

## The Veto



From Left to Right, Ambassadors Li Boadong (China), John Bolton (US) and Vitaly Churkin (Russia) casting vetoes in the Security Council on draft resolutions on Syria (4 October 2011), Israel/Palestine (13 July 2006) and Georgia (15 June 2009), respectively. (UN Photo)

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## Introduction

In the lead-up to the UN's 70th anniversary on 24 October, three initiatives addressing one of the more challenging issues facing the organisation—how the Security Council can more effectively prevent and halt mass atrocities—have been garnering considerable attention. These include: a French initiative; the Accountability, Coherence and Transparency Group (ACT) initiative; and a reform proposal by the Elders.

All three are being discussed in the context of heightened controversy regarding Security

Council decision-making. Russian vetoes in July prevented the Council from adopting a resolution that would have commemorated the 20th anniversary of the genocide at Srebrenica, and a second one that would have established an international criminal tribunal to prosecute those responsible for the downing of Malaysian Airlines Flight MH17. Also in July, New Zealand hosted an informal discussion on Council decision-making, including practices which have developed around the veto and impact on the Council's effectiveness. Elected members

# Introduction (con't)

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## Supplement

Permanent Members and the Use of the Veto: An Abridged History

reportedly expressed concerns about the ways in which the permanent members arrive at outcomes without adequately consulting the elected members.

The veto and the threat of a veto play considerable parts in the growing disappointment with how the Council is managed. The right of veto granted to the permanent members of the Council (China, France, Russia, UK and US) was the sine qua non for the establishment of the UN, ensuring the participation of the most powerful states in the world body<sup>1</sup>. It is a prerogative enshrined in the UN Charter. However, there is a perception among many member states that the veto or threat of the veto is at times abused to the detriment of

international peace and security.

The goal of this Research Report is to give an overview of the current discourse on the veto and place it in its historical context. In doing so, the report will:

- provide some background on the history of the veto;
- describe and analyse the three current initiatives on veto restraint in the case of atrocity crimes;
- explore how the veto and the threat of its use impact on Council decision-making; and
- analyse how the permanent members of the Council and the wider membership view the initiatives on veto restraint.

## The Veto: Background and History

In article 27 (3), the UN Charter says that decisions on all but procedural matters:

*...shall be made by an affirmative vote of nine members including the concurring votes of the permanent members.*

During the UN's early days, there was considerable discussion about whether "concurring votes" meant that all five permanent members had to vote affirmatively for a resolution on non-procedural matters to be adopted. However, as early as 29 April 1946, an abstention by a permanent member was considered a "concurring vote," when the Soviet Union abstained on a resolution on the Spanish question<sup>2</sup>. At the time, the Soviet representative said that the adoption of the resolution in spite of its abstention should not establish a precedent<sup>3</sup>. However, an accepted practice quickly developed whereby a "concurring vote" meant an affirmative vote or an abstention, and this has endured. Hence, the veto is constituted by a negative vote by one or more of the permanent members on a draft resolution on non-procedural matters that has the support of nine or more other Council members.

Article 27 (3) goes on to say:

*...in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.*

This means that a permanent member should refrain from voting, and thus not be able to use its veto prerogative, if it is a party to a dispute that is the focus of a draft resolution considered under Chapter VI or under article 52 (3). (Paragraph 3 of article 52 deals with the pacific settlement of local disputes through regional arrangements.) In practice, the permanent members have only selectively adhered to this Charter restriction. Russia's 15 March 2014 veto of a draft resolution that would have considered invalid the referendum it was planning in the Crimea (S/2014/189) would appear to be a violation of article 27 (3).

In 1945, at the San Francisco Conference, a number of small and medium-sized states expressed concerns about the veto being accorded to the permanent members. It was feared by some that it violated the notion of "sovereign equality," and that "a too rigid designation of permanent members in the Charter might hamper the ability of the United Nations to adapt to the changing nature of power in the international system in the

<sup>1</sup>This was a point made during the 30 September 2015 ministerial-level meeting in New York on veto restraint co-hosted by France and Mexico.

