

The Responsibility Not to Veto: A Genealogy



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*The responsibility not to veto is the idea that the Permanent Five at the UN Security Council should voluntarily refrain from using their veto in the event of atrocities. There are currently three veto-restraining initiatives, one of them from a P5 member, France. Despite its importance in diplomatic and UN circles, this debate has attracted little academic attention. This is partly because of the difficulty to access primary sources such as the details of the French proposal that circulated among the P5. Empirically focused and using diplomatic archives and experience, this article intends to fill such a gap. It provides the most detailed picture of the RN2V genealogy to date while offering a behind-the-scenes perspective on how the idea emerged and developed inside the French administration. It then unpacks the French strategy, its motivations and diplomatic efforts toward the P5, Group of 4, other states, and nongovernmental organizations, and eventually makes four recommendations for the initiative to have a chance of progressing among the Permanent Three. **KEYWORDS:** UN Security Council, veto, responsibility to protect.*

IN HIS 2000 REPORT AS UN SECRETARY-GENERAL, KOFI ANNAN ASKED THE FOLLOWING question: “If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?”¹ A year later, the concept of the responsibility to protect (R2P) was born as a tentative answer. At the 2005 UN World Summit, states committed to protect their populations from mass atrocities (genocide, crimes against humanity, ethnic cleansing, and war crimes). R2P is actually three responsibilities: for the territorial state not to commit or incite the crimes; and for the international community to encourage and assist individual states, and respond if there is a manifest failure to protect but only through the UN Security Council. However, a related question remained: what should be done when in such a situation the Council is blocked due to the veto of one of its Permanent Five (P5)? The notion of a responsibility not to veto (initialized as RN2V to mimic R2P), also called “veto restraint” or a “code of conduct,” is now emerging as an answer.

The idea that the P5 should voluntarily refrain from using their veto in the event of atrocities developed after NATO’s Kosovo intervention (1999), and was revived with the war in Syria (since 2011). In both cases, Russian and Chinese vetoes seemed to prevent a Security Council response to the humanitarian crisis. The movement has been growing, with small states and nongovernmental organizations (NGOs) pushing as norm entrepreneurs, and the P5 resisting as

gatekeepers, as is often the case on global human security issues.² An exception to this resistance is that, among the three veto-restraining initiatives developed in the past few years, one of them comes from a P5 member, France. The movement now enjoys the support of more than half of UN member states and prominent NGOs. It is fair to say that a “transnational advocacy network” has emerged to promote RN2V,³ closely articulated to the R2P one.

Despite its importance in diplomatic and UN circles, this debate has attracted little academic attention.⁴ This is partly due to the difficulty in accessing primary sources such as the details of the French proposal circulated among the P5. Empirically focused, using diplomatic archives and experience, this article intends to fill such a gap. I do not examine here the theoretical grounds and practical mechanisms of the current veto-restraining initiatives, to which a distinct and complementary article is devoted. Rather, I provide the most detailed picture to date of the RN2V genealogy while offering an inside view on how the idea emerged and developed inside the French administration.

As a member of the Ministry of Foreign Affairs Policy Planning Staff between 2013 and 2016, I was myself one of the main contributors to the French proposal. Exploring the archives, I discovered that the idea actually originated from the same service, only fifteen years earlier, before being included in the 2001 International Commission on Intervention and State Sovereignty (ICISS) R2P report. It was then promoted by a number of states and NGOs, but failed to be included when the 2005 World Summit endorsed R2P. It then went out of the limelight until France resumed the project in 2012 and circulated a proposal among the P5 while the Accountability, Coherence and Transparency (ACT) Group and later the Elders (an independent group of global leaders founded by Nelson Mandela in 2013 and chaired by Kofi Annan) developed parallel initiatives.

Having explained this history, this article unpacks the French strategy, its motivations and diplomatic efforts toward the P5, Group of 4 (G4), other states, and NGOs. It makes four recommendations for the initiative to have a chance of progressing among the Permanent Three (P3): insist that the objective is not to weaken the veto but, on the contrary, to safeguard it; respond to the risk of abuse; simplify the proposal, which is complicated and procedural; and pursue public diplomacy efforts.

