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The Responsibility to React? Lessons from the Security Council's Response to the Southern Lebanon Crisis of 2006

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The Security Council's failure to react when Israel initiated its third large-scale military incursion into southern Lebanon in July 2006 stands in contrast to the overall reform agenda towards a responsive and accountable Security Council. While the idea of 'responsibility to protect' increasingly gains recognition, the delay in reacting to this event demonstrated a setback contrary to legitimate expectations expressed by member states. This article uncovers the extent to which the international community has come to recognize the legal significance of the Security Council's responsibility under the UN Charter, what legal implications the failure of reaction could entail, and what needs to be reformed to rectify the 'responsibility deficit disorder' of the Security Council. It is argued that the Security Council's responsibility under Art. 24(1) carries growing legal significance, which requires reform of the 'attitude' and 'culture' of the Security Council towards conflict management by mainstreaming peacekeeping operations in its security policy.

During 34 days from 12 July 2006 the international community witnessed the third large-scale military raid by Israel across the southern Lebanese border.¹ Throughout this time the UN Security Council, the primary organ responsible for the maintenance of international peace and security, remained silent until it finally stepped in by adopting resolution 1701 on 11 August. In contrast to the more proactive posture towards Iran,² its response to this event showed reluctance on the part of the Security Council to intervene into the 'actual' (as opposed to 'potential' as in the case of Iran) military conflict to undertake a peacekeeping operation at an early stage rather than after the conclusion of the conflict. The Security Council has been increasingly reactive rather than proactive in dealing with armed conflicts.³

On the other hand, there has been an on-going agenda in favour of the normative underpinning of the UN Charter and particularly the role of the Security Council, as illuminated by the emerging doctrine of the 'responsibility to protect'. From this perspective, the primary responsibility for the maintenance of international peace and security, which is vested in the Security Council under Art. 24(1) of the UN Charter,⁴ has arguably been fostering legitimate expectations that the Security Council will take necessary action when it is expected to do so, and that it would otherwise be failing to discharge its responsibility.⁵ This essay attempts to uncover the extent to which the international community has come to recognize the legal significance of the Security Council's

responsibility under the Charter. It draws on the debates in the Security Council where an appropriate course of action was sought and called for to respond to the conflict in the Middle East intensified by Israel's military incursions into southern Lebanon. From an examination of those I argue that the Security Council's responsibility carries growing legal significance, which requires reform of the 'attitude' and 'culture' of the Security Council towards conflict management by mainstreaming peacekeeping operations in its security policy.

The Security Council's failure to take necessary action gives rise to two separate yet interrelated questions: whether the Security Council is not held responsible in any legal sense for the failure or is in breach of its obligations with impunity; and what consequences and implications the failure might bring about. The first question is addressed by examining the nature of the Security Council's responsibility under Art. 24(1) of the Charter, casting light on the doctrinal shift from the right of humanitarian intervention to the 'responsibility to protect'. This is then contextualized with a specific focus on the Israeli military incursions into southern Lebanon. The next part examines the second question by dividing the issue into direct consequences and the wider implications of the failure, signifying in turn the regulatory effects of Security Council resolutions. The third part explores some options available to rectify the current 'responsibility deficit disorder' of the Security Council, calling for reform of the 'attitude' and 'culture' of the Security Council rather than a mere institutional reform and emphasizing the early and decisive deployment of peacekeeping operations in conventional settings.

Nature of the Security Council's Responsibility

'When is the [Security] Council galvanized into action?'⁶ This is the question that has long been posed without a satisfactory answer.

General Framework

It has been generally seen that the Security Council's responsibility under Art. 24(1) of the Charter is purely political and organizational in nature, merely giving it priority over the General Assembly in discharging UN functions for the maintenance of international peace and security,⁷ and that the charter in no way dictates when and how the Security Council must take action. Undeniably, Security Council actions must result from complex decision-making processes in which political, military, economic and other national interests hold sway. Those considerations may certainly provide a descriptive explanation for the delay in the Security Council's response to Israel's 2006 military incursion. However, the significance attached to the Security Council's mandated role in the maintenance of international peace and security pushes the discussion into a deeper legal realm. Indeed, observers allege that the Council had been acting on a selective and privatized basis in the choice of targets as well as in the manner of reaction, reflecting the interests of the permanent members (P-5) rather than the collective interests of UN member states.⁸ The inconsistency and the discrepancy between what member states expect and what the Council actually does may provide a recipe

for diminishing the legitimacy of its decisions and even for jeopardizing its very existence.⁹ It could be argued, at least in theory, that legitimate expectations have been fostered that the Council should take action in a timely and consistent manner. Such legitimate expectations, defined as legally justifiable expectations concerning the legal relevance and effect of a certain type of behaviour,¹⁰ indicate greater legal significance in interpreting the Council's responsibility under Art. 24(1) requiring it to act in the interests of the 'international community'. Yet the question is posed: how far have we come in forming such legitimate expectations about how the Security Council should discharge its responsibility?

