon would go on. For Lebanon and Hesbollah the provision has meant that they are entitled to continue to try to force Israel to withdraw from Lebanese territory, while for the IDF and the SLA it has meant that they have the right to patrol south Lebanon in an attempt to wipe out Hesbollah.

The text also includes provisions for the establishment of two new bodies: a Consultative Group and a Monitoring Group. The Consultative Group, whose membership includes the European Union and Russia, two powers left out of the rest of the Agreement, is intended as an aid organization to assist in the reconstruction of Lebanon in the wake of the substantial damage inflicted upon it by the Israeli military forces. The Israel-Lebanon Monitoring Group (ILMG), which is studied in greater depth in Part V below, is an innovative dispute resolution mechanism intended to deal with the difficulties that would arise with respect to the enforcement of the Agreement.

V. THE ISRAEL-LEBANON MONITORING GROUP (THE ILMG)

The April Agreement itself, although sparsely worded in most of its provisions, contains several stipulations applying to the Israel-Lebanon Monitoring Group. The Agreement provides that the group will be comprised of five parties—the United States, France, Syria, Lebanon and Israel. Like the negotiations on the rest of the Agreement, the negotiations that led to these provisions were secret, but Itamar Rabinovich, who at the time served as Israel’s Ambassador to Washington and as the head of Israel’s delegation in peace talks with Syria, has written that France was included at Syria’s demand despite Israeli and American reluctance.39 After stating that the task of the group is to monitor the application of the accord, the Agreement goes on to specify that complaints will be submitted to the group within twenty-four hours of an alleged violation of the understanding.40 In addition, because the Agreement of April 26 was not itself the proper forum to set out more detailed

38. Dennis Ross underlined the importance of this provision in a radio interview when he mentioned it as the second most important change from the 1993 understanding, after the fact that this set of rules is written. He insisted, “Number two is that within this we also have gone beyond what we had before, in the sense that . . . very explicitly, civilian targets are not to be attacked, but they’re also not to be used . . . as shields from which to launch attacks.” Interview with Dennis Ross, supra note 34.

39. “It was Syrian insistence on a French role as a condition to cease-fire and agreement that brought France into the monitoring group.” RABINOVICH, supra note 19, at 233. Syria’s demand for French participation in the Monitoring Group makes sense given America’s support for Israel and France’s historical association with Lebanon and Syria in international politics.

40. This provision seems to serve purposes equivalent to those served by statutes of limitations. By bringing the complaints immediately, the states would ensure that the committee would have access to more conclusive evidence, especially if it undertook a verification mission, as initially foreseen by the parties. In addition, because the prompt submission of complaints would allow the committee to deal with a specific violation as quickly as possible, the military actors might be persuaded to hold off on reprisals until after the committee had attempted to diffuse any crisis.
procedural rules for the Israel-Lebanon Monitoring Group, the text provides that the Monitoring Group will establish working rules for dealing with the complaints.

Rather than waiting for the first meeting of the Monitoring Group and allowing the delegates to the group itself to establish a set of procedural rules, representatives of the group's member states met at the U.S. State Department to negotiate a set of working rules over the course of May 1996. The talks were near resolution when they were postponed for the Israeli elections on May 29, and the rules were eventually initialed on July 12, 1996 when the new Israeli Prime Minister, Benyamin Netanyahu, visited Washington. The exact substance of the protocol was not made public at the time, though the basic outlines of the working rules were revealed to the press, and in 1998 Israeli Minister of Justice Yossi Beilin published a book on the Israeli withdrawal from Lebanon in which he presented the text of the protocol as an appendix.

While the particular workings of the committee mechanism will be examined more closely below, several points about the procedural rules should be noted. The Monitoring Group is expressly presented as a temporary institution, to exist until "a peaceful solution through negotiations is reached." The group itself would not participate in peace negotiations. Its function is limited to "monitoring the application" of the April Agreement and "deal[ing] with" and "address[ing] complaints about violations of the Agreement. The working rules reiterate the April Agreement's list of member states, and stipulate that each delegation is to be headed by senior military personnel. The institution was to be headed by a Chair and a Co-chair, seats that would alternate every five months between the United States and France, with the United States appointing the first chair and France appointing the first co-chair.

The document on the working rules does not specify a location for the group's headquarters—each Chair is to determine its address at an appropriate diplomatic mission—though in practice both the United States and France maintained an office for the Chair in Nicosia, Cyprus. The headquarters is to

41. The delegates to the Monitoring Group did, however, continue to expand and shape the working rules at the group's first meeting and in subsequent meetings thereafter. See infra Parts VII and VIII.

42. YOSSI BEILIN, HA'MADRICH LE'YETZIAH Mi'LEVANON [A GUIDE TO AN ISRAELI WITHDRAWAL FROM LEBANON] 123-25 (1998). The text was also published with only minor differences as an appendix to Rotem Giladi's article on the Agreement. See Rotem M. Giladi, The Practice and Case Law of Israel in Matters Related to International Law, 32 ISR. L. REV. 355, app. II at 387-89 (1998). Giladi has assured the author that the text is authentic, and the author was not made to feel otherwise when he presented it to Israeli officials who participated in the committee meetings. See Appendix A for the text of the working rules.

43. ILMG Working Rules, art. 1.A. See infra Appendix A.

44. Id. art. 2.A. See infra Appendix A.

45. Id. art. 2.B. See infra Appendix A.

46. Id. art. 3.A. See infra Appendix A. One should note that while the Israeli, Syrian and Lebanese delegations have, in fact, been led by military officers, the American and French delegations have been headed by diplomatic officers.

47. Id. art. 1.B. See infra Appendix A.

48. Id. art. 1.D. See infra Appendix A.
accept complaints from Lebanon and Israel “at any time.” One should note that the limitation of the power to submit complaints to just Lebanon and Israel seems to deviate from the text of the April Agreement, which seems not to limit this power, but rather states in general terms that “[c]omplaints will be submitted to the Monitoring Group.” When the Chair receives a complaint, which is to be submitted within twenty-four hours of the alleged violation, he is to circulate a copy of the complaint among the group members and call a meeting immediately.

Complaints are to be dealt with in meetings at the UNIFIL headquarters in Naqura, a Lebanese town on the Mediterranean coast situated within Israel’s security zone several kilometers north of the Israeli border. The protocol on the working rules stipulates that if the members of the Monitoring Group determine that a complaint requires verification, representatives of the member states will actually go into the field and examine evidence. In verification missions within Lebanon, representatives of the United States, France, Lebanon and Syria (if Syria desires) will participate, and representatives of the United States, France and Israel will carry out verification missions within Israel. The working rules also establish a procedure for drafting a report dealing with complaints, a task that is to be completed within seventy-two hours of the submission of a complaint.

VI. THE CONFLICT UNDER THE APRIL AGREEMENT

By all accounts, the April Agreement achieved relative success in limiting the number of civilian casualties in northern Israel and southern Lebanon. Several former delegates to the ILMG have told the author that the Agreement reduced civilian casualties. In the opinion of one former delegate to the ILMG, the existence of the Agreement and the complimentary Monitoring Group resulted in “a dramatic decrease in the number of civilian casualties in the conflict.” Hassan Nasrallah, the Secretary-General of

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49. Id.
50. Id. art. 1.E. See infra Appendix A.
51. Id. art. 3.A. See infra Appendix A. While the document states that the meetings are to be held in Naqura, it is clear that participation in the meetings is limited to the five member states and that UNIFIL representatives will not take part.
52. Id. art. 3.B & 3.C. See infra Appendix A.
53. Id. art. 3.C. See infra Appendix A.
54. Id. art. 3.E. See infra Appendix A.
55. Interview with anonymous diplomat (May 15, 2000). The fact that there was a notable decrease in casualties was corroborated in additional interviews with anonymous sources carried out on April 14, 2000 and August 2, 2000. On the occasion of the Agreement’s one year anniversary, Israel’s military delegate to the Monitoring Group told a reporter: You can look at this as a great success. For a whole year, the residents of the north have not been frightened about Katyushas being fired on them. . . . It is having an effect. You can see it on the ground. If you count how many Israeli civilians were injured a year before the Grapes of Wrath and then count how many have been wounded this year . . . I think none. On the other side there is a big reduction of civilians or soldiers wounded in military clashes. No doubt about it.

Arieh O’Sullivan, Against All Odds, JERUSALEM POST, Apr. 11, 1997, at 8. Similarly, in December of 1996 Lebanese diplomatic sources publicly stated that “the number of casualties and the number of shells fired by Israel has drastically fallen since the ILMG started its mission.” Beirut Radio Lebanon (Lebanon), Foreign Ministry Comments on ILMG Meeting, Dec. 12, 1996, FBIS-NES-96-241,
Hesbollah, has also conceded the success of the Agreement at reducing civilian casualties, telling a reporter, "Despite our annoyance with the continuing Israeli violations, the Understanding did curb the attacks on civilians." Furthermore, the Monitoring Group itself has also expressed the sentiment that the Agreement along with its own work reduced the risk to civilians in Lebanon and Israel.

It is difficult to measure accurately the Agreement's success in reducing the level of civilian casualties. Sheer comparison of figures would not be a very meaningful exercise since the scope and nature of the fighting have evolved since 1996. Hesbollah forces became increasingly well-armed and increasingly effective, thus drawing the IDF into more frequent and more violent exchanges over the course of the April Agreement's existence. Given that the intensity of the firepower deployed on both sides increased considerably over the course of the Agreement's duration, one would have to consider it a substantial achievement that the level of civilian casualties did not see a comparable rise. In particular, during the four years of the Agreement's duration no single incident even approached the disastrous proportions of Qana, where upwards of 100 civilians were killed in a single exchange of fire. Thus, while it is impossible to know what the civilian death toll would have been in its absence, one can confidently concur with the diplomats and generals cited above that the April Agreement reduced the number of civilian casualties in the Lebanon conflict.

A. Legal Currency

As a result of its success in reducing civilian casualties, the April Agreement achieved a real currency among the parties to the conflict in south Lebanon. In public remarks on the conflict, political and military leaders in Lebanon and Israel referred to the April Agreement constantly. In February 2000, for example, Lebanese Prime Minister Salim al-Hoss conducted an interview with an Arab news network that dealt extensively with the April Agreement. Similarly, in Israel public officials spoke about nearly every incident in Lebanon in the context of the Agreement, and the Israeli political arena entertained vociferous debate as to the merits of the Agreement.
Discussion of the April Agreement also played a role in the Israeli debate on withdrawal from Lebanon. Nor was the public discussion of the April Agreement conducted at a superficial level—on the contrary, both officials and citizens consistently demonstrated an ability and a willingness to consider the intricacies of the Agreement. In addition to public statements by Lebanese and Israeli officials, Hesbollah leaders also referred openly to the Agreement and, on occasion, publicly responded to statements released by the Monitoring Group. The Agreement emerged as a point of reference for other countries as well.

The April Agreement and the Monitoring Group also gained touchstone status among the civilians of south Lebanon. In November 1997, when shells hit the village of Beit Leif and killed eight citizens, the Israeli government blamed the Shi’ite militia Amal for the attack and issued a complaint to the Monitoring Group. After the Lebanese government declined to file a formal complaint of its own, several hundred residents of south Lebanon protested against the government. The protest was held outside the UNIFIL compound in Naqura where a meeting of the Monitoring Group was taking place at the same time, and among the protesters’ demands was that they be given a chance to meet with the group.

The Agreement’s strong currency was likely related to its relatively long existence in some way. It is difficult to sort out cause and effect—did the Agreement’s international currency keep the parties paying homage to it or did their continued homage give it its currency? No doubt the causal effect worked in both directions. The important point is that, despite the fact that it was initially intended as a temporary measure to defuse a crisis and was


61. In an opinion article which he titled with an allusion to the April Agreement, prominent Labor Knesset member Yossi Beilin argued in favor of a unilateral withdrawal and defended his position, in part, by writing, “Understanding with the other side already exist [referring to the April Agreement]. Yossi Beilin, Grapes of Wrath Model, JERUSALEM POST, Dec. 21, 1997, at 10. The Agreement also plays a central role in Beilin’s book on the subject. BEILIN, supra note 42.

62. An Associated Press article, relating public statements by Israeli leaders after a clash in Lebanon killed five Israeli soldiers, is representative: “Israeli military sources said Monday that [Hesbollah] guerrillas mounted the ambush from a civilian area and fled back to it, therefore violating the April Agreement. But Deputy Defense Minister Ori Orr said [Hesbollah] did not break its earlier promises when it killed the soldiers Monday.” Karin Laub, Peres: Israel Will Retaliate for Lebanon Ambush—Eventually, ASSOCIATED PRESS, June 10, 1996, available at 1996 WL 4427032.

63. When the Monitoring Group issued a statement regarding an Israeli complaint about a roadside bombing in Lebanon, a Hesbollah representative publicly retorted, “How could the Lebanese delegate have agreed to the issuing of such a statement containing such confusion and such language?... We lodge a protest against such language, and do not agree to any amendment of the clauses of the April Understanding.” ‘Why Has Israel Reoccupied Arnoun?,’ MID EAST MIRROR, Apr. 21, 1999, at 7.

64. American, French, Egyptian and other world leaders often publicly urged the parties to uphold the Agreement, and leaders of influential inter-governmental organizations spoke about events in the Middle East in the context of the April Agreement. The Chair’s statement concluding the G-7 summit of June 1996, for example, included the following exhortation: “We urge all parties to adhere to the 26 April 1996 Understanding which restored calm along the Lebanese-Israeli border.” G-7 Summit Chair’s Statement, Toward Greater Security and Stability in a More Cooperative World, June 29, 1996, available at http://www.state.gov/www/issues/economic/summit/Chair.html.

viewed by many with skepticism, all of the parties to the conflict in south Lebanon continued to honor the Agreement over a period of nearly four years.

As with the 1993 understanding, application was not achieved on a level of 100 percent. Indeed, the Monitoring Group met 103 times during its existence to deal with 607 violation complaints. Nonetheless, all of the parties to the conflict continued to treat the Agreement as the expected norm of behavior. During the Agreement’s duration, leaders on both sides constantly invoked it in denouncing attacks from the other side or in justifying attacks of their own forces as within the bounds of permissible action. Moreover, the very testing of the April Agreement may itself have played an important role in solidifying the principles encapsulated in the convention as norms of behavior. The repeated military encounters and the consequential diplomatic exchanges in the forum of the Monitoring Group may be viewed as the process through which the parties established the true normative value of these principles.

B. Testing the Agreement in the Web of International Law

The parties occasionally responded to perceived violations of the April Agreement with force, but such coercive reactions did not necessarily undermine the agreement’s validity and may, in fact, have strengthened it. As it had under the unwritten 1993 understanding, Hesbollah at times responded to collateral deaths of Lebanese civilians by launching Katyusha rockets at Israeli population centers. Israeli forces often fired on civilian areas in Lebanon when coming under fire from Hesbollah fighters within those areas. In June of 1999 and February of 2000, the Israelis struck at civil infrastructure targets in Lebanon after Hesbollah, according to Israeli claims, blatantly violated the Agreement. These forceful responses in violation of the April Agreement would appear to contravene the Law of Reprisals, which prohibits such retaliatory attacks.66

Representatives to the Monitoring Group may have sought to defend such actions as justified under the April Agreement as, for example, the Lebanese delegate did in July of 1997 when he attempted to legitimate the firing of a Katyusha rocket into Israel by arguing that “the launching of the Katyusha was linked to repeated Israeli attacks on Lebanese civilians” and that “the Understanding aims at protecting all civilians equally.”67 In response to the Lebanese delegate’s claim, the Monitoring Group “determined that the action, whatever the motivation, was a violation of the April 26, 1996 Understanding.”68 In the same vein, the group announced a clear policy a month later when it released a press statement reading in part, “The Group declared that the concept of retaliation upon civilian targets is inadmissible and incompatible with the Understanding.”69

66. See First Additional Protocol, supra note 36, at art. 51(6).
68. Id.
69. ILMG Statement 25, Aug. 23, 1997. The delegates issued this strong statement in response to the deliberate shelling of Sidon by SLA forces. In the same press release, they also “condemned” the deliberate launching of Katyusha rockets into Israel and termed the action a “serious
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Israeli officials have publicly defended the IDF and SLA's right to return fire as a legitimate action of self-defense. The text of the April Agreement itself seems to recognize the principle of self-defense, though it does so with the important caveat that the right to self-defense should be exercised "without violating [the] understanding." Israeli officials have also pointed to a confidential side-letter issued by Secretary of State Christopher when he initialized the April Agreement as legitimizing IDF actions against Hesbollah forces operating within civilian areas. The letter includes a passage that reads:

The United States understands that if Hezbollah or another group in Lebanon acts contrary to the understandings or attacks Israeli forces in Lebanon, whether this attack involves firing weapons, an ambush, suicide missions, roadside explosive devices or another form of attack, Israel has the right, in response, to take appropriate defensive actions against the armed forces which perpetrated the attack. Regarding the prohibition against using certain areas to launch attacks from, the United States understands that the prohibition does not relate only to attacks involving the firing of weapons, but also to the use of these areas by armed groups as a base to carry out those activities.

