



# The Responsibility Not To Veto: A Way Forward



*A study and proposal on the use of the veto by the permanent members of the UN Security Council (P5) for blocking action in response to genocide and mass atrocities otherwise approved by a Council majority.*

## ***Summary: <sup>i</sup>***

This paper proposes that the permanent five members of the UN Security Council (P5) should agree not to use their veto power to block action in response to genocide and mass atrocities which would otherwise pass by a majority. The concept of the ‘responsibility not to veto’ (RN2V)<sup>ii</sup> has been discussed in a variety of international forums for nearly a decade as an element of the Responsibility to Protect (R2P). However, while the Member States of the United Nations (UN) unanimously endorsed the ‘responsibility to protect’ principle in October 2005, the P5 have yet to make it fully operational. Adopting an agreement which removes the use of the veto in cases of genocide and mass atrocities would be one step to implementing the R2P agenda.

The basic logic behind this paper is that (1) the R2P agenda to prevent mass atrocities deserves support; (2) that in the formulation of R2P set out at the 2005 World Summit the UN Security Council has a vital role to play in its implementation; (3) that the P5 have special responsibilities both to take action to prevent or stop mass atrocities but also not to block potential rescue/humanitarian protection missions undertaken by other actors; and (4) that this responsibility could be more efficiently met if the P5 came to an agreement that there is a responsibility not to wield their veto power in certain circumstances. While such an agreement by the P5 will not, on its own, generate the political will necessary for action, it would remove perceived potential obstacles to intervention. Key Recommendations include that:

- The Security Council is crucial and its response to genocide and mass atrocities must be made more effective; the RN2V proposal can address the Council’s perceived credibility gap.
- Civil society in P5 states must be engaged, as it has an important role to play.
- The United States should play a leading role in making an RN2V agreement a reality.
- The Obama Administration must adopt the findings of US Secretaries Albright and Cohen’s Genocide Prevention Task Force to adopt the RN2V as US Policy and utilize the Secretary of State to engage in robust diplomatic efforts to secure an agreement with other P5 members.

## ***The Responsibility to Protect***

In October 2005 the United Nations’ (UN) member states unanimously endorsed the responsibility to protect (R2P) principle in three paragraphs of the World Summit Outcome Document.<sup>iii</sup> This principle affirmed that each state had ‘the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity’ as well as ‘their incitement’ (paragraph 138). Moreover, should any state be found to be ‘manifestly failing to protect their populations’ from these four crimes, the world’s governments committed themselves ‘to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter’ (paragraph 139). Since then, the R2P principle has been endorsed in a variety of international venues including in Security Council resolutions related to peacekeeping and the protection of civilians – notably resolutions 1674 (2006), 1706 (2006) and 1894 (2009) – and in a UN General Assembly resolution which appeared after a long series of debates.<sup>iv</sup>

In addition, the UN Secretary-General, Ban Ki-moon and his former special adviser, Edward Luck, also engaged in an effort to translate the R2P principle from ‘words to deeds’.<sup>v</sup> This led to the publication of an important Report of the Secretary-General in January 2009, *Implementing the Responsibility to Protect*.<sup>vi</sup> The report argued that R2P rested on three equally important and non-

sequential pillars. The first is the responsibility of each state to use appropriate and necessary means to protect its own population from the four crimes as well as from their incitement. The second pillar refers to the commitment that UN member states will help each other exercise this responsibility. This includes specific commitments to help states build the capacity to protect their populations from the four crimes and to assist those which are under stress before crises and conflicts erupt. The third pillar refers to international society's collective responsibility to respond through the UN in a timely and decisive manner, using Chapters VI, VII and VIII of the UN Charter as appropriate, when national authorities are manifestly failing to protect their populations from the four crimes listed above. Defined in this manner, the R2P represents an ambitious policy agenda in urgent need of implementation.<sup>vii</sup>

### ***Veto Power in the United Nations Security Council***

The UN Charter grants the P5 veto power in three main areas related to Security Council decision-making, Charter amendments, and the appointment of the Secretary-General.<sup>viii</sup> Peculiarly, nowhere does the Charter oblige the P5 to provide an explanation for any vetoes they may cast.

The rationale for the P5 veto power was to ensure that the UN Security Council did not suffer the same fate as its predecessor the League of Nations. In essence, the veto power was granted to the P5 as reassurance that their interests would not be ignored and in the hope that it would ensure their participation in the new organization. This was reflected in both the Dumbarton Oaks and San Francisco meetings to establish the UN where the great powers made it clear to the smaller powers that their choice was to accept an organization with great power privilege or no organization at all.<sup>ix</sup> Expressed in more positive terms, the veto power was designed 'to transform a wartime alliance into a big-power oligarchy to secure the hard won peace that would follow.'<sup>x</sup>

Even though the rationale for the veto system was widely recognized as being of foundational importance to the UN system there have been many attempts to place limits on the P5 veto powers.<sup>xi</sup> Indeed, arguably the first effort to limit the veto came at Dumbarton Oaks when an Australian proposal to exclude the veto from all arrangements relating to the peaceful settlement of disputes was put to a vote but failed to attract enough support.<sup>xii</sup> After the UN was established there were regular calls to reform the veto power, the most common grounds being that the veto violated the principle of sovereign equality, that it would be used as a tool of great power domination, and that it would effectively exempt the P5 from being governed by the Council.<sup>xiii</sup>

One of the most successful ventures in relation to limiting the veto power came from within the P5 when in

1950 US Secretary of State, Dean Acheson, developed a proposal designed to neuter the Soviet Union's veto power in relation to the Korean War. In what became known as the 'Uniting for Peace' procedure, Acheson came up with the idea of turning to the UN General Assembly to respond to aggression and threats to international peace and security when the Council was prevented from fulfilling its obligations because of the threat of a veto.<sup>xiv</sup> Since the transfer of an issue from the Security Council to the General Assembly is considered a procedural matter it was therefore not subject to the P5 veto. Since then, the Uniting for Peace procedure has been used on more than ten occasions to facilitate UN action short of the use of force but its use has been rare in recent decades with the last occasion being in 1997 to take action against Israel.