In this connection, albeit in a wider context, attention should be drawn to the idea of shifting the focus from 'right' to 'responsibility', which came to the fore in the report prepared by the International Commission on Intervention and State Responsibility (ICISS) in 2001 in relation to humanitarian intervention.¹¹ By re-characterizing the notion of state sovereignty from 'right' to 'responsibility', the report purports to make a change in perspective of the traditional and sovereignty-oriented notion of humanitarian intervention to the 'responsibility to protect', encompassing human security.¹² Although it stopped short of declaring that there is a legal obligation to protect, the Commission certainly goes beyond the traditional question of whether humanitarian intervention is permissible or not.¹³ The Commission also stressed the paramount importance of the Security Council in dealing with military intervention issues for human protection purposes,¹⁴ notwithstanding its controversial endeavour to set out 'ethical checklists' to guide military intervention without UN authorization.¹⁵

The idea was subsequently given greater attention in the report of the UN Secretary-General's High-Level Panel on Threats, Challenges and Change published in December 2004.¹⁶ After reiterating a growing awareness of the 'responsibility to protect', the report endorsed:

the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.¹⁷

The UN Secretary-General's follow-up report, *In Larger Freedom*, echoed the endorsement of the 'responsibility to protect' in cases where national authorities are unable or unwilling to protect their citizens.¹⁸ Notwithstanding concerns expressed by several states about the legal underpinnings and potential abuse of the idea,¹⁹ the General Assembly affirmed collective action through the Security Council in accordance with the UN Charter, including Chapter VII, 'should peaceful means be inadequate and national authorities are manifestly failing to [protect] their population'.²⁰ The Council itself also embraced the notion in relation to the protection of civilians in armed conflict.²¹

The overall trend is thus clear that the 'international community' – comprising sovereign states which have committed themselves to the centralized security system under UN authority – has moved towards the idea of 'responsibility',

expecting the Security Council to act in a timely, decisive and consistent manner. Yet the particular emphasis on human protection might have sidelined the Council's primary responsibility to maintain 'international' peace and security in conventional settings such as cross-border armed conflicts. Also, it seems that the aforementioned reports focus mainly on the Council's action under Chapter VII as a last resort,²² leaving us inattentive to the question as to whether the Council is under an obligation to take any other measures at an earlier stage of conflict as part of its responsibility. On the other hand, the debates leading up to the adoption of the UN Charter clearly indicate that the privileged status of the P-5 comes with the special responsibility to react to individual crises on behalf of other states.²³ The normative significance of Art. 24(1) can only be properly understood against the background of historical and political dynamics. Given the overall trend towards the idea of 'responsibility', it is worth examining whether the idea has developed in a broader context including the 'responsibility to react', as originally envisaged, even at an early stage of conflicts in conventional settings.

Calls for Action in Response to Israeli Military Incursions

The first military incursion by Israel into southern Lebanon took place on 15 March 1978 in response to terrorist attacks launched by Palestinian rebels as part of the Palestine Liberation Organization (PLO) against northern Israel. The Security Council promptly reacted by creating UNIFIL, four days after the 1978 military operation began.²⁴ The second large-scale military incursion was initiated on 4 June 1982, whereupon the Council immediately adopted resolution 508 unanimously calling for the cessation of hostilities and the withdrawal of all Israeli forces.²⁵ Although several draft resolutions including the French proposal for despatching a UN force were vetoed by the United States, a multinational force comprising French, Italian and US military forces was instead deployed when a ceasefire in the Beirut area finally took effect on 12 August 1982. When Israel initiated the third military incursion on 12 July 2006, the Council kept silent until 11 August 2006 when it finally adopted resolution 1701, calling for a full cessation of hostilities and authorizing an increase in the force strength of UNIFIL for deployment together with Lebanese forces.

Israel's justification for its military incursions into southern Lebanon has been traditionally twofold: the failure on the part of the Lebanese government to exercise an effective control over southern Lebanon to suppress the PLO's (and later, Hizbollah's) terrorist activities against Israel;²⁶ and the failure on the part of the Security Council to take necessary action to protect Israel from repeated terrorist attacks launched by PLO rebels.²⁷ The frustration directed at the Council's failure to react was expressed in the Israeli representative's remarks during Council's debates in 1978 and 1982, accusing the Council of betraying its mandate and function²⁸ and of being unmoved by PLO 'terrorist activities'.²⁹ Interestingly, in 2006 it was the Lebanese government and the PLO that urged the Council to perform its duties and expressed frustration at the Council's inaction in response to Israel's military incursion.³⁰

The July 2006 situation prompted several states to urge an immediate action plan by the Council. The Swiss representative stated that: 'in view of the magnitude of the political and humanitarian crisis, the international community has a responsibility to act, and Switzerland hopes that the Security Council is in a position to take such action'.³¹ He proposed three sequential courses of action: calling for an immediate ceasefire; calling for the establishment of humanitarian corridors; and deploying an international security and monitoring force to southern Lebanon.³² The Brazilian representative also stressed that 'through the Security Council, the international community must urgently fulfil its responsibilities and take immediate action to prevent a further escalation of the conflict'.³³ Saudi Arabia, Jordan and Morocco also expressed similar views on the Council's responsibility.³⁴ Those views certainly reflected an expectation that the Council was required to take action in this particular situation. Despite the presence of UNIFIL in the field, it was incapable of reacting to a full-scale armed conflict and even unable to carry out regular patrols.³⁵

Stated differently, the Security Council's failure to react disregarded the legitimate expectation of member states, reinscribing the issue of double standards in the Council's practice. As the Venezuelan representative contended, an obstructionist policy, notably on the part of the US and the UK, hampered a balanced and just action to resolve the situation in the Middle East, including the Palestinian question.³⁶ Moreover, the inaction in such a flagrant case of threat to international peace and security would only contribute to weakening the Council's credibility. The then Secretary-General Kofi Annan in fact emphasized that 'the authority and standing of the Council are at stake: people have noticed its failure to act firmly and quickly during this crisis'.³⁷ The 'credibility gap'³⁸ created by the divergence between the legitimate expectation of member states and the actual practice of the Council, might have widened to an extent conducive to undermining its authority.