Israeli officials have read the passage broadly, arguing that it endorses the IDF's right to fire on civilian areas if such action is necessary for self-defense. Whether these reprisals violated the April Agreement and/or the Law of Reprisals, they do not seem to have deprived the Agreement of its authoritative force. Indeed, the practice of responding to breaches of the Agreement with retaliatory attacks may have been necessary to some extent to ensure that the parties perceived that the Agreement was backed up with a coercive threat. This threat may have lent the Agreement greater credibility. While one might lament the damage and suffering these reprisals exacted upon civilians in each specific incident, one cannot argue that the occurrence of such attacks reflects a general disregard of the Agreement. On the contrary, all sides understood such actions, whether their own or those of their adversary, as deliberate moves to publicly assert and reinforce the authority of the Agreement.

Military actors, especially on the Israeli side, did complain that the Agreement burdened their forces with excessively heavy restrictions. But despite occasional noises of discontent both sides continued to abide by the Agreement and apparently perceived their antagonists to be honoring it as well. Except for a brief renunciation by a departing Israeli government, both violation of the Understanding." The delegates also condemned the firing of Katyushas into Israel in their statement of July 13, 1999, in which they also condemned the Israeli strikes on Lebanese civil infrastructure of the preceding month, and branded the actions violations of the Agreement. See ILMG Statement 85, July 13, 1999.

70. Bar'el, supra note 28.

71. In this vein, consider statements made by Israeli Prime Minister Ehud Barak after Israeli raids on Lebanese power stations in February 2000. Barak announced: "Our operation yesterday is intended to signal to the Lebanese Government, to the Hezbollah and indirectly even to the Syrians that Israel is not ready to accept unilateral violations of this agreement and we will do whatever it takes to defend our citizens." Barak Says He Will Do Whatever Necessary to Protect Israelis, AGENCE FRANCE-PRESSE, Feb. 8, 2000, LEXIS, News Group File.

72. In their periodic briefings of the Knesset Foreign Affairs and Defense Committee, Israeli military leaders have told the political leaders that Hesbollah has abided by the Agreement. See, e.g., Liat Collins, Shahak Warns Palestinian Anger Is Rising, JERUSALEM POST, May 21, 1997, at 1; Gideon
Israel and Lebanon remained party to the April Agreement from its inception in April 1996 until at least February 2000, and all parties to the conflict continuously (though not always consistently) honored it during this period.\textsuperscript{73}

VII. THE ISRAEL-LEBANON MONITORING GROUP AS A JUDICIAL INSTITUTION

A. Logistics and Procedure

In thinking about the role that the April Agreement and the ILMG played in shaping the situation in south Lebanon in the last four years, one must be careful to distinguish between the convention and the mechanism. While the mechanism, the Israel-Lebanon Monitoring Group, existed solely to monitor the application of the convention, it is a distinct entity deserving of examination as a unique international institution.

Including three initial meetings at which additional procedural rules were discussed, the Monitoring Group met 103 times\textsuperscript{74} to deal with complaints by Lebanon or Israel. At one of the initial meetings, the delegates to the Monitoring Group agreed on a standard form for submitting complaints to the Chair’s office.\textsuperscript{75} After a complaint was submitted, the headquarters arranged for a meeting of the Monitoring Group as soon as was logistically possible.\textsuperscript{76}

Because of the complicated logistics of getting to and departing from the UNIFIL compound, the delegates did not return to their countries in the middle of ILMG meetings, which were often marathon sessions of four days

\textsuperscript{73} The Israeli renunciation, in the final days of the lame duck Netanyahu government, may actually serve to demonstrate the strength of the April Agreement. Even the Netanyahu government, whose main participants were openly critical of the Agreement from its inception, was not able to renounce the Agreement until it was a basically meaningless action. Netanyahu’s government announced its intention not to be bound by the April Agreement in its final days when it was clear that the incoming Barak government would immediately reenter the convention. One should note that Syria briefly boycotted the Monitoring Group, but the move was a temporary political stand intended to show solidarity with the Arab League, not a calculated decision not to abide by the April Agreement. See David Rudge, \textit{Syria Apparently Boycotting Monitoring Committee}, JERUSALEM POST, Apr. 4, 1997, at 20.

\textsuperscript{74} This figure also includes two meetings in May and June of 1999 that were convened for the purpose of considering the same set of complaints. The Israeli delegation reportedly left the first meeting in order to consult with the Israeli government, but the delegates convened another meeting twelve days later to finish their business. The author has chosen to consider these as two separate meetings. See ILMG Statement 80, May 20, 1999; ILMG Statement 81, June 1, 1999.

\textsuperscript{75} Interview with anonymous diplomat (Aug. 2, 2000). This form apparently standardized the procedure for submitting complaints and specified what information—i.e., time, place, description of violation—was needed in order to process and consider each complaint.

\textsuperscript{76} The July 12, 1996 Protocol on the Working Rules for the ILMG stipulates that upon the submission of a complaint the Chair will call for a meeting “immediately.” ILMG Working Rules, art. 1.E. See infra Appendix A. A review of the Monitoring Group’s public statements shows that in practice there was a wide variance in the amount of time between the submission of complaints and the convening of meetings to consider them. Sometimes meetings were convened within twenty-four to forty-eight hours after the receipt of a complaint, while in other cases complaints were considered as long as two weeks after they were submitted. Logistical constraints probably explain the variance in the group’s response time.
or more. After late night talks, the delegates rested for a few hours in the
conference room or in sparse sleeping rooms at the UNIFIL compound.

Initially, as stipulated by the July 12, 1996 protocol on procedural rules,
the delegates to the Monitoring Group planned to carry out visits to inspect
the sites of alleged violations of the Agreement. However, except for two such
exercises early in the group’s existence,\(^7\) it did not implement on-site
inspections. Some representatives have pointed the finger at the other side as
the party blocking the inspections, while other representatives have told the
author that there simply was no consensus among the parties that such
missions should be carried out.\(^8\)

While army generals led the Israeli, Lebanese and Syrian delegations,
diplomatic officers led the American and French delegations. The Israeli,
Lebanese and Syrian generals were supported by a representative of their
diplomatic corps at the ambassadorial level as well as a military representative
knowledgeable about events in the field who could present or rebut evidence.
The Israeli delegation also included an officer from the International Law
Branch of the IDF Judge Advocate General’s Office. The composition of the
American and French delegations was less consistent, with each team usually
comprised of four to six representatives. An army general and a State
Department or Foreign Ministry officer supported the diplomatic leader, with
various aides and secretaries also present to assist in logistics.

The delegates to the Monitoring Group sat at a large oval table in a
conference room at the UNIFIL compound. As might be expected from such a
complicated diplomatic exercise, a fixed seating arrangement was established
by an initial agreement.\(^9\) The Israeli, Lebanese and Syrian representatives
spoke to each other through the mediation of the American and French
representatives rather than directly. Delegates from both Israel and Lebanon
have said that the meetings were tense but professional.\(^0\)

When a complaint was raised for discussion at an ILMG meeting, the
first order of business was the presentation of a showing of technical evidence
by the parties. The delegates arrived at the meetings with bomb fragments,
aerial and regular photographs, maps, video recordings and other technical
data to support or refute complaints. An excerpt from a news report on one of
the group’s meetings may be instructive as to how the delegates carried out
these evidentiary displays: “The Monitoring Group saw a video film which
showed shells being fired from a vehicle close to a house in Majdal Salim.
The vehicle was destroyed a few moments later by an air-to-ground missile
fired by an Israel Air Force (IAF) helicopter gunship, the IDF Spokesman

\(^7\) ILMG Statement 5, Oct. 18, 1996; ILMG Statement 7, Dec. 12, 1996.
\(^8\) Interview with anonymous diplomat (May 15, 2000); Interview with anonymous
diplomat (Aug. 2, 2000); Interview with anonymous Major and First Lieutenant of the IDF Judge
\(^9\) The Chair of the meeting sat at the head of the table with his colleagues. On his left sat
either the American or French delegation (whichever was not chairing the meeting), then the Syrian
delegation, the Lebanese delegation and the Israeli delegation, in that order. See Interview with
anonymous diplomat (Apr. 14, 2000); Interview with anonymous diplomat (May 15, 2000).
\(^0\) See Interview with anonymous diplomat (Apr. 14, 2000); Interview with anonymous
diplomat (May 15, 2000); Interview with anonymous diplomat (Aug. 10, 2000).
said. Monitoring Group delegates report that the military representatives often quickly reached consensus as to whether a given complaint was legitimate or not, as the technical evidence was often conclusive. Once the technical evidence was discussed, the diplomatic representatives began to formulate the group’s confidential report and its public statement, always composed in English. ILMG delegates have said that the process of writing the text of the statement consumed the bulk of the meeting time, as the diplomatic representatives negotiated the carefully crafted document for hours on end. Because the group voted by consensus, a single holdout on a single word could stall the process indefinitely.

The working rules of the Monitoring Group call for it to draw up a report within seventy-two hours of the submission of a complaint. The group did not adhere to this rule because of logistical challenges, though this deviation was apparently agreed upon by consensus. Delegates to the group report that the process became more streamlined with time, as they gained trust in one another and adopted agreed-upon wordings for particular types of incidents.

The reader will see below that, as they became more comfortable with the institution, Israel and Lebanon both increased the number of complaints they submitted to the ILMG. Yet despite the increased volume, the Monitoring Group generally shortened the length of its meetings over time. As they gained experience, the delegates dealt with a larger number of complaints per day of meeting. While the delegates were able to handle an average of one complaint per day of meeting in 1996, by 2000, they had raised this figure to an average of fourteen complaints.

The drafting process was not a simple procedure. The first step of the process, that of writing the confidential internal report, was simpler than drafting the group’s press release. During deliberations concerning the complaints, delegates always spoke from a written text. After finishing his statement, the delegate would hand the text to the Chair. The collection of the written statements served as a basis upon which to formulate the internal report, which read like a kind of executive summary of the proceedings. The

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81. David Rudge, *Grapes of Wrath Monitoring Group: IDF, SLA Responsible for Civilian Death*, JERUSALEM POST, Dec. 22, 1998, at 5. See also David Rudge, *IDF Colonel Wounded in Zone*, JERUSALEM POST, Nov. 28, 1997, at 3 (“Israel’s representative to the Monitoring Group submitted fragments of a mortar round which hit the village. Writing on it showed that it was made by Iran’s military industries.”); Interview with anonymous diplomat (Apr. 14, 2000); Interview with anonymous diplomat (May 15, 2000); Interview with anonymous diplomat (Aug. 10, 2000).


83. According to a diplomat who took part in the meetings of the ILMG, the diplomatic representatives would consult English, French, Arabic and Hebrew dictionaries as well as dual-language dictionaries in their efforts to find agreeable words. O’Sullivan, *supra* note 55, at 8. See Interview with anonymous diplomat (Apr. 14, 2000). See also Interview with anonymous diplomat (May 15, 2000); Interview with anonymous diplomat (Aug. 10, 2000).

84. ILMG Working Rules, art. 3.E. See infra Appendix A.

85. Interview with anonymous Major and First Lieutenant of the IDF Judge Advocate General’s Office (Aug. 10, 2000).

86. Numbers compiled by author from the ILMG statements, dividing the number of complaints handled at each meeting by the number of days the parties met.
texts of the statements themselves were attached to this internal report as an appendix along with copies of the violation forms submitted for the meeting.

After drawing up the internal report, the Chair turned to the more complicated task of composing the public statement. The Chair wrote and circulated a draft of a public statement among the parties so that they could present him with separate comments on it. After revising the draft according to the parties' demands, the Chair resubmitted it to the parties for further criticism. This process repeated itself over and over again until the parties had reached consensus on the text of the public statement.

The Monitoring Group's statements aimed at resolving the complaints that had been submitted. As the reader will observe below, although the group was often unable to determine whether or not a complained-of action constituted a violation of the April 26, 1996 Agreement, it frequently did make such a determination. Furthermore, even in cases in which the group could not decisively state whether the action at hand constituted a breach of the Agreement, it often issued some statement putting forth findings of fact.

One should note that the Monitoring Group was not armed with any sanction power beyond the public condemnation that it could deliver through its public statements. However, this ability to release a widely disseminated report condemning the actions of any given party and endorsed by that party itself did endow the Monitoring Group with a substantial sanction. Thus, the Israel-Lebanon Monitoring Group served as a kind of arbitral or judicial institution, commissioned by the member states to issue authoritative findings of fact and resolve disputes between Israel and Lebanon regarding the application of the April Agreement.

The ILMG delegates' task of resolving these disputes must have been made considerably more difficult by the fact that the IDF and Hesbollah both subscribe to military doctrines that call for constant review and modification of military tactics. With both forces often changing the nature of their day-to-day field operations during the Monitoring Group's existence, the delegates were forced to repeatedly consider new types of incidents and how to deal with them. One wonders not only how the constant changes in military tactics may have affected the work of the Monitoring Group, but also, conversely, how the April Agreement played a role in influencing these tactical changes.

87. Delegates to the ILMG report that the procedure changed somewhat over time and that sometimes the drafting was done in a more group-like fashion, without each party retiring to a separate room. Interview with anonymous diplomat (Aug. 10, 2000).

88. Commenting on how the constant changes in tactics complicated the Monitoring Group's work, an IDF lawyer who participated in the meetings stated:
Both sides were constantly changing tactics and this made the committee's work more challenging. The delegates had periods, for example, when they were dealing mostly with mines. Then there might be a period with many complaints about the firing of anti-tank weapons. The delegates would then have to start from scratch in determining how to deal with the complaints, what is legitimate and what is not.
Interview with an anonymous Major and First Lieutenant of the IDF Judge Advocate General's Office (Aug. 10, 2000).

89. Israeli Brigadier-General David Tzur has speculated that in its first year of existence the Agreement caused Hesbollah to rely more heavily on roadside bomb ambushes and anti-tank attacks and less on mortar and other heavy fire. See O'Sullivan, supra note 55, at 8.
Notwithstanding several instances in which the Monitoring Group was unable to agree as to whether it had jurisdiction to hear certain types of complaints, the group seems generally to have dealt effectively with most issues it faced. It is noteworthy that a group consisting of delegates from five countries, each with its own distinct agenda and three of which have been embroiled in a hot military conflict for the better part of the past two decades, was able to function so effectively. Such effective and efficient work is unusual in international institutions in general, let alone under the specific circumstances in the case at hand. Perhaps one explanation for the group's relative success is the relation between its work and public international law. The ILMG applied only a single body of law—the April Agreement between Israel and Lebanon. The group was not competent to resolve complaints based upon violations of public international law in general. The delegates thus dealt with a small, well-defined body of law that they were able to handle adeptly.

Furthermore, the procedural style of the group's meetings was more akin to a military meeting than an adversarial legal forum. The delegates concerned themselves with sorting out events on the ground and trying to ensure that the situation would stay under control. The delegates did not, for example, turn to public international law to settle arguments about the proper definition of a "civilian populated area" under the April Agreement. Had they done so, it is unlikely that the military officers leading the Israeli, Lebanese and Syrian delegations would have been moved. These men, with their years of military experience, understood what was acceptable under the convention and would not be interested in legal pontification. They could communicate with one another on a simpler, more practical level and adjust the rules of the system as they saw fit, without recourse to legal theory or outside bodies of law.90

This functional focus does not mean that the ILMG was not a legal institution. On the contrary, from the perspective of the New Haven scholar, the ILMG was a quintessential legal institution, settling disputes between conflicting parties, issuing decisions that carried a considerable sanction power based in public castigation and establishing the norms of behavior for the ongoing conflict. There can be no doubt that the activity of the Israeli-Lebanon Monitoring Group substantially affected the behavior of the parties to the conflict in Lebanon. Indeed, it interpreted and reinforced the norms that informed expectations on all sides regarding acceptable behavior in the conflict. The fact that the participants in the ILMG's adjudication process framed their arguments in terms of the real-life events in the field rather than theories of international law in no way diminishes the legal character of the institution, and in fact may have been an important factor enabling it to effectively carry out its work as a legal institution.