The 1960s also witnessed a variety of debates about how to reform the Council but these led only to a change in the number of the members (from eleven to fifteen) not the veto power. Similarly, the attempts to abolish the veto which took place under the Open-Ended Working Group on the Question of Equitable Representation of and an Increase in the Membership of the Security Council (established by the General Assembly in 1993) came to nothing. Indeed, the debate quickly focused on the number of Security Council seats rather than on veto power *per se*. The same thing happened in the debates leading up to the 2005 World Summit. Here the options on Security Council reform boiled down to two under which the Council would increase from 15 to 24 members with neither option entailing any change in the number of veto wielding powers.<sup>xv</sup> This process seemed to confirm the conclusion of the UN Secretary-General's High-level Panel on Threats, Challenges and Change that there was 'no practical way of changing the existing members' veto powers.'<sup>xvi</sup>

What these various cases illustrate is that there have long been arguments made which seek to limit the use of the veto without necessarily doing away with the veto system altogether. This is based on the drawing of distinctions between particular types of (more or less legitimate) veto activities. In addition, it is important to note that P5 members have sometimes been at the forefront of these efforts.

### ***The US, Israel and Non-RN2V Examples***

This distinction between types of veto activities is very important for any RN2V doctrine to be effective. It must be realized that regardless of the criticism towards it, the veto is a fact. The principle of the veto is laid out in the UN charter, a document that is not easily changed, meaning that total abolition of the veto is not realistic in the near future. The P5 have all used and will continue to use the veto for their own purposes when mass atrocities are not involved. The US has a history of using the veto to protect national and political interests and allies from harmful resolutions. Usually this happens with resolutions involving Israel, where language can be interpreted as unbalanced and aggressive that "does [not] advance the cause of Israeli-Palestinian peace" and could risk "hardening the positions of both sides...encourag[ing] the parties to stay out of negotiations."<sup>xvii</sup> Since casting its first veto in 1972, the US has used the veto for Israel 45 times, more than France and China combined.

However, it is important to note that whether these vetoes were perceived as right or wrong, the situations surrounding the draft resolutions did not rise to the levels of mass atrocities or systematic violence as defined by R2P. For example, draft resolution S/2011/24 condemned the continued building of Israeli settlements in the West Bank and called for intensified negotiations. This resolution was vetoed by the US on February 18, 2011 with a statement acknowledging the settlements as illegal, but rebuked the resolution as unfair and a detriment to the peace process.<sup>xviii</sup> Similarly, draft resolutions S/2006/878, S/2006/508, and S/2002/1385 were vetoed by the US because of their bias against Israel in language and policy that condemned Israel, but did little to denounce attacks from Palestinian forces in return.<sup>xix</sup> While some of the offences committed by Israel that are referenced in these draft resolutions could be perceived as violations of human rights or international law, these actions are not perceived as mass atrocities or unchecked slaughter of unarmed civilians.

China used their vetoed similarly in regards to draft resolution S/1991/201 on Macedonia. This resolution recognized the ongoing violence within the state and planned to renew the UN peacekeeping mission there for six months to prevent threats and violent clashes. China vetoed this draft resolution out of political motivation when Macedonia recognized Taiwan, a stance that is wholly opposed by the



Chinese government.<sup>xx</sup> However, because this veto did not stand in the way of mass atrocity prevention, this veto would not be limited under a RN2V code of conduct.

This distinction is crucial for any restriction of the veto. All the P5 nations have used their veto as a political instrument in the UN system. Any code of conduct put forth to limit the veto will need to clearly define the mass atrocities or events that will meet the criteria for RN2V if there is an expectation the P5 members will adhere to any agreement.

### ***Use and Threats***

The other key point to make regarding the veto system is that the actual use of the P5 veto is only part of the story because of the important roles played by a wide range of informal processes within the UN system.<sup>xxi</sup> Once a distinction is made between the formal, overt use of the veto and the informal, threatened or anticipated use of the veto the political terrain becomes significantly more complicated.<sup>xxii</sup> In sum, it is widely recognized that the veto power can be used for deterrence and coercive purposes without actually being cast. As the editors of a major study on the Security Council concluded, 'Even when the veto is not actually used, it casts a shadow.'<sup>xxiii</sup> Unlike the actual use of vetoes, which has declined significantly in the post-Cold War era, it is a widely held belief within the UN system that the informal threat of the veto in the Council's private consultations 'has not diminished'.<sup>xxiv</sup> Indeed, the P5 have kept the Council's rules of procedure 'provisional' for over six decades precisely because of the diplomatic benefits which informality affords.

There are several illustrations of informal patterns of conduct relevant to contemporary Council decision-making. One is what a former UK ambassador to the Council, described as the 'effective veto'. This occurs when, on certain issues, non-permanent members have enough influence among the P5 to 'wield an effective veto' at the Council. An example is the Indian government with regard to Kashmir.<sup>xxv</sup> Another illustration is what Howard Adelman and Astri Suhrke called the 'anticipatory veto,' namely the 'unspoken rule' that the Secretariat should 'discern what the Council was likely to accept, then to prepare policy within this range of options.' These authors used the idea of the 'anticipatory veto' to explain the Secretariat's failure to provide meaningful strategic options to the Council in relation to the Rwandan genocide of 1994.<sup>xxvi</sup> In other words, the veto system exists within a broader web of understanding which influences expectations about what are realistic policies when it comes to matters of international peace and security.