Critics may point to ambiguity over when the Council is required to take action. Two approaches can be taken to ascertain the criteria against which the Council's responsibility needs to be discharged: first, a subjective approach relies on the perception of Council members as to the extent that a particular situation requires attention; and second, an objective approach takes into account factual assessments of the situation. Given that legitimate expectations have arguably been fostered among states to propel the legal significance of the Council's responsibility under Art. 24(1), the subjective approach is more consistent with the rationale behind the development. Yet an objective approach should not be disregarded, as it can provide the secondary criteria, especially in cases where Council members are uncertain as to the prospect of conflict or where a particular situation, however serious in a region, does not warrant attention for political reasons should the subjective approach triumph.

It is thus submitted that, while states have been expressing their expectations that the Council must perform its responsibility in a particular situation, malpractice has helped undermine its authority. Ironically, the Council's failure in the Lebanon case, in contrast to the general attempts to complement or improve its practice, may have strengthened the legal significance of the responsibility

under Art. 24(1).³⁹ The expectations expressed by several states indicate that the idea of 'responsibility to react' has developed as part of the overall reform agenda towards the responsive and accountable Council.⁴⁰ A question remains nevertheless whether inaction merely entails political impacts upon the Council's authority or involves legal implications, which leads to the second question about the consequences and implications of a failure to react.

Consequences of the Failure to React

The consequences of a failure to react have both direct and wider implications.

Direct Consequences

An direct consequence arising from the Security Council's failure to react to a particular conflict is an indeterminacy relating to the conflict's legal status, including most importantly the legality of claims based on self-defence. States are permitted to use armed force in exercising their inherent right of self-defence under Art. 51 of the Charter, in conformity with several conditions.⁴¹ Yet the scope and content of self-defence remains indeterminate and controversial,⁴² including the introduction of debates on anticipatory and pre-emptive self-defence, and there are practical difficulties involved in adjudicating claims to the exercise of self-defence,⁴³ in that states often make their claims to self-defence in general terms to justify their military action without engaging in doctrinal debates on its scope and content.⁴⁴ In the early days of UN practice, the Security Council from time to time rejected pleas of self-defence made by Israel to justify its military incursions in the region.⁴⁵ It also sometimes affirmed the right to self-defence with regard to a particular use of armed force.⁴⁶ Although they do not provide general statements of the law, such resolutions are authoritative as to the legality of a particular use of force.⁴⁷ In the absence of the Council's intervention expressing its views of legal limitation upon the parties to a particular conflict, the legal status of the situation arguably shifts to a 'second-order level of legal inquiry that is guided by the more permissive attitudes toward the use of force to uphold national interests that is contained in customary international law'.⁴⁸

The significance of the role that such resolutions can play was demonstrated when the Council finally stepped into the situation in southern Lebanon to call for a ceasefire and a cessation of hostilities. Criticism was levelled at the resolution on the grounds that the Security Council gave tacit approval of Israel's military action for strictly self-defensive purposes by calling for the immediate cessation by Israel of 'all offensive military operations', as opposed to the call for immediate cessation of 'all attacks' addressed to Hizbollah.⁴⁹ The Lebanese representative objected to this phraseology, warning that the resolution carried the great risk of continued violence and destruction under the pretext of self-defence.⁵⁰ Yet the terms of the resolution must be read against the background leading up to its adoption. Given that Israeli military incursion into southern Lebanon was heavily criticized as clearly excessive and disproportionate,⁵¹ the drafters' intention seems clear that no action comparable to that scale was to be considered

non-offensive, although the issue remained how far Israel's self-defence action can extend.⁵² The resolution certainly played a significant role in regulating the situation by placing the parties under specific obligations and guidance. Further complication provoked subsequently by less extensive military action may need to be teased out by additional resolutions, though the failure to do so by no means releases the parties from their obligations to comply with the terms of the initial resolution.

The Security Council's failure to discharge its responsibility may reflect the trends and demands that prevail at a particular point in time. For example, in contrast to the first Israeli military incursion in 1978 when a UN peacekeeping force was deployed, the second incursion in 1982 led to bypassing the UN in favour of a multilateral peacekeeping force, which reflected a broader trend towards multilateralism during the 1980s.⁵³ The distinctive feature that prevailed in 2006 was the wider and stronger condemnation of terrorism: the enormous impacts of the September 11th terrorist attacks on the 'international community' led to tougher and more united counter-terrorism measures. The paradigm shift took place when the Security Council adopted resolution 1373 imposing obligations on member states under Chapter VII of the Charter, *inter alia*, to 'take the necessary steps to prevent the commission of terrorist acts'.⁵⁴

Although Israel's action in 2006 was triggered by the kidnapping of two Israeli soldiers by Hizbollah, Israel insisted more broadly on the cessation of terror as a matter of urgency.⁵⁵ Vijay Nambiar, Special Adviser to the Secretary-General reported that:

Israel had decided that military operations would continue until Hizbollah was seriously weakened; this was not, as in the past, a response to a particular incident – the abduction of the two soldiers – but was a definitive response to an unacceptable strategic threat posed by Hizbollah and a message to Iran and Syria that threats by proxies would no longer be tolerated.⁵⁶

