JURIST Guest Columnist Anthony D'Amato of Northwestern University School of Law offers his analysis of UN Security Council Resolution 1701, calling for an immediate cessation of hostilities in the Middle East conflict involving Israel, Hezbollah and Lebanon...

Hezbollah's surprising television announcement accepting the terms of the UN Ceasefire Resolution means that the precise wording of the Resolution will be under strict diplomatic scrutiny for weeks or months to come. The following is my paragraph-by-paragraph commentary (in regular text) on the complete text (in italics) of UN Security Council Resolution 1701 (11 August 2006).

The Security Council,


These previous resolutions are all superseded by the present resolution.

PP2. Expressing its utmost concern at the continuing escalation of hostilities in Lebanon and in Israel since Hezbollah's attack on Israel on 12 July 2006, which has already caused hundreds of deaths and injuries on both sides, extensive damage to civilian infrastructure and hundreds of thousands of internally displaced persons,

Hezbollah's attack on 12 July 2006 was a border incident that under international law does not amount to an armed attack against a nation. Violent border incidents occur between India and Pakistan almost on a daily basis. If either side regarded these as armed attacks, the two sides right now would be engaged in total war, perhaps even using nuclear weapons. Constant border incidents also occur between a number of nations in Africa. None of these are regarded in international law as a casus belli. Israel's immediate and massive retaliation, however, was arguably an act of aggression. Nevertheless, this paragraph PP2 casts the blame on Hezbollah. Since it is not an operative paragraph (OP), but merely a preparatory paragraph (PP), its inclusion was a probably a sop to Israeli sensibilities.

PP3. Emphasizing the need for an end of violence, but at the same time emphasizing the need to address urgently the causes that have given rise to the current crisis, including by the unconditional release of the abducted Israeli soldiers,

This paragraph does not call for the immediate release of the abducted Israeli soldiers. Its
main purpose seems to be the decoupling of Israeli prisoners from Lebanese prisoners, so that the final settlement does not appear to be a trade. Israel has made it clear that a "trade" would be humiliating under the circumstances.

*PP4. Mindful of the sensitivity of the issue of prisoners and encouraging the efforts aimed at urgently settling the issue of the Lebanese prisoners detained in Israel,*

For the same reason as above, this paragraph finishes the job of decoupling.

*PP5. Welcoming the efforts of the Lebanese Prime Minister and the commitment of the government of Lebanon, in its seven-point plan, to extend its authority over its territory, through its own legitimate armed forces, such that there will be no weapons without the consent of the government of Lebanon and no authority other than that of the government of Lebanon, welcoming also its commitment to a UN force that is supplemented and enhanced in numbers, equipment, mandate and scope of operation, and bearing in mind its request in this plan for an immediate withdrawal of the Israeli forces from Southern Lebanon,*

This is now a sop to the sensibilities of the Lebanese government.

*PP6. Determined to act for this withdrawal to happen at the earliest,*

The Security Council could have decreed that the withdrawal begin immediately. However, to do so would have meant that the Security Council was acting within its mandatory powers of Chapter 7 of the UN Charter. This paragraph PP6 indicates that the Council is acting under Chapter 6, which is limited to making recommendations to the parties. As we shall see, this entire Resolution creates profound ambiguities as to whether it is authorized by either Chapter 6 or Chapter 7. Different paragraphs seem to shift from one to the other.

*PP7. Taking due note of the proposals made in the seven-point plan regarding the Chebaa farms area,*

The Chebaa Farms is a small strip of territory on the border between Israel and Lebanon. Israel has occupied it since defeating Syria in the 1967 war, but it belongs either to Syria or to Lebanon. Under international law, territory can no longer be obtained by military conquest, and hence it does not legally belong to Israel. Heated diplomatic disputes between Lebanon and Israel in the past week over this territory almost killed the UN draft resolution. The accommodation in PP7 allows UN Secretary-General Kofi Annan to determine the status of the Chebaa Farms. This was not acceptable to Israel. In a side deal between the United States and Israel, brokered by Secretary of State Condoleezza Rice, the United States pledged to use its veto power in the Security Council to block any decision by Annan to hand the territory directly over to Lebanon. This side deal appears to have sandbagged the Lebanese government. Yet it does not contradict the language of PP7 and therefore appears to be lawful. Perhaps Lebanon should have had better lawyers representing it at the United Nations. Or maybe Lebanon liked the rest of the Resolution
so much as to induce it to let the Chebaa Farms go for the time being.