<sup>2</sup>The resolution (S/RES/4) referred to the "unanimous moral condemnation of the Franco régime in the Security Council" and resolved "to make further studies in order to determine whether the situation in Spain has led to international friction and does endanger international peace and security." With the adoption of resolution 10 on 4 November 1946, the situation in Spain was taken off of the Council's agenda.

<sup>3</sup>Loraine Sievers and Sam Daws, *The Procedure of the UN Security Council*, Fourth Edition, Oxford University Press, Oxford, p. 339.

<sup>4</sup>Sievers and Daws, *The Procedure of the UN Security Council*, p. 297.

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future.”<sup>3</sup> Most states appreciated the importance of consensus among the major powers in sanctioning enforcement measures, as it was believed that there was a good chance their militaries would be engaged in such situations; however, extending the veto to questions related to the peaceful settlement of disputes was strongly contested.<sup>5</sup>

In the end, the great powers made it clear that their participation in the UN was contingent on them being accorded the veto over all but procedural matters. This point was emphatically made at San Francisco by US Senator Tom Connally, part of the US delegation. Connally famously lectured delegates from states questioning the veto, “You may go home from San Francisco...and report that you have defeated the veto...but you can also say, ‘We tore up the Charter!’” He then proceeded to tear up his copy of the draft Charter.<sup>6</sup>

Over the years, permanent members have used the veto to defend their perceived national interests, or to uphold a tenet of their foreign policy. Since 16 February 1946, when the Union of Soviet Socialist Republics (USSR) cast its first veto on a draft resolution regarding the withdrawal of foreign troops from Lebanon and Syria (S/PV.23), the veto has been recorded 276 times. In total, 230 draft resolutions or parts thereof have been vetoed.

In the early years, the veto was cast primarily by the USSR, with a considerable number of these vetoes used to block the admission of a new member state due to concerns about the composition of the General Assembly in the context of the Cold War. In total, the USSR/Russia has cast 132 vetoes. The US cast the first of its 83 vetoes to date on 17 March 1970 (S/9696 and Corr. 1 and 2), and, from that point on, it has used the veto more than any other permanent member, most frequently to block decisions that it believes would be detrimental to the interests of Israel. The UK has used the veto 32 times, the first such instance taking place on 30 October 1956 (S/3710) during the Suez crisis. France applied its first veto on 26 June

1946 (S/PV.49) on the Spanish Question and has cast a total of 18. China has used the veto 11 times, with the first one, cast by the Republic of China (ROC) on 13 December 1955 (S/3502) to block Mongolia’s admission to the UN and the remaining 10 cast by the People’s Republic of China after it succeeded ROC as a permanent member on 25 October 1971. (Please refer to the supplement included in this report on *The Permanent Members and the Use of the Veto* for a breakdown of vetoes by agenda item.)

Since the end of the Cold War, new patterns on the use of the veto have emerged. France and the UK have not used the veto since shortly after the fall of Berlin wall. On 23 December 1989, they cast their most recent vetoes, in conjunction with the US, to prevent condemnation of the US invasion of Panama. China, which has historically used the veto the least, has become increasingly active on this front, casting eight of its 11 vetoes since 1990, including six since 2007. Russia has cast 13 vetoes in this period, 10 of them since 2007. The US has resorted to the veto 16 times since the end of the Cold War.

In the last decade, a trend has developed whereby the veto has been used in relation to a variety of situations in which human rights concerns featured prominently. On 13 July and 11 November 2006, the US cast vetoes on draft resolutions calling on Israel to halt military operations in Gaza endangering civilians (S/2006/508 and S/2006/878). On 12 January 2007, China and Russia jointly vetoed a draft resolution calling on the government of Myanmar to cease military attacks against civilians in ethnic minority regions. Following the violent elections in Zimbabwe in June 2008, China and Russia cast vetoes on an 11 July 2008 draft resolution that would have condemned the government for a campaign of violence against civilians and the political opposition, while imposing an arms embargo on Zimbabwe and designating individuals participating in the violence for a travel ban and assets freeze (S/2008/447). Most recently, China

and Russia have cast four vetoes in tandem between 2011 and 2014 preventing action on the Syrian conflict, which has now claimed over 250,000 lives, displaced 11.7 million people, and shown no signs of abating (S/2011/612, S/2012/77, S/2012/538, and S/2014/348).