In the Wake of Kosovo (1999–2001)

In the 1990s, there were several isolated criticisms of the veto as an obstacle to humanitarian interventions⁵—even though its use was not so frequent at the time and rarely about situations of mass atrocities. The critique developed with NATO’s intervention in Kosovo (1999), which was undertaken without the Security Council’s authorization following Russia’s (and possibly China’s) threats of vetoes. The intervention was labeled “illegal but legitimate”⁶—highlighting a critical gap between law and legitimacy that has been affecting the UN in multi-

ple ways. It is from the perspective of a failure to maintain international peace and security, as per the UN Charter's provisions, that the "abuse" of the veto, while technically legal, was then denounced and has been since condemned for progressively delegitimizing the Security Council and the UN more generally.⁷ The first concrete proposals of restricting the veto in humanitarian crises were formulated in this context, in 1999.⁸

The French Policy Planning Staff (Centre d'analyse et de prévision [CAP]), whose role is to present strategic recommendations to the French minister of foreign affairs, has been instrumental in the idea's success. In November 1999, in the wake of the fifty-fourth session of the UN General Assembly marked by a post-Kosovo debate on sovereignty versus intervention, the CAP wrote memos recommending the minister to take the initiative of a "reform of the veto," a "P5 collective reflection on the responsible use of the veto."⁹

Rather than an amendment to the Charter, with its legal and procedural hurdles, the CAP proposed the adoption of a political declaration, a shared Franco-British text to be submitted to the three other permanent members before the then upcoming UN Millennium Summit. The goal was only to launch a debate, or even better a counternarrative to the risk of delegitimization and circumventing of the Security Council, and exert political pressure while making clear that France was not the source of obstruction either in the Council or on its reform. This reasoning still underlies France's position today: the real objective of its proposal to restrict the veto is not so much to obtain an agreement in the P5 but rather to exert pressure, rendering the improper use of the veto more politically costly, and more deeply to counter narratives on the demise or obsolescence of the Council.

For the mechanism, the CAP recommended at the time that a preliminary characterization of the nature of the humanitarian crisis was necessary, which could be carried out by either the Security Council itself or externally by the High Commissioner for Human Rights or the then Commission on Human Rights.

These early suggestions did not convince London and, ultimately, failed to lead to the Franco-British declaration sought by the CAP. But remarkably, all the main ingredients of what would be known, as of 2012, as the French proposal were already in the 1999 CAP memos.

The idea reached the foreign minister, Hubert Védrine. He learned of it from the CAP but it was another memo, written on 10 March 2000 by the division for political affairs of the Department for the United Nations and International Organizations (NUOI/P), that led to action.¹⁰ When it was sent to the minister, his chief of staff (*directeur de cabinet*) annotated it as follows: "Mr Minister, my feeling is that our interest—in the long term—is to accept and even propose a form of self-discipline on the use of the veto: a code of conduct, a solemnization ... but without revising the Charter." Védrine circled this message and wrote in turn: "To put in an article which I could write."¹¹

Less than ten days later, in the newspaper *Le Monde*, Védrine suggested "that the permanent members agree on situations where they would refrain

from invoking [the veto] (severe oppression or confirmed massacres, failure or responsibility of the state concerned, emergency).¹² He then repeatedly advocated the idea, including in a letter to the former Algerian and UN diplomat Mohammed Sahnoun, and contributed to his nomination to the cochairmanship of the ICISS, which would deliver the concept of R2P.¹³ When the ICISS conducted a roundtable discussion in Paris in May 2001, Védrine reiterated his proposal under the form of a “code of conduct” in the use of the veto.¹⁴ In November 2001, he also presented elements of a diplomatic strategy: “France is ready to take this type of engagement to create a pulling effect and contagion *vis-à-vis* the other permanent members.”¹⁵

France was not the only one to develop the concept before the ICISS popularized it. At the same time in the academic world, but without any apparent impact on government policies, the solidarists from the English School equally thought that the right of veto implied a corollary duty of not abusing it, and therefore distinguished “responsible” and “irresponsible” uses of the veto.¹⁶ Also, a Danish legal scholar proposed several innovative mechanisms that are still relevant today.¹⁷

From R2P to RN2V (2001–2011)