In relation to Security Council decision-making, in one sense the intensity of the controversy over vetoes has subsided somewhat because of the relative rarity with which the P5 have cast vetoes in the post-Cold War era. During the Cold War it was widely acknowledged that the veto power drastically curtailed the Security Council's ability to act effectively on matters of international peace and security. This was reflected by the fact that between 1945 and 1989 P5 members vetoed 192 draft resolutions in the Council. In comparison, the Cold War's end heralded an era of unprecedented great power cooperation in the Council with only 13 vetoes occurring between January 1990 and March 2003. Since the 2005 World Summit Document was endorsed in October 2005 there have been only ten vetoed draft resolutions: US vetoes relating to the situation in the Middle East (July and November 2006 and February 2011); Russian and Chinese vetoes of both draft resolutions concerning the situations in Burma/Myanmar (January 2007) and Zimbabwe (July 2008); the Russian veto of a draft resolution relating to Georgia (June 2009); Chinese and Russian vetoes on draft resolutions dealing with the Middle East situation in Syria (October 2011 and February and July 2012) in direct violation of R2P; and a Russian veto of a draft resolution involving the situation in

Ukraine (March 2014). None of these vetoes were cast in order to block an actor contemplating a humanitarian military intervention in response to R2P- related crimes.

## ***Relevant Cases***

During the period between 1990 and the endorsement of the World Summit Outcome Document in 2005 the most relevant cases for thinking about the relationship between P5 veto power and the response to mass atrocities are Rwanda (1994), Kosovo (1998-9), Darfur (2003-6), Libya (2011), and Syria (2011-Present).

### **Rwanda 1994**

Although Rwanda's 1994 genocide is not a case where a P5 member threatened a veto in order to stop a proposed military intervention, it is relevant because it demonstrates the potential power that P5 members can exert over the Security Council's decision-making process in response to mass atrocities. The central point of controversy that is relevant here is the way in which several P5 members, notably France, the UK and the US, used their influence during the Council's private deliberations to prevent the deployment of a reinforced peacekeeping operation in the first few weeks after the genocide began in April 1994.<sup>xxvii</sup>

### **Kosovo 1998-9**

This episode of threatened veto power occurred in the context of the ethnic cleansing carried out by Serbian forces in the territory of Kosovo during 1998 and 1999.<sup>xxviii</sup> Throughout 1998, NATO members on the Security Council tried informally to secure a Chapter VII resolution authorizing the use of force to prevent Serb forces conducting ethnic cleansing in Kosovo. Germany and Italy were particularly insistent that NATO obtained the Security Council's blessing before engaging in military action. Russia and China, however, made it equally clear that they would not sanction any use of force against the authorities in Belgrade because they viewed Kosovo's crisis as an internal problem for the Federal Republic of Yugoslavia. The closest the NATO states got was Resolution 1199 which defined Yugoslav activities in Kosovo as a threat to the peace under Chapter VII of the UN Charter but stopped short of authorizing force. This left NATO in a difficult situation which it eventually resolved by launching Operation Allied Force in March 1999 without tabling a draft resolution authorizing force thereby probably forcing Russia and/or China to veto it. As Adam Roberts noted, NATO decided that 'it could have been more difficult to get public support for a military action which had actually been vetoed in the UN, and the whole process might expose divisions in the alliance.'<sup>xxix</sup>

There were several other noteworthy aspects of the Kosovo case. First, that NATO states questioned the Security Council's legitimacy as *the* authoritative voice on responding to ethnic cleansing. Specifically, former US Secretary of State Madeleine Albright argued that the Alliance did not need UN Security Council authorization because the North Atlantic Council, which at that time comprised fifteen liberal democracies, was a more legitimate voice on the issue of humanitarian military intervention than the Security Council, which included many non-democracies. According to Albright, repressive regimes such as Russia and China should not be given the opportunity to veto action intended to prevent a humanitarian catastrophe by a coalition of liberal democracies.<sup>xxx</sup> Secondly, it is important to recall that although the threat of Russian and Chinese vetoes gave NATO states pause for thought, ultimately it did not stop them taking military action. Indeed, Operation Allied Force demonstrated that NATO was willing to undertake an out-of-area intervention that was widely perceived as illegal and had no basis in the Alliance's founding document (the Washington

Treaty), and to defend that decision on the moral and political grounds that such action was in line with previous Security Council resolutions and urgently necessary in light of the atrocities occurring in Kosovo.

### **Darfur, Sudan 2003-6**

The debate in this case revolved around how international society should respond to the mass atrocities that occurred during a civil war which centered on Sudan's western province of Darfur.<sup>xxxix</sup> In this episode, the major controversy concerned the informal threats made by the Chinese and Russian governments to veto any Security Council resolution which might authorize the use of military force, or even serious economic sanctions, against the military junta in Khartoum.<sup>xxxix</sup> Despite much rhetoric emanating from Washington which condemned what it referred to as the ongoing genocide in Darfur – especially in the run up to the 2004 presidential election campaign – no UN member state ever came close to contemplating military intervention let alone tabling a draft resolution authorizing force against Sudan in the Security Council. In this sense, the Russian and Chinese threats served as convenient diplomatic camouflage for the unwillingness of Western (or any other powers) to even seriously threaten military action against Khartoum.