90. In this respect, Jonathan Schwartz, Deputy Legal Adviser of the U.S. Department of State, has commented:

The Monitoring Group was intended to be a very streamlined organization that could react quickly to alleged violations of the cease-fire. Military representatives comprise the group. It is not a lawyers' forum for debating technicalities but rather one in which military experts from the five countries—Israel, Lebanon, Syria, France and the United States—can discuss alleged violations and decide how to respond.

B. Fostering Adherence to the Legal Convention

The Monitoring Group’s single stated function was to monitor the parties’ adherence to the April Agreement. The establishment of a committee to consider complaints of violations of the convention endowed the Agreement with day-to-day salience. The very act of periodically meeting to review each side’s performance under the Agreement seems to have lent the written text of the convention greater force. Group members, knowing that they would have to meet repeatedly with the same delegates and defend their state’s actions had incentives to try to persuade authorities in their country to abide by the Agreement. More importantly, knowing that the Monitoring Group would release a statement at the end of each session and that news media worldwide would have an opportunity to examine both sides’ adherence to the Agreement, the states’ leaders had incentives for compliance. Furthermore, while both sides occasionally expressed frustration at the other’s perceived indifference to violations, the possibility of discussing violations and working to reduce them may have given the parties greater faith in the potential of the Agreement to restrain their adversary’s actions. In this respect, the Monitoring Group has itself noted “the important role the Group can play in protecting civilians by building mutual restraint, diffusing tensions, and preventing escalation.”

The dynamics that made the Monitoring Group an effective mechanism for enhancing each side’s performance are difficult to define. In fact, in some sense it may have been just the perception that the Monitoring Group would have such an effect that caused it to be effective. In any event, both the individual delegates to the Monitoring Group, and the group in its institutional capacity, have repeatedly expressed the opinion that the ILMG enhanced application of the written Agreement.

92. Interview with anonymous diplomat (Apr. 14, 2000); Interview with anonymous diplomat (May 15, 2000). Uri Lubrani, Israel’s longtime coordinator on Lebanon, expressed this view when he told a reporter,

I think we have to be very vigorous in our contacts with the Monitoring Group so that it will do whatever is necessary in order to get the other side to adhere fully to the understandings. We have to find ways of proving our case as clearly and unequivocally as possible and in this way put pressure on Syria and the Lebanese government to ensure that the understandings are upheld.

93. See, e.g., ILMG Statement 50, June 23, 1998 (“[T]he Group . . . noted that the positive and responsible conduct of both sides in presenting and evaluating evidence and in drawing appropriate conclusions highlights the Group’s effective role in protecting civilians and reducing tensions in the region.”).
Just as the April Agreement, over time, gained currency with the parties to the conflict, so too did the Monitoring Group gain a certain stature with the member states as they became increasingly familiar with the institution. A former delegate has said that as the parties recognized the ILMG’s ability to lend complaints an air of authenticity and significance, a competition developed between Israel and Lebanon to stay even with one another in terms of the number of complaints each was submitting to the group. The graph above illustrates that the parties did indeed track one another extremely closely in their submission of complaints.

Of course, one might explain the graph above by arguing that each party just happened to experience roughly the same number of violations in each month of the April Agreement’s duration or that because the parties retaliated against violations inflicted on themselves with violations of their own, the figures on the two sides mirrored one another. Several diplomats have indicated, however, that some sense of competition also shaped the graph above. The parties’ concern with the relative number of complaints each submitted to the Monitoring Group, as reflected in the graph, demonstrates the significant faith they placed in the power and meaning of the Monitoring Group.

94. Interview with anonymous diplomat (Aug. 2, 2000).
95. Interview with anonymous diplomat (May 15, 2000); Interview with anonymous diplomat (Aug. 2, 2000).
The graph also illustrates another noteworthy trend over time in the parties’ use of the Monitoring Group mechanism. With the passage of time, the parties seem to have become increasingly comfortable with the institution and increasingly willing to turn to the group when they felt they had been wronged by their adversary. 96

VIII. ILMG PUBLIC STATEMENTS—RECORDING A JURISPRUDENCE

For scholars and observers of the April Agreement and the Israel-Lebanon Monitoring Group, the 103 public statements generated by the Monitoring Group are an invaluable resource. The statements deserve special scrutiny as the group’s sole official public record. When combined with additional information gleaned from interviews and public sources, an analysis of the ILMG’s statements reveals much about how the Monitoring Group conducted its work.

A critical analysis of the group’s statements reveals much not only about how the Monitoring Group worked, but also about why it worked—why it served as such an effective mechanism for encouraging the parties to adhere to the Agreement and why the parties so actively participated in the group for so long. The statements, which were released to media organizations worldwide, carried enough of an authoritative voice to push the parties towards compliance with their 1996 pledges. The Monitoring Group was able to assign responsibility for specific actions to one party or another and to condemn events that harmed civilians in southern Lebanon and northern Israel. But because the parties crafted the press releases through a joint and consensual drafting process, they were able to control the content of the statements enough to protect themselves from an unbearable level of castigation and public criticism. This drafting process resulted in statements whose messages were delivered with the subtlety and grace necessary for such a delicate diplomatic exercise. Thus the parties were able to release announcements

96. Interview with anonymous Chair of the ILMG (Nov. 24, 2000). One should note that while the Monitoring Group did, by most accounts, serve as a relatively successful tool to increase application of the April Agreement and to allow communication between Israel, Syria and Lebanon, it was not able to expand its usefulness to achieve other objectives, nor was it able to agree on an expansion of the 1996 Agreement itself. Israel reportedly proposed to the Monitoring Group that the April Agreement be expanded to include a prohibition on the use of roadside bombs, but Lebanon and Syria rejected the proposal. Israeli Plan for Ban on Roadside Bombs in Lebanon Rejected, AGENCE FRANCE-PRESSE, Sept. 15, 1997, LEXIS, News Group File. Likewise, an American idea to use the Israel-Lebanon Monitoring Group to create a military hotline between Israel, Syria and Lebanon apparently failed, as did proposals to expand the Monitoring Group into a mechanism to monitor an Israeli-Lebanese agreement on Israeli withdrawal from Lebanon. See US Tries To Set Up Israel-Syria “Hot Line,” AGENCE FRANCE-PRESSE, Nov. 13 1997, LEXIS, News Group File; Lebanese Premier Against Changing ILMG Form, WORLD NEWS CONNECTION, Nov. 6. 1999. The failure of the Monitoring Group to expand its role or to expand the April Agreement demonstrates its limited and confined purpose. The group could effectively serve as a monitoring mechanism to increase adherence to the April Agreement and lower the prospects of all-out war without evolving into a cure-all multipurpose institution. The fact that other functions were not added to the group’s mandate reflects the non-essential value of these functions, rather than any inherent disability in the group itself. The parties remained faithful to the Agreement and the Israel-Lebanon Monitoring Group without expanding either the convention or the mechanism because they fulfilled their limited but crucial functions in their original forms.
which, while robust enough to serve as a disincentive to misconduct, were sterilized enough to allow the parties to continuously and actively participate in the group’s deliberations.

The July 12, 1996 protocol on the working rules of the Israel-Lebanon Monitoring Group allows for two options in regards to the group’s reporting function. If there is unanimity among members of the group, the working rules stipulate that the report “will identify the party responsible for not complying with the understanding, will address and deal with the situation and will contain recommendations for enhancing compliance with the understanding.” If there is no unanimity, the rules provide that the report “will contain a description of the Monitoring Group’s discussions of the complaint and the results of the verification mission, and the matter will be referred to the Foreign Ministers for follow-up.”  

A review of the record shows that in practice the delegates settled on a kind of hybrid path between these two approaches. The delegates authored a confidential internal report at the end of each meeting that summarized the events of the meeting and recorded the arguments presented by each side. In addition, as they agreed to do at their first meeting, they unanimously or consensually released a public statement at the end of each meeting which fell somewhere between the two options envisioned by the working rules in terms of its substantive resolution of the dispute at hand. While the delegates seem never to have referred an issue to their foreign ministers, they often failed to “identify the party responsible for not complying with the understanding.” Many of the group’s press releases simply reviewed the claims made by the parties and acknowledged that the delegates were not able to agree on an apportionment of responsibility or culpability between the parties, but did so unanimously.

The public statements issued by the Israel-Lebanon Monitoring Group comprise a truly unique and remarkable set of documents. During its nearly four years of existence the group dealt with a tremendous variety of issues and created a fascinating historical record. Like fact-finding judges of a court of law, the delegates to the Monitoring Group have endowed scholars and the public at large with a set of decisions that together form a body of instructive

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97. ILMG Working Rules, art. 3.E. See infra Appendix A.
98. ILMG Statement 1, Aug. 8, 1996.
99. The working rules speak of “unanimity” among the parties, but as Rotem Giladi has pointed out, in practice the group’s decision-making process may more accurately be termed “consensual.” While unanimity implies the requirement of an affirmative vote of approval, consensus implies the less stringent requirement of the absence of formal objection. See Giladi, supra note 42, at 379 & n.107.
100. One delegate has reported that the Monitoring Group did refer issues to the foreign ministers of the member states on three occasions, but other delegates have said that the group never referred an issue to the parties’ foreign ministers. However, even the delegate who insisted that the group had passed matters up to the foreign ministers related that such a move implied only telephone calls between Washington or Paris and Jerusalem and between the western capitals and Beirut or Damascus, not an actual meeting of foreign ministers or even a direct phone call between the Israeli and Lebanese or Syrian foreign ministers. All of the delegates agreed that political considerations, rather than lack of opportunity, explain the non-use of this option. While the delegates faced issues which they could not resolve as a group, they were not able to refer such matters to the foreign ministers due to political exigencies that would not allow the foreign ministers to contact one another directly. Interview with anonymous diplomat (Apr. 14, 2000); Interview with anonymous diplomat (May 15, 2000); Interview with anonymous diplomat (Aug. 2, 2000).
Clashing Behavior, Converging Interests

jurisprudence. A student of the group’s work can refer to this body of law for guidance as to how the members of this institution evolved over time in their thinking about particular issues and as to how the institution as a whole, a conglomeration of five veto-enabled parties, developed over the course of the conflict.

A. Increasing Competency

A review of the Monitoring Group’s public statements shows that, over the course of its existence, the group became increasingly able to determine that a particular action constituted a violation of the April Agreement and to apportion culpability for the incident. Whereas the group’s early press releases simply reviewed the claims put forth by each side and only sometimes stated that one side or another was “responsible” for a given incident, the group’s later announcements often directly proclaimed that one side had committed a particular action in “violation” of the 1996 Agreement. As the reader will see in the discussion below, the group’s tendency towards greater competence to assign blame allowed it to transform its jurisprudence on particular issues. Thus, for example, while in its early existence the Monitoring Group handled claims of exchanges of fire to and from civilian areas by merely repeating the principles encapsulated in the April Agreement, in its later years the group was often able to assign culpability to a given party for such incidents.

Several factors seem to have propelled the group towards greater competence. As one might expect, the governments of the five member states approached their participation in this completely new and untried institution with utmost caution in the summer of 1996. As the parties became more familiar with the workings of the mechanism and observed the results of the group’s work, they became willing to lend the institution more substantial responsibility. As the reader has seen, this heightened level of comfort with the Monitoring Group’s work not only led the member states to allow the group a stronger hand, but also led Israel and Lebanon to make complaints more frequently. Furthermore, as the parties became increasingly comfortable with the Monitoring Group mechanism, they may have been able to think more about the longer term implications of the ILMG’s jurisprudence and thus become more willing to allow the group to establish specific principles of law by finding one party culpable for a given incident. A former Chair of the Monitoring Group has said that each party eventually recognized that if it allowed the Monitoring Group to find it at fault in a given incident then the principle thereby established would enable the group to find the other side at fault if it committed the same action in the future.

Undoubtedly, the Monitoring Group’s trend towards greater competency also reflects an increased level of comfort among the individual delegates to the institution. Over time the delegates could be expected to have become more familiar with their counterparts and to have developed routines of dispute resolution. The delegates seem to have developed personal

101. Interview with anonymous Chair of the ILMG (Nov. 24, 2000).
relationships during the course of their work together, and their closer ties may have facilitated the move towards greater competency as an institution.

Although the governments of the member states retained ultimate control over the group's public statements, indeed over its very existence, the institution may have developed a life of its own in some sense. Once a member state had agreed to a certain outcome and a particular wording of the public statement in a given case, it would be difficult for its delegation not to allow a similar resolution in a similar case in the future even in circumstances where it was the wrongdoer. This was especially true because the Chair and Co-chair of the group cajoled the parties to maintain an even course. Thus, the Monitoring Group slowly but steadily developed a body of jurisprudence that was progressively more principled and more likely to find the parties guilty of violating the April Agreement.

B. The Structure of the Statements

Because the group's statements evolved so much over time and because they dealt with such a wide variety of issues, it is difficult to describe the contents and language of a "typical" statement. Nonetheless, the structure of the press releases did follow a given pattern. Each statement opened with an announcement that the Monitoring Group met on a particular day or number of days in order to consider a given number of Israeli and Lebanese complaints.

The announcement then continued to present the various claims offered by each party at the meeting. While both parties offered numerous and varied complaints over the course of the Monitoring Group's existence (Israel submitted 298 complaints; Lebanon submitted 309), Lebanese complaints most often accused IDF or SLA forces of firing on civilian areas, and Israeli complaints most often accused Hesbollah of firing from civilian areas or of firing into southern Lebanese villages or Israeli territory. In presenting a complaint, the press release often stated that the Monitoring Group had accepted the occurrence of the underlying event (though not necessarily all of its surrounding details) as factual. The Monitoring Group's press release of September 29, 1997, for example, reported, "The Monitoring Group acknowledged that in the village of Beit Yahun a civilian woman was wounded in her leg and her home damaged in the course of a rocket attack by a Lebanese armed group on a military position of forces cooperating with Israel." The factual reporting was often quite detailed, reflecting the

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102. Although it is difficult to label any given statement as "typical," a sample statement is attached to this Article as Appendix B in order to give the reader a better sense of what these announcements entailed.