PP8. Welcoming the unanimous decision by the government of Lebanon on 7 August 2006 to deploy a Lebanese armed force of 15,000 troops in South Lebanon as the Israeli army withdraws behind the Blue Line and to request the assistance of additional forces from UNIFIL as needed, to facilitate the entry of the Lebanese armed forces into the region and to restate its intention to strengthen the Lebanese armed forces with material as needed to enable it to perform its duties,

This language tilts the resolution toward Chapter 6 (recommendations). The Security Council could have ordered Lebanon to deploy such an armed force if the Council wished to invoke Chapter 7 (decisions). But inasmuch as the government of Lebanon agreed in advance to deploy such an armed force, it was prudent here for the Council to use the honey of Chapter 6 instead of the vinegar of Chapter 7.

PP9. Aware of its responsibilities to help secure a permanent ceasefire and a long-term solution to the conflict,

This is probably meant for the average American high-school student who says, "What's the United Nations and why should I care?"

PP10. Determining that the situation in Lebanon constitutes a threat to international peace and security,

Suddenly, almost as an afterthought, come these remarkable words. Up to now it has appeared that the Security Council was acting under the recommendatory powers of Chapter 6. But PP10 directly invokes Chapter 7 by the use of the key words "determine," "constitutes," "threat," and "international peace and security," all found in Article 39 of the Charter. Why would Israel consent to PP10 when all along it had been insisting on its right to accept or reject the pending UN resolution? (Note that Israel could reject a "recommendation" under Chapter 6, but would have no choice in the matter if the Security Council were to act under Chapter 7). The reason is probably that Israel for the past month has complained that the 2,000 UNIFIL force in southern Lebanon (United Nations Interim Force In Lebanon) has from its inception in 1978 been nothing but a see-no-evil vacation spot for lazy peacekeepers. Israel's insistence that a UN force have full military powers to use force if necessary to back up UN recommendations may have been interpreted as a concession on Israel's part that the UN peacekeeping force can be nothing other than a UN Army with full enforcement powers under Chapter 7.

OP1. Calls for a full cessation of hostilities based upon, in particular, the immediate cessation by Hezbollah of all attacks and the immediate cessation by Israel of all offensive military operations;

Sheikh Hassan Nasrallah of Hezbollah has called this provision unfair: it only bars "offensive" military operations by Israel while prohibiting "all" Hezbollah attacks. Yet this is what lawyers would call a distinction without a difference. So long as Hezbollah
ceases all attacks, Israel would not have any justification for offensive or defensive operations.

**OP2.** Upon full cessation of hostilities, calls upon the government of Lebanon and UNIFIL as authorized by paragraph 11 to deploy their forces together throughout the South and calls upon the government of Israel, as that deployment begins, to withdraw all of its forces from Southern Lebanon in parallel;

Just as the ink was drying on the UN Resolution, Israel hurriedly moved 20,000 of its ground forces across the border into Lebanon. This action shocked many of the members of the Security Council in New York. They should have seen it coming. Israel's decision seems to have been triggered by the "in parallel" language of OP2. With a total now of 30,000 soldiers in Lebanon, Israel is in a position of withdrawing them one-for-one only with each replacement soldier from the UN or from Lebanon. The UN peacekeeping force is capped at 15,000 (see below, OP 11), and Lebanon has amassed 15,000 troops for deployment in its southern area.

**OP3.** Emphasizes the importance of the extension of the control of the government of Lebanon over all Lebanese territory in accordance with the provisions of resolution 1559 (2004) and resolution 1680 (2006), and of the relevant provisions of the Taif Accords, for it to exercise its full sovereignty, so that there will be no weapons without the consent of the government of Lebanon and no authority other than that of the government of Lebanon;

This is one of the many paragraphs of the Resolution that is premised upon the assumption that the Lebanese government wants to disarm and render inoperative the Hezbollah fighters. But what if the Lebanese government and Hezbollah in the past few days have reached a secret accommodation between themselves so that they are no longer in opposition to each other? Then many of the provisions of this Resolution could fall apart. I will take up this possibility in greater detail as we proceed through the operative paragraphs of this Resolution.