### **Libya 2011**

The importance of this case is that it illustrates a time when there was no veto on a resolution and mass atrocities were prevented. As part of the Arab Spring, the Libyan people rose up against Muammar el-Qaddafi. In retaliation Qaddafi and his regime carried out assaults against civilians saying he was going to crush the protestors like “cockroaches.” By the time the violence ended, an estimated 30,000 had been killed and another 50,000 had been injured.<sup>xxxix</sup> In response to this violence, the UN was able to pass five resolutions between February (when the violence started) and December 2011 with support from the Arab league and the Libyan ambassador to the UN. These resolutions were instrumental in ending the violence and protecting the civilians and specifically mentioned R2P and without the veto from any of the P5, asserted the effectiveness of the policy and the UN's ability to intervene on behalf of those being prosecuted.<sup>xxxix</sup>

### **Syria 2011-Present**

This case is most clearly an example of the need for a Responsibility Not to Veto. Violence in Syria began in 2011 when the Syrian Regime started perpetrating violence against unarmed non-violent protestors. Since then a civil war has erupted and violence has only escalated leading to thousands of deaths and human rights atrocities by the government and the rebel forces. With deadly gas attacks and bombs on civilians daily the death toll is approaching 150,000 with over 5.1 million internally displaced people and 3 million refugees.<sup>xxxix</sup> In attempting to end the violence against civilians, three draft resolutions were introduced condemning the human rights violations in the country. Each time however, China and Russia have exercised their veto deliberately violating the ‘Responsibility to Protect’ doctrine that they both signed.<sup>xxxix</sup> This decision to veto has essentially rendered the UN and its Security Council ineffective and undermined the legitimacy of these bodies as effective forces to protect against mass atrocities.<sup>xxxix</sup>

### ***The Responsibility Not To Veto: Origins and Evolution***

The idea that the P5 states should agree not to use or threaten their veto power when addressing situations of mass atrocities has its origins in the early discussions about the R2P principle. In 2001, in an attempt by the International Commission on Intervention and State Sovereignty (ICISS) to engage the P5, key French government officials, think tank members and

opposition party members were brought together for a roundtable in Paris.<sup>xxxviii</sup> It was here that the French Minister of Foreign Affairs, Hubert Védrine, first proposed a new ‘code of conduct’ for the P5 in the context of a responsibility to protect. Védrine proposed that an agreement be generated concerning use of the veto regarding actions necessary to halt or avert a serious humanitarian crisis.<sup>xxxix</sup> His idea was that in matters where their vital national interests were not involved, the P5 states would not use their veto to obstruct the passage of draft resolutions that would otherwise gain a sufficient number of votes to pass.<sup>xl</sup> This ‘code of conduct,’ he argued, was a more achievable option than formally amending the UN Charter to reflect a change in the veto authority. Védrine suggested that an agreement by the P5 to refrain from using the veto would enable the Security Council to be a more effective body by allowing quicker reaction time which, in turn, would generate greater reliability, predictability and credibility for the institution.<sup>xli</sup>

This proposal and the ICISS’s own deliberations eventually led the Commissioners to recommend that the P5 ‘should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.’<sup>xlii</sup> The R2P idea slowly started to build momentum during 2002 and 2003. In September 2003 then Secretary-General Kofi Annan reported to the General Assembly that he had appointed a High-Level Panel to conduct an in-depth study on global threats and recommend changes necessary to ensure effective collective action, including a review of the principal organs of the UN. Of most relevance here is the fact that the Panel’s report published in December 2004 referred to the institution of the veto as having an ‘anachronistic character’ and recommended that any proposal for Council reform refrain from expanding the veto power.<sup>xliii</sup> The High-Level Panel called for the permanent members, ‘in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses.’<sup>xliv</sup>

Momentum for the idea of a responsibility not to veto continued in the debates leading up to the World Summit in 2005. However, the final version of the outcome document did not address any measures that would limit the P5’s veto powers in relation to situations of mass atrocities. According to accounts of the long process of drafting the outcome document this particular omission was due in large part to P5 pressure.

In early 2008 the idea was put back on the agenda by an alternative and bipartisan group of Americans who were planning a rather different approach to R2P. This initiative was the Genocide Prevention Task Force established by the US Holocaust Memorial Museum, the American Academy of Diplomacy, and the US Institute of Peace and chaired by former Secretary of State Madeleine Albright and former Secretary of Defense William Cohen.<sup>xlv</sup> The Task Force was assigned to create a blueprint for the incoming administration to procedurally and structurally align the US government to prevent genocide and mass atrocities worldwide. Among other suggestions, the Task Force also discussed the question of the P5 veto. ‘Too frequently,’ its report argued, ‘one of the five permanent members of the UN Security Council has made effective collective action virtually impossible by threatening veto, implicitly or explicitly. This has led to either watered-down, ineffectual resolutions, or no resolution at all.’<sup>xlvi</sup> Recognizing that in the contemporary international system there is little substitute for effective action taken by the Security Council, the Task Force pointed out that it was in US national interests to improve the manner in which the Council deals with mass atrocities.<sup>xlvii</sup>

Shortly after the release of the Genocide Prevention Task Force, the UN Secretary-General released



his January 2009 report, *Implementing the Responsibility to Protect*, which called for reform of the way the P5 wielded their veto power. Citing a global attitude shift since the massacres in Cambodia, Rwanda, Srebrenica and elsewhere, Ban Ki-moon stated that the political costs had risen domestically and internationally for ‘anyone seen to be blocking an effective international response to an unfolding genocide or other high-visibility crime relating to the responsibility to protect.’<sup>xlviii</sup> Describing the P5 veto power as a privilege of tenure, he outlined how these States had particular responsibility ‘to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect’ in situations of genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>xlix</sup> Later that year the General Assembly debated how to take the R2P agenda forward and it was notable that more than 35 member states echoed the recommendation of the Secretary-General’s report for the P5 to refrain from employing the veto in situations where people are at risk of mass atrocity crimes.<sup>1</sup>

Recently, the small states group (S5), comprised of Costa Rica, Jordan, Liechtenstein, Singapore, and Switzerland, have called for restraint of veto use around human rights issues. Championing the idea behind Responsibility Not to Veto, the S5 introduced a resolution to the General Assembly in May 2012 on the Security Council working methods. This resolution recommended that the P5 explain their reasons behind the use of the veto and refrain “from using a veto to block Council action aimed at preventing or ending genocide, war crimes and crimes against humanity.”<sup>ii</sup> In response to this resolution, the P5 took action behind the scenes to undermine the S5 efforts, effectively bringing about its defeat.<sup>iii</sup> The efforts of this S5 group are now being spearheaded by a group called ACT – the Accountability, Coherence, and Transparency group. This group is made up of 21 member states and focuses on Security Council reform.