103. For example, the ILMG statement of January 12, 1998, begins with the following paragraph:


precision of the technical evidence that the parties usually submitted. For example, the ILMG statement of July 7, 1998, read in part:

With regard to the Lebanese violation complaint, the Monitoring Group acknowledged that on July 2, during the course of the military operations referred to above, five houses in the village of Alta Ez Zott were damaged by 120 mm shells and 12.7 mm machine-gun fire fired by Israeli military forces and those cooperating with them. In addition, two 81 mm rounds and four 120 mm rounds fired by the same units impacted in Haddatha, damaging three houses.\textsuperscript{105}

After stating that the Monitoring Group had accepted a certain set of circumstances as factual, or sometimes without making such an announcement, the press release introduced the discussion of each submitted complaint by reciting the claim put forth by a given party. In the case above, in which the Monitoring Group acknowledged that a woman was wounded in Beit Yahun, the delegates continued their composition of the press release by relating, “The Israeli delegate stated that the home was one hundred meters from the military target and that the attack was carried out from within the village of Bara’shit, thus running counter to the Understanding in two ways.”\textsuperscript{106}

After presenting a claim of one of the parties, the statement usually proceeded with the defense offered by the party against whom the complaint was filed. According to the record as presented by the press statements, in some rare cases the responding party did not, in fact, offer a defense. For example, when Lebanon complained on July 12, 1997 that a Lebanese civilian had been killed by IDF or SLA tank fire, according to the press release, “[t]he Israeli delegate stated that the farmer was mistaken for a member of a Lebanese armed group and expressed deep sorrow for the death.”\textsuperscript{107} However, the party against whom the complaint was submitted usually did present some sort of defense. Such a defense could assume many forms. Often the defense presented a version of the same story with slightly changed facts and argued that under this fact pattern no legitimate claim could be sustained. Thus, for example, with regard to the Israeli complaint discussed in the preceding paragraph, in which the Israeli delegation argued that the rocket attack was launched from within a civilian area and impacted on a civilian area one hundred meters from the intended military target, the press release presented the Lebanese defense as follows:

The Lebanese delegate stated that the house was twenty meters from the military target, that the military position of forces cooperating with Israel ought not be established so close to civilian houses since positioning military units close to houses could endanger civilians and that the attack did not run counter to the Understanding since it was launched from a safe distance away from civilian populated areas.\textsuperscript{108}

At some of the group’s meetings, the parties seem to have presented sharply different understandings of the same incident. For example, in relation

\begin{itemize}
\item\textsuperscript{105} ILMG Statement 52, July 7, 1998.
\item\textsuperscript{106} ILMG Statement 27, \textit{infra note} 104.
\item\textsuperscript{107} ILMG Statement 22, \textit{infra note} 67.
\item\textsuperscript{108} ILMG Statement 27, \textit{infra note} 104.
\end{itemize}
to an Israeli complaint in January 1998 concerning a roadside bomb detonated by Hesbollah, the ILMG announced,

The Monitoring Group acknowledged that on January 17, 1998 a roadside bomb placed by a Lebanese armed group was detonated on a road near Yaroun, damaging a vehicle. The Israeli delegate stated that the car was owned by a civilian who had used it daily, that there was no military target in the area and that no precaution had been taken in order to avoid affecting civilians; hence it was a violation. The Lebanese delegate stated that the target was an Israeli patrol, that no civilian had been affected, that the car was abandoned and that complaints should not be filed regarding damages to abandoned property. He added that there was no violation.109

In some rare instances, the delegates of the responding state did not deny the facts as presented by the other party but simply maintained that they had no information concerning the event at issue. At a meeting in May 1999, both the Israeli and the Lebanese delegations offered this uncommon response. After reporting a Lebanese claim that Israeli forces had fired on a civilian area and a parallel Israeli claim that Lebanese forces had fired on a civilian area, the ILMG press release noted, “In response to these violation complaints, the Israeli and Lebanese delegates respectively stated they had no knowledge of any firing at the times and places indicated by the other side.”110 The extreme infrequency with which both Israel and Lebanon claimed a lack of knowledge reflected a high level of information at top levels of the armed forces on both sides of the conflict, a fact made apparent in the often detailed examinations of evidence and determinations of fact.111 However, while the evidence presented was often quite extensive, in some few cases the responding party argued in its defense that the evidence offered against it was unpersuasive and that the claim should therefore be dismissed. For instance, in response to an Israeli complaint presented at an ILMG meeting in January of 1998 that Hesbollah had shelled a Lebanese village, “[t]he Lebanese delegate stated that the Israeli delegation did not provide sufficient data for the complaint to be accepted by the Group or to allow proper examination, and that the complaint had no basis in its present form and content.”112

In some cases the responding party did not dispute the facts as presented by the complaining party, but argued that such facts, even if taken as true, would not constitute a basis for a legitimate complaint. Sometimes this type of defense took the form of a claim that the complaint was trivial. For example, in response to Israeli complaints about Hesbollah attacks to and from civilian areas, the ILMG’s press release of July 31, 1997 reported that “[t]he Lebanese Delegation stated that the Israeli complaints dealt with events of limited consequence and gravity. It added that Lebanon had refrained in the past from filing complaints about such acts in order to preserve the credibility of the Group.”113 At other times, this type of defense took the form of a claim that

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111. The reciprocal proffering of this rarely used defense at a single meeting does, however, lead to skepticism as to the genuineness of its submission or, alternatively, to the genuineness of the complaints in this particular case.
112. ILMG Statement 36, supra note 109.
the action complained of, even if it was in fact committed by forces under the responsibility of the responding party, did not constitute a violation of the April Agreement, and that the complaint should thus be dismissed. In this vein, when the Israeli delegation submitted a complaint that in the course of shelling Israeli forces near the Israeli-Lebanese border, Hesbollah mistakenly fired at least one shell over the border into Israeli territory and thereby violated the April Agreement, the Monitoring Group reported that “[t]he Lebanese Delegation rejected this assertion and stated that all shells were fired at a military target, that all but one shell impacted on Lebanese territory, and that the attack was therefore consistent with the Understanding.”

At times the responding party defended the actions of its forces by putting forth a kind of affirmative defense. A party might argue, for example, that the surrounding circumstances of a given event, such as the need to act in self-defense, justified the actions taken by its forces. An ILMG statement reports the following response to a Lebanese complaint that Israeli shelling had led to civilian casualties and damage:

The Israeli representative expressed sorrow for the injuries and damage caused, but maintained they were an unintended result of defensive counter-fire following a Hizbollah mortar attack. He said Israel had responded in a proportionate and restrained manner consistent with the recommendations of [sic] adopted by the Monitoring Group on September 25.

One should note that in attempting to provide an affirmative defense for the Israeli action, the Israeli delegates contextualized their claim not only in reference to the April Agreement but also in reference to the existing ILMG jurisprudence. Because the Monitoring Group was more likely to condemn reprisals than violations of the Agreement committed in self-defense, the parties were less apt to argue that their actions were justified as retaliatory. Nonetheless, the delegations did at times attempt to carve out such an affirmative defense. When the Monitoring Group “accepted as factual that at least one Katyusha rocket launched by a Lebanese armed group fell onto Israeli territory,” the Lebanese delegate defended the actions of the group by arguing that “the launching of the Katyusha was linked to repeated Israeli attacks on Lebanese civilians and that the Understanding aims at protecting all civilians equally.”

After presenting a claim and any defenses raised to that claim, public statements issued by the ILMG continued by recording the finding of the group, if it had been able to reach one, concerning the given claim. Often the delegations were not able to reach consensus as to whether the disputed action did take place as claimed or whether it constituted a violation of the April Agreement, and thus they simply announced the claim and the defense without stating any conclusion as to the merits of the complaint. In regard to many complaints, however, and increasingly so with the Monitoring Group’s

115. ILMG Statement 5, supra note 77.
116. ILMG Statement 22, supra note 67.
lengthening tenure, the delegates were able to agree on whether the action complained of constituted a violation of the April Agreement.

On some extremely rare occasions, the group affirmatively determined by consensus that the complained-of action did not constitute a breach of the April Agreement. For instance, in its press statement of August 12, 1997, the Monitoring Group announced that "[w]ith respect to the Israeli complaint regarding the incident at Aray, the Group accepted that the target was military." More commonly, the delegates agreed that a complaint warranted a finding of a violation of the Agreement. Tellingly, the delegates expressed their findings of guilt in a variety of terms. Through their bargaining on the exact language to be used in each case, the delegates were able to send subtle messages about the level of culpability reflected in each case, or, more correctly, the level of culpability that they were able to agree was reflected in each case.

Consider, for example, the ILMG meeting of August 10-12, 1997. Among the six complaints which they submitted prior to that meeting, the Israelis submitted one complaint regarding a mortar round that overshot its military target just inside Lebanon and landed within Israeli territory without causing any damage and one complaint concerning a Katyusha rocket deliberately fired at the Israeli town of Kiryat Shemona that injured a civilian and caused property damage. In reference to the former complaint, the delegates announced, "The Group acknowledged that this action, whether intentional or not, fails to conform to the provisions of the Understanding..." In reference to the latter complaint, the delegates announced, "[T]he Group acknowledged it as a violation of the Understanding and condemned it." Clearly, the delegates to the ILMG coordinated on a much sterner response to the latter action than to the former.

In some of their press releases, the delegates issued statements "strongly condemning," as opposed to simply "condemning," the disputed action. In other statements, the delegates announced that they "reject[ed]" or "strongly reject[ed]" the action at issue. Often the delegates implemented language that softened the finding of a violation and the assignment of blame. Thus, for example, in their announcement of May 13, 1998, after branding several actions as outright violations of the April Agreement, the delegates reported:

The Monitoring Group acknowledged that on May 11, 1998, a shell fired by a Lebanese Armed Group in the course of an attack on military targets in Lebanon impacted on the Israeli side of the Israeli-built fence and very near to it, northwest of Kibbutz Menara, in what could be considered a violation of the Understanding.

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118. Id.
119. See, e.g., ILMG Statement 37, Feb. 6, 1998 ("The Group considered this attack a violation of the Understanding and strongly condemned it and those who carried it out.").
120. See, e.g., ILMG Statement 25, Aug. 23, 1997 (rejecting the shelling of villages by SLA forces and the firing of a Katyusha at a civilian area by Heshbollah).
121. See, e.g., ILMG Statement 18, May 8, 1997 (finding that placement of explosive devices in a civilian area "violates the April 26, 1996 Understanding" and "strongly reject[ing] such action").
122. ILMG Statement 45, May 13, 1998 (emphasis added).
Similarly, the delegates occasionally termed actions "unintentional violations" of the April Agreement. In yet another nuance of the level of culpability that the Monitoring Group was able to assign, it sometimes described actions as "possibly unintentional violations" of the Agreement. Such language, which seems more condemnatory than that naming an action as a purely "unintentional violation," was used, for example, in a case in which Lebanon complained that Israel had "deliberately and indiscriminately" shelled a poultry farm, killing two civilians and injuring one, while Israel claimed that the "casualties were the result of self-defensive counterfire during the evacuation of wounded soldiers following a military clash." Other formulations that seem to imply less culpability than a direct statement that the action considered was a "violation of the Agreement," include findings that an action "ran counter to the understanding" and that an action was "in breach of the understanding.

It is noteworthy that the Monitoring Group's statements often appeared quite balanced in terms of their assignment of culpability. It seems that the group was more likely to find one party guilty of a violation of the April Agreement if it also found the other side guilty of a violation in the same report. This balance makes sense in light of the veto wielded by each party to the Monitoring Group over the institution's findings in the public report. Each party would be more likely to accede to a finding against itself if its adversary did the same. In this respect, one former delegate to the Monitoring Group dismissed the possible criticism that the public reporting of the group's work might have created a dynamic whereby Israel and Lebanon felt obligated to submit complaints when either saw that the other had done so, just for the sake of staying even in this arena. This delegate maintained that meetings at which roughly equal numbers of complaints had been submitted ran more smoothly than more asymmetric meetings, because "the equilibrating effect of the evenness of the complaints created a better atmosphere and allowed us to do better work."

One should note that the language the delegates used to assign authorship of a given act left both sides of the conflict ample room to maneuver in order to evade direct international condemnation and to deal with the domestic consequences flowing from such condemnation. When the Monitoring Group reported on a Lebanese complaint, it stated that the alleged action had been committed by "Israeli forces or those cooperating with them." Likewise, when it reported on an Israeli complaint, it referred to the perpetrators of the protested action as "a Lebanese armed group." This loose

123. See, e.g., ILMG Statement 50, supra note 93 (finding that the detonation of a roadside bomb which killed an SLA soldier and his young son constitutes an unintentional violation of the understanding).

124. ILMG Statement 22, supra note 67.

125. See, e.g., ILMG Statement 53, July 21 1998 (finding that IDF or SLA firing of shells into a civilian area in response to Hizbollah missile launchings "ran counter to the Understanding").

126. See, e.g., ILMG Statement 10, Jan. 10, 1997 (finding that the launching of a Katyusha rocket into Israel "was in breach of the April 26, 1996 Understanding and was calculated to undermine it").

127. Interview with anonymous diplomat (Aug. 10, 2000).
language enabled Israeli forces to share the burden of blame with SLA forces and allowed the governments of Lebanon and Syria to avoid participation in an explicit condemnation of a specifically named military group, let alone a finding that either government had itself violated the Agreement in any concrete way.

Significantly, when issuing a finding in regards to an action with no established perpetrator, the Monitoring Group was likely to adopt its harshest condemnatory language. For example, the ILMG press release of February 6, 1998 related the discussion of an Israeli complaint claiming that a specific Lebanese armed group had detonated a roadside bomb in southern Lebanon, killing a civilian. The press release reported that the Lebanese delegation denied that the armed group had carried out the attack and suggested that it could have been a "local initiative." The delegates then concluded their reporting of the complaint by announcing that "The Group considered this attack a violation of the Understanding and strongly condemned it and those who carried it out." Undoubtedly, the failure to assign blame to any particular group allowed the delegates to coordinate on the strongly worded condemnation. Lebanese and Syrian authorities would not feel, and would not be made to feel, that they had betrayed any constituency since culpability for the attack resided with an anonymous actor.

A similar dynamic seems to have been in effect in the few cases in which Lebanese complaints were pointed at actions specifically attributed to the SLA rather than the IDF. In such cases the Israeli delegation may have felt less need to resist strongly condemnatory language, since the brunt of the disparagement would fall upon the southern Lebanese rather than the Israelis. In June of 1998, following a Hesbollah attack, SLA forces undertook a shelling action in which several rounds fell within a Lebanese village, inflicting property damage. At the conclusion of its meeting to consider the Lebanese complaint regarding this incident, the Monitoring Group announced that it "strongly criticized this violation of the Understanding and declared once again that targeting civilian areas is inadmissible with the Understanding." It also "welcomed the prompt action that was undertaken to bring an end to the shelling and to discipline those immediately responsible for the violation."
The message delivered in the announcement was subtly stronger than that usually sent after such errant shellings. The Israeli delegation may have seen an opportunity to win a measure of good will from its counterparts by offering a concession in this case, since permitting the sterner tone would not impinge directly on Israel.

After reviewing the complaints considered at a given meeting, the delegates usually continued their announcements by stating or restating relevant principles. Often, especially in cases in which the delegates could not reach a consensus as to whether the April Agreement had been breached, the delegates simply recited the principles enshrined in that document. In its press statement of March 4, 1997, the Monitoring Group announced that it "by

128. ILMG Statement 37, supra note 119.
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unanimity reaffirmed the obligation for all combatants to act strictly in accordance with the Understanding of April 26, 1996, which prohibits attacks from and on civilian populated areas. In other cases discussed below, the delegates went further and established new substantive principles. In their press release of September 25, 1996, for example, they stated:

...noting paragraphs 2, 3 and 4 of the April 26 understanding, the Monitoring Group called on all parties to desist in all circumstances from any shelling which is disproportionate and indiscriminate, or directly or indirectly puts in danger the lives of civilians and the safety of populated villages, and to adopt restraint and caution in military operations in the vicinity of such areas.

In line with its mandate to issue a report which “will address and deal with the situation and will contain recommendations for enhancing compliance with the understanding,” the Monitoring Group often included a statement in its press releases suggesting how the parties might proactively avoid civilian casualties in the future. Thus, for example, in its press statement of July 17, 1997, the group declared, “The Monitoring Group warned of cycles of action and reaction that could erode the Understanding. It called on responsible authorities to exercise caution and restraint in order to defuse tension and protect civilian lives on both sides of the border.” In another statement, the delegates went beyond their common and generic “reaffirmation of the provisions of the understanding of April 26, 1996,” and actually spelled out the exact duties of each party in their public announcement.

In concluding their announcement, the delegates to the Monitoring Group consistently thanked UNIFIL with a statement that the “Monitoring Group expressed its great appreciation to UNIFIL for providing facilities and support for the meeting.”

C. Establishing Principles and Jurisprudence

As one might expect would be the case with an international institution meeting frequently over the course of four years in order to resolve disputes and issue findings of fact, throughout its existence the Monitoring Group established several noteworthy principles. These principles dealt with both the procedural rules of its administration and with the substantive rules of the conflict in south Lebanon. In considering the ILMG’s jurisprudence, one

131. See discussion infra Section VII.C.
133. ILMG Working Rules, art. 3.E, see infra Appendix A.
134. ILMG Statement 22, supra note 67.
135. They proclaimed:
In accordance with the language of the Understanding, Israel “will ensure ... that Israel and those cooperating with it will not fire any kind of weapon at civilians or civilian targets in Lebanon” and “that under no circumstances will civilians be the target of attack.” Israel will take the necessary measures to ensure that Israeli forces and those cooperating with them will comply fully with the Understanding.
136. ILMG Statements passim.
should keep in mind that relative to other international judicial or arbitral institutions, the ILMG’s four-year duration did not constitute a lengthy lifetime. In many respects the group’s jurisprudence was reflective of its embryonic development, but its frequent meetings were enough to allow it to achieve significant progress in several areas. An analysis of this progress reveals much about the Monitoring Group’s effectiveness in fulfilling member states’ needs as a micro-arena for nonviolent conflict and about the way in which those states viewed the April Agreement.