Despite these first blueprints, it was the ICISS that popularized the idea in its report on *The Responsibility to Protect* (2001).¹⁸ The idea was then taken up by the High-Level Panel on Threats, Challenges and Change, formed by the Secretary-General (2004),¹⁹ and the “Uniting for Consensus” group at the General Assembly (2005).²⁰ And it figured in the third version of the World Summit draft document,²¹ but ultimately was not included in the final paragraphs on R2P due to objections by the United States, Russia, and China.²² Five states (Switzerland, Liechtenstein, Costa Rica, Jordan, and Singapore), calling themselves the Small Five (S5) group, then prepared a draft resolution, distributed in November 2005. One of its proposals was “designed to prevent—bearing in mind the responsibility to protect—the use of the veto in cases of genocide, crimes against humanity and serious violations of international humanitarian law.”²³ The S5 tried, in vain, to pass resolutions in the General Assembly in March 2006, April 2011, and May 2012. Launched in 2013 with twenty-three states including four from the S5, the ACT Group continued the S5’s first attempts—except more effectively and with broader support.

In 2008 the Genocide Prevention Task Force, a US bipartisan group whose objective was to determine the conditions under which the government could prevent genocide and mass atrocities, asked the secretary of state to take the initiative on a code of conduct. The task force proposed that the renouncement of the veto should be mutual, voluntary, and informal; that it would be applicable unless three P5 members agree to veto a given resolution; and that the General Assembly should have a role.²⁴ In his report on *Implementing the Responsibility*

to *Protect* (2009), the Secretary-General also supported this idea,²⁵ with explicit backing from over thirty-five states.²⁶ In 2010, the American NGO Citizens for Global Solutions named it the “Responsibility Not to Veto.”²⁷ The initialism “RN2V” reflects the concept’s origins “as an element of” R2P.²⁸ In 2011, the World Federalist Movement adopted a resolution supporting the concept²⁹ and the first academic article devoted exclusively to it was published in the journal *Global Responsibility to Protect*.³⁰

The 2012 Turning Point

With the war in Syria worsening, the second Russian-Chinese double veto on 4 February 2012 blocked a resolution supported by the thirteen other Security Council members and triggered an important controversy on the link between the veto and Council impotency.³¹ NGOs pleaded for a new norm and the S5 proposed a draft resolution,³² but the P5 placed pressure so the project was abandoned.

France launched its diplomatic offensive the same year. Like more than a decade earlier, the CAP was once again at the initiative. A memo of November 2011 recommended relaunching the debate on the use of the veto in situations where there is a clear failure in the obligations linked to R2P.³³ France supported the idea at the General Assembly in May 2012 while opposing the method proposed by the S5 (an Assembly resolution).³⁴

After the 2012 French presidential election, the CAP presented a report to the new administration containing a series of recommendations. One of them was “to put back on the agenda the ‘code of conduct’ Védrine proposed to the ICISS.” The report added that there was “nothing to expect from Russia and China but a voluntary commitment from the P3 could increase the political pressure on them.”³⁵ The new minister of foreign affairs, Laurent Fabius, was receptive. A few months later, in September 2012, he publicly expressed for the first time the concept of “a ‘code of conduct’ through which permanent members of the UNSC [UN Security Council] would commit not to exercise their right to veto in situations of serious humanitarian crises when their vital interests are not in play.”³⁶ The following month, the French ambassador to the UN repeated this position in New York.³⁷

The timing was no coincidence: France launched its initiative just four months after the S5 presented and then withdrew under pressure a draft resolution³⁸ that came close to passing. Paris acted to avoid missing the opportune moment, which would have allowed the General Assembly to take the lead. Indeed, if there is one thing on that topic that the P5 unanimously agrees on, it is that the use of the veto should be discussed among themselves since they are the only ones to possess this “right.” As a matter of fact, any Assembly proposal to limit the veto would be much weaker since it would not emanate from the veto’s holders themselves—and in any case, a revision of the Charter, needed to change the legal conditions of the veto, cannot get through without the approval of each of the P5.