The French Foreign Minister, Laurent Fabius, also took this position in an op-ed in *The New York Times* in October of 2013. Fabius called for restraint in the use of the veto citing Syria and the Central African Republic as places where the Security Council has failed civilians with their inability to act because they were constrained by vetoes. Like the S5 resolution he called on the permanent members to make a concrete commitment saying, “if the Security Council were required to make a decision with regard to a mass crime, the permanent members would agree to suspend their right to veto.”<sup>iiii</sup>

This brief overview illustrates that not only has the idea of a responsibility not to veto been doing the diplomatic rounds for at least a decade it has also made some headway within P5 states, notably members of the former US administration and France, as well as the UN Secretariat. Yet it has made no discernible public progress in the arena that really counts: the Security Council. Moreover, it is noticeable that even senior figures in the Obama administration who are self-proclaimed supporters of the R2P have made no public mention of the responsibility not to veto.<sup>liv</sup>

### ***Vetoes, Politics, and a Way Forward***

The extent to which members of the P5 are willing to countenance the idea of RN2V is arguably a good barometer of the depth of their commitment to responding effectively to mass atrocities. While there has been an effort from the French contingent, general P5 reluctance to openly discuss self-imposed limits on their veto authorities beyond what is prescribed by the UN Charter is hardly surprising. What is perhaps more telling is that all references to the RN2V were removed from the final version of the 2005 World Summit Outcome Document despite being present in earlier drafts

of the text. In sum, the P5's commitment to the Responsibility to Protect must be questioned; the failure to adopt a concrete proposal to reform their approach to the veto in cases of genocide and mass atrocities demonstrates that there is still a lot of work to be done here.

It is also important to point out that debates about veto abstention address only one dimension of the broader range of policies that would be required to effectively implement the R2P agenda. Arguably the principal limitation of the RN2V approach is that there are relatively few historical cases – and hence perhaps there will be few future cases – where a P5 member has threatened or used its veto power to block a proposed humanitarian military intervention. Instead, in the majority of relevant cases where atrocities have been committed the world's most powerful governments have shown little inclination to use military force to stop them. As Simon Chesterman put it, 'inhumanitarian non-intervention' has been international society's usual response.<sup>lv</sup>

### ***Recommendations:***

The Security Council is a crucial international player and its response to genocide and mass atrocities must be made more effective. In the definition of the R2P principle set out in the World Summit outcome document and the UN Secretary-General's report, *Implementing the Responsibility to Protect*, the Security Council is clearly *the* crucial body for implementing several aspects of the agenda, particularly in relation to pillars 2 and 3. The Council will not have legitimacy if it does not respond to cases of mass atrocities effectively. This is not a minor issue because the Council's authority increasingly depends on its legitimacy within world politics.<sup>lvi</sup> As the ICISS Report correctly noted, if the P5 'fail to make the Council relevant to the critical issues of the day then they can only expect that the Council will diminish in significance, stature and authority.'<sup>lvii</sup> The prevention of genocide and mass atrocities remains one of 'the critical issues of the day' and that it will have a particularly acute impact upon the Council's legitimacy.<sup>lviii</sup> An agreement by the P5 on RN2V will aid the Council and the issue. Moreover, if the P5 really were widely perceived to be serious about responding effectively to mass atrocities through the Council, this could, in turn, act as a deterrent for would-be perpetrators.

As mentioned previously, in 2009 a report was created by the Genocide Prevention Task Force that offered recommendations on a way forward with RN2V. These recommendations are:

- (1) 'The secretary of state should undertake robust diplomatic efforts toward negotiating an agreement among the permanent members of the United Nations Security Council on non-use of the veto in cases concerning genocide or mass atrocities, in consideration with efforts from the French and S5 policies already started.'
- (2) 'A principal aim' of US policy in the Security Council 'should be an informal, voluntary code of conduct that advocates for mutual restraint in the use or threat of a veto in cases involving ongoing or imminent mass atrocities. The P5 should agree that unless three permanent members were to agree to veto a given resolution, all five would abstain or support it. This should apply, in particular, to resolutions instituting sanctions and/or authorizing peace operations in situations when mass atrocities or genocide are imminent or underway.'
- (3) The P5 'should also agree that a resolution passed by two-thirds of the General Assembly finding that a crisis poses an imminent threat of mass atrocities should add further impetus to an expeditious Security Council response without threat of a veto. An agreement along these lines would make the Security Council a more effective vehicle in cases when a permanent

member might otherwise prefer to block action.’

More recently, the French Foreign Minister also gave recommendations on the implementation of a veto limitation along with his call for restraint.

- (1) ‘[I]f the Security Council were required to make a decision with regard to a mass crime, the permanent members would agree to suspend their right to veto.’
- (2) The criteria for implementation of restraint would be: ‘at the request of at least 50 member states, the United Nations 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.’
- (3) ‘The code would exclude cases where vital national interests of a permanent member of the Council were at stake.’