The Canadian representative in the Council argued that the abduction could have been only the prelude to a major offensive action by Hizbollah against Israel.⁵⁷ Israel could thus place its justification for military action in the context of counter-terrorism, which had been given an authoritative blessing by the Security Council. From such a point of view, it could be argued that Israel was given prior authorization for undertaking military operations against terrorism. Yet resolution 1373 by no means gives states *carte blanche* in undertaking military action, but rather requires them to take counter-terrorism measures in accordance with the UN Charter and to comply with all their obligations under international law.⁵⁸ Even if one assumes that counter-terrorism was integral to Israeli operations, the Security Council still holds the responsibility for making an authoritative decision about the legality of each military action.

Wider Implications

The issue concerning wider implications is deep-rooted in the controversy over the normative power of the principle of non-use of armed force, as embodied in

Art.2(4) of the Charter.⁵⁹ While this principle has been accorded customary international law status,⁶⁰ its normative power has been seriously challenged,⁶¹ especially by those who see its normativity premised upon the effective functioning of the Security Council.⁶² Such a descriptive proposition can lead easily to the view that the Council's failure to fulfil its assigned responsibility has contributed to undermining the normative foundation of the principle,⁶³ and thus to giving states free rein in taking purportedly self-defensive action. The extent to which the principle has lost its normative force may well be subject to questions as to what constitutes an effective functioning of the Council and how should the effectiveness be measured.

Some commentators have nonetheless recognized the normative force of the principle of non-use of armed force,⁶⁴ ostensibly based on the fact that 'no state has invaded or used force against another state without providing a legal justification'.⁶⁵ From the normative perspective, effectiveness can be understood in two different senses: one in an internal sense focusing on the intrinsic values and objectives of a norm, and the other in an external sense placing the emphasis on the social reality.⁶⁶ Even supposing that the principle appears to have failed in its application due to the Council's failure to function properly, it may still retain a normative power at least as a rule of customary international law, so long as there are legitimate expectations with regard to its legal relevance and the effect of certain types of behaviour.⁶⁷ Thus the principle may well retain its legal clout as an underlying norm to support the international system.

In theory, the two perspectives result in completely different legal situations: from the descriptive perspective, an aggrieved state will be released from its obligation under Art. 2(4) for the reason that the Council is not performing its assigned functions; and from the normative perspective, the aggrieved state will still be bound by its obligation, at least under customary international law, not to resort to armed force except in exercising the right of self-defence notwithstanding the Council's failure to take necessary action. The indeterminacy is inevitable, given the general and abstract nature of the principle of non-use of armed force. The principle therefore needs to be regulated by more specific and consistent instructions with a view to maintaining its legitimacy.⁶⁸ It underlines the significance of the overall role that Council resolutions can play in maintaining and enhancing their regulatory effects, without which each resolution would lose legal significance.

Need for Reform?

It is thus imperative that when a conflict occurs, specific instructions addressed to the particular situation should be given, and are expected to be given, by the Security Council by virtue of its responsibility under Art. 24(1). There are several measures available to it for the regulation of conflicts in the legal context. The Council may call for a ceasefire and a cessation of hostilities, which will play an important role in placing all the parties to a conflict under a specific obligation not to use military force unless the Council determines otherwise. When Council members are uncertain about the prospect of conflict

development, the Council is empowered to initiate an investigation.⁶⁹ It can also deploy peace observation missions and peacekeeping forces, arguably even before a situation reaches the stage that constitutes a threat to the peace, a breach of the peace, or an act of aggression within the meaning of Art. 39 of the Charter.⁷⁰

However, those measures have been under-used since the 1990s, in contrast to the cold war when peace observation missions and peacekeeping forces represented the bright side of the Security Council's activities.⁷¹ The declining feature of peacekeeping to forestall the exacerbation of conflicts can be ascribed, as examined below, to (1) the centrality of the consent of parties involved; and (2) the inclination to rely heavily on Chapter VII powers in the post-cold war period.⁷² Those two factors have contributed to fostering the Council's reactive and conservative 'culture' in exercising its powers – only in response to clear, overt actions of renegade states or factions,⁷³ while neglecting the early deployment of peacekeeping operations.

The first obstacle is posed by allowing the consent of belligerent parties (state and non-state) to play a central role in drafting a resolution for the deployment of a peacekeeping operation as if it were a legal requirement.⁷⁴ The Security Council is under no obligation to obtain the consent of the parties, though it may be required politically, for mandates whether taken under Chapter VII or otherwise.⁷⁵ It would otherwise amount to giving belligerent parties 'veto' power to block the adoption of a resolution. This was in fact a point of concern raised with the immediate call for cessation of hostilities in southern Lebanon in 2006. While most of the states that participated in the Council debate urged an immediate call for cessation of hostilities,⁷⁶ a few states including notably the United States objected to this by prioritizing a complete and durable solution to the long-standing conflict.⁷⁷ The Peruvian representative rightly pointed out that the action to secure the consent of the parties involved for a lasting peace agreement should be separated from the first action calling for a cessation of hostilities.⁷⁸ The difficulties with obtaining the consent of the parties involved should by no means preclude the Security Council from taking responsibility for whatever action it deems necessary and possible for regulating the conflict at issue.