Refining the French Proposal (2013–2015)

France first mentioned its proposal in 2012, but intensified its campaign in the autumn of 2013. In between, a resolution was also passed at the European Parliament.³⁹ On 24 September 2013, speaking at the General Assembly, President François Hollande proposed “that a code of good conduct be defined by the permanent members of the Security Council, and that in the event of a mass crime they can decide to collectively renounce their veto powers.”⁴⁰ Ten days later, Minister Fabius simultaneously published in *Le Monde* and the *New York Times* an article that set out the French position. The nature of the project (collective and voluntary, without any modification of the Charter) and the envisaged exception (when vital national interests are at stake) have been proposed since the 2000s. However, the mechanism to activate the restriction was new: “At the request of at least 50 member states, the UNSG [UN Secretary-General] would be called upon to determine the nature of the crime. Once he had delivered his opinion, the code of conduct would immediately apply.”⁴¹

The French proposal immediately received a warm welcome from several delegations in New York. However, in the following days it also unleashed a wave of questions and was criticized, in particular by the United States and the United Kingdom in bilateral meetings, for being too vague and posing a number of problems (see below). On the basis of these first comments, the French Ministry of Foreign Affairs worked to refine the proposal.

A first draft of the code of conduct, elaborated by NUOI/P and the CAP (renamed under Fabius: Centre d’analyse, de prévision et de stratégie [CAPS]), was presented to the minister in March 2014. Fabius’s first reaction was to remove the paragraph mentioning R2P because he considered the notion to be “toxic” after Libya and was afraid that invoking it would make France lose the support of some states.⁴² A CAPS memo was successful in convincing the minister to implicitly reintroduce R2P because its absence not only made no sense genealogically, but also risked losing more states (and the NGO networks) than it gained.⁴³ In the spring of 2014, the final version of this first draft was sent to New York, along with supporting arguments and instructions to circulate it first only among the P3, before moving to the P5.

As a confidential text, it cannot be reproduced here but it can be said that this document, titled *Non-paper: French Proposal for a Code of Conduct on the Use of Veto Within the Security Council*, specifies that the “massive crimes” activating the suspension are only those of genocide, crimes against humanity, and war crimes on a large scale. It considers a role not only for the Secretary-General, but also for the UN High Commissioner for Human Rights; and if the veto was to be used under the exception of vital national interests, a public explanation would be required. Each element of the proposed mechanism is open to debate, and that is why the working document is not public, so it can be modified by the P5.

The French strategy has two sides: discussing the code of conduct with the other permanent members; and continuing, in parallel, to mobilize like-minded

countries and civil society to raise public awareness and support. On 25 September 2014, in the margins of the Sixty-ninth General Assembly, Paris organized a meeting, copresided over by the French and Mexican ministers of foreign affairs, in which Fabius restated the proposed mechanism. While this provided the French initiative, largely supported by civil society, with media attention, behind the P5's closed doors discussions were not improving. Time was limited: not only was the ACT Group pressurizing the P5 with a similar initiative and threatening to put its Assembly resolution to a vote, but September 2015—the session of the Assembly marking the seventieth anniversary of the UN—was a highly symbolic meeting that France had identified for a long time as the opportune moment to present results and thus served as a deadline.

Aiming to advance the P3's discussions within this narrow time frame, in December 2014 Fabius asked Védrine to become an informal ambassador for the French initiative, with a view toward establishing a discussion first and foremost with the other permanent members. The CAPS was also enlisted in this public diplomacy drive. On 21 January 2015 at Sciences Po, I organized an international conference entitled “Regulating the Use of Veto at the UN Security Council in Case of Mass Atrocities” with Fabius, Védrine, the French ambassador to the UN, leading experts on R2P including Jennifer Welsh representing the Secretary-General, Gareth Evans, Simon Adams, and others. The conference allowed the French proposal to be discussed with unprecedented precision, and many objections and suggestions were gathered.⁴⁴ The CAPS also organized an international conference at the Universidade de Brasília in August 2015, which, with several meetings at the Itamaraty, helped to convince Brazil to support the initiative.⁴⁵

In May 2015, NUOI/P presented the minister with a second version of the nonpaper to negotiate amidst the P5, incorporating many suggestions from the Paris conference. In contrast to the first version, it no longer spoke of a “code of conduct” (wording that was criticized for its overly legal connotations and abandoned in internal documents since June 2014), but simply a “declaration of intent.” It also introduced a preventative dimension so that action would not need to wait until crimes were actually committed, a limit on the duration of engagement not to veto, a role for the High Commissioner for Human Rights and the special advisors to the Secretary-General on the prevention of genocide and R2P, a condition of geographic representativeness for the fifty member states, and the obligation for a permanent member using its veto in the name of its vital interests to provide not only a public explanation but also an alternative credible course of action. The minister approved this second version, which was then circulated among the P5.