One factor that is not reflected by statistics on the veto is the “hidden” or “pocket” veto. This refers to cases in which draft resolutions are not formally tabled because of the threat of veto by one or more permanent members. Elected members, as well as the wider membership, frequently complain that the pocket veto undermines the effectiveness of the Council. It is very difficult to document the use of the pocket veto because records only exist if a draft resolution is circulated as a Council document, and in most cases, this only happens if there is a reasonable expectation of adoption.

A lack of transparency has similarly surrounded the voting by permanent members on the selection of Secretaries-General, particularly since the introduction of “straw polls” in 1981. Under this practice, members indicate “encouragement,” “discouragement,” or since 2006, “no opinion” for candidates. Negative straw ballots from a permanent member have had an effect similar to a veto, but there is no official information. The only information available to those outside the Council comes by way of an unofficial announcement by delegates or through leaks. In 1996, the US formal veto of a resolution to reappoint Boutros Boutros-Ghali supported by all other Council members is well known, but what is less well known is the number of subsequent “vetoes,” or negative straw ballots, cast by permanent members after Boutros-Ghali suspended his candidature.<sup>7</sup> Kofi Annan was ultimately selected after France, which had opposed his candidacy, changed its vote, in the face of support from all other members and reportedly after Annan agreed to appoint a French national to head the Department of Peacekeeping Operations.<sup>8</sup>

<sup>5</sup>Edward C. Luck, *UN Security Council: Practice and Promise*, Routledge, New York, pp. 13-14.

<sup>6</sup>David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World*, Oxford University Press, Oxford, p. 36.

<sup>7</sup>The candidates who came in after Boutros-Ghali withdrew were Kofi Annan (Ghana), Foreign Minister Amara Essy (Côte d’Ivoire), Ambassador Ahmedou Ould-Abdallah (Mauritania) and Secretary-General of the Organization of Islamic Conference, Hamid Algabid (Nigeria).

<sup>8</sup>James Traub, *The Best Intentions: Kofi Anna and the UN in the Era of American World Power*, Picador, New York, 2007, p. 75.

## Veto Restraint Initiatives: Past and Present

The current initiatives on veto restraint in mass atrocity situations have precedents, which largely grew out of the inability of the Security Council to prevent and halt mass atrocity crimes in the 1990s. The UN's failures during that decade—including the Council's fecklessness in confronting the genocides in Rwanda and Srebrenica—led to years of soul-searching about the future of the organisation and about how to strengthen its efforts to address man-made humanitarian tragedies.

In September 2000, the government of Canada launched the International Commission on Intervention and State Sovereignty (ICISS), which grappled with how to improve the Council's performance to protect populations in cases of large-scale loss of life or ethnic cleansing. In its December 2001 report, which gave birth to the concept of "responsibility to protect", the Commission argued that the permanent members of the Council "should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support."

At the 2005 World Summit, the responsibility to protect concept was endorsed by world leaders in the Summit's Outcome Document (A/RES/60/1). In the lead-up to the Summit, the High-Level Panel on Threats, Challenges and Change had called on "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" (A/59/565).

During the same year, the S5—a group of five small countries (Costa Rica, Jordan, Liechtenstein, Singapore, and Switzerland)—began tackling issues regarding Council working methods, espousing a series of reforms intended to improve the Council's performance. The use of the veto was one of the many issues the S5 addressed in their proposals. The S5 argued that a permanent member casting a veto or intending to do so should provide an explanation for its decision that is consistent with the purposes and principles of the UN Charter and relevant international law. According to the S5, this explanation should be circulated as a Council document to the wider UN membership. The S5 further called on the permanent members to refrain from using the veto "to block Council action aimed at preventing or ending genocide, war crimes and crimes against humanity."

The S5 included these proposals—and several more dealing with different aspects of Council working methods—in a draft resolution that they tabled in the General Assembly in May 2012 (A/66/L.42.Rev.1).<sup>9</sup> In a controversial move, Under-Secretary-General for Legal Affairs Patricia O'Brien ruled that in order to be adopted the resolution required affirmative votes from two-thirds of UN member states, instead of a simple majority, as an "important question." Given this ruling

and facing strong opposition from the permanent members of the Security Council—as well as other member states concerned that focusing on Council working methods could distract attention from structural reform proposals—the draft resolution was withdrawn. While this led to the demise of the S5, the goals of the S5 to reform Security Council working methods, including with regard to the veto, were taken up by the Accountability, Coherence and Transparency Group (ACT) group, which was formed in May 2013 and currently includes 25 member states.

