

UN Security Council and the responsibility to protect: Voluntary restraint of the veto in situations of mass atrocity



Briefing for Parliamentarians by UNA – UK

Current context – France calls for “code of conduct”

In October 2013, France proposed¹ a “code of conduct” for the use of veto in the Security Council in situations of genocide, war crimes, crimes against humanity and ethnic cleansing (“mass atrocity crimes” covered by the Responsibility to Protect (R2P) principle as endorsed at the 2005 World Summit).

France argued that, in the wake of inaction in Syria, this would:

- Increase the legitimacy of the Council
- Preserve the credibility of the Council
- Convey the will of the international community to make the protection of human life a true priority
- Restore the power of discussion and constructive negotiation
- Prevent member states from becoming prisoners of their own principled positions.

France also set out a suggestion for how the code of conduct would work in practice:

- It would not require an amendment of the Charter as it would be a mutual commitment of the P5, who would agree to suspend right of veto in cases of mass atrocities
- It would require at least 50 member states to request for the UN Secretary-General to determine the nature of the crimes
- Once the Secretary-General confirmed the commission of atrocity crimes the code of conduct would apply immediately
- It would exclude cases where the vital national interests of a permanent member of the Council were at stake

International support for voluntary restraint

During the past decade, the support for a “responsibility not to veto” has grown considerably amongst a wide variety of UN member states and respected international commissions and panels. 2013 particularly saw increasing momentum on this issue, sparked in part by the inability of the Council to respond to the catastrophic humanitarian crisis in Syria.

Timeline of developments

2001	French Foreign Minister Hubert Védrine called for the Permanent 5 (P5) not to apply their veto to block humanitarian action where their own national interests were not involved. <i>The International Commission for Intervention and State Sovereignty endorsed the restraint of the veto in its 2001 report on The Responsibility to Protect.</i>
2004	<i>The High-Level Panel on Threats, Challenges and Change called for a voluntary restraint on the use of veto in cases of mass atrocities.</i>

¹ During the General Debate of the 68th Session of the General Assembly of the United Nations, <http://gadebate.un.org/68/france>; in an opinion editorial in the *New York Times* on 4 October 2013, <http://www.nytimes.com/2013/10/04/opinion/a-call-for-self-restraint-at-the-un.html>

2008	The United States' <i>Genocide Prevention Task Force</i> , chaired by former US Secretary of State Madeleine Albright and Senator William S. Cohen endorsed the voluntary restraint on the veto in their report.
2009	The UN Secretary-General's report on <i>Implementing the Responsibility to Protect</i> supported the suggestion for restraining the veto in cases of mass atrocities. Nine member states in the General Assembly also endorsed this idea during the informal interactive dialogue on R2P.
2012	The "Small 5 (S5) initiative", led by Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland, advanced a resolution in the General Assembly on improving the transparency of the Security Council, suggesting that P5 states should explain why the veto has been employed or considered in each situation, including a reference to the voluntary restraint of the veto in cases of mass atrocities. This draft resolution was later retracted by the S5 due to pressure from the P5 on the resolution's supporters.
2013	<p>Launch of the Accountability, Coherence and Transparency (ACT) Group. Made up of 21 countries (mostly small and middle powers), the group is focusing on a wide variety of issues related to improving the working methods of the Security Council, including a code of conduct for using the veto in cases of mass atrocities.</p> <p>European Parliament adopted a resolution in support of the R2P principle proposing that the P5 adopt a voluntary code of conduct that would limit the right to veto in cases of genocide, war crimes, crimes against humanity and ethnic cleansing.</p> <p>At a General Assembly informal interactive dialogue on R2P in 2013, 9 states spoke up to voice their support for the voluntary restraint of the veto (Chile, Costa Rica, Croatia, France, Liechtenstein, Mexico, New Zealand, the Netherlands, and Slovenia).</p> <p>As the Security Council President in August 2013, Argentina stated that the veto was an out-dated safeguard of the Cold War that prevents the Council from dealing with current problems.</p> <p>French President and Foreign Affairs Minister advance proposal for a code of conduct in the UN and in the <i>New York Times</i>.</p>
2014	<p>Jordan made a statement as president of the Security Council reiterating its support for reform of the Council and the veto restraint initiative.</p> <p>Australia, the Netherlands and Liechtenstein made statements at an event at the UN commemorating the 20th anniversary of the Rwandan Genocide in support of France's proposal.</p> <p>France and Mexico co-hosted a High-Level Ministerial Meeting on the side of the opening session of the UN General Assembly on "Regulating the veto in the event of mass atrocities". Over 100 member states attended the meeting and all of the P5 made statements.</p>
2015	<p>Amnesty International urged the P5 to not use the veto in cases of mass atrocities in their annual report.</p> <p>The ACT Group is currently drafting a resolution for the General Assembly that will call for a code that applies to all UN Member States on the Security Council or seeking election to the Council, rather than just veto wielding members. This would include a pledge to not hinder the adoption of a draft resolution before the Security Council that is aimed at ending the commission of genocide, crimes against humanity or war crimes.</p>