**OP4.** Reiterates its strong support for full respect for the Blue Line;

With Israel having so many boundary disputes, it comes as a relief to all sides that at least the Blue Line between Lebanon and Israel is being made permanent.

**OP5.** Also reiterates its strong support, as recalled in all its previous relevant resolutions, for the territorial integrity, sovereignty and political independence of Lebanon within its internationally recognized borders, as contemplated by the Israeli-Lebanese General Armistice Agreement of 23 March 1949;

This provision could backfire if Hezbollah becomes integrally associated with the government of Lebanon. The parallel with Palestine is striking: Hamas became the democratically elected government of the Palestinians to the utter dismay of Israel. Now the four-week war between Lebanon and Israel has moved the majority of the Lebanese
public to support Hezbollah, as if there has been a virtual election of Hezbollah to the government.

OP6. Calls on the international community to take immediate steps to extend its financial and humanitarian assistance to the Lebanese people, including through facilitating the safe return of displaced persons and, under the authority of the Government of Lebanon, reopening airports and harbours, consistent with paragraphs 14 and 15, and calls on it also to consider further assistance in the future to contribute to the reconstruction and development of Lebanon;

A sound humanitarian provision to which no one could object.

OP7. Affirms that all parties are responsible for ensuring that no action is taken contrary to paragraph 1 that might adversely affect the search for a long-term solution, humanitarian access to civilian populations, including safe passage for humanitarian convoys, or the voluntary and safe return of displaced persons, and calls on all parties to comply with this responsibility and to cooperate with the Security Council;

This is more than precatory language. It enables the Security Council to enforce its provisions under the Chapter 7 authorization of this Resolution that was inserted above in PP 10.

OP8. Calls for Israel and Lebanon to support a permanent ceasefire and a long-term solution based on the following principles and elements:

- full respect for the Blue Line by both parties,
- security arrangements to prevent the resumption of hostilities, including the establishment between the Blue Line and the Litani river of an area free of any armed personnel, assets and weapons other than those of the government of Lebanon and of UNIFIL as authorized in paragraph 11, deployed in this area,

Whether or not it occurred to the Security Council, this provision could turn into an economic bonanza for Lebanon in partial compensation for the suffering and losses it has endured for the past four weeks. The area between the Blue Line and the Litani river will be one of the most secure places in the Middle East, with 30,000 soldiers guarding it. Moreover, the soldiers will bring foreign money into the area to purchase food, supplies, clothing, recreational gear, services, accommodations, bars, etc. Not only will displaced Lebanese civilians return to the area, but Palestinian refugees might also emigrate there to take up the many jobs that will be created.

- full implementation of the relevant provisions of the Taif Accords, and of resolutions 1559 (2004) and 1680 (2006), that require the disarmament of all armed groups in Lebanon, so that, pursuant to the Lebanese cabinet decision of July 27, 2006, there will be no weapons or authority in Lebanon other than that of the Lebanese state,

It is clear that the authors of this provision intend the disarmament of all members
of Hezbollah. But this is where common sense must interrupt our formal analysis of the Resolution and ask: what group in its right mind would consent to a Resolution that calls for its disarmament to be likely followed by arrests and prosecutions for war crimes? (See my JURIST editorial on war crimes.) The only reasonably conceivable reason Hezbollah has agreed to this Resolution is that it has been assured, by secret agreement with the government of Lebanon, that its members will not be disarmed, arrested, or prosecuted. My best guess is that the agreement calls for members of Hezbollah to be smoothly integrated into the armed forces of the Lebanese government.

- no foreign forces in Lebanon without the consent of its government,

No problem if Hezbollah becomes a governmental force instead of a foreign force.

- no sales or supply of arms and related materiel to Lebanon except as authorized by its government,

In my JURIST editorial last week, I focused upon the importation of rockets and rocket launchers by Hezbollah as the most important issue that Israel faces in this conflict. So long as Syria and Iran supply increasingly sophisticated rockets to Hezbollah, Israel's security diminishes with each shipment. What would be ideal, from Israel's point of view, is a blockade on all arms and military equipment to Lebanon. But instead Israel has settled for a loophole: there is no blockade to arms and military equipment if authorized by the Lebanese government. In my view, this is the reason why Hezbollah has agreed to the UN Resolution. Hezbollah must believe that it can look forward to importing sophisticated armaments and rockets under the authority and permission of the government of Lebanon. By the same token, the magnitude of this concession makes it appear that Israel has thrown in the towel.

