*Council Unbound: The Growth of UN Decision Making on Conflict and Postconflict Issues After the Cold War.* By Michael J, Matheson. U.S. Institute of Peace Press, 2006. Pp. xvi, 422. Index. $50, cloth; $16, paper.

The UN Security Council has been described (by Lord Hannay, former British ambassador to the United Nations) as "that most mysterious and misunderstood international body."[1] This book helps to dispel the mystery and, it is to be hoped, will also go some way toward correcting the misunderstandings. Hardly a day goes by without media references to the Security Council in connection with important world events—references that may or may not be accurate. In the post–Cold War world, not only international lawyers, but anyone who takes an intelligent interest in international affairs, needs some understanding of the Council and how it works.

This important and timely book covers a range of international legal issues arising in the work of the Council in the post–Cold war era. It is a straightforward, readable account of legal (and some policy) developments in the Council, chiefly over the period 1990 to 2005. The author, Michael Matheson, avoids entering into a technical legal analysis or getting bogged down in a detailed rebuttal of some of the wilder academic writings (writings that this reviewer has sometimes referred to as the "demonization" of the Security Council). Rather, he describes the legal developments in their historical and policy context, distilling the essence of his long and close involvement in the workings of the Council from the perspective of the United States, the Council's most powerful member. It is, in his words, "neither a history nor a legal treatise" (p. 8). At a time when much is being written about the Council from a theoretical point of view, it is refreshing to read a work grounded in reality, based on the practice of states and the practice of the Council.

Matheson was principal deputy legal adviser to the U.S. Department of State from 1990 to 2000, and acting legal adviser on a number of occasions during that period. He teaches international law at the George Washington University School of Law and was a member of the International Law Commission from 2001 to 2006. He was one of the architects, within the U.S. government, of an expanded role for the Security Council in the first decade of the post–Cold War era. One might be forgiven for wondering if he is as content with the Council's activity in the present decade as he appears to be with what it did in the 1990s.

The idea behind the book's somewhat obscure title is explained early on:

> The fall of the Soviet Union made it possible for the Council to act without being immobilized by the fundamental conflicts of interests and attitudes among its permanent members that had been characteristic of the Cold War period. This circumstance enabled the Council to begin to carry out the role envisioned for it under the UN Charter as the supreme arbiter of international peace and security. It had the effect of unleashing the dormant legal authority of the Council and turning it into a great engine for the creation of legal obligations and mechanisms for suppressing armed conflict and dealing with its results, many of which would have surprised even the founders of the United Nations. The Council was thus unbound from its Cold War political constraints *but not from the legal constraints of the UN Charter.* (Pp. 5–6, emphasis added)

The book includes an introduction, seven chapters, and a conclusion, along with five appendices. There is no attempt to be comprehensive—and the book is all the more readable for that. It is concise, with some 240 pages of text plus 60 pages of endnotes. The short introduction is key to understanding the author's approach. He provides there a clear affirmation that the founders of the United Nations "made it clear that the overriding priority of the new international order . . . would be to maintain international peace and security" (p. 3).[2] Chapters 1 (covering the framework for Council

[1] As quoted on the back cover of THE UN SECURITY COUNCIL: FROM THE COLD WAR TO THE 21ST CENTURY (David M. Malone ed., 2004).

[2] It is interesting to note that in its recent admissibility decision in *Behrami* and *Saramati*, the European Court of Human Rights came to the same conclusion: "it is evident from the Preamble, Articles 1, 2 and 24 as well as Chapter VII of the Charter that the primary objective of the UN is the maintenance of international

action) and 2 (on the Council's jurisdiction and mandate) are of a general nature, dealing with some central legal and institutional issues. The remaining chapters deal with particular fields of Council activity. They are concise and authoritative accounts of their subjects. Chapter 3 examines the use of various types of sanctions and also the problems arising in their enforcement. Chapter 4 addresses "peace operations"—in particular, those that have extended to full governance of territories. Chapter 5 deals with the Council's authorization of the use of force by UN operations and by others, including states, coalitions of states, and regional organizations. Chapter 6 describes what the author terms "technical commissions"—that is to say, a range of subsidiary organs of the Council, mainly those put in place in 1991 to deal with various aspects of the situation between Iraq and Kuwait. Chapter 7 considers the ways in which the Council has facilitated the prosecution of criminal offenses. The ten-page conclusion is masterful, encapsulating in a few short paragraphs the author's experience and wisdom. Each word seems carefully chosen. This reviewer (himself the former legal adviser to the British Foreign Office) found himself underlining large parts of it for future citation.