In parallel, France continued to lobby states and civil society. It asked Mexico to cosponsor a “political statement on the suspension of the veto in case of mass atrocities,” which it made public during summer 2015 and open to the signature of all UN members with the aim of obtaining as many signatures as possible by the Seventieth General Assembly.

The ACT Group's Project

In January 2014 France learned that civil society and the countries participating in initiatives such as the ACT Group, Friends of R2P (with the notable absence of the United States and the United Kingdom), and Friends of the International Criminal Court (ICC)—anticipated presenting a General Assembly resolution on restricting the veto in the spring, if France had not acted before then. The ACT Group explained that they had abstained from presenting their resolution as early as November 2013 to allow time for the French initiative to succeed because it had the benefit of coming from within the P5—but that their patience was limited.

In an ACT Group meeting in February 2014, Liechtenstein distributed a draft resolution that was supposed to be presented to the General Assembly in April (a symbolic month, as that was the twentieth anniversary of the Rwandan genocide). It gave France a copy, without hiding the fact that it was a way to push Paris to speed up its timetable and present its own text in the following weeks. Other states explained to the French representative that, if France negotiated a text among the P5 by then, the ACT Group would withdraw their own. To confirm this arrangement and maintain pressure, Liechtenstein proposed that France organize a joint seminar on the subject, which took place on 31 March 2014 at the International Peace Institute. It brought together forty representatives from states—with the notable absence of Russia and China—as well as from civil society and academia. This entire sequence is a good example of the strategy of small states in what Vincent Pouliot calls “international pecking orders.”⁴⁶

Finally, it was only on 1 September 2015 that the ACT Group circulated the final draft of its *Code of Conduct Regarding Security Council Action Against Genocide, Crimes Against Humanity or War Crimes*. The crimes concerned are the same as in the French initiative (genocide, crimes against humanity, and war crimes). The main differences are that the ACT code is not only for permanent members, but for any potential member of the Security Council; and it is not just about the veto, but is a broader “pledge to support timely and decisive action by the Security Council aimed at preventing or ending the commission” of these crimes. Also, unlike the French initiative, there is no “vital interests” exception or procedural trigger for the code to apply: the situation on the ground suffices. The Secretary-General is just “invited” “to continue to bring situations that, in her or his assessment, involve or are likely to lead to” these crimes.

The two initiatives are distinct and complementary. But coming from outside the P5 and from some states that wish to not only limit but eliminate the veto, the ACT project has no chance of convincing the P5. Furthermore, the ACT Group's objective remains to formally adopt a General Assembly resolution, which France opposes in the belief that such an adoption not only would be politically and legally contrary to the Charter, but also would risk killing the French initiative by irritating the P5 and encouraging them to rally against it, and even further undermine proposals to enlarge the Security Council.

The 2015 Outcome

On 7 February 2015, the Elders adopted a statement on *Strengthening the United Nations* that called for the P5 to pledge “not to use, or threaten to use, their veto in such crises [genocide or other mass atrocities] without explaining, clearly and in public, what alternative course of action they propose, as a credible and efficient way to protect the populations in question.”⁴⁷ Like the proposed ACT code, it differs from the French initiative in that it does not offer a procedural trigger or give a determining role to the Secretary-General. It also has a totally inverse view of national interests, regarding them as a reason why a veto should be suspended, rather than as a reason not to apply the suspension, as France proposed. The crimes referenced are also more vague (“other mass atrocities”). However, France retained the idea that, in the case of a veto, the public explanation should include a proposal for an alternative and credible course of action. The Secretary-General also incorporated this into his 2015 report on R2P.⁴⁸

At the beginning of September 2015 Paris learned that the UK would not sign the French-Mexican declaration but instead the ACT Group’s code of conduct, a reversal which, inside the French Ministry of Foreign Affairs, was viewed as a betrayal. By supporting the ACT code, London hoped to have it both ways: to look good in front of civil society without going so far as to irritate the United States, which had serious reservations about the French initiative (see below).

