

# COUNCIL UNBOUND



**COUNCIL UNBOUND:**  
**THE GROWTH OF UN DECISION MAKING ON CONFLICT**  
**AND POSTCONFLICT ISSUES AFTER THE COLD WAR**

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The views expressed in this book are those of the author alone. They do not necessarily reflect views of the United States Institute of Peace.

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*To my wife Patricia,  
who has sustained and supported me  
in every way*



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# FOREWORD

**A**lthough scholars, students, and policymakers will find Michael Matheson's *Council Unbound* a masterful survey of the newly renascent powers of the United Nations Security Council, two distinct readerships will significantly benefit from this book: those who believe that the United Nations is an ineffective entity, and those who believe it is becoming a global government. *Council Unbound* will dispel many cherished (if not well-informed) beliefs among both of these readerships.

Regarding the former, Matheson lays out the myriad tasks of the world organization in halting incipient conflagrations between or within states the world over, and in managing the Herculean job of guiding the reconstruction of states and societies recovering from the human and physical destruction of mass violence.

For the latter readership, the title of this work does not imply a world body run amok. In fact, as the author explains in detail, the United Nations Security Council has its own limits within the UN Charter, and it must find concurrence among nine of its fifteen members (including the veto-wielding "Permanent Five") before deciding to act on a "threat to the peace"—including international terrorism—or to undertake complex peacekeeping operations. Although the UN

Security Council is now *unbound* from the Cold War constraints of superpower competition that prevented full implementation of the UN Charter's provisions for stemming aggression, it is not free from the strictures of that same charter, which stands as the basic legal authority for the Council's actions in summoning either sanctions against a miscreant member or assistance for a collapsing one.

Nor is the Council immune to the effects of disputes that arise over conflicting national interests. The organization continues to be plagued by disagreements among its permanent members—witness the objections of China and Russia regarding various UN-mandated peacekeeping missions and, more recently, the decision of the Bush administration to forgo a specific UN mandate for intervention in Iraq, relying on previous UN Security Council resolutions.

Regardless of these limitations on the Security Council's operations, any reader of this book cannot fail to acknowledge that the Council has surely expanded its roles in the maintenance of peace over the past decade and a half, extending its purview into not only "third-generation" peacekeeping tasks—entailing the establishment of representative political institutions in "failed" states that have collapsed under the weight of their profound social divisions, and the restoration of effective public security architectures—but also the criminal prosecution of political and military leaders, including even heads of state. Indeed, Matheson expertly documents the Security Council's assumption of an enormous conflict management agenda and the challenges of constructing responsive political institutions worldwide.

Mike Matheson is highly qualified to write about the U.S. response to the Council's expanded functions. He came to the Institute as a senior fellow after serving as deputy legal adviser and acting legal adviser at the U.S. State Department during the beginning of the Security Council's assumption of new tasks in the post-Cold War period, starting with the first Gulf War. He also serves on the executive council of the American Society of International Law, as well as being a member of the UN International Law Commission. Currently he is a member of the international law faculty at George Washington University's School of Law.

As with any large institution that has expanded its functions, there are bound to be problems with management, and *Council Unbound* comes at a time when the United Nations faces the weighty task of assessing proposals for the world organization's reform. Practically every program and project of the United States Institute of Peace involves the United Nations or its specialized agencies, and we are now in the process of following up on the work of the Institute-supported bipartisan Task Force on the United Nations. The task force's report, *American Interests and UN Reform*, called for myriad changes in the way the organization is managed and run, many of them paralleling Secretary-General Kofi Annan's own agenda for organizational reform of the world body. The Institute's UN-related programmatic work also reflects many of the in-depth studies of how international organizations manage conflict and postconflict peacebuilding that have been published by the U.S. Institute of Peace Press, starting with Mihaly Simai's *The Future of Global Governance* (1994). We now proudly offer Mike Matheson's excellent survey of the UN's expanded global repertoire as the latest addition to this important body of policy-relevant scholarship.

Richard H. Solomon  
President  
United States Institute of Peace



# PREFACE

**T**HIS BOOK IS AN ATTEMPT TO DESCRIBE the development and expanded use by the United Nations Security Council during the post–Cold War period of its legal authority to deal with threats to the peace. It is not a broad treatise on the political role of the Council, its effect on the events of the period, or its place in the foreign policy of the United States. Rather, the book reflects my experience and perspective as an attorney in the U.S. State Department over a period of almost thirty years, and in particular my 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 reascent 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.

Although this book draws on my experience in the U.S. State Department, of course it does not purport to represent the views of the U.S. government. It was the product of a year's work as a senior fellow at the U.S. Institute of Peace, but, likewise, it does not necessarily represent the Institute's views. It is based entirely on the public

record of this period, though it is wholly consistent with my own personal recollection of the events and issues described. Most of the major events in the development of the Council's authority occurred between 1990 and 2000 (when I left the State Department), but the book continues the story through 2005. The discussion herein is extensively annotated with references to the major UN decisions in each context, as reflected in the resolutions of the UN Security Council, and to the legal debates surrounding those decisions, as reflected in a variety of secondary sources, including leading law reviews (principally the *American Journal of International Law*). For readers interested in surveying more broadly the primary sources of U.S. and international law pertaining to the Council's expanded powers, as well as the legal commentary on these powers, I offer a selected bibliography at the end of this volume. Although I have made most citations to the scholarly and professional literature conform to the guidelines set forth in *The Chicago Manual of Style*, 15th ed., most of the references to public documents (treaties, international legal cases, etc.) follow a modified system of commonly accepted legal citation.

I want to thank Peter Pavilionis and Timothy Docking of the U.S. Institute of Peace for their inspiration, suggestions, and editing on this project, and Charles Henderson for his outstanding work as my research assistant at the Institute. I also want to acknowledge the many colleagues with whom I worked at various times in the State Department and elsewhere on the issues described in the book, particularly Edwin Williamson, Conrad Harper, David Andrews, the late Edward Cummings, Sean Murphy, Bruce Rashkow, Ronald Bettauer, John Crook, Theodor Meron, David Scheffer, James O'Brien, Crystal Nix, Alan Kreczko, James E. Baker, and Kathleen Suneja.

# LIST OF ACRONYMS\*

CSCE:	Conference on Security and Cooperation in Europe
ECOMOG:	ECOWAS Monitoring Group
ECOWAS:	Economic Community of West African States
EU:	European Union
FRY:	Federal Republic of Yugoslavia
IAEA:	International Atomic Energy Agency
ICC:	International Criminal Court
ICJ:	International Court of Justice
ICTY:	International Criminal Tribunal for the Former Yugoslavia
IFOR:	Implementation Force (Bosnia)
ILC:	International Law Commission
INTERFET:	International Force for East Timor
ISAF:	International Security Assistance Force (Afghanistan)

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\* A listing of acronyms for UN peacekeeping operations discussed in this work can be found in Appendix 2.

KFOR:	Kosovo Force
NATO:	North Atlantic Treaty Organization
OAS:	Organization of American States
OSCE:	Organization for Security and Cooperation in Europe
SFOR:	Stabilization Force (Bosnia)
SRSG:	Special Representative of the (UN) Secretary-General
UN:	United Nations
UNCC:	UN Compensation Commission
UNITAF:	Unified Task Force (Haiti)
UNMOVIC:	UN Monitoring, Verification, and Inspection Commission (Iraq)
UNSCOM:	UN Special Commission (Iraq)
WMD:	weapons of mass destruction

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