Given these proposals from the Task Force and the French, GlobalSolutions.org recommends:

- **An informal agreement by the P5 is achievable and would send an important political message.** While there is almost no hope of amending the UN Charter this is not necessary to achieve the political effect sought by advocates of the RN2V. Adopting a code of conduct along the line proposed by the French is achievable because of the importance of informal processes within the UN system. While this is no guarantee that an informal agreement will last, given the way that the Security Council decision-making functions, it makes sense to try and influence the informal habits of the relevant players rather than seek formal reform of the structure or nature of the veto system. Furthermore, there are multiple precedents of P5 members as well as many other states wanting to limit the veto power in certain circumstances.
- **Civil society in P5 states has an important role to play.** Successful negotiations for a RN2V agreement will require engagement by civil society in the P5 countries. In the 2009 UN Secretary-General’s report, *Implementing the Responsibility to Protect* identifies a role for civil society as a partner with Member States in employing the wide array of prevention and protection instruments available. The ultimate success of civil society will be based on a strong partnership with the donor community and maintaining pressure on key governments to accede to an agreement to utilize the veto responsibly.
- **Any code of conduct presented must clearly define mass atrocities and a trigger mechanism.** A clear definition of what comprises acts of mass atrocities that could trigger a RN2V code of conduct must be included in any final code. P5 members are likely to feel the need to protect their use of the veto for non-RN2V purposes, thus a distinction is necessary. This would also minimize politically motivated activation of a code and increase confidence in it. The definitions of crimes included in Rome Statute of the International Criminal Court could be a starting point in this process.<sup>lix</sup>

The current French proposal suggests that upon a request of 50 member states, the United Nations secretary general could determine the nature of the crime. Fifty is too low a number for this purpose as the current political dynamics within the General Assembly would likely make repeated and politically motivated requests aimed at Israel all too easy. US engagement would require a higher bar.

However, the Secretary General would make a good trigger as he or she has significant resources to utilize to make a determination and could be trusted by the P5 to be a good faith actor, in part because election to this position requires P5 consensus.

- **“National Interest” should not be a limiting criterion in a code of conduct.**  
The French propose to exclude cases where vital P5 national interest is at stake. This is simply too broad of an exclusion. Repeated use of this exclusion for political purposes would weaken the integrity of any code. Instead, as noted above, great focus on defining the acts and the trigger process should be utilized to assuage P5 concerns.
- **The United States could play a leading role in making an RN2V agreement a reality.**  
The Obama administration, and in particular its current ambassador to the UN Security Council, are a self-declared supporters of the R2P agenda.<sup>ix</sup> Furthermore, this administration has also demonstrated that it sees considerable merit in the recommendations of the Genocide Prevention Task Force. The Administration created an interagency Atrocities Prevention Board and a position on the US National Security Staff with responsibility for coordinating and supporting the Administration’s policies on preventing, identifying, and responding to mass atrocities and genocide, along with many other comprehensive efforts to prevent mass atrocities.<sup>lxi</sup>

Finally, even if a P5 agreement is unlikely any time soon, this should not stop the US government from engaging in an open international dialogue on the issue. Indeed one proposal circulated by the Council on Foreign Relations is for the US to publicly acknowledge support for the RN2V idea and encourage other like-minded allies to issue similar or joint political statements on the prevention of genocide and mass atrocities.<sup>lxii</sup> This might build political momentum or it might stall in the face of opposition but given the seriousness of the crime of genocide it is worth taking the political risks. Without taking this risk, the volatile conflicts in South Sudan and the Central African Republic are in danger of devolving into genocide with no international force to intervene to stop the human rights violations.



## *The Responsibility Not To Veto: A Way Forward*

Published 2010 (updated in 2014) by



420 Seventh Street SE  
Washington, DC 20003-2769  
(202) 546-3950  
[www.globalsolutions.org](http://www.globalsolutions.org)  
[outreach@globalsolution.sorg](mailto:outreach@globalsolution.sorg)

© All Rights Reserved.

This paper was originally authored by Ariela Blätter, the Director of Policy and Programs for Citizens for Global Solutions, and it draws upon the more detailed study, A. Blätter and P.D. Williams, “The Responsibility Not to Veto,” *Global Responsibility to Protect*, forthcoming. This draft was updated and built upon by Colleen Chiochetti and Alice Abracen, Research Associates at Citizens for Global Solutions. Thanks go to Don Kraus, for his support and for coining the term “responsibility not to veto,” Paul D. Williams, and to Veronica Glick for her research assistance.