The ICISS and S5 proposals on veto restraint can be viewed in the context of long-standing concerns about the Council's mixed performance in situations related to atrocity crimes, although the S5 proposal was focused on Council decision-making more broadly. Echoing the ICISS and S5 proposals, calls for veto restraint in cases of mass crimes have been made in recent years by member states in open debates on working methods.

Since 2011, the horrific crimes committed in Syria, where a divided Council has been unable to play more than a marginal role in stemming the human suffering, have added renewed vigour to the view that the Council needs to do a better job of preventing and responding to mass atrocities.

The French initiative, the ACT code of conduct, and the Elders' proposal were developed against the backdrop of the deteriorating situation in Syria.

### SECURITY COUNCIL VETOS ON SYRIA CONFLICT

DRAFT RESOLUTION	DATE	CONTENT	APPROXIMATE DEATH TOLL FROM CONFLICT AT TIME
S/2011/612	4 October 2011	Condemned use of force by Syria authorities; expressed intent to consider further options, including measures under article 41 of UN Charter	3,000
S/2012/77	4 February 2012	Supported Arab League's 22 January decision to facilitate Syrian-led political transition	7,500
S/2012/538	19 July 2012	Stipulated that Syrian authorities cease troop movements – and use of heavy weapons – in population centres; stipulated that article 41 measures would be imposed in case of non-compliance	13,000
S/2014/348	22 May 2014	Referred Syria to the ICC	150,000

<sup>9</sup>In addition to the use of the veto, the draft resolution also proposed for the Security Council's consideration measures related to the relationship between the Council and the General Assembly, the implementation of decisions, and the relationship between the Council and regional arrangements and agencies, among other issues.

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### French Initiative

On 4 October 2013, French Foreign Minister Laurent Fabius published an op-ed in *The New York Times* advocating that the permanent members refrain from using the veto “if the Security Council were required to make a decision with regard to a mass crime... [except in] cases where the vital interests of a permanent member...were at stake.” In the article, Fabius laid out criteria for triggering this “code of conduct,” stating that the UN Secretary-General would make the determination regarding the occurrence of a mass crime at the request of at least 50 member states.

In preparation for the ministerial-level meeting co-hosted with Mexico on 30 September 2015 regarding its initiative, France and Mexico prepared a political declaration on suspension of veto powers in cases of mass atrocity, open to commitments of support from UN member states. The political declaration “welcome[s] and support[s] the initiative...to propose a collective and voluntary agreement of the permanent members...in which the permanent members would abstain from using their veto powers in cases of mass atrocities.”

France is still refining its proposal. For example, it recently announced that it favoured calling on permanent members to explain their vote when casting a veto, an element that was not part of their original proposal and is consistent with the proposal of the Elders on veto restraint. France continues to negotiate the content of its initiative with the other permanent members of the Council, and it is possible that some elements of the initiative could change as a result of these negotiations.

At the 30 September meeting, France and Mexico announced that they had received support from 70 member states for their declaration. At press time, that number had reached 80 member states.

### ACT Code of Conduct

In July 2015, the Accountability, Coherence and Transparency Group (ACT) circulated a “code of conduct” that calls on member states to “pledge to support timely and decisive action by the Security Council aimed at preventing or ending the commission of genocide, crimes against humanity or war crimes...” More specifically, it commits Council members not to vote against “credible” draft resolutions that seek to end

or prevent such crimes. The pledge is applicable to the UN’s broader membership—not just the permanent members of the Council—as all member states are eligible to run for a seat on the Council and thus to serve as elected members.

There is no procedural trigger for the code’s application. The code simply requests the Secretary-General, using the early warning capacities and expertise of the UN system, to continue to bring to the Council’s attention situations involving, or likely leading to, genocide, crimes against humanity or war crimes.