In their first meeting, the delegates to the Monitoring Group agreed to establish a principle of confidentiality. In another early meeting, the delegates recognized that “the Monitoring Group might deal with any issue of common concern to reduce tensions.” A similar step towards the establishment of a substantive body of administrative law was taken at the ILMG meeting of July 16-17, 1997, when the delegates “agreed that all articles of the April 26, 1996 Understanding are of equal weight.” As one might expect, the establishment of principles was a slow and lengthy process and often did not involve an explicit statement of law.

In August of 1997, a year after the Monitoring Group had begun its work, the delegates leaned towards the establishment of a rule governing the accuracy of violation reports. They announced, “In order to enhance the effectiveness of the Understanding, the Group also urged the appropriate authorities to be precise and accurate in submission of violation reports in compliance with the Understanding.” One year later, the delegates moved towards the establishment of a principle requiring a minimum level of gravity for the submission of complaints and a minimum standard of quality for the presentation of evidence. In addition to their demand for a minimum standard of quality for submitted evidence, the delegates to the Monitoring Group seem to have agreed on the establishment of a procedural rule requiring the submission of evidence in order to meet burdens of proof in given situations. It is not clear to the outsider when or how this rule was established. In any event, the delegates made the existence of the rule and its consequential results clear to the public by laying it down with a firm voice in their statement of June 3, 1998. The delegates related that Lebanon had submitted a complaint regarding the death of a Lebanese youth and the wounding of his brother in an Israeli missile attack. The Lebanese delegation claimed that the brothers were unarmed civilians and that no military activity was taking place in the area at the time they were attacked. The Israeli delegation argued that the brothers were assisting a Lebanese armed group and thus represented a

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137. ILMG Statement 1, supra note 97; see also ILMG Statement 2, Aug. 15, 1996; ILMG Statement 3, Sept. 1, 1996.
138. ILMG Statement 6, Nov. 6, 1996.
139. ILMG Statement 22, supra note 67.
140. ILMG Statement 24, supra note 117.
141. The ILMG delegates reported that “The Group also welcomed the statements by the Lebanese and Israeli delegates indicating their desire to ensure that complaints of violation are substantive and reasonable, with a view to strengthening the functioning of the Group and its deliberations. Finally, the Monitoring Group stressed the necessity of maintaining high standards in the presentation and evaluation of supporting evidence.” ILMG Statement 48, June 10, 1998.
legitimate target. In concluding its discussion of the issue, the Monitoring Group declared, "Since the Israeli Delegate did not present supporting evidence, the Monitoring Group concluded that this attack was a violation of the Understanding."\(^{142}\) Participants in the Monitoring Group and students of it could be certain from this point on that once a party had submitted a reasonable complaint regarding the death of civilians, the accused party would be found guilty of a violation if it did not present evidence in its defense.

Along with the above-mentioned procedural rules, the Monitoring Group established substantive principles governing the conduct of the parties to the conflict in southern Lebanon. Thus, for example, in its press release of September 25, 1996 the Monitoring Group "called on all parties to desist in all circumstances from any shelling which is disproportionate and indiscriminate, or directly or indirectly puts in danger the lives of civilians and the safety of populated villages, and to adopt restraint and caution in military operations in the vicinity of such areas."\(^{143}\) Such a principle, if it were in fact implemented by the military forces in the region, would reduce the likelihood of violations of the civilian immunity which lay at the center of the April Agreement. Just over a month later, the group continued in its effort to adopt a set of rules which would provide extra protection for the principles enshrined in the April Agreement and ensure that the promise of safety for civilians would be realized. The group announced that the delegates "agreed that all parties should avoid activities of such nature which could constitute a violation of the April 26 Understanding and that might inflict harm on civilians."\(^{144}\)

The Monitoring Group bolstered the protection given to civilians under the April Agreement when it considered a Lebanese complaint in July of 1998 that Israeli forces had fired two missiles into a Lebanese village. The Israeli delegate defended the action by explaining that the Israeli forces had fired the missiles at two suspicious individuals in order to prevent a possible attack. The Monitoring Group moved towards stronger protection for civilians by establishing a default rule in similar cases. The group announced that it "concluded that since the presumption of hostile intent does not justify targeting a civilian populated area, the firing of these missiles was in violation of the Understanding."\(^{145}\) The delegates continued to establish principles that would serve as barriers to the violation of the April Agreement when, for example, they agreed on "the principle that the side launching an attack bears responsibility for the consequences of its military actions."\(^{146}\) In the case which led to the public announcement of this strict liability principle, four Lebanese women and two children had been injured when their mud-brick house collapsed following an Israeli air strike on a military target several hundred meters away. The delegates dealt with the case by deciding that while "the location of the attacked target was at what would normally be considered

\(^{142}\) ILMG Statement 47, June 3, 1998.  
\(^{143}\) ILMG Statement 4, supra note 132.  
\(^{144}\) ILMG Statement 6, supra note 138.  
\(^{145}\) ILMG Statement 53, supra note 125.  
a safe distance," the strict liability principle called for a conclusion that "the
injury to the civilians was an unintentional violation of the Understanding."147

Several points should be made about these general principles. First,
these rules served as a kind of added protection for civilian immunity. If the
parties did apply these principles in their day-to-day actions in the field, they
would be much less likely to fire at or from civilian areas and to injure
civilians on either side of the border. By announcing their adoption and
acceptance of these principles in a public forum, the parties to the conflict
gave themselves an added incentive to adhere in actual practice to this body of
ILMG "common law." Moreover, by publicizing the establishment of these
rules, the Monitoring Group increased the predictability of the system. With
the introduction of each additional rule to the corpus of ILMG law, member
states and observers at large could be more certain of the outcome of the
deliberations in any given case. Knowing, for example, that the ILMG had
established a presumption that the attacking party bears responsibility for the
consequences of its actions, member states would be forewarned that they
faced greater chances of condemnation if one of their attacks led to civilian
casualties. With this awareness, parties would be less likely to undertake risky
attacks, and if they did so anyway, the predictable ILMG determination would
be more acceptable to the liable party.

It should be noted that these general principles were practical rules of
engagement, not abstract legal principles. For example, when the delegates
agreed that the parties should "desist in all circumstances from any shelling
which is disproportionate and indiscriminate," they were not invoking the
well-established law of war prohibiting disproportionate and indiscriminate
attacks. Rather, they were agreeing on a code of conduct that would serve as
an understandable and practical rule of behavior for military leaders and
commanders in the field. When the delegates to the Monitoring Group
convened a meeting, they did not cast their arguments in reference to outside
instruments and principles of international law. When the head of the
Lebanese delegation complained to the head of the Israeli delegation that
Israeli soldiers had used disproportionate and indiscriminate force, members
of both delegations, all of them high-ranking military officers, understood the
charge being made. The principles being developed by the ILMG were
understood as practical concepts with a real meaning grounded in the conflict
at hand, a meaning all of the players could understand without resort to legal
sophistry.

Once again, from the perspective of the New Haven scholar, the real-life
practicality of these principles does not make them any less legal. On the
contrary, the fact that they were mutually understood and mutually respected
as establishing critical protections for the core norms of the April Agreement
made them law in its truest sense. Although they were tested throughout the
Agreement's duration, these principles assumed the status of legal norms in
controlling the actions of the parties to the conflict.

147. Id.
Moreover, one should note that while these principles could serve as a protective network of law around the core of the April Agreement, the rules set out in that document remained the sole body of law that the ILMG applied. In other words, while an attack that resulted in civilian casualties would be more likely to be found a violation if it had been disproportionate or indiscriminate, an attack that was disproportionate or indiscriminate but did not cause civilian casualties would not offer a proper cause of action and would not constitute a violation of the Agreement. For the scholar of the New Haven school this is an important insight. While certain incursions might lead to repercussions on the battlefield, they would not amount to a violation of the Agreement and would not lead to public condemnation by the ILMG. But again, this "softness" was of limited importance when one considers that any attack that was disproportionate or indiscriminate or in some other way a violation of ILMG "common law" was extremely likely also to violate the April Agreement itself.

D. Unprocessable Complaints

As the discussion above demonstrates, although the Monitoring Group was able to achieve significant progress on many difficult issues, several issues defied resolution because there was disagreement among the parties as to whether the April Agreement and the ILMG mandate covered certain actions. For example, when Lebanon submitted a complaint in September of 1996 concerning the expulsion of civilians, it took the Monitoring Group until November to issue a public finding, and all it could manage at that time was a statement that "[b]y unanimity, the members of the Monitoring Group accepted that there were differing views on whether this complaint fell within the scope of the Understanding." Two-and-a-half years later, the group was still unable to agree on whether expulsions fell within its mandate, and it was again forced to issue a press release to this effect, stating that "the issue has been raised in other channels and is being addressed by appropriate authorities." Likewise, in its final meeting the Monitoring Group was unable to agree on whether the abduction of civilians fell within its mandate. Similarly unprocessable complaints arose in regard to alleged threats against the citizens of Arnoun and in regard to Israeli attempts to fence off that village from areas outside the security zone, as well as in

148. The above points apply as well to the principles that the Monitoring Group established in regard to several frequently raised issues, such as the question of who is a "civilian" and what constitutes a "civilian populated area." By laying out a clear jurisprudence on these issues, the ILMG was able to improve the parties' adherence to the 1996 Agreement and enhance the value placed on civilian immunity. Moreover, by announcing the adoption of each new principle, the ILMG signaled to member states and observers how it would rule on future disputes, thereby increasing the transparency and stability of the system.

149. ILMG Statement 6, supra note 138; see also ILMG Statement 34, Dec. 11, 1997 (reporting similar failure to coordinate on complaints of civilian expulsions).

150. ILMG Statement 75, Apr. 8, 1999.


152. See ILMG Statement 20, June 24, 1997.

regard to sonic booms set off by the Israeli Air Force in low overflights of Beirut. 154

Just as an analysis of the ILMG's progress in dealing with certain issues allows insight into the April Agreement and its monitoring mechanism, so too does a consideration of the institution's paralysis in regard to other issues. The Monitoring Group's inability to deal with some of the issues raised for consideration demonstrates the limited and practical nature of the April Agreement and its monitoring mechanism. The value of the regime rested in its ability to reduce civilian casualties and dampen the likelihood of all-out war, a function that could be satisfactorily fulfilled even if the Monitoring Group was unable to resolve, for example, the issue of civilian expulsions.

Moreover, the convention may have benefited from the ambiguity these disputes raised as to the scope of the April Agreement and the mandate of the Monitoring Group. The point is somewhat counter-intuitive. One might assume that civilians would have been unquestionably better off had it been clear that the April Agreement banned expulsions of civilians and sonic booming of towns and villages. However, it is not at all clear that the parties would have continued to abide by such a convention had they agreed to it. The limited ambiguity of the April Agreement endowed the system it established with a certain flexibility that may have been crucial to its endurance. This flexibility allowed the parties to undertake and condemn actions of disputable validity. Thus, for example, Israel could send fighter planes to set off sonic booms over Beirut and still claim to be abiding by the Agreement, while Lebanon could vigorously protest the action in the ILMG. In this way, the Monitoring Group's paralysis in regard to certain issues allowed the parties to claim faithfulness to the April Agreement while actively furthering their constituencies' interests in Lebanon. This inherent flexibility did not completely undermine the supreme value the Agreement supposedly placed on civilian immunity because the system remained rigid enough to clearly preclude (though not completely prevent) blatant attacks on civilian populations. Throughout the convention's duration, the central tenets of the Agreement, mutually understood and mutually accepted by all the parties to the conflict, continued to guard civilian immunity as a protected norm.

Even in areas in which the Monitoring Group was able to achieve significant progress, some ambiguity remained, with its consequent flexibility. The parties were never able to agree, for example, on whether border-crossing officials were protected civilians or legitimate military targets. Again, this disagreement allowed the parties to pursue military objectives while professing compliance with the April Agreement.

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154. The ILMG statement dealing with this complaint simply stated that "the Group noted that the matter had been handled in bilateral diplomatic channels." ILMG Statement 66, Dec. 20, 1998. But a media report on the meeting suggested that the delegates had been unable to agree whether the action fell within the bounds of the April Agreement. See Rudge, supra note 81. In a later case in which such an IAF sonic boom resulted in a civilian injury, the Monitoring Group did find the action to be a violation of the April Agreement. See ILMG Statement 85, supra note 69.
Furthermore, one should note that the Monitoring Group mechanism might have proven valuable even in cases in which the group was unable to decide if it was authorized to hear the given complaint. In these cases, the parties were still obligated to struggle with the issue of exactly what the principles of the April Agreement dictated, and thereby to test and define the norms they had created. In addition, the complaining state was still afforded a public platform on which to announce that it considered the aggressor state in breach of the April Agreement and thereby to vent its citizens' sense of injustice without resort to increased military force. Finally, the submission of these unprocessable complaints, just as much as the submission of processable complaints, resulted in the convening of an ILMG meeting and an opportunity for signaling and back-channel communications among the parties. Such contacts could open the way for yet another back-channel of communication or at least a one-time opportunity for signaling. In this way, the unprocessable complaints may have served as well as the processable complaints to provide the parties with opportunities to communicate and to avoid the possibility of a mutually painful escalation of the conflict.

IX. THE SITUATION AFTER FEBRUARY 2000

In February of 2000, the fighting in southern Lebanon witnessed a typical period of escalation. After Hesbollah attacks on Israeli positions in south Lebanon had left six Israeli soldiers dead in two weeks, the Israeli Air Force struck at power stations in Lebanon. While the Lebanese and Syrians saw the Israeli strikes as a violation of the April Agreement, Israeli officials insisted that the bombings were justified because deadly Hesbollah attacks had been perpetrated from civilian areas.\footnote{155. The legal logic presented by Israel might be strained, as the Law of Reprisals does not seem to justify such a quid pro quo attack. See First Additional Protocol, supra note 36, art. 51(6). Moreover, the Monitoring Group condemned similar Israeli strikes in June of 1999 and found that they were a violation of the April Agreement. However, Israel publicly insisted that the reprisals of February 2000 were validated by a letter of understanding from the American Secretary of State in April 1996, and Israel's right to self-defense. In an interview with the author, officers from the International Law Branch of the Judge Advocate General's Office declined to comment on this specific set of incidents, maintaining that the issue of reprisals under the April Agreement and public international law is a complex one and that because the ILMG had never determined whether the Israeli strikes were, in fact, a violation of the Agreement, they would not comment on that issue. Interview with anonymous Major and First Lieutenant of the IDF Judge Advocate General's Office (Aug. 10, 2000).}

Commentators in Syria and Lebanon speculated that under pressure from a public exhausted by rising military casualties, Israel would demand that the April Agreement be amended to prohibit all attacks on Israeli soldiers in southern Lebanon.\footnote{156. See, e.g., Syria and Israel Back to the Negotiating Table Next Week?, MIDEAST MIRROR, Feb. 14, 2000, on file with author (discussing articles in the Arabic newspaper Al-Hayat reporting Israeli demands to amend the April Agreement).} Israeli media sources did not report that the Israeli government intended to amend the written text of the April Agreement, but they did note the change in Israeli reactions to Hesbollah attacks. Whereas past attacks on Israeli soldiers from civilian areas had drawn return fire to those civilian areas, and attacks on Israeli civilians in northern Israel had sometimes drawn Israeli strikes on Lebanese infrastructure, Israel had now changed the equation to attacks on
Lebanese infrastructure in return for attacks on Israeli soldiers from civilian areas.¹⁵⁷

On February 11, 2000, in the midst of these public discussions of changes in the rules of the game, the ILMG met to discuss complaints over the heightened level of fighting. Just after the meeting had been convened, a Hesbollah attack on an Israeli position left a seventh Israeli soldier dead in two weeks. Israel believed that the attack was launched from a civilian area and, viewing it as a blatant violation of the April Agreement and a clear sign of ill will by the Syrian government, ordered its delegation to leave the meeting and return home immediately. That meeting proved to be the ILMG’s final conference.