---

## Endnotes

- <sup>i</sup> This paper was originally authored by Ariela Blätter, the Director of Policy and Programs for GlobalSolutions.org, and it draws upon the more detailed study, A. Blätter and P.D. Williams, “The Responsibility Not to Veto,” *Global Responsibility to Protect*, forthcoming. This draft was updated and built upon by Colleen Chiochetti, a Research Associate at GlobalSolutions.org. Thanks go to Don Kraus, for his support and for coining the term “responsibility not to veto,” Paul D. Williams, and to Veronica Glick for her research assistance.
- <sup>ii</sup> The term was created by Don Kraus, Chief Executive Officer of GlobalSolutions.org.
- <sup>iii</sup> *2005 World Summit Outcome* (UN document A/60/L.1, 24 October 2005), paragraphs 138-40.
- <sup>iv</sup> *The Responsibility to Protect* (UN General Assembly document A/RES/63/308, 7 October 2009).
- <sup>v</sup> Ban Ki-moon, ‘On Responsible Sovereignty: International Cooperation for a Changed World,’ Berlin, SG/SM11701, 15 July 2008.
- <sup>vi</sup> Report of the UN Secretary-General, *Implementing the Responsibility to Protect* (UN document A/63/677, 12 January 2009).
- <sup>vii</sup> See Alex J. Bellamy, ‘The Responsibility to Protect – Five Years On’, *Ethics and International Affairs*, 24:2 (2010), pp.143-69.
- <sup>viii</sup> Article 27(3) states that Security Council decisions on matters that are not procedural ‘shall be made by an affirmative vote of nine members including the concurring votes of the permanent members.’ Initially at least, there was some debate over what exactly constituted a ‘concurring vote’. See Courtney B. Smith, *Politics and Process at the United Nations* (Boulder, CO: Lynne Rienner, 2006), p.214. The P5 also have the right to veto amendments of the Charter as set out in Articles 108 and 109. In addition, under Article 97 they can exercise a veto over the appointment of the UN Secretary-General
- <sup>ix</sup> Nico Krisch, ‘The Great Powers and the Security Council’ in Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominik Zaum (eds.), *The United Nations Security Council and War* (Oxford: Oxford University Press, 2008), p.136.
- <sup>x</sup> Krisch, ‘The Great Powers and the Security Council’, p.63.
- <sup>xi</sup> Specific reform proposals have included the Non-Aligned Movement’s idea to confine the right of veto to decisions made under Chapter VII of the UN Charter; the Organization of African Unity’s proposal that for a veto to become effective it should be exercised by at least two permanent members; the attempt to eliminate the veto’s use in regard to the selection of the Secretary-General; as well as efforts to find ways to overrule a veto cast by only one permanent member by a majority decision of either the Council or the General Assembly. There was even a plan to adopt the oxymoronic idea of ‘rotating permanent seats’ in the Council so that the states enjoying the right of veto would not be known in advance.
- <sup>xii</sup> Krisch, ‘The Great Powers and the Security Council’, p.135.
- <sup>xiii</sup> Fassbender, ‘Pressure for Security Council Reform’, p.351; Smith, *Politics and Process*, p.213.
- <sup>xiv</sup> Dominik Zaum, ‘The Security Council, the General Assembly, and War’ in Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominik Zaum (eds.), *The United Nations Security Council and War* (Oxford: Oxford University Press, 2008), p.157.
- <sup>xv</sup> Report of the Secretary-General, *In Larger Freedom* (UN doc. A/59/2005, 21 March 2005), paragraphs 165-83.
- <sup>xvi</sup> UN Secretary-General’s High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (New York: UN, 2004), paragraph 256.
- <sup>xvii</sup> Amnesty International Public Statement. ‘US veto effectively gives Israel “green light” to expand illegal settlements’ (22 February 2011). <http://www.amnesty.org/en/library/asset/MDE15/015/2011/en/59568ed5-c87a-4caa-9f91-9998a4236ebc/mde150152011en.html> (accessed 8 April 2014).
- <sup>xviii</sup> Ibid.
- <sup>xix</sup> UN Security Council Meeting Transcript S/PV.4681. (20 December 2002). <http://unispal.un.org/UNISPAL.NSF/O/7BDFAAA547A3624C85256C98006BA3F6> (accessed 8 April 2014).
- <sup>xx</sup> Nicole Winfield, ‘China Vetoes’, *Associated Press* (25 February 1999).
- <sup>xxi</sup> For a good discussion and overview see Smith, *Politics and Process*.
- <sup>xxii</sup> See Inis L. Claude, *Swords Into Ploughshares* (New York: Random House, 1984), p.149.
- <sup>xxiii</sup> Lowe et al., ‘Introduction’, p.6.

- xxiv Kishore Mahbubani, 'The Permanent and Elected Council Members' in David Malone (ed.), *The UN Security Council* (Boulder, CO: Lynne Rienner, 2004), p.259.
- xxv Jeremy Greenstock, 'The Security Council in the Post-Cold War World' in Vaughan Lowe, Adam Roberts, Jennifer Welsh, and Dominik Zaum (eds.), *The United Nations Security Council and War* (Oxford: Oxford University Press, 2008), p.258.
- xxvi Howard Adelman and Astri Suhrke, 'Rwanda' in David Malone (ed.), *The UN Security Council* (Boulder, CO: Lynne Rienner, 2004), p.492.
- xxvii The P5 members were not alone in this regard; other states including Belgium also called for the UNAMIR mission to be withdrawn after ten of its peacekeepers were deliberately murdered. But the P3 in this case were certainly the most powerful voices in the debate. See Colin Keating, 'Rwanda: An Insider's Account' in David Malone (ed.), *The UN Security Council* (Boulder, CO: Lynne Rienner, 2004), p.509.
- xxviii A good overview is Tim Judah, *Kosovo: War and Revenge* (London: Yale University Press, 2000).
- xxix Adam Roberts, 'NATO's "Humanitarian War" over Kosovo', *Survival*, 41:3 (1999), p.104.
- xxx See Alex J. Bellamy, *Kosovo and International Society* (Basingstoke: Palgrave-Macmillan, 2002), p.87.
- xxxi Evidence of the atrocities is available in *Report of the International Commission of Inquiry on Darfur to the Secretary-General, Pursuant to Security Council resolution 1564 (2004) of 18 September 2004*, UN Doc. S/2005/60).
- xxxii For an overview of the debates see Michael G. MacKinnon, 'The United Nations Security Council' in David R. Black and Paul D. Williams (eds.), *The International Politics of Mass Atrocities: The Case of Darfur* (Abingdon: Routledge, 2010), pp.71-99.
- xxxiii Karin Laub, 'Libyan estimate: At least 30,000 died in the war', *The Guardian* (8 September 2011).
- xxxiv Irwin Cotler and Jared Genser, 'Libya and the Responsibility to Protect', *The New York Times* (28 February 2011), <http://www.nytimes.com/2011/03/01/opinion/01iht-edcotler01.html> (accessed 19 February 2014).
- xxxv 'UN Report: Syrian forces commit 'gross violations' of human rights', *CNN* (29 November 2011), <http://www.cnn.com/2011/11/28/world/meast/syria-un-report/index.html> (accessed 19 February 2014).
- xxxvi 'Russia and China veto draft Security Council resolution on Syria', UN News Centre (4 October 2011), <http://www.un.org/apps/news/story.asp/www.iaea.org/story.asp?NewsID=39935&Cr=syria&Cr1=#.UwTzGmJdXTo> (accessed 19 February 2014).
- xxxvii It is worth noting that although there has been RN2V action on Syria, there was one resolution passed that detailed a plan for removal of chemical weapons from Syria. However, progress on this has stalled as Russia has failed to enforce this resolution.
- xxxviii On 23 May 2001 a roundtable discussion with French Government officials and Parliamentary officials was held at the Canadian Cultural Center in Paris. This was one of many consultations the ICISS held at venues all over the world. For details of the Paris meeting see ICISS, *Responsibility to Protect: Research, Bibliography, Background* (Ottawa: IDRC, December 2001), pp.378ff.
- xxxix ICISS, *The Responsibility to Protect* (Ottawa: IDRC, 2001), paragraph 6.21.
- xl ICISS, *Responsibility to Protect: Research, Bibliography, Background*, p.379.
- xli *Ibid*, p.379.
- xlii ICISS, *The Responsibility to Protect*, p.XIII.
- xliii High-Level Panel, *A More Secure World*, paragraph 256.
- xliv *Ibid*, paragraph 256.
- xlvi In the spirit of full disclosure, Ariela Blätter was a member of the Task Force's expert working group on early warning.
- xlvi Genocide Prevention Task Force (GPTF), *Preventing Genocide: A Blueprint for U.S. Policymakers* (Washington DC: The US Holocaust Memorial Museum, The American Academy of Diplomacy, and the US Institute of Peace, 2008), p.106.
- xlvii See longer discussion in the Recommendations section of this paper.
- xlviii *Implementing the Responsibility to Protect*, paragraph 61.