ACT has invited member states to commit to its code of conduct, which it intends to launch on 23 October 2015 to mark the 70th anniversary of the UN. On 1 October, in the lead up to this launch, ACT convened a ministerial-level presentation of the code at UN headquarters, during which it announced that it had received the support of 56 member states for its initiative, including permanent members France and the UK. (As a condition for the UK’s support for the ACT code of conduct, the code was slightly modified to commit states to refrain from voting against a “credible” Security Council draft resolution on timely and decisive action to end or prevent the commission of genocide, crimes against humanity or war crimes; the qualifier “credible” had previously not been part of the document.) At press time, the number of supporters of the code of conduct had risen to 78 member states.

### Elders’ Proposal

On 7 February 2015, the Elders, a diverse and independent group of global leaders working to promote peace and human rights currently chaired by former Secretary-General Kofi Annan, adopted a statement on strengthening the UN. Among its proposals, it called for the permanent members of the Security Council to pledge “not to use, or threaten to use, their veto” in crises in which genocide or other mass atrocities are committed or threatened “without explaining, clearly and in public, what alternative course of action they propose, as a credible and efficient way to protect populations in question.” According to the Elders’ proposal, the explanation should pertain to international peace and security, and not be based on national interest, as using the veto under such circumstances represents an

abuse of this privilege. In cases where the veto is cast by one or more permanent members, the Elders argue that efforts must be made by the other members of the Council “not to abandon the search for common ground.”

There are a number of similarities among the French initiative, the ACT code of conduct and the Elders’ proposal. All are animated by a desire to improve the effectiveness of the Council in preventing and halting mass crimes. Their development has been largely fueled by the Council’s inability to take effective action in Syria. Furthermore, supporting these initiatives is a political commitment that would not be legally binding; in other words, signing onto the French/Mexican political declaration or the ACT code of conduct would not constitute an obligation under international law. (The Elders have not developed a pledging statement similar to the French/Mexican political declaration or the ACT code of conduct).

However, there are a number of key differences among these initiatives. First, the French initiative’s allowance for veto use when “vital interests” are at stake is not an element of the other initiatives. In his *New York Times* op-ed, Fabius argued that the caveat of vital interests is necessary to make the initiative “realistically applicable.” Over the long term, this pragmatism may increase the chances that France can sell its initiative to the other permanent members. France has further pointed to the political cost that will accrue to a permanent member which claims that its “vital interests” are at stake when casting a veto in a case in which it is clear that such interests are not in fact in play.

The counter-argument to France’s position is that the perceived political cost will often not be enough to deter a permanent member from casting a veto, even if its vital interests are not at play. Moreover, vital interests are usually the underlying reason why permanent members use the veto, weakening the idea of restraint that informs the initiative. This may help explain why the Elders have explicitly stated that members casting vetoes for reasons of national interest are abusing their privilege, and should refrain from explaining their decisions for using the veto in such terms.

Second, the three initiatives have different approaches regarding a procedural trigger

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for their application. The French initiative's trigger has been criticised by some for placing too much pressure on the Secretary-General to be the ultimate arbiter of the code's application. Some have also suggested that the process of getting 50 member states to request that the Secretary-General take a decision could be a time-consuming and bureaucratic process, potentially preventing timely responses to situations in which atrocities are being committed or are about to be committed. However, it should be reiterated that France is open to refining its proposal, including this trigger mechanism, emphasising that its fundamental goal is to avoid paralysis in the Council in mass atrocity situations.

While there is no specific procedural trigger for the ACT code to apply, ACT has said

that "facts on the ground" would determine whether its code applies. It indicates that the code "is subject to the assessment of a particular situation by a state that has expressed its commitment to the Code of Conduct." ACT invites the Secretary-General to make the Council aware of situations which constitute, or could lead to, the commission of atrocity crimes.<sup>10</sup> However, ACT made the conscious decision to make the Secretary-General an important voice, rather than the determining voice, in the application of its code of conduct, so as not to focus this decision-making burden on the Secretariat alone.

The Elders do not discuss a procedural trigger in their proposal, but they too believe that the Secretary-General would have an important role in informing the Council's

decision-making.

Third, the three proposals are cast differently in terms of whom they apply to. The French initiative focuses specifically