Moreover, the ACT Group made France a proposal of mutual support: their twenty-five signatures to the French-Mexican declaration in return for France’s signature of the ACT Group’s code of conduct. This was a smart move and, with the British reversal, France found itself trapped: if it did not sign the ACT code, it risked appearing as lagging behind a movement that it initiated. But France feared that if it signed the code of conduct, it might be considered a unilateral legal act restricting its veto, which it always rejected by supporting the P5’s collective engagement instead.

Confronted with the same problem, London asked the ACT Group to modify its code to commit states to refrain from vetoing only a “credible” draft resolution. This was introduced in the final draft.⁴⁹ *Credibility* being subjective—what is credible to a state that supports a resolution is not credible to a state that does not—the word provided some freedom for interpretation and was enough to reassure London. Furthermore, the absence of an activation mechanism left more room for each state to judge whether to implement the restriction than in the French proposal. This also reassured France, which accepted the ACT Group’s offer of mutual support and signed its code.

At the General Assembly, France eventually decided to unilaterally commit. On 28 September 2015, President Hollande declared: “Let us set an example. I give an undertaking here that France will never use its right of veto where there have been mass atrocities.”⁵⁰ The president’s wording was vague and potentially overly constraining. When later referring to this declaration, Paris therefore pre-

ferred using ACT-like wording: unilaterally renouncing the veto only against a credible draft resolution aiming to end or prevent mass atrocities—even though Hollande never mentioned “credible.”

The French-Mexican declaration was presented on 30 September 2015. It had then gathered the signatures of seventy-eight countries. The ACT code was formally launched on 23 October, and was then signed by 104 states, including two P5 members, France and the UK. Since then, France and the ACT Group’s campaigns continue to gather support, with the persistent support of the Secretary-General, who, in his report for the World Humanitarian Summit in February 2016,⁵¹ also used the word “credible.” At the time of this writing, the French-Mexican declaration has been signed by 100 states and the ACT code of conduct by 116.

Diplomacy

The Permanent Five

The P5 negotiations around the French proposal are at a standstill. Even under the previous administration, the United States was reticent out of principle, not wanting to weaken the veto, which until recently it had used more than anyone else since the end of the Cold War,⁵² almost exclusively to protect Israel. It also has technical objections to the proposed mechanism (see below). However, initially there were reasons to believe that the Americans would support the proposal: they contributed to the development of RN2V with the Genocide Prevention Task Force in 2008, and the Obama administration created an Atrocities Prevention Board, called atrocity prevention a “core interest” of the United States, and nominated Samantha Power as ambassador to the UN. For Paris, Power’s career and ideas made her a potential ally, but divisions in the Obama administration over the initiative reduced her room for maneuver. In the White House, Susan Rice was apparently against the idea—an interesting example of how a professional position can change a personal conviction, as she supported the very same idea before joining the Obama administration.⁵³ The election of Donald Trump has killed any residual hope for US support. Like under the George W. Bush administration, the Trump administration shows no interest for any reform proposal and for atrocity prevention, not to mention human rights violations.

From France’s perspective, the UK is the closest to its own position, both in its nonuse of the veto since 1989 and its values. France was therefore convinced early on that London was the P5 member most likely to support the initiative, as shown in the CAP memo of November 1999 aiming at a Franco-British declaration. Ironically, when the UK did seem closest to the idea, it was in 2003 against the French intent to block a resolution authorizing the use of force in Iraq. Tony Blair argued that France’s threat “was like the Russian threat to veto NATO action against Yugoslavia. It was ‘unreasonable.’”⁵⁴ Despite this episode,

which confirmed the necessity to develop objective criteria for what would be an “unreasonable” or “illegitimate” use of the veto, the UK still seemed to be the closest to the French position a decade later. However, while the UK fully supports France’s proposal in principle and has signed the ACT code, it is also skeptical on its implementation and shelter behind American reticence to avoid taking a position.