<sup>xlix</sup> Ibid, paragraph 61.

<sup>i</sup> These included South Korea, Liechtenstein, Lesotho, Costa Rica, Denmark, Italy, Malaysia, New Zealand, Rwanda, Solomon Islands, South Africa, Slovenia, Switzerland, Singapore, Timor-Leste and Norway. Bolivia went as far as calling for the veto to be abolished. Global Center for the Responsibility to Protect, *Implementing the Responsibility to Protect – The 2009 General Assembly Debate: An Assessment* (GCR2P Report, August 2009), p.6. At <http://www.globalr2p.org/media/files/gcr2p-general-assembly-debate-assessment.pdf> (accessed 10 July 2010).

<sup>ii</sup> Enhancing the Accountability, Transparency and Effectiveness of the Security Council (UN document A/66/L.42/Rev.2, 15 May 2012).

<sup>iii</sup> Volker Lehmann, 'Reforming the Working Methods of the UN Security Council', (August 2013), p. 3. At <http://library.fes.de/pdf-files/iez/global/10180.pdf> (accessed 18 April 2014).

<sup>iiii</sup> Laurent Fabius, 'A Call for Self-Restraint at the UN', *The New York Times* (4 October 2013).

<sup>liv</sup> See, for example, Remarks by Ambassador Susan E. Rice, US Permanent Representative on 'The UN Security Council and the Responsibility to Protect', International Peace Institute, Vienna seminar, 15 June 2009, at <http://usun.state.gov/briefing/statements/2009/125977.htm> (accessed 10 July 2010).

<sup>lv</sup> Simon Chesterman, 'Hard Cases Make Bad Law' in Anthony Lang (ed.), *Just Intervention* (Washington DC: Georgetown University Press, 2003), p.54.

<sup>lvi</sup> ICISS, *The Responsibility to Protect*, paragraph 6.22.

<sup>lvii</sup> See Victoria Holt and Glyn Taylor with Max Kelly, *Protecting Civilians in the Context of UN Peacekeeping Operations* (New York: UN DPKO/OCHA, November 2009).

<sup>lviii</sup> See Rice, 'The UN Security Council and the Responsibility to Protect'.

<sup>lix</sup> See, <http://www.un.org/law/icc/>, for a copy of the Rome Statute of the International Criminal Court.

<sup>lx</sup> Ian Hurd, *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton, NJ: Princeton University Press, 2007). See also Justin Morris and Nicholas J. Wheeler, 'The Security Council's crisis of legitimacy and the use of force', *International Politics*, 44:2-3 (2007), pp.214-31.

<sup>lxi</sup> 'Fact Sheet: The Obama Administration's Comprehensive Efforts to Prevent Mass Atrocities Over the Past Year', Whitehouse.gov, 1 May 2013, [http://www.whitehouse.gov/sites/default/files/docs/fact\\_sheet\\_-\\_administration\\_efforts\\_to\\_prevent\\_mass\\_atrocities5.pdf](http://www.whitehouse.gov/sites/default/files/docs/fact_sheet_-_administration_efforts_to_prevent_mass_atrocities5.pdf) (accessed 18 April 2014).

<sup>lxii</sup> Waxman, *Intervention to Stop Genocide*, pp.23-24. Additionally, Oxfam International recommended "permanent members should renounce the use of their veto in situations of actual or incipient war crimes, genocide, ethnic cleansing, or crimes against humanity." E. Cairnes, "For a Safer Tomorrow: Protecting civilians in a Multi-polar world." (Oxfam: 2008). pp. 3, 17, 128.