- provision to the United Nations of all remaining maps of land mines in Lebanon in Israel's possession;

OP9. Invites the Secretary General to support efforts to secure as soon as possible agreements in principle from the Government of Lebanon and the Government of Israel to the principles and elements for a long-term solution as set forth in paragraph 8, and expresses its intention to be actively involved;

OP10. Requests the Secretary General to develop, in liaison with relevant international actors and the concerned parties, proposals to implement the relevant provisions of the Taif Accords, and resolutions 1559 (2004) and 1680 (2006), including disarmament, and for delineation of the international borders of Lebanon, especially in those areas where the border is disputed or uncertain, including by dealing with the Chebaa farms area, and to present to the Security Council those proposals within thirty days;

OP11. Decides, in order to supplement and enhance the force in numbers, equipment, mandate and scope of operations, to authorize an increase in the force strength of UNIFIL to a maximum of 15,000 troops, and that the force shall, in addition to carrying out its mandate under resolutions 425 and 426 (1978):
Is the UNIFIL force, which has been at 2,000 troops since 1978, a Chapter 6 or a Chapter 7 force? It has certainly behaved as if it were an entirely defensive Chapter 6 force. Yet Resolutions 425 and 426 (1978) contain language that fixes UNIFIL within Chapter 7. It appears that Hezbollah, in accepting this Resolution, has abandoned the area between the Blue Line and the Litani river. This area was extremely important to Hezbollah because of its proximity to the northern Israeli cities, making it possible for Hezbollah to use short-range Katyusha rockets against Israel. But with Hezbollah's success in holding out against Israel for four weeks, Hezbollah can now look forward to importing more sophisticated and deadly rockets from Iran and Syria. The Katyusha rockets, after all, are World War II models. The new ones can be fired from a much longer range with greater accuracy and a greater payload, over the heads, so to speak, of the peacekeepers in southern Lebanon.

a. Monitor the cessation of hostilities;

b. Accompany and support the Lebanese armed forces as they deploy throughout the South, including along the Blue Line, as Israel withdraws its armed forces from Lebanon as provided in paragraph 2;

c. Coordinate its activities related to paragraph 11 (b) with the Government of Lebanon and the Government of Israel;

d. Extend its assistance to help ensure humanitarian access to civilian populations and the voluntary and safe return of displaced persons;

e. Assist the Lebanese armed forces in taking steps towards the establishment of the area as referred to in paragraph 8;

f. Assist the government of Lebanon, at its request, to implement paragraph 14;

It is clear from all these provisions of OP 11 that something decisive must have happened between Hezbollah and the government of Lebanon in the past few days. I have no evidence of any such thing. But purely from inference, it seems to me that the two have joined forces for the following reasons: (a) Israel's ill-advised indiscriminate bombing campaign in Lebanon, reminiscent of Operation Barbarossa in World War II which turned the citizens of Russia against the German armies, has elevated Hezbollah to the heights of popularity among the Lebanese people; (b) half of the Lebanese army is composed of Shiites, who are of the same faith as Hezbollah; (c) many of the senior officers of the Lebanese army are members of Hezbollah; (d) Hezbollah is already a minor party that is officially part of the Lebanese government; (e) Hezbollah is already more powerful than the Lebanese government and its army; (f) Hezbollah is increasing its power due to training, funding, and arms shipments from Iran and Syria; (g) one may reasonably assume that many Hezbollah fighters will now enlist in the Lebanese army, thus averting "disarmament" while simply changing their uniforms.
OP12. Acting in support of a request from the government of Lebanon to deploy an international force to assist it to exercise its authority throughout the territory, authorizes UNIFIL to take all necessary action in areas of deployment of its forces and as it deems within its capabilities, to ensure that its area of operations is not utilized for hostile activities of any kind, to resist attempts by forceful means to prevent it from discharging its duties under the mandate of the Security Council, and to protect United Nations personnel, facilities, installations and equipment, ensure the security and freedom of movement of United Nations personnel, humanitarian workers, and, without prejudice to the responsibility of the government of Lebanon, to protect civilians under imminent threat of physical violence;

The use of the term “authorizes” in OP 12 means that the Security Council is acting here under its Chapter 7 powers. In other words, UNIFIL is a lot more than a conventional peacekeeping force. It is an Army acting under the direct authority of the Security Council.