The fact that France has not succeeded in winning over the P3 reassures Russia and China of the innocuousness of the diplomatic offensive. Hostile to the initiative, they feel no pressure to grant it greater importance, and remain inflexible. Using a slippery slope argument, they pretend that any discussion on limiting the veto, even voluntarily, would eventually lead to calling it into question. China insists on the relative nature of the crimes in question, on the fact that each Security Council decision should be made on a case-by-case basis and not by preestablished rules,⁵⁵ and on the need to win the P5’s consensus, fully knowing this to be impossible. For a long time, Russia has equally shown its opposition.⁵⁶ On 11 August 2015, Sergey Lavrov tweeted that “ideas of scrapping or limiting the veto have no future.”⁵⁷

France logically focuses its efforts on the P3. However, it is important that the initiative is not perceived as being *against* Russia and China. They must be included in the discussion as well as the others in the Brazil, Russia, India, China, and South Africa (BRICS) grouping. The Chinese and Russian cases should also be treated differently. Russia’s reticence undoubtedly will not be overcome, not only due to the Cold War climate currently weighing on relations but also because the veto is far more important to Moscow. Unlike China, Russia is not a major economic power and so along with its military power and energy resources, the veto is one of its few attributes of power. Russia is also attached to the veto because it occupies a minority position in the Security Council where, unlike the P3, it rarely finds the support of eight other states to make a resolution pass or fail, and often even struggles to rally around the six additional votes it needs to deprive a draft resolution from a majority. It is therefore the least susceptible of the P5 to changing its mind on the veto.

Might China, on the other hand, be less stubborn? Not only does Beijing have other forms of power but it understands that, to become a global power, the economy is not enough: one must also be a norm entrepreneur. Hence, it appropriates R2P through its concept of responsible protection,⁵⁸ and its engagement in UN peacekeeping missions is growing for realist (stabilizing Africa is protecting its trade and investment on the continent) and constructivist reasons (being seen as a responsible stakeholder).

The Group of 4

Outside of the P5, the first priority was to convince the so-called G4 group, made of the four countries claiming a permanent seat in a reformed Security Council (Brazil, Germany, India, and Japan). France is in favor of giving the G4 a per-

manent seat but it insists on keeping the two initiatives distinct to reassure the G4 that the veto initiative is neither competing with, nor impeding, enlargement. France also needs to preserve this initiative's two specific characteristics: its voluntary and political nature, not involving an amendment of the Charter, unlike the Security Council enlargement, and the fact that it deals with the protection of civilians, which is especially important to NGOs.

Of the G4, only Germany and Japan formally support both France and the ACT Group's initiatives. Brazil has signed only the French-Mexican declaration of support while India has signed neither. This is because only Germany and Japan would accept permanent membership without veto power.

Furthermore, an additional difficulty for India, Brazil, and South Africa is that the French proposal has arrived in the context of a division between the West and the BRICS, who suspect a hidden agenda. The discussions often return to the controversial 2011 Libya intervention, which makes the French initiative even more difficult to promote. A lot of countries are still under the (false) impression that not vetoing Resolution 1973 is responsible for the current disorder in Libya.⁵⁹ Therefore, gaining their support for the initiative implies changing their interpretation of the Libya intervention.

Other States

The pool of states that might support the French initiative is limited since, among those that remain, many are waiting to see how the P5 evolves. They do not dare to become involved for fear that it would annoy an important P5 partner, for some the United States, for others Russia. This is especially true of India, which does not support the initiative, less because it remains attached to the veto in the hope of being granted it than for fear of irritating Moscow—even though India's external affairs minister recently acknowledged “that the Security Council is increasingly unable, or sometimes unwilling, to respond to the security challenges of our times, with tragic consequences.”⁶⁰

Nongovernmental Organizations

The Global Centre for the Responsibility to Protect (GCR2P) and Amnesty International are leading the most visible public campaign. While supporting the French initiative, they have essentially two reservations about it: the exception for vital interests, and the legal nature of the agreement. While France seeks an agreement that is as nonlegal as possible, NGOs on the contrary hope for the most legal, and thus most binding, agreement possible.

Conclusion: Improving the Proposal

Ultimately, France can hope to convince more states to sign its declaration of support, and consequently to increase political pressure on the use of the veto in situations involving mass atrocities. But the room for progress inside the Security

Council seems far more limited. Here are four recommendations to Paris for this initiative to have a chance of progressing at least among the P3:

1. *Insist that the objective is not to weaken the veto but, on the contrary, to safeguard it.* It is important to defuse the objection, particularly from the United States, of a slippery slope, according to which restricting the veto would weaken it and open the door to its reconsideration. On the contrary, while repeated vetoes such as in the case of Syria undermine the authority and eventually the centrality of the Security Council, restricting the veto gives it its full international effectiveness.