It remains unclear whether Israel formally left the group. The Israeli government never issued a formal statement to that effect, and officers of the Judge Advocate General’s Office have denied to the author that Israel withdrew from the institution. They argued that in light of the working rules’ call for Lebanon and Israel to “strive to create a stable and tranquil environment for [the Monitoring Group] to carry out its work,” Israel had simply decided that the group should not meet under conditions of intense fighting. Furthermore, the officers argued, by the time stability had been restored, group meetings were no longer necessary since Israel had already begun preparations for withdrawal that spring.¹⁵⁸ However, sources in the Israeli Ministry of Foreign Affairs have told the author that the Israeli government did make a conscious decision to withdraw from the group. They report that actors in the Ministry of Defense persuaded the government that participation in the Monitoring Group restricted the actions of the IDF too severely. These same sources in the Ministry of Foreign Affairs claim that the motive behind the Ministry of Defense’s move was not simply a desire to free the hand of the military but also an underlying fear that participants in the committee meetings had begun to build stronger ties with the Syrians and Lebanese than officials in the Ministry of Defense had been able to establish.¹⁵⁹ Whether Israel made a formal policy decision to leave the group or not, and whatever the motivations behind such a decision if it was in fact made, the fact of the matter is that the committee has not reconvened since February 11, 2000.

Mounting displeasure among the Israeli public and military due to increasing IDF casualties, as well as the alleged political motivations on the part of Ministry of Defense officials discussed in the previous paragraph, may

¹⁵⁷. IDF Chief of Staff Shaul Mofaz was quoted as announcing, “For the first time, we struck at infrastructure after a soldier was killed and not after Katyushas hit the Galilee.” Nitzan Horowitz & Amos Harel, South Lebanon Monitors to Meet as Fighting Eases, HA’ARETZ (English Edition), Feb. 11, 2000, available at http://www.haaretzdaily.com.


¹⁵⁹. For decades, Uri Lubrani, the Ministry of Defense’s coordinator on Lebanon affairs, had been looked to by Israeli governments as the Israeli official with the strongest connection to the Syrians and Lebanese. However, anonymous diplomatic sources argue, with the success of the ILMG at building back-channel connections between Israeli and Syrian and Lebanese delegates, Lubrani’s status as the best-informed Israeli official on Syrian and Lebanese affairs was threatened and he therefore sought to take Israel out of the group.
have played a role in the demise of the ILMG. However, like Israel’s previous withdrawal from the institution in the spring of 1999, the break in ILMG meetings in the spring of 2000 was facilitated by the larger political context. Israeli Prime Minister Ehud Barak had pledged to pull Israeli troops out of Lebanon within one year of his taking office in July of 1999. With the withdrawal looming no more than five months into the future, Barak and the Israeli government knew that there was less at stake than would ordinarily be the case if the ILMG was dismantled at this point. Therefore, like the earlier Israeli boycott of the ILMG in the spring of 1999, the Israeli decision to abandon the group, or at least not to actively encourage meetings of the group, may actually signify the strength, rather than the weakness, of the parties’ adherence to the April Agreement and their commitment to the Monitoring Group. It was only under conditions in which the parties knew that such a move would be relatively risk-free that they were willing to renounce the April Agreement or not participate in the Monitoring Group.

The current status of the April Agreement and the ILMG remain unclear. The Agreement and its mechanism appear to have become defunct since the IDF withdrew from southern Lebanon in May 2000. Nonetheless, the convention continues to serve as a touchstone in the ongoing conflict between Israel and Hesbollah. As late as March 6, 2000, American officials were still calling for the group to reconvene, leading one to conclude that, as far as the United States was concerned, the institution was still in existence and still relevant at that point. Furthermore, in the wake of the Israeli withdrawal from Lebanon in May 2000, State Department officials publicly aired the possibility that the Monitoring Group could deal with disputes arising under the new circumstances, once again pointing to the conclusion that in the American view the April Agreement may still be in effect.

The April Agreement does not make explicit reference to the presence of Israeli soldiers in south Lebanon. Thus, one might argue that it is technically still binding upon both parties. However, a more practical viewpoint would acknowledge that the Agreement has been superceded by events and is no longer relevant in today’s circumstances. As for the Agreement’s enforcing mechanism, its working rules also do not make mention of Israel’s presence in south Lebanon, but the Monitoring Group’s existence clearly rests on the April Agreement’s validity. Nonetheless, with the Israeli-Lebanese border witnessing continuing disorder, the two countries might find a reconstituted convention and a resurrected Monitoring Group beneficial. In the final analysis, this is the real question—will the two sides find it mutually beneficial to coordinate on re-entering such an agreement? The issue of the

160. State Department Spokesman James Foley told the media, “At least in terms of the Monitoring Group, I can confirm that our efforts and that of the other co-chair, France, continue with capitals with the aim of reconvening the Monitoring Group, which is, in our view, the critical forum for addressing tensions and reducing tensions in southern Lebanon. I don’t have an announcement to make about the reconvening of the Group, but we and France remain hard at work in capitals to achieve that purpose.” U.S. Department of State, Daily Press Briefing, Mar. 6, 2000, available at http://www.state.gov/.

technical legal status of the Agreement and the mechanism under today's situation is academic. Since neither side can enforce the April Agreement in a court of law, the real question is whether the political leaders on each side will see the agreement as beneficial—a question which can only be answered in the course of time. Even if the April Agreement is itself not renewed, its text will undoubtedly serve as the key precedent for any future tacit or explicit agreement, short of a full peace treaty, between Israel, Lebanon and Syria.

X. UNDERSTANDING THE APRIL AGREEMENT IN THE CONTEXT OF INTERNATIONAL LAW

The parties to the conflict in south Lebanon made a significant effort over a period of four years to uphold the April Agreement and to protect the lives of civilians. While application of the Agreement was by no means perfect and civilians on both sides of the border continued to suffer, the military forces did make an effort to abide by the Agreement and civilian suffering was reduced. Moreover, throughout the period during which the military forces in south Lebanon honored the text of the April Agreement, other military forces in countless conflicts around the world did not make even a semblance of an effort to protect civilians.

The war in southern Lebanon was not a likely candidate to be the one international military conflict in which the parties agreed to restrict their actions in accordance with a code of conduct that protects civilian targets. A regular standing army employing weapons of mass firepower in order to hunt and eliminate irregular forces operating in a populated field of action is not likely to agree to restrict its forces to strictly military targets. Moreover, such voluntary restraint is even less likely when the field of action is a natural terrain that favors guerrilla warfare, as it is in south Lebanon. Furthermore, as far as Hesbollah is concerned, an irregular military force with the capacity to wreak havoc on a soft metropolitan target by lobbing missiles at it is unlikely to agree not to use such tactics.

Perhaps these fundamental characteristics of the war in south Lebanon explain the overwhelming skepticism that greeted the announcement of the April Agreement, or perhaps it was the parties' previous record of making and then breaking understandings. Whatever the cause of incredulity, one must

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162. An expert on the war in Lebanon and guerrilla warfare has written, "The area is considered to be highly useful for guerrilla warfare, and [Hesbollah] teams, familiar with its routes and obstacles, are quick to exploit its advantages. Military convoys and vehicles are incapable of moving through the basalt ravines. They are limited to certain roads and narrow winding tracks and are under constant threat from guerrilla ambushes.


163. Even participants in the system themselves viewed the April Agreement and the Monitoring Group with skepticism. For example, in 1998, the head of the French delegation and former Chair of the ILMG, Laurent Rapin, told a reporter that in the first year after the Group's establishment "every meeting was thought to be our last, and every additional meeting was thus thought a victory." Ad She'Yotzeh Ashan Lavan, [Until a White Smoke Comes Out], Ici LA France, July-Aug. 1998, at 10.
ask why the parties managed to converge on the Agreement in 1996 and why they remained faithful to it for nearly four years.

In considering this issue, one should distinguish between the United States, France, Lebanon and Hesbollah on the one hand, and Syria and Israel on the other. For not only are the latter two states the parties upon whom the responsibilities for living up to the April Agreement ultimately fell, but they are also the parties whose adherence to the Agreement most demands explanation. American and French support for the Agreement and the activities of the Monitoring Group might be more readily understood, as these states benefited from the relative stability that the system lent the volatile region. Furthermore, both states stood to garner benefits in terms of international influence and prestige in mediating the conflict in south Lebanon.

To the extent that the actions of the Lebanese government require elucidation beyond the recognition that those actions are generally dictated by Syria, one might posit that Lebanon was driven by a sincere concern for the well-being of its own citizens and a desire to protect its civil infrastructure. To the extent that Syria would allow Hesbollah to determine its own course of action, Hesbollah had an incentive to obey the Agreement, which placed it in a position of power. Although the ILMG never mentioned Hesbollah by name in its press releases, it was clear to all of the member states that the system established by the April Agreement revolved around Hesbollah’s acquiescence to its code of conduct.

While the interests of the United States, France, Lebanon and Hesbollah are understandable, the cooperation of Syria and Israel is quite puzzling. In trying to understand this enigma, a viewpoint grounded in international law is most useful. In his influential study of strategy, Thomas Schelling has shown that parties to a conflict can agree on limited war through tacit or explicit bargaining if they share “common interests.”

In this case Israel and Syria certainly did share common interests—the avoidance of a full scale Israeli-Syrian war. Engaged in a deeply entrenched military and political struggle, which could easily escalate into an extremely costly all-out war, both states had incentives to craft a system that would enable them to avoid such a possibility. Furthermore, Israel desperately sought protection for its civilians from Katyusha rocket attacks while Syria sought to continue to use the violence in Lebanon as leverage for the return of the Golan Heights to Syrian control. With American and French assistance, Israel and Syria were able to dampen the prospects of war and satisfy their respective needs by creatively turning to a legal convention.

This analysis is especially persuasive in light of the broader historical context of the April Agreement. Syria and Israel had already fought major

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164. THOMAS SCHELLING, THE STRATEGY OF CONFLICT (2d ed. 1960). Schelling conducted his work at the height of the Cold War, amidst fears of nuclear conflict between the superpowers. Some readers might question whether lessons from such an exceptional case are applicable to the Israeli-Syrian relationship. In fact, fears of an extremely destructive war involving chemical and biological weapons have produced somewhat similar dynamics in the Israeli-Syrian relationship. While the Cold War is surely exceptional in some ways, as the discussion below illustrates, Schelling's work may be applied quite effectively to the Israeli-Syrian case.
inter-state wars against each other in 1948, 1967, and 1973, and the two states confronted each other in the 1982 Lebanon War as well. Not only could the bitter rivalry easily explode into a hot war on the Israeli-Syrian border, but it could also lead to a full-fledged Israeli-Syrian war in Lebanon. Moreover, the ongoing violence in southern Lebanon made the threat of all-out war a palpable one throughout the duration of the Agreement’s existence. The shared desire to avoid the fulfillment of this threat led the parties to converge on the unique legal convention at the center of this study.

Indeed, the historical context of this case is not only one of repeated war; it is also one of repeated efforts at avoiding war. From the 1960s onwards, Israel and Syria have engaged in a deterrence dialogue in the Lebanese arena aimed at constructing a system to contain their rivalry. The two states have sent explicit messages through Washington and the public media, and tacitly signaled one another with maneuvers in the field, all in an effort to avoid war—an effort which failed in 1973 and 1982. In this respect, the April Agreement may be seen as an offspring of the red-lines agreements: a unique and improved system, but one which was built upon the model of these earlier war-avoidance efforts.

Seen in this historical context, one can more easily understand Israel’s and Syria’s continuous adherence to the April Agreement as a manifestation of a shared interest in avoiding war. Had either state been more confident of its ability to achieve gains in a full-scale war, Israel and Syria probably would not have agreed to limit the struggle. Likewise, had the parties been willing or able to disentangle themselves from their longstanding military conflict, they would not have found the need to create a system of containment in Lebanon. However, facing an intractable dynamic of struggle which threatened to spiral into a costly war, the two states shared a common interest in building and adhering to this mechanism.

A. The Equilibrium Convergence Point: Civilian Immunity and the Laws of War

In considering how Israel’s and Syria’s common interests led them to reach the April Agreement and led them to uphold it in the ensuing years, one should consider exactly what conditions the countries agreed upon—principally civilian immunity.¹⁶⁵ Schelling argues that variables such as simplicity, precedent, and natural boundaries will play a powerful role in signaling to the parties at which exact point their negotiations may reach equilibrium. As Schelling would predict especially for an international

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¹⁶⁵ One should consider, as well, to what conditions they did not agree. Schelling describes a “strong attraction to the status quo ante.” Id. at 68. Perhaps the attraction to the status quo ante explains Syria’s and Lebanon’s reluctance in 1996 to agree on the original Israeli cease-fire proposal. The Syrians and Lebanese might also, for example, have proposed that Israel agree to a prohibition on the use of phosphorous weapons. The fact that apparently neither party raised this issue may reflect the perception that it would not have been a viable outcome since it would have represented a move away from the status quo ante. Likewise, the attractiveness of the status quo ante may explain the parties’ refusal to expand the April Agreement to include further restrictions which have been proposed, such as a ban on the use of roadside bombs.
agreement between two states (Israel and Lebanon), made with a third party mediator (the United States), in consultation with yet another third party (Syria), governing an extremely complex situation, the April Agreement is a blunt and simple document. Moreover, as Schelling posits is likely to be the case, the Agreement is clearly shaped by its 1993 predecessor.\footnote{166. \textit{Id.} at 67 ("Precedent seems to exercise an influence that greatly exceeds its logical importance or legal force.").} As Schelling notes, "The outcome may not be so much conspicuously fair or conspicuously in balance with estimated bargaining powers as just plain 'conspicuous.'"\footnote{167. \textit{Id.} at 69.}

Furthermore, while simplicity, precedent, and the acceptability of the status quo may have made civilian immunity the obvious convergence point, the fact that the principle has been enshrined as the most fundamental rule of the laws of war may have made it even more conspicuous. The principle was "prominent" not only because observers thought it was fair or just but because, since both sides knew it was viewed as such, they may have believed that agreeing to it would not signal to their adversary or other observers that they were vulnerable to being forced into further concessions.

Further scrutiny of the fact that civilian immunity was the conspicuous outcome in this case confirms the supposition that Israel and Syria were driven by a common interest in avoiding all-out war. Perhaps both Israel and Syria shared a sincere concern for the well-being of civilians: such benevolent concerns would help explain why their bargaining resulted in coordination on civilian protection. But two other possible explanations for their convergence on civilian protection as the overarching principle of the Agreement strengthen the hypothesis that the underlying interest was avoiding an all-out Israeli-Syrian war.

First, as the respective leaders must have known, domestic political pressure can often be a major factor in the precipitation of war. Indeed, it was the unrest caused by the wave of suicide bombings and the mounting toll of military casualties in Lebanon that pushed Peres to launch Operation Grapes of Wrath. By reducing civilian suffering in southern Lebanon and northern Israel, Israel and Syria could diminish the prospects that strong domestic pressure would push the two states to war. Realizing that civilian casualties on either side could precipitate such escalation, the states recognized a common interest in protecting civilians through adherence to the April Agreement.

Second, the high population density of southern Lebanon makes it a theater in which the exertion of any considerable military force could easily result in civilian casualties. Therefore, by pledging to protect civilians from the fighting in Lebanon, Israel and Syria were implicitly limiting the amount of military force employed in the arena. In this respect, the April Agreement mirrored the red-lines system that limited the types of weapons which could be deployed in Lebanon. While the Agreement did not place any explicit limit on the arsenals permitted in Lebanon, the very fact that it placed civilians in a protected sphere put major exertions of force off-limits. Furthermore, by constraining the scope of force that the parties could exercise in Lebanon, the
Agreement reduced the chances that the Israeli-Syrian rivalry in that arena would spiral into an Israeli-Syrian war.