At a time when there are increasing fears of a gulf between "American" and "European" international lawyers, it is good to read a work self-evidently in a common tradition of international law. This reviewer is not convinced that there really is any such gulf, at least not amongst legal practitioners. There are, of course, differences in the international obligations of states (both substantive and procedural), in the policy constraints under which practitioners operate, and perhaps also in their relations with "clients." But such differences do not necessarily preclude a common approach to law itself. It may in any event well be overly simplistic to see any such division as between "Americans" and "Europeans."

The work is revealing in showing how at least one part of the Washington machine saw the events of this critical period. It is "based entirely on the public record . . . , though it is wholly consistent with [the author's] personal recollection of the events and issues" (pp. xiii–xiv). In short, it is an authoritative insider's account, but one that—quite properly—uses material in the public domain. There is always a fine balance to be struck by responsible public servants (former or serving) when they put pen to paper. That they do so is surely to be encouraged, though except under special circumstances, their accounts need to be based only on what is already public. That is no bad thing. While inside information may make good headlines, it may also be misleading or ephemeral, and is not necessarily of real interest in a scholarly work.

Matheson sees a clear, but modest, role for law in matters of war and peace. From the outset, he is explicit about the importance—for U.S. policy interests—of the developments he describes. In the preface, he refers to his

> experience during the 1990s, when my colleagues and I in the Office of the Legal Adviser resorted again and again to the legal authority of the newly renascent Security Council to help policymakers deal with the crises of the post–Cold War period. In doing so, we often made use of that authority in ways that may have seemed ambitious at the time but have since been generally accepted as legally valid by the major actors of the UN system. (P. xiii)

Matheson sometimes leaves the impression that he sees the law essentially as a tool, to be used to achieve policy objectives, rather than as a good in itself. But a careful reading suggests that his viewpoint is broader than that. Early on, he points out that "when states or international organizations take actions that have no credible basis in international law, they tend to corrode the integrity and viability of the international order and move international relations away from predictability and rationality toward the arbitrary use of force and economic power" (p. 4).

I should mention briefly some of the legal points, all of a highly practical nature, deftly covered by Matheson (often in one or two short paragraphs). In chapter 1 he describes Council decision making and procedure. He does so without going into much detail (for that we have Bailey and Daws's *The Procedure of the UN Security Council*

peace and security." App. Nos. 71412/01 & 78166/01, Admissibility, para. 148 (Eur. Ct. H.R. May 31, 2007).

(3d ed., 1998), albeit in need of a new edition). This approach reflects post–Cold War reality, since procedural issues rarely arise nowadays, at least not on the record. He uses what this reviewer regards as the misleading terminology of "delegation" to describe authorizations by the Council to others, including the secretary-general, persons or bodies outside the United Nations, and subsidiary organs of the Council (such as sanctions committees, the UN Claims Commission, and ad hoc criminal tribunals) (pp. 26–31). In connection with the important practical question of terminating particular Council decisions, Matheson recalls the United Kingdom's unilateral decision that sanctions against Southern Rhodesia were terminated (a bad and unnecessary precedent, happily short-lived), and considers whether—and if so, when—sanctions should be time limited. He deals succinctly, but well, with the legal character of Council decisions and with Article 103 of the UN Charter, along with possible limits and checks on the Council's powers.

In chapter 2, Matheson considers at some length the expansion of the concept of "threat to the peace," which now includes internal conflicts and terrorism, and also the question of generic threats to the peace. Chapter 3 on sanctions touches only lightly on the relationship between the Council's powers and human rights. He makes the basic point that "the 'Purposes and Principles of the United Nations' [referred to in Article 24(2)] contain a number of objectives, first and foremost of which are the restoration and maintenance of the peace, and when these objectives conflict in a particular situation, it is the responsibility of the Council to decide how to reconcile them or to what degree to compromise some of them to accommodate others" (p. 95). He omits any mention of *jus cogens* in this context.

Chapter 5, on use of force, is full of interest for lawyers. It covers, among other things, the scope of the prohibition against the use of force in Article 2(4); the authorization and supervision of the use of force in the absence of the arrangements foreseen in Articles 43 to 47; and the Council's role in relation to self-defense, and the meaning of Article 51. Matheson's conclusion in this chapter is that "the striking facts about the experience of the past decade . . . are not the limitations of the system that has emerged but its considerable potential" (p. 166). This view coincides with that of the UN General Assembly, meeting at the level of heads of state and government, in the 2005 World Summit Outcome (General Assembly Resolution 60/1 (Sept. 16, 2005)), "that the relevant provisions of the Charter are sufficient to address the full range of threats to international peace and security." At the same time, they reaffirmed "the authority of the Security Council to mandate coercive action to maintain and restore international peace and security" and stressed "the importance of acting in accordance with the purposes and principles of the Charter."

In the conclusion, Matheson refers to the debate over Council "legislation." In his view, it would be wrong to infer from the Council's actions that it "can or should act as a 'global legislature'" (p. 235). But his main reason for this position seems to be that "the Council's jurisdiction is limited to actual threats to the peace" (p. 236), which is not perhaps a complete answer.