The use of the veto in mass atrocity situations

The veto is employed rarely and international inaction in the face of the threat of atrocity crimes is in part a symptom of Member States' inability to muster sufficient political will to act in a timely and decisive manner. Nevertheless, the veto has been threatened or used to block action where a P5 decides that their interests are at stake.

Informal use of the veto is more common than formal use. This entails the threat of the use of the veto as a means for coercion or deterrence, in anticipation of a resolution being put forward for vote that is not viewed favourably by a permanent member. This kind of anticipatory veto can serve as part of an explanation for the inaction on Rwanda (1994) and NATO's unauthorised military intervention in Kosovo (1999).

Nevertheless, the veto has been formally employed five times in cases with where a threat of mass atrocities was present since the endorsement of the responsibility to protect in 2005:

1. 12 January 2007: Resolution calling for the cessation of serious human rights abuses in Myanmar vetoed by Russia and China
2. 11 July 2008: Resolution imposing sanctions on Robert Mugabe, President of Zimbabwe -who carried out widespread state-sponsored murder, intimidation, violence, enforced disappearances and sexual violence - vetoed by Russia and China
3. 4 October 2011: Resolution condemning "grave and systematic human rights violations" perpetrated under the Syrian President Bashar al-Assad vetoed by Russia and China
4. 4 February 2012: Resolution condemning violence in Syria vetoed by Russia and China
5. 19 July 2012: Resolution imposing economic sanctions on Assad regime for failing to abide by the Annan peace plan vetoed by Russia and China. While the Council was able to come to an agreement on a resolution on the destruction of Syria's chemical weapons on 27 September 2013, the threat of further vetoes has marred the likelihood of a resolution on humanitarian access and protection to Syria.

P5 perspectives on the veto

While pressure is building outside the Council, any meaningful reform or adoption of new working methods can only come from the P5 themselves.

The UK last employed the veto in 1989, when the US, France and Britain vetoed a resolution deploring the US military intervention in Panama. Overall, the UK has a progressive standpoint on UN Security Council reform, particularly in terms of improving working methods and enlarging Council membership. The UK has shown willing to take part in discussions on the topic of veto restraint but has not come out in support of the initiative. mass atrocities.

The US has not made a statement on the issue, but US Permanent Representative to the UN, Samantha Power is a known supporter of the Responsibility to Protect Principle and has publically stated that "the Security Council the world needs to deal with this urgent crisis [in Syria] is not the Security Council we have".

Russia and China both argue against a 'piecemeal' approach to Council reform. However, both have participated in meetings regarding the veto restraint initiative.

It is clear that after repeated failures to address the humanitarian crisis in Syria, the P5 need to put more effort into thinking creatively about how to improve the Council's ability to address complex and destructive political crises.

Improving the French Proposal

Some improvements could be made to the French proposition, if the UK were to participate in the discussion:

- Rather than trying to agree on an actual code of conduct, the Council could start incrementally by supporting a declaration not to use the veto in atrocity situations;
- Rather than a threshold of 50 member states, the UK could propose that the request to the Secretary-General should be supported by a two-thirds majority in the General Assembly, as is customary for important matters of peace and security;
- The UK should call for an examination into how the various parts of the UN system – such as Special Advisers, Rapporteurs and Representatives; funds, programmes and agencies; and the Office of the UN High Commissioner for Human Rights, as well as relevant regional organisations – could support the functioning of this code of conduct in terms of advising on the situation on the ground and confirming evidence of the risk or commission of genocide, war crimes, crimes against humanity or ethnic cleansing.