The second obstacle is the inclination to rely heavily on Chapter VII powers, not only for directing enforcement measures but also for peacekeeping and peace-building operations, often on conclusion of a ceasefire agreement.⁷⁹ The invigoration of Chapter VII powers since the early 1990s, due to the relative ease of reaching compromises among the P-5 after the cold war, has been overshadowed by unbalanced commitments – neglecting some conflicts, for example.⁸⁰ Israel and the United States in fact insisted on the deployment of the most robust international force under Chapter VII authority to stabilize the situation in southern Lebanon,⁸¹ which might have caused delay in adopting resolution 1701.

It may well be argued that none of the measures weaker than Chapter VII action can constitute a necessary measure to disqualify aggrieved states from exercising their right of self-defence.⁸² Israel could have refused to cease its military operations or to withdraw its troops on the grounds that the call for a ceasefire or a cessation of hostilities and even the deployment of UN forces are not effective

enough to repel terrorist attacks.⁸³ Concerned about this possible plea, the Kuwaiti representative posed a question in 1978: 'Should the aggressor refuse to withdraw unless United Nations forces are sent to perform duties on terms dictated by the aggressor?'⁸⁴ Ironically, the question became directly relevant to its own situation in 1991 when the Security Council authorized full-scale military operations to repel the Iraqi invasion, which fuelled debate on whether the right of self-defence can coexist with collective military action authorized by the UN.⁸⁵ Yet the issue of effectiveness for disqualifying the right of self-defence must be distinguished from the regulatory function of Security Council resolutions in applying the principle of non-use of armed force to a particular conflict. However weak they might be, such resolutions would have regulatory effects specific to the given situation.

Over the past few decades, the issues of legitimacy, effectiveness and representation of the Security Council have been raised, resulting in the current quest for comprehensive reform.⁸⁶ Yet mere institutional reform will do little to rectify its responsibility deficit.⁸⁷ What should be urged is reform of the 'attitude' and 'culture' of the Security Council towards conflict management. There is no doubt that the political reality, as best illustrated by the P-5 veto power, dictates the Council's action as well as any sort of reform of the body. However, the legitimate expectations expressed by some of the member states, as examined above, indicate that the potential for such internal reforms is not necessarily groundless. In order to foster the impetus to internal reforms, more emphasis should be placed on an early and robust deployment of peacekeeping forces in a timely, decisive and consistent manner, rather than on opportunistic Chapter VII actions and post-conflict peacebuilding operations based on the conclusion of a peace agreement. The failure of the Security Council to react for 31 days during the Lebanon Crisis should be seen as a summons to revalue its earlier and more flexible practice of peacekeeping. The legacy of peacekeeping operations should be mainstreamed, rather than discounted or sidelined, in the centre of the Security Council's collective security policy.

Conclusion

It has been generally said that the Security Council has reinvigorated its authority and powers under the Charter and dramatically expanded the scope of activities in the past few decades. However, its failure to react to a specific conflict in southern Lebanon in July 2006 indicates that this is not always the case, and even demonstrates a setback from the previous instances where it responded more promptly. Yet the legitimate expectations that have been fostered among member states over the years and expressed in Council debates breathed life into the Council's responsibility under Art. 24(1) in the legal sense. The idea of 'responsibility to react' is in harmony with the overall reform agenda towards a responsive and more accountable Security Council.

The 'credibility gap' created by the divergence between the legitimate expectations of member states and the actual practice of the Security Council inevitably entails significant impacts upon the Council's regulatory functions, in relation not only to a particular situation at issue but also to the normative foundation of

international community such as the general principle of non-use of armed force. It is thus arguable that the Security Council's responsibility under Art. 24(1) carries increased legal significance.

Although it is encouraging to see greater weight being placed on the 'responsibility to protect', equally significant is that the Security Council has the 'responsibility to react' in conventional settings to avert a threat to the peace arising from inter-state and intra-state conflicts. A mere institutional reform will not provide a satisfactory solution to this fundamental issue; rather it is the 'attitude' and 'culture' of the Security Council towards conflict managements that needs reform most. It is time to look back on the legacy of peacekeeping operations and to go ahead with mainstreaming peacekeeping at the centre of the Security Council's security policy with a view to discharging its responsibility to react in a timely, decisive and consistent manner.