The book includes extensive endnotes (which would be more reader friendly as footnotes), five appendices, and an index. Some of the appendices are not all that useful, at least for those who know the Council well. Appendix 5 (fifty-four pages), for example, consists of some forty Security Council resolutions (mostly only extracts) adopted during the period covered by the book. Their inclusion may make the volume self-contained, but they are readily available on the UN Web site, and lawyers at any event are unlikely to be satisfied with extracts from what are actually quite short documents.

There are few points in the book with which this reviewer would disagree. Some of the terminology is opaque (though that may reflect usage in Washington). For example, the heading "Action by Consensus" (pp. 23–24) covers all-too-short a section devoted essentially to presidential statements, rather than the Council's practice of adopting resolutions by consensus or without a vote. The treatment of what Matheson terms "implied action" (pp. 24–26) is generally sound, especially in discussing the claim that the Council sometimes has "acted by inaction"; in such cases, the

permanent member opposing such action would simply prevent the Council from taking the action, with the consequence that there was no "implicit authorization," but only a veto or potential veto. However, Matheson's apparent acceptance of implied ex post facto authorization (as in the case of the ECOWAS intervention in Liberia in the early 1990s) seems potentially open to the same objection.

These are minor criticisms. This book should be essential reading for anyone involved with the Security Council or interested in its activities, whether lawyer, diplomat, member of civil society, or concerned member of the public. The Council has a central role to play in the maintenance of international peace and security. It is "the indispensable heart" (p. 20) of the collective security system established by the UN Charter—and that Matheson has played his own part in fostering. The Council's continued legitimacy depends, in part, on it being understood around the world. This book dispels some myths and is thoroughly recommended reading.

MICHAEL WOOD
*Lauterpacht Research Centre for International Law, University of Cambridge*

*Law in Times of Crisis: Emergency Powers in Theory and Practice*. By Oren Gross and Fionnuala Ní Aoláin. Cambridge, New York: Cambridge University Press, 2006. Pp. xxix, 481. Index. $100, £55, cloth; $52, £27.99, paper.

Oren Gross and Fionnuala Ní Aoláin, law professors at the University of Minnesota,[1] have cast new light on a subject that has been addressed before in the legal literature: how law does and does not function when governments are faced with what they regard as extraordinary circumstances requiring extraordinary responses.[2] Unlike the earlier works, *Law in Times of Crisis*—which was awarded the American Society of International Law's Certificate of Merit for a preeminent contribution to creative scholarship—eschews a predominantly doctrinal approach to the subject. With its apt subtitle, *Emergency Powers in Theory and Practice*, the book is divided into two parts, one dealing primarily with theory and the other with practice. Part I begins with chapters setting forth three models of emergency regimes, followed by a bridge chapter that chips away at the perceived boundary between normalcy and times of crisis. Part II consists of three chapters focusing on how theory adapts to real-world practice during and after a crisis. The depth and breadth of the authors' research into both theory and practice are apparent throughout.

Before we go further, let it be noted that the book is not easy reading. In a number of instances, the authors' syntax is unnecessarily convoluted, and their line of reasoning is not always the shortest distance between two points. Nevertheless, there is originality and plenty of substance to be found here.

Theoretical models have their uses and their shortcomings. They must be simple enough to be manageable, just broad enough to encompass conduct that has recognizable contours but that does not replicate itself in every detail over time and space, and insightful enough to have some explicative or predictive value. Models of this sort do not necessarily have clear boundaries. One model may shade into another, sometimes making it difficult to place actual conduct within one or the other. Moreover, the models themselves may be subsets of a larger model, which may itself have contested or fuzzy boundaries. Thus, the models of emergency regimes are subsets of the model of national emergency, which may not always be distinguishable from normalcy. Gross and Ní Aoláin recognize this difficulty, particularly in chapter 4, but they do not seem especially troubled by it. Good for them. Their models have enough integrity to withstand some uncertainty at the edges.

[1] The latter is also a professor of law and associate director of the Transnational Justice Institute at the University of Ulster.

[2] For some earlier treatments, see SUBRATA ROY CHOWDHURY, RULE OF LAW IN A STATE OF EMERGENCY (1989); JOAN FITZPATRICK, HUMAN RIGHTS IN CRISIS (1994); JAIME ORAÁ, HUMAN RIGHTS IN STATES OF EMERGENCY IN INTERNATIONAL LAW (1992); Stephen P. Marks, *Principles and Norms of Human Rights Applicable in Emergency Situations: Underdevelopment, Catastrophes and Armed Conflicts*, *in* 1 THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS 175 (Karel Vasak ed., 1982).