OP13. Requests the Secretary General urgently to put in place measures to ensure UNIFIL is able to carry out the functions envisaged in this resolution, urges Member States to consider making appropriate contributions to UNIFIL and to respond positively to requests for assistance from the Force, and expresses its strong appreciation to those who have contributed to UNIFIL in the past;

The Chapter 7 mandate to the new UNIFIL has already made it so attractive that OP 13 became unnecessary as soon as it was written. Nations are now vying to send their own soldiers to UNIFIL. It was only a week ago that most nations expressed their reluctance to send any of their ground troops into Lebanon.

OP14. Calls upon the Government of Lebanon to secure its borders and other entry points to prevent the entry in Lebanon without its consent of arms or related materiel and requests UNIFIL as authorized in paragraph 11 to assist the Government of Lebanon at its request;

The important thing here is what is not mentioned. UNIFIL is not authorized to act outside its assigned territory. Thus, if UNIFIL wishes to add to the blockade of weapon shipments into Lebanon originating in Syria or Iran, it must receive authorization from the Lebanese government. This effectively means that if the government wants to import such weapons, UNIFIL cannot interfere with it.

OP15. Decides further that all states shall take the necessary measures to prevent, by their nationals or from their territories or using their flag vessels or aircraft,

(a) the sale or supply to any entity or individual in Lebanon of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, whether or not originating in their territories, and
(b) the provision to any entity or individual in Lebanon of any technical training or assistance related to the provision, manufacture, maintenance or use of the items listed in subparagraph (a) above, except that these prohibitions shall not apply to arms, related material, training or assistance authorized by the Government of Lebanon or by UNIFIL as authorized in paragraph 11;

Notice the huge ambiguity between these paragraphs (a) and (b). Paragraph (a) seems to require any country, such as Iran for example, to prevent its nationals from sending missiles, for example, to Lebanon. Paragraph (b) allows Iran to send technical trainers to Lebanon if the government of Lebanon authorizes it. The ambiguity arises from the “except” clause in (b): does it apply just to the technical trainers mentioned in (b), or does it also relate back to (a) and allow missiles to be sent to Lebanon if authorized by the government of Lebanon? Furthermore, on either interpretation, what happens if a state violates OP 15? The Resolution does not contain any provision for enforcement of OP 15. Thus the Security Council would have to enact a further Resolution to use force to impede any state from sending missiles to Lebanon. But this further Resolution might be vetoed by Russia or China, for example, who may not want to accept any restrictions on their power to freely export goods or services. The reader may ask how such basic ambiguities find their way into international resolutions and treaties when the drafters are surely intelligent enough to spot them and to clarify the language. The straightforward answer is that the drafters were unable to agree on any plain language and so they intentionally adopted ambiguous language in order to “give something” to both sides.

OP16. Decides to extend the mandate of UNIFIL until 31 August 2007, and expresses its intention to consider in a later resolution further enhancements to the mandate and other steps to contribute to the implementation of a permanent ceasefire and a long-term solution;

OP17. Requests the Secretary-General to report to the Council within one week on the implementation of this resolution and subsequently on a regular basis;

OP18. Stresses the importance of, and the need to achieve, a comprehensive, just and lasting peace in the Middle East, based on all its relevant resolutions including its resolutions 242 (1967) of 22 November 1967 and 338 (1973) of 22 October 1973;

OP19. Decides to remain actively seized of the matter.

POSTSCRIPT. Hezbollah's rockets have been a wake-up call to Israel. Or, more accurately, it is like a dream in which you dream you are waking up only to fall into a deeper nightmare. The rockets will not uninvent themselves. The UN Resolution is not going to keep them away. Israel's best defense, in my humble opinion, is to return to strict adherence to international law, to move its Wall from Palestinian property and either dismantle it or erect it on its own property, and to cease and desist from land-grabbing. For what is vital to me, a non-Jew, is Jewish morality, its teachings on justice, its immense contribution to civilization, the music of Gershwin and Weill that daily runs through my mind, and even its incomparable humor. These must survive. War is not
way.

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