NOTES

1. Lebanon alleges that this was the fifth Israeli penetration into southern Lebanon after the invasions of 1978, 1982, 1993 and 1996. UN Doc. S/PV.5493, 21 July 2006, p.13. However, a week-long military operation, during which Israeli forces engaged with Hizbollah militants in July 1993 and in April 1996 should rather be seen as part of Israel's on-going military occupation since 1982.
2. E.g., S/RES/1747, 24 March 2007; S/RES/1737, 23 Dec. 2006; S/RES/1696, 31 July 2006.
3. The deployment at the conclusion of a peace agreement often under Chapter VII authority has become the dominant feature of operations: see, e.g. S/RES/1590, 24 Mar. 2005 (Sudan); S/RES/1545, 21 May 2004 (Burundi); S/RES/1528, 27 Feb. 2004 (Côte d'Ivoire); S/RES/1509, 19 Sept. 2003 (Liberia); S/RES/1320, 15 Sept. 2000 (Ethiopia and Eritrea). This trend contrasts with ONUC in the Congo, UNFICYP in Cyprus, and UNEF II in the Middle East. See, Trevor Findlay, *The Use of Force in UN Peace Operations*, Oxford: Oxford University Press, 2002.
4. It provides that: 'In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council act on their behalf'.
5. See, Leland M. Goodrich, Edvard Hambro and Anne Patricia Simons, *Charter of the United Nations: Commentary and Documents*, New York: Columbia University Press, 1969 (3rd edn), p.203.
6. A question posed by Ambassador Yehuda Blum in the Council debate of 1982: UN Doc. S/PV.2375, 6 June 1982, p.4, para.36.
7. See, Jost Delbrück, 'Article 24', in Bruno Simma (ed.) *Charter of the United Nations: A Commentary*, Oxford: Oxford University Press (2nd edn), 2002, pp.445–7.
8. See, Martti Koskeniemi, 'The Place of Law in Collective Security', *Michigan Journal of International Law*, Vol.17, 1996, pp.460–62; John Quigley, 'The "Privatization" of the Security Council Enforcement Action: A Threat to Multilateralism', *Michigan Journal of International Law*, Vol.17, 1996, pp.270–73.
9. See, Thomas M. Franck, *The Power of Legitimacy Among Nations*, Oxford: Oxford University Press, 1990 (setting out four properties necessary to uphold legitimacy: determinacy, symbolic validation, coherence, and adherence).
10. Michael Byers, *Custom, Power and the Power of Rules: International Relations and Customary International Law*, Cambridge: Cambridge University Press, 1999, pp.106–9.
11. International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, Ottawa: International Development Research Centre, 2001.
12. Ibid., pp.11–18.
13. Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford: Oxford University Press, 2004, p.430.
14. ICISS (see n.11 above), p.49.

15. See David Chandler, 'The Responsibility to Protect? Imposing the "Liberal Peace"', *International Peacekeeping*, Vol.11, No.1, 2004, pp.68–76. A proposal is also made elsewhere that the 'responsibility to protect' should be emulated in the context of terrorism and weapons of mass destruction through a 'duty to prevent', Lee Feinstein and Anne-Marie Slaughter, 'A Duty to Prevent', *Foreign Affairs*, Vol.83, No.2, 2004, p.136.
16. *A More Secure World: Our Shared Responsibility*, New York: UN Dept of Public Information, 2004.
17. *Ibid.*, p.66, para.203.
18. *In Larger Freedom: Towards Development, Security and Human Rights for All*, UN Doc. A/59/2005, Mar. 2005, para.135.
19. See, UN Doc. A/59/PV.86, 6 April 2005, pp.5 (Pakistan), 9 (Algeria), 13 (Egypt); UN Doc. A/59/PV.87, 7 April 2005, p.6 (Russia), 18 (Iran); UN Doc. A/59/PV.89, 8 April 2005, pp.15 (Cuba), 22 (Vietnam), 24 (Venezuela). See also, Christine Gray, 'A Crisis of Legitimacy for the UN Collective Security System?', *International and Comparative Law Quarterly*, Vol.56, 2007, pp.166–8.
20. *2005 World Summit Outcome*, A/RES/60/1, 24 Oct. 2005, para.139.
21. S/RES/1674, 28 April 2006, para.4.
22. See, *A More Secure World* (see n.16 above), p.66, para.202; *2005 World Summit Outcome* (see n.20 above), para.139.
23. See, Delbrück (see n.7 above), pp.443–5.
24. S/RES/425, 19 Mar. 1978; S/RES/426, 19 Mar. 1978.
25. S/RES/508, 5 June 1982; S/RES/509, 6 June 1982.
26. See, UN Doc. S/PV.2071, 17 March 1978, p.6; UN Doc. S/PV.2374, 5 June 1982, p.7.
27. See, UN Doc. S/PV.2071, 17 March 1978, pp.3–4; UN Doc. S/PV.2375, 6 June 1982, pp.3–4.
28. UN Doc. S/PV.2071, 17 March 1978, p.3, para.27.
29. UN Doc. S/PV.2375, 6 June 1982, p.4, para.35.
30. See UN Doc. S/PV.5488, 13 July 2006, p.6 (PLO); UN Doc. S/PV.5489, 14 July 2006, p.5 (Lebanon); UN Doc. S/PV.5493, 21 July 2006, pp.8–10 (PLO), 13–14 (Lebanon).
31. UN Doc. S/PV.5493 (Resumption), 21 July 2006, p.18.
32. *Ibid.*, p.18.
33. *Ibid.*, p.19.
34. *Ibid.*, pp.20 (Saudi Arabia), 24 (Jordan), 29 (Morocco) respectively.
35. See remarks made by Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations, UN Doc. S/PV.5489, 14 July 2006, p.3.
36. UN Doc. S/PV.5493 (Resumption), 21 July 2006, p.36; see also, *ibid.*, p.43 (United Arab Emirates). See also, Richard Allen Greene, 'Bush–Blair Team Unshakeable As Ever', *BBC News*, 28 July 2006 (<http://news.bbc.co.uk/2/hi/americas/5225436.stm>).
37. UN Doc. S/PV.5498, 30 July 2006, p.3.
38. This terminology is used by Bowett to describe the normative status of international law as a whole in particular relation to the Middle East situation. Derek Bowett, 'Reprisals Involving Recourse to Armed Force', *American Journal of International Law*, Vol.66, 1972, p.1; see also Stephen D. Krasner, *Sovereignty: Organized Hypocrisy*, Princeton: Princeton University Press, 1999.
39. See, ICISS (n.11 above), p.49; *A More Secure World* (see n.16 above), para.198; *In Larger Freedom* (see n.18 above), para.126.
40. See *A More Secure World* (see n.16 above), para.249; *In Larger Freedom* (see n.18 above), para.168.
41. The basic three conditions are the existence of an armed attack, necessity and proportionality. See, Christine Gray, *International Law and the Use of Force*, Oxford: Oxford University Press, 2004 (2nd edn), pp.108–26; Yoram Dinstein, *War, Aggression and Self-Defence*, Cambridge: Cambridge University Press, 2001 (3rd edn), pp.165–84.
42. See for example Jean Combacau, 'The Exception of Self-Defence in UN Practice', in Antonio Cassese (ed.), *The Current Legal Regulation of the Use of Force*, Dordrecht: Martinus Nijhoff, 1986, pp.20–29; Oscar Schachter, 'Self-Defense and the Rule of Law', *American Journal of International Law*, Vol.83, 1989, pp.259–69.
43. David Kaye, 'Adjudicating Self-Defense: Discretion, Perception, and the Resort to Force in International Law', *Columbia Journal of Transnational Law*, Vol.44, 2005, pp.134–84.
44. Gray (see n.41 above), p.99.
45. See, Combacau (see n.42 above), p.17.
46. E.g., S/RES/661, 6 Aug. 1990.
47. Gray (see n. 41 above), p.101.