2. *Respond to the risk of abuse.* Several risks have been highlighted that need to be addressed. First, the United States and the United Kingdom are afraid that Russia or China could pass a “spoiler resolution,” claiming to address atrocities while in fact just undermining other initiatives. This could have happened over Libya when, just before the vote on Resolution 1973, Russia had prepared its own resolution which, if the veto had been restricted, could not have been blocked. Nevertheless, on one hand, this certainly would not have been worse than the current situation in which obstruction is possible and inaction cannot be overcome, which amounts to the same as being unable to stop an ineffective action (except in the case of counterproductive action, i.e., of a resolution actually aggravating the situation). On the other hand, the disrespect of such an ineffective resolution would provide a solid justification to present another resolution, this time coercive. Therefore, this would not delay action for long, and perhaps could even help it—depending on how much time it wasted.


Second, there is also the inverse risk that a resolution could be too strong rather than too weak, proposing the use of force as a first resort. In a Libya-style scenario where, usually, Security Council action is gradual—first condemnation and political efforts, then sanctions, and only then use of force—restricting the veto would prevent opposition to a resolution, perhaps well intentioned, immediately authorizing the use of force to end an ongoing massacre. Why should a permanent member abstain from blocking a resolution if it considers that the military intervention that it authorizes would kill more civilians than it would save? “A veto to a resolution authorizing such measures may very well be based on the sensible conviction that they would not contribute to a solution to the conflict.”⁶¹ RN2V is not a responsibility to do nothing, but “not to undertake, not to support, or not to authorize *an inappropriate measure*”; that is, “a measure that would be likely to do more harm than good, be wrongly motivated, or would cause significant harms to many civilians.”⁶²

Third, in the common cases where mass crimes are committed on two sides, Russia, for example, could pass a resolution authorizing the use of force against the opposition and in support of the regime (Syria), or the other way around (Ukraine).

Fourth, the initial version of the French proposal—suspending the veto “with regard to” a mass crime (October 2013)—was far too vague and could be interpreted as preventing the P5 from vetoing a resolution likely to encourage mass crimes, rather than prevent or end them. Imagine, for example, a resolution deferring an ICC investigation, as is permitted under controversial Article 16 of the Rome Statute, for no reason. To automatically and indiscriminately suspend all vetoes with regard to a mass crime could therefore have perverse effects. For this reason, the UK suggested that France instead say: in cases where “the veto blocks a UNSC action purporting to prevent or end genocide, crimes against humanity or war crimes.” A resolution facilitating these crimes could therefore be blocked. This reformulation would still not prevent another criticism, that it naïvely assumes that any resolution with regard to or even purporting to prevent such crimes would necessarily have good results.

These pernicious effects could be avoided by reformulating the proposal: refraining to use the veto when the Security Council acts “in order to settle situations involving” these crimes, or “in order to protect populations from” these crimes. Since as early as 2014, the French draft proposals have used similar wording to that effect.

3. *Simplify the French proposal, which is complicated and procedural.* It is somewhat surprising that a proposal to deal with emergency situations is so complex and procedural.⁶³ It is often criticized as being “overly bureaucratic and complicated.”⁶⁴ By comparison, the ACT code of conduct has been praised for “its flexibility and the lack of complex procedures,”⁶⁵ which makes it “the most realistic.”⁶⁶ The ACT code’s vaguer formulations such as “not to vote against credible resolutions,” or leaving the determination of the crime to states themselves and “facts on the ground” are certainly the best way to spark endless conflicts of interpretations and, ultimately, inaction. However, the French proposal’s formalism has generated concern by appearing binding and Paris would benefit from making it more flexible.

4. *Pursue public diplomacy efforts.* As previously described, the 2015 Paris conference allowed the proposal to evolve. France should organize similar events, not only in London and Washington, but also in Beijing, Moscow, or Addis Ababa, for instance. First and foremost, this should take place in the countries affected, currently or previously, by mass crimes such as Jordan, a frontline state in the Syrian tragedy, or Indonesia, which has seen both mass atrocities and a humanitarian intervention and is one of the new emerging powers open to effectively promoting this idea to the 133 countries of the Group of 77 (G-77). 

Notes

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