B. The Role of the ILMG in Preserving the 1996 System

Israel and Syria maintained the code of conduct established by the April Agreement because it served to contain the level of conflict between them. They may have remained faithful to the April Agreement, however, for a longer period of time because it was superior to the various red-lines systems and the July 1993 understanding. First, because the parties agreed to a written set of rules, the 1996 convention may have been more stable. While several of the earlier understandings were similarly explicit, the presence of a written text protected this system. This is not to deny that the enhanced flexibility of tacitly agreed-upon conventions is advantageous in many ways, but in this case the transcription of at least some of the rules of the system seems to have protected it from unraveling. Furthermore, the prohibition on targeting civilians, a prohibition not incorporated into the red-lines systems, may have added to the Agreement's durability. As argued above, the reduction of civilian suffering could be expected to limit otherwise dangerous domestic pressure for war and restrain the deployment of military force in the field. Moreover, the fact that the parties coordinated on an equilibrium point that stands as the central principle of the laws of war—civilian immunity—lent the system crucial stability. Most significantly, the system established by the April Agreement distinguished itself from its predecessors through the creation of the ILMG, which played an important role in enforcing the regime.

The frequent meetings of the group seem to have lent the Agreement greater currency and to have increased its level of implementation. While the group was not armed with any sanction power beyond public reprimand, its ability to issue public statements condemning the actions of one party or another did serve as a considerable enforcement mechanism. In this vein, the group served the April Agreement as Walter Lippmann's plate glass window protected the jewelry store: any party could break it easily enough, but not without creating an uproar. Because the work of the Monitoring Group endowed the Agreement with a heightened level of application, Israel and Syria faced greater incentives to continue to adhere to the Agreement. Furthermore, the Monitoring Group may have significantly increased the stability of the April 1996 system by providing the parties with a nonviolent outlet for contention. Faced with internal rancor over casualties suffered in the conflict, Israel and Syria could respond to one another and satisfy their respective constituencies through non-violent means. Consider the following extract from the ILMG's statement of October 18, 1996:

168. One should note that this convention did retain some flexibility despite the transcription of the rules. The parties could continue to negotiate over ambiguous issues, such as whether the sonic booming of Israeli jets over Beirut constitutes a violation of the Agreement. Furthermore, they could continue to bargain over understandings which remained tacit rules of the system.
169. See SCHELLING, supra note 164, at 38, citing Walter Lippmann's analogy.
170. Reisman has considered the implications of rising military casualties for a democratic entity fighting an optional war. See Reisman, supra note 14.
The Lebanese and Syrian representatives expressed the view that the shelling was deliberate and voiced the concern that the Israeli artillery action was aimed at raising tension to prepare the ground for a wider Israeli military action. The Israeli representative assured that this was not the case and that Israel's policy was exactly opposite.

....

The Israeli representative stated that Israel considered this counterfire defensive, while the Lebanese and Syrian representatives rejected such an interpretation. 171

Because the governments of Israel, Lebanon and Syria could all return to their constituencies with this statement and continue to present themselves as protecting their interests in the conflict while simultaneously upholding the April Agreement, they could all afford to remain party to the mechanism. In this regard, the Agreement served as legal pageantry to some extent. But this symbolic function also played an important role in controlling events in the field. Israeli representative to the ILMG Brigadier General David Tzur has posited:

The Monitoring Group’s effectiveness lies in its role as a tension-curbing mechanism. In a number of instances, had the specific problem arisen before Operation Grapes of Wrath, it would have provoked an escalation .... Thanks to the understandings achieved after Operation Grapes of Wrath, problems are discussed by the ILMG, which ... makes its decision, and that’s all there is to it. 172

Attacks on one side or the other no longer necessarily led to escalation because, with the Monitoring Group in place, the injured party could appease its citizens through the meetings in Naqura instead of military actions in the field. In an action that nicely illustrates the added value provided by the ILMG as a forum for venting, the IDF itself has even gone so far as to list the complaints filed by the Israeli government on its web site. 173 The Monitoring Group itself recognized this important function when, for example, it “agreed that any potential violation of the Understanding should be brought to the attention of the Monitoring Group in order that it not lead to a cycle of violence.” 174 In this sense, the ILMG offered the parties a micro-arena in which to voice complaints over the adversary’s behavior and thereby to vent otherwise destructive internal pressures.

The creation of the ILMG was also an extremely significant development in the effort to contain Israeli-Syrian conflict because it opened a new channel of direct communication between the parties. Under the previous systems the parties were forced to signal one another through public statements or actions, or at best, to send explicit messages through third parties. 175 In contrast, under the system established in 1996, the parties could communicate directly, in a confidential and protected setting, without the

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171. ILMG Statement 5, supra note 29.
174. ILMG Statement 25, supra note 171.
175. EVRON, supra note 10, at 214 (“[W]hen a detailed and specific system of deterrence thresholds is required, tacit bargaining is not sufficient, a trusted mediator becomes vital, and explicit signals and communications become necessary.”).
problems of third-party translation. In this respect, the April Agreement was crafted in the mold of a much older system than the previous Israeli-Syrian understandings discussed above: the 1949 Israeli-Lebanese General Armistice Agreement. That document, which called for a complete cessation of hostilities, also established a Mixed Armistice Commission to oversee the armistice and resolve disputes concerning application of the Armistice Agreement. The Commission was to maintain two headquarters, including one at Naqura, and, like the ILMG, it was to be composed of five members and to make decisions unanimously.

The latent communication function of the ILMG significantly enhances the value of the April Agreement. Israel and Syria could use their newly-opened channel to establish arrangements on particular issues such as prisoner exchanges, to ensure that specific incidents of violence did not spiral into war, and to carry on more general forms of explicit or tacit communication.

Meetings of the Monitoring Group repeatedly allowed the parties to the conflict to rein in the violence when it might otherwise have spiraled out of control. After a particularly tense flare up in August of 1997, the Chair of the Monitoring Group, Laurent Rapin, explained to the media that the group had helped keep the conflict under control. An Israeli delegate to the group has also said that during his year-long tenure the group more than once was able to halt what would otherwise have been a “deterioration of the situation,” including one cycle of violence which he said would almost certainly have led to a Katyusha attack on Israel had the representatives not met. In a similar

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176. Evron has commented on these problems in the Israeli-Syrian context: Washington’s mediation was attended by ambiguities. The relationship between Washington and Damascus was hardly intimate. Mutual suspicions might have created misperceptions. Even the Israeli-American relationship, though close, was complicated and allowed scope for suspicion. Indeed, it is not yet clear to what extent Washington manipulated the messages delivered to it by both Israel and Syria. Israeli and Syrian messages may have been “doctored” by Washington in the interest of easing both sides into an indirect understanding. Id.

177. For the text of the Armistice Agreement, see Israeli-Lebanese General Armistice Agreement, March 23, 1949, Isr.-Leb., reprinted in 1 THE ARAB-ISRAEL COLLECTION, supra note 8, at 102.

178. One should note that the never-implemented Israeli-Lebanese Agreement of 1983 also contained a provision for the creation of a Joint-Liaison Committee, which would make decisions unanimously and include American participation. For the text of that agreement, see Agreement Between Israel and Lebanon, May 17, 1983, art. 7, Isr.-Leb., 1 THE ARAB-ISRAEL COLLECTION: ANNUAL REPORTS, supra note 8, at 308-11.

179. The Monitoring Group appears to have facilitated at least one prisoner exchange between Lebanon and Israel. Beirut Radio Lebanon, Israel To Release 22 Lebanese Prisoners From al-Khiyam, WORLD NEWS CONNECTION, Jan. 3, 2000 (translating Arabic radio broadcast).

180. In 1997, Brigadier General David Tzur, the head of the Israeli delegation to the ILMG, remarked, “Back then [April 1996], the optimists said we wouldn’t last eight months . . . But the Monitoring Group has done what it was meant to do and proves itself with every new incident which has the potential of causing a deterioration in the area.” O’Sullivan, supra note 55, at 8.

181. Rapin related, “[W]e were able to get out of this difficult situation. I think that the conversations that were conducted by phone, at the time the committee was meeting in Nakoura, by the ministers of the five countries helped a lot . . . During the August crisis, the delegations, and especially the Syrian delegation, played a very responsible role in quieting the tension and reestablishing, during the meetings that followed, the minimum amount of trust between the delegations.” David Rudge & Jay Bushinsky, France: Lebanon Deal Must Include Syria, JERUSALEM POST, Oct. 21, 1997, at 1.

182. As Dr. Gerald Steinberg, a specialist on Middle East strategy told a reporter, “[N]one of
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vein, in its statement of December 9, 1998, the Monitoring Group itself paid homage to its ability to keep particularly explosive episodes of violence under control by announcing, “The Monitoring Group also acknowledged that positive steps have helped lead to a situation in which incidents that could impact civilians and their property have been minimized in spite of ongoing military activity in recent days.”

Prior to the signing of the April Agreement and the institution of the Monitoring Group, the tit-for-tat policies of the opposing forces resulted in a dynamic of escalation that could easily spin out of control, as it did in the days leading up to the Israeli offensives of 1993 and 1996. However, with the Monitoring Group in place, the parties could directly communicate and reassure one another of their shared interest in avoiding war. If one takes the view that Israel and Syria’s underlying aim in creating and adhering to the April Agreement was the avoidance of an Israeli-Syrian war, then this communication function assumes added significance as part of a system of control. In this way, the ILMG served not only as an enforcement mechanism for the April Agreement, but also as an insurance mechanism for that convention and the general peace and stability of the region it sought to promote. In cases in which the April Agreement was breached and the violence threatened to spiral out of control, the convening of an ILMG meeting could act as a safety net protecting the parties from greater violence.

Israel and Syria were able to use the channel not only to keep specific episodes of escalation under control, but also to send more general messages about the conflict in Lebanon. For example, in one such publicly announced communication in 1998, Israel delivered a warning to its adversaries about continued Hesbollah violations of the April Agreement. Even more importantly, ILMG meetings served as a latent communication channel, allowing Israel and Syria to send tacit or explicit messages about their general relationship. While some delegates to the meetings have admitted that their interactions did carry such meaning, others have insisted that their conversations were restricted to the issues raised by Israeli and Lebanese complaints and thus could not have served a back-channel communication function. However, the Monitoring Group has publicly announced that its

the parties want this last forum to disintegrate. They don’t want it to fail. It is the only place where there is Israeli-Syrian contact.” O’Sullivan, supra note 55, at 8.


184. Israel has issued a warning to Lebanon over continued violations of the Grapes of Wrath understandings by Hizbullah gunmen firing from inside the security zone and from the outskirts of villages north of the zone. The warning was given during a meeting at UNIFIL’s headquarters in Nakoura of the five-nation monitoring group which concluded discussions early yesterday on a single complaint from Israel.


185. Two Israeli delegates have told the author that the meetings did serve an important role as a back-channel of communication between Israel, Syria and Lebanon.

186. A Lebanese delegate with whom the author has spoken is skeptical of the back-channel role of the Monitoring Group. He argues that the meetings could never serve as an effective back-channel because the delegates were strictly limited in what they were permitted to discuss and did not deal with any matters other than the specific complaints of Israel and Lebanon. Likewise, a report in the Beirut daily al-Safir quotes Lebanese diplomatic sources insisting that ILMG meetings could not serve
mandate was not so restricted, reporting in November of 1996 that the delegates had recognized that the group “might deal with any issue of common concern to reduce tensions.” In fact, the group has reportedly worked on an assortment of issues not covered by its mandate, including a prisoner exchange, a resolution of the fate of boat people stranded off the Lebanese coast, and a three day ceasefire to recover the bodies of fallen soldiers. But even if the delegates did refrain from discussing issues outside of those raised by the complaints submitted to the group, their interactions nonetheless could have served as a forum for signaling.

One can speculate, therefore, that Israel and Syria did use this channel of communication to feel one another out and to signal one another in a broader context. Such back-channel communications would have been especially important in the Israeli-Syrian relationship since the two states are unable to communicate openly through other channels and did not participate in bilateral peace talks throughout nearly all of the Agreement's duration.

In this vein of facilitation of interactions, one should also note the potential for individual relationship-building. The individual delegates were influential military and diplomatic actors in their own countries, and any feelings of goodwill and personal relationships which they may have formed through the meetings could well have affected their respective countries’ stances towards each other. One delegate has, in fact, told the author that he was asked by the foreign policy establishment in his country whether his state could trust the other side in case of a peace deal, and that based on his dealings with his counterparts in Naqura he reported that leaders of the state could in fact be trusted to hold to their word. Furthermore, a former Chair of the Monitoring Group has reported that he made a point of walking Israeli and Syrian officials into private rooms in the UNIFIL compound and then slipping away, leaving them to talk in complete privacy. Viewing the April Agreement as a containment mechanism created out of a shared interest in

as a back channel of communication between Israel and Syria or Israel and Lebanon “because neither the Lebanese nor the Syrian delegations talk directly to the Israelis around the round table. They address their talk directly to ILMG Ambassador Greenlee. Besides, the discussions do not involve issues that are not within the ILMG’s jurisdiction but are restricted to the discussion of the complaint.” Al-Safir (Beirut), A Diplomatic Assessment of the Monitoring Group’s Work. Discussions in Limbo, Nov. 6, 1996, FBIS-NES-96-2-17, available at http://wnc.fedworld.gov.

187. ILMG Statement 6, supra note 138.

188. For a report of the prisoner exchange, see Beirut Radio Lebanon, supra note 179. The ILMG’s involvement in the situation of the boat people and the establishment of a cease-fire were related to the author by a former Chair of the Monitoring Group. Interview with anonymous Chair of the ILMG (Nov. 24, 2000).

189. Israeli delegates said that although meetings were often filled with tension, there were moments of breakthrough when delegates were able to communicate with one another on more amicable terms. One delegate claimed that personal relations within this insulated institution grew so strong that at the end of the final meeting in which he participated there were tears in his counterparts’ eyes. However, a Lebanese diplomat who participated in the meetings denies that any amicable personal relationships were ever formed, calling any such reports “illusions.”

190. This same delegate informed the author that the back channel function of the group was so important that at times the complaints themselves were secondary and that the states sought complaints simply as an excuse to meet.

191. See Interview with anonymous Chair of the ILMG (Nov. 24, 2000).
avoiding war, one can fully appreciate the extraordinary value of the communication brought to the system by the meetings of the ILMG.

XI. CONCLUSION

To the untrained eye, the April 1996 Agreement looks like a bizarre and nonsensical arrangement between Israel and Lebanon. However, one can begin to make sense of the Agreement by viewing it through the lens of the international legal scholar. Faced with an intractable rivalry which threatened to lead to a war they both perceived as undesirable, Israel and Syria shared a common interest over four years in constructing and maintaining a system of containment for their conflict. That system was first and foremost a legal one, regulating the behavior of the parties and their proxies in southern Lebanon, the locus of their most combative interactions. In coordinating on the April Agreement, Israel and Syria were able to safeguard common interests by agreeing to limit the actions of their forces and those of their proxies. In addition, the states created a juridical body to resolve disputes concerning perceived violations of the legal regime. Conveniently, the meetings of this body, the ILMG, also served to further the goals of the legal regime by augmenting its application and by allowing the parties to deflect internal pressure and to communicate with each other.

Having used concepts endemic to the study of international law in order to explicate the April Agreement, perhaps one can conversely use this case study in the creation and maintenance of an international legal institution to shed light on the legislative process in international law in general. In this case, two states facing a seemingly insoluble dilemma turned to international law to remedy their situation as best as they could. The turn to law in this case did not follow the pattern familiar to the scholar of domestic legal institutions. Compare, for example, the actions of Israel and Syria in this case, with those of the state actor trying to increase public order in the domestic realm.

In the domestic universe, a national legislative institution might pass new legislation in order to deal with a particular problem facing its constituents. The legislators may have to search for the most effective law to deal with the targeted problem, and the proponents of a law may have to bargain for passage of the statute, but the process is familiar and the template pre-existing. In the international universe, on the other hand, while Israel and Syria did, by 1996, have a primitive model on which to construct their convention in the series of previous failed systems as well as the 1949 Israeli-Lebanese Armistice Agreement, the task was much more complex. The states could not turn to an established legislative institution in which to expeditiously formulate a new legal arrangement. On the contrary, they were forced to seek assistance from at least one outside authority in order to cobble together a novel legal regime that would regulate the actions of a wide range of state and non-state actors.

Furthermore, the international realm, as represented by the case at hand, differs from the domestic one in regards to the enforcement of legal norms. Skeptics of international law might say that the April Agreement held in place because it was not in fact law, but a meaningless statement. The parties were
not bound by it in the sense that one is bound by the domestic laws of one's
country, and they were free to renounce it at any time. Indeed, all parties to
the conflict appear to have violated the Agreement numerous times from its
inception. However, the fact that the Agreement did not see 100 percent
application does not mean that it was not law. On the contrary, as this Article
has shown, the Agreement played an extremely important role in shaping the
behavior of all the parties to the Lebanon conflict. Indeed, it assumed a kind
of omnipresence, coloring every interaction in the conflict for four years.

The Agreement was undoubtedly soft in some sense. But as scholars of
international law have argued, soft law is still law. The Agreement's
softness, to the extent that it was soft, may in fact have been a crucial reason
why the parties were able to agree on it and were willing to remain bound by
it. In a hypothetical world in which a hard law agreement with a strong
enforcement mechanism had been proposed to the parties in 1996, one doubts
whether the Israeli and Syrian governments would have accepted it. But the
Agreement's softness was limited. Underlying the soft facade was a hard core
of enforcement backed up by the Israeli and Syrian military forces. Herein lay
the April Agreement's otherwise inexplicable endurance. Simply put, both
Israel and Syria had incentives to uphold the April Agreement as a beneficial
code of conduct as they continued their struggle in Lebanon. While they
demonstrated a willingness to continue fighting, neither country wanted the
conflict to spiral into a full-scale Israeli-Syrian war, a war that would be
extremely costly for both sides. Hence the parties saw fit to agree on a set of
rules that enabled them to continue their conflict, but within limits acceptable
to both. Thus the case at hand may be reflective of the larger lesson that even
without the type of enforcement mechanism available in the domestic realm,
states may be able to remain faithful to a legal norm if they mutually perceive
non-compliance to be more costly than compliance.

The fact that the parties remained faithful to the April Agreement for
four years does not mean that the legal institution was costless. On the
contrary, in addition to the obvious administrative costs of participation in the
Monitoring Group, the states faced various other political and strategic costs
in adhering to the regulations. For example, state leaders on both sides were
forced to restrict the behavior of their military forces. Such limitations not
only circumscribed the set of options open to their military agents but also
brought a political cost in the form of public constituencies dissatisfied with
this restraint. Yet despite the inherent costs of the system, both Israel and
Syria appraised it as the most cost effective option available. The alternatives,
various levels of risk of war, were perceived as even more costly. Herein lies
one of the critical lessons of the April Agreement: because they viewed the
alternative policy options as more costly, Israel and Syria created and
maintained a legal regime regulating their behavior despite its inherent costs
and despite the fact they were embroiled in a hot military conflict with one
another.

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192. See Michael Reisman, The Concept and Functions of Soft Law in International Politics,
in 1 ESSAYS IN HONOUR OF JUDGE TASLIM OLAWALE ELIAS 135 (Emmanuel G. Bello & Prince Bola A.
Ajibola, eds. 1992).
The April 1996 Agreement and the ILMG are certainly unique. But despite its exceptional character, the case at hand may illustrate a broader point about parties to conflict in general. While states may not be likely to craft explicit, written legal regimes regulating military conflicts and to establish monitoring mechanisms to enforce these agreements, the phenomenon of two adversaries sharing mutual interests during a time of war may not be so rare. Indeed, unless they are willing to engage in a no-holds-barred fight to the death, states are likely to share a converging interest in the containment of military conflicts within certain limits.

While states may not always recognize these common interests or may not be able to coordinate their actions for mutual gain, it is likely that they often will achieve some arrangement, however tacit and however incomplete, to protect shared interests to the extent they can. This explains the innumerable limited conflicts that rage around the world at any given moment.

While coordination on mutually advantageous behavior by warring states may be a common aspect of conflict, the scholar should go further than the recognition of the phenomenon and ask whether it serves a greater value or whether it may be destructive in its net aggregate effects. In this case, for example, one is led to ask whether the Agreement between Israel and Lebanon may have been pathological. By prohibiting strikes on civilian targets and the use of civilian areas as launching grounds for attack, the April Agreement left itself open to exploitation by parties wishing to undermine its object and its existence. If Hesbollah or parties controlling it determined that it was in their best interests to destroy the April Agreement, they could do so by firing on Israeli forces from the fringes of populated areas in the hope of drawing damaging counter-fire. Such a scenario, which Israeli officials did actually claim to be reality in February of 2000, could easily escalate the violence to a level that rendered the April Agreement functionally irrelevant.

Even if the April Agreement was not inherently pathological, one might raise an opposite concern—that it allowed a low intensity conflict to smolder and exact continuing damages. If the alternative was a short-term war with a more decisive outcome, one might argue that the April Agreement was actually destructive.\footnote{Schelling puts the point this way: Pure conflict, in which the interests of two antagonists are completely opposed, is a special case; it would arise in a war of complete extermination, otherwise not even in war. For this reason, “winning” in a conflict does not have a strictly competitive meaning; it is not winning relative to one’s adversary. It means gaining relative to one’s own value system; and this may be done by bargaining, by mutual accommodation, and by the avoidance of mutually damaging behavior. If war to the finish has become inevitable, there is nothing left but pure conflict; but if there is any possibility of avoiding a mutually damaging war, of conducting warfare in a way that minimizes damage, or of coercing an adversary by threatening war rather than waging it, the possibility of mutual accommodation is as important and dramatic as the element of conflict. \textit{Schelling, supra} note 164, at 4-5.} Had they not been assured that they could keep their

\footnote{194. For an example of this type of argument, see Edward N. Luttwak, \textit{Give War a Chance}, \textit{Foreign Affairs} 36 (July-Aug. 1999). Luttwak’s argument is addressed to those considering foreign intervention. But in the case at hand, Israel and Syria may have found a way to keep their conflict under control even without American and French intervention at the end of Operation Grapes of Wrath.}
conflict within bearable limits, Israel and Syria may have chosen to stifle the violence completely. One would be hard-pressed to make accurate calculations about the relative costs of the possible scenarios, however, and in this case Israel and Syria apparently both came to the conclusion that the Agreement was not in fact destructive.

The system might also have been deeply flawed to the extent that it undermined public faith in law among the region’s population. If two states announce the achievement of a new legal regime and then continually violate the enshrined norm while claiming to honor it, constituents may begin to reevaluate the meaning of law. In this case, the repeated testing of the norm may have helped define and strengthen it. Indeed, a norm needs to be tested at least to a minimal extent before it can truly be considered a norm. But the long-term aggregate impact of such behavior on the people whom it affects most is not at all clear.

While the value of the system may be questionable, the crucial point for the present discussion is that in the case at hand, despite the possible existence of deep underlying flaws, for four years Israel and Syria found the legal arrangement useful in advancing their shared interests. Because the arrangement in this case — an explicit understanding to fight a limited war — is quite novel, one should be cautious about extrapolating conclusions about converging interests in military conflicts in general. Indeed, it remains a question whether this type of agreement is exportable. The conflict in south Lebanon is a unique situation, and the mechanism employed there may not be possible or helpful in other conflicts. As Ikle has noted, some negotiations to arrive at arrangements to limit wars are better conducted tacitly.\footnote{Ikle notes the Korean War as an example of a situation in which explicit bargaining could have been damaging. He argues, “The mutually observed restrictions in the Korean War (for instance, no attacks on the supply lines leading into North and South Korea) is an example of arrangements that would not have been facilitated or might even have been upset by negotiation.” Fred Charles Ikle, How Nations Negotiate 5 (1981).}

Of course, if this type of convention is exportable, then international decision-makers should add it to their set of policy options when considering the best way to control violent conflict.

More generally, while the April Agreement regulates the actions of military forces in a hot conflict, scholars might benefit from more detailed scrutiny of other examples of coordinated behavior in the context of war. The case at hand suggests that observers might find states behaving according to tacitly or explicitly bargained-upon patterns, even in situations in which one might assume such coordination to be impossible due to the conditions of war. While the April Agreement remains a unique example of an explicitly negotiated written agreement with a special monitoring mechanism, it suggests that other tacitly negotiated or unwritten arrangements may be reached between warring parties. Indeed, the April Agreement demonstrates that the vagaries of the international system may drive states to coordinate on what might otherwise appear as bizarre arrangements, but which the legal
scholar can interpret as negotiated codes of behavior which, despite their costs and their flaws, allow the states to meet mutual interests.
APPENDIX I: JULY 12, 1996 PROTOCOL ON THE WORKING RULES FOR THE ISRAEL-LEBANON MONITORING GROUP

1. Overview of the Monitoring Group

A. The Monitoring Group (M.G.) established by the April 26, 1996 understanding consists of delegates headed by military representatives of the five countries: the United States, France, Syria, Lebanon, and Israel. The existence of the Monitoring Group will be temporary, until a peaceful solution through negotiations is reached. The Monitoring Group will not be a part of these negotiations.

B. The Monitoring Group will have a Chair and a Co-chair. These responsibilities will be undertaken by the United States and France alternately. The United States will appoint the first Chair. France will appoint the first Co-chair. The first Chair will serve until December 1, and thereafter each Chair will serve for five months. The Chair and the Co-chair will work together closely in a spirit of full coordination and cooperation.

C. The Chair of the Monitoring Group will receive complaints from Lebanon and Israel and will circulate them among the members of the group. The Chair will also call for meetings and conduct such meetings.

D. The Chair will be available to receive complaints from Lebanon and Israel at any time. The Chair will determine its address at an appropriate diplomatic mission.

E. Complaints will be submitted in a written form to the Chair of the group within twenty-four hours in the event of a claimed violation of the understanding. The Chair will immediately notify the members by providing a copy of the complaint and call a meeting in Naqura immediately.

2. The Functions of the Monitoring Group

A. The group, with all its members, will be in charge of monitoring the application of provisions 1, 2, 3, and 4 of the understanding.

B. The group will deal with complaints and will address the complaints submitted according to procedures described below.

3. The Mechanism

A. By invitation of the group Chair, or at the request of its members, the military representatives of their delegations of the five

196. Giladi's version reads "or." Giladi, supra note 34, at 388.
states will meet at Naqura in order to carry out their responsibilities under the understanding of April 26, 1996.

It has been agreed that the military representatives who will lead their countries’ delegations will be at a senior rank. Meetings of the Monitoring Group, with the participation limited to the five member states, will be held at the UNIFIL headquarters at Naqura.

B. The members of the Monitoring Group will determine through their discussions whether the matter requires verification.

C. Verification in Lebanon will be undertaken by representatives of the United States, France, Lebanon, and Syria if Syria desires; in Israel, verification will be undertaken by representatives of the United States, France, and Israel. Furthermore, wherever in practice the work of the verification mission requires, Lebanon and Israel will be asked to facilitate the movement and safety and security of the verification mission to enable it to carry out its task as it relates to the complaint.

D. On the basis of Israel’s and Lebanon’s commitment to the April 26, 1996 understanding, and without derogation from any of the terms: Israel and Lebanon will take necessary measures to facilitate the work and ensure the safety of the Group, and refrain from any actions and reactions which could endanger the Group and its work during the period of review of a complaint. For the Monitoring Group to function effectively, Lebanon and Israel will strive to create a stable and tranquil environment for it to carry out its work.

E. The Monitoring Group will draw up its report about the complaint within 72 hours after the submission of the complaint. If there is unanimity among the members of the Monitoring Group, the report will identify the party responsible for not complying with the understanding, will address and deal with the situation and will contain recommendations for enhancing compliance with the understanding. If there is no unanimity, the report will contain a description of the Monitoring Group discussions of the complaint and the results of the verification mission, and the matter will be referred to the Foreign Ministers, taking into consideration that the Foreign Ministers of...

197. Giladi’s version reads, “or at the request of any one of its members.” *Id.* In theory, this difference in wording could result in a significantly different meaning. While the wording presented by Beilin might imply that all of the member states aside from the Chair would have to jointly request a meeting, the addition of the words “any one of” would make it clear that any single party to the group could request a meeting. In practice, the Monitoring Group only met when there was an actual complaint filed by Lebanon or Israel, not at the request of other group members.

198. Giladi’s version uses “and” in place of “of.” *Id.* In practice, both the military representatives and the rest of the delegations of the five states participated in the meetings.

199. The version presented by Giladi reads “in its work.” *Id.* at 389. The use of the word “and” lends the provision broader application as it would require the states to refrain from endangering both the group members and its work. Under either reading, though, the states are required “to strive” to maintain stability and tranquility.
the United States, Syria, and France will exert their efforts to help resolve the problem in consultation with the Foreign Ministers of the parties involved.

F. Each state in the Monitoring Group will bear the expenses of its representatives.

-July 12, 1996

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200. BEILIN, supra note 42, 123-25 (reproducing English text of the protocol establishing the ILMG); see also discussion in supra note 42.
APPENDIX II: SAMPLE STATEMENT OF THE ISRAEL-LEBANON MONITORING GROUP

Monday, May 10, 1999
United States Department of State:
Press statement on behalf of the Chair of the Lebanon-Israel Monitoring Group

The Monitoring Group met on May 5-6, 1999, at the UNIFIL Headquarters compound in Naqura, Lebanon to consider five complaints of violation of the April 26, 1996 Understanding, three filed by Israel and six filed by Lebanon.

With regard to the Israeli complaints concerning two attacks initiated by a Lebanese armed group on April 24, 1999 in the area of Haddatha and el-Mansouri/Majdal Zun, there was no agreement on whether the launching sites were in a civilian populated area. The Monitoring Group stressed the importance of ensuring that civilian lives and property are not put at risk in the course of military operations and, to this end, urged those launching attacks to err on the side of caution in selecting firing sites where there could be a risk of civilian casualties and property damage as a result of counter-fire.

With regard to the Lebanese complaints concerning Khirbat Silm Jarjouaa, and Jibal al-Butm, the Monitoring Group acknowledged that on April 27, 1999, following an attack initiated by a Lebanese armed group against a military target, one 155mm round fired by Israeli forces impacted near an inhabited house in Khirbat Silm, damaging a walled house fence. The Monitoring Group also acknowledged that on April 27, 1999, following an attack initiated by a Lebanese armed group against a military target, eight 120mm rounds fired by Israel and those cooperating with it impacted in Jarjouaa, injuring two civilians and damaging five houses and an electrical net. With regard to Jibal al-Butm, the Monitoring Group acknowledged that on April 28, 1999, one 160-mm round fired by Israel or those cooperating with it impacted in the village, damaging a walled house fence. The Monitoring Group concluded that these three incidents constituted violations of the Understanding and called on Israel to take effective measures to ensure that such incidents are not repeated.

With regard to the Lebanese complaint concerning Nabatieh el-Fawka, the Lebanese delegate stated that on April 27, 1999, following an attack initiated by a Lebanese armed group against a military target, three 81mm rounds impacted in the village, damaging a house. With regard to the Israeli complaint concerning Maknouni, the Israeli delegate stated that on April 27, 1999, during the course of an attack initiated by a Lebanese armed group against a military target, a mortar shell impacted in the village, damaging one house. In response to these violation complaints, the Israeli and Lebanese delegates respectively stated that [sic] had no knowledge of any firing at the times and places indicated by the other side. They added they
would further investigate the respective complaints and report back to the Monitoring Group as appropriate.

With regard to the Lebanese complaint concerning Zibqin, the Monitoring Group acknowledged that on May 4, 1999, three air-to-surface missiles fired toward the village by Israeli Air Force helicopters destroyed one house and damaged 18 others. With regard to the Lebanese complaint concerning Baalbek, the Monitoring Group acknowledged that on the same evening, two air-to-surface missiles fired toward the city by Israeli aircraft injured five civilians, destroyed a public building, and damaged a mosque, a cemetery, and the electricity network. In addition, several dozen houses sustained broken glass and other minor damage.

The Monitoring Group expressed its strong disapproval of these incidents, which constitute violations of the Understanding and which have resulted in a grave situation with civilian casualties and extensive property damage. The Monitoring Group also called on Israel to desist from a repetition of such incidents in the future, which can contribute to a serious increase in tensions and to a deterioration of the situation. It also called on Israel to more effectively implement its commitment pursuant to the April Understanding not to target civilians or their property in Lebanon.

The Monitoring Group expressed its great appreciation to UNIFIL for providing facilities and support for the meeting.²⁰¹