48. Richard A. Falk, 'The Beirut Raid and the International Law of Retaliation', *American Journal of International Law*, Vol.63, 1969, p.430, n.39.
49. S/RES/1701, 11 Aug. 2006, para 1.
50. See UN Doc. S/PV.5508, 8 Aug. 2006, p.4.
51. See, e.g., UN Doc. S/PV.5489, 14 July 2006, pp.13 (Congo), 17 (Greece, France); UN Doc. S/PV.5493 (Resumption), 21 July 2006, pp.7 (Denmark), 9 (Argentina), 19 (Brazil), 22 (Algeria), 24 (Jordan), 28 (Turkey), 32 (Djibouti), 33 (New Zealand), 34 (India), 35 (Chile), 41 (Guatemala).
52. For general discussion on the principle of proportionality, see Judith Gardam, *Necessity, Proportionality and the Use of Force by States*, Cambridge: Cambridge University Press, 2004.
53. See Naomi Weinberger, 'How Peace Keeping Becomes Intervention: Lessons from the Lebanese Experience', in Milton J. Esman and Shilbey Telhami (eds), *International Organizations and Ethnic Conflict*, Ithaca: Cornell University Press, 1995, pp.152–4.
54. S/RES/1373, 28 Sept. 2001, para.2(b).
55. See UN Doc. S/PV.5493, 21 July 2006, p.12.
56. UN Doc. S/PV.5493, 21 July 2006, p.5.
57. UN Doc. S/PV.5493 (Resumption), 21 July 2006, p.39.
58. See S/RES/1566, 8 Oct. 2004.
59. It provides that: 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'.
60. *Case concerning Military and Paramilitary Activities in and against Nicaragua*, 1986, ICJ 14, pp. 99–101, paras 188–90.
61. For a summary of discussions among US scholars, see John D. Becker, 'The Continuing Relevance of Article 2(4): A Consideration of the Status of the U.N. Charter's Limitation on the Use of Force', *Denver Journal of International Law and Policy*, Vol.32, 2004, pp.583–609.
62. See for example Anthony C. Arend and Robert J. Beck, *International Law and the Use of Force: Beyond the UN Charter Paradigm*, London: Routledge, 1993, pp.179–85; Michael Reisman, 'The Emperor Has No Clothes: Article 2(4) and the Use of Force in Contemporary International Law', in Jagdish Narain Saxena, Gurdip Singh and A. K. Koul (eds), *United Nations for a Better World*, New Delhi: Lancers Books, 1986, pp.6–10; Thomas Franck, 'Who Killed Art.2(4)? Or Changing Norms Governing the Use of Force by States', *American Journal of International Law*, Vol.64, 1970, pp.809–37; Julius Stone, *Aggression and World Order: A Critique of United Nations Theories of Aggression*, Sydney, NSW: Maitland Publications, 1958, pp.96, 98–101.
63. See Michael J. Glennon, 'Why the Security Council Failed', *Foreign Affairs*, Vol.82, No.3, 2003, pp.22–4.
64. See, e.g., Oscar Schachter, *International Law in Theory and Practice*, Dordrecht: Martinus Nijhoff, 1991, pp.129–31; Ian Brownlie, 'The Principle of Non-Use of Force in Contemporary International Law', in William Elliot Butler (ed.) *The Non-Use of Force in International Law*, The Hague: Martinus Nijhoff, 1989, pp.21–22; Louis Henkin, 'The Report of the Death of Article 2(4) Are Greatly Exaggerated', *American Journal of International Law*, Vol.65, 1971, pp.544–8.
65. Oscar Schachter, 'The Nature and Process of Legal Development in the International Society', in Ronald St-J. Macdonald and Douglas M. Johnston (eds), *The Structure and Process of International Law: Essays in Legal Philosophy, Doctrine and Theory*, Dordrecht: Martinus Nijhoff, 1986, p.756.
66. See, P. van Dijk, 'Normative Force and Effectiveness of International Norms', *German Yearbook of International Law*, Vol.30, 1987, pp.22–6.
67. Byers (see n.10 above), pp.106–7, 147–51.
68. See Franck's proposed four properties necessary to maintain legitimacy (see n.9 above).
69. See, Hitoshi Nasu, 'Investigation *Proprio Motu* for the Maintenance of International Peace and Security', *Australian Year Book of International Law*, Vol.23, 2004, pp.105ff.
70. See, Goodrich et al. (see n.5 above), pp.303–5; Rosalyn Higgins, *The Development of International Law Through the Political Organs of the United Nations*, London: Oxford University Press, 1963, pp.235–6; Eduardo Jiménez de Aréchaga, *Voting and the Handling of Disputes in the Security Council*, New York: Carnegie Endowment for International Peace, 1950, p.155. Cf. Derek W. Bowett, *United Nations Forces: A Legal Study of United Nations Practice*, London: Stevens & Sons, 1964, pp.280–81.
71. See n.3 above.

72. In addition, the disinterest and unwillingness of the Security Council in regional areas provide a further obstacle to the peacekeeping operations, which gives more room for regional arrangements to take the initiative in military intervention. The issue is examined elsewhere: Rosemary Durward, 'Security Council Authorization for Regional Peace Operations: A Critical Analysis', *International Peacekeeping*, Vol.13, No.3, 2006, pp.355–9.
73. Sean D. Murphy, 'The Security Council, Legitimacy, and the Concept of Collective Security after the Cold War', *Columbia Journal of Transnational Law*, Vol.32, 1994, p.270.
74. See *Report of the Panel on United Nations Peace Operations*, UN Doc. A/55/305-S/2000/809, 21 Aug. 2000, para.48; cf. *An Agenda for Peace*, UN Doc. A/47/277-S/24111, 17 June 1992, p.4. For discussions on this issue, see Neil Fenton, *Understanding the UN Security Council: Coercion or Consent?*, Aldershot: Ashgate, 2004; Christine Gray, 'Host-State Consent and United Nations Peacekeeping in Yugoslavia', *Duke Journal of Comparative and International Law*, Vol.7, 1996, pp.244–5.
75. See Derek W. Bowett, *The Search for Peace*, London: Routledge, 1972, pp.93–5; Mona Harrington Gagnon, 'Peace Forces and the Veto: The Relevance of Consent', *International Organization*, Vol.21, 1967, pp.820–22.
76. See UN Doc. S/PV.5489, 14 July 2006, pp.12 (UK), 16 (Slovakia); S/PV.5493, 21 July 2006, p.17 (Japan); S/PV.5493 (Resumption), 21 July 2006, pp.2 (Russia), 3 (Greece), 5 (Tanzania), 8 (Ghana), 9 (Ghana), 11 (Congo), 18 (Switzerland), 19 (Brazil), 21 (Algeria), 23 (Egypt, Norway), 25 (Indonesia), 26 (League of Arab States), 31 (Iran), 32 (Djibouti), 34 (India), 35 (Chile), 37 (Venezuela), 38 (Cuba), 39 (Sudan), 44 (Pakistan), 45 (Vietnam).
77. See UN Doc. S/PV.5488, 13 July 2006, p.3; S/PV.5493, 21 July 2006, pp.16–17 (US).
78. UN Doc. S/PV.5493 (Resumption), 21 July 2006, p.4.
79. See n.3 above, and in relation to peacebuilding operations, see S/RES/1244, 10 June 1999 (Kosovo); S/RES/1264, 15 Sept. 1999 (East Timor).
80. See, e.g., Jeremy Giniher, 'Peacebuilding in the Congo: Mission Impossible?', *International Peacekeeping*, Vol.9, No.3, 2002, p.127. The troop strength has subsequently been reinforced: see, *Democratic Republic of the Congo – MONUC – Mandate* (www.un.org/Depts/dpko/missions/monuc/mandate.html).
81. Warren Hoge and Steven Erlanger, 'U.N. Council Backs Measure to Halt War in Lebanon', *New York Times*, 12 Aug. 2006.
82. Under Art. 51 states are allowed to invoke the right of self-defence 'until the Security Council has taken measures necessary to maintain international peace and security'.
83. In fact, after the second Israeli full-scale military incursion into southern Lebanon in 1982, while withdrawing from most of Lebanese territory, Israel kept control of a 12-mile-wide security zone in the south despite the presence of UNIFIL until 2000: see *United Nations Interim Force in Lebanon: Background* (www.un.org/Depts/dpko/missions/unifil/background.html).
84. UN Doc. S/PV.2074, 19 Mar. 1978, p.5, para.49.
85. See, Malvina Halberstam, 'The Right to Self-Defense Once the Security Council Takes Action', *Michigan Journal of International Law*, Vol.17, 1996, pp.229ff; Thomas K. Plofchan Jr, 'Article 51: Limits on Self-Defense?', *Michigan Journal of International Law*, Vol.13, 1992, pp.336ff; Eugene V. Rostow, 'Until What? Enforcement Action or Collective Self-Defense', *American Journal of International Law*, Vol.85, 1991, pp.506ff.
86. It attained unanimous support in the *UN Millennium Declaration*: A/RES/55/2, 8 Sept. 2000, para.30.
87. See, Louis B. Sohn, 'Important Improvements in the Functioning of the Principal Organs of the United Nations that Can Be Made without Charter Revision', *American Journal of International Law*, Vol.91, 1997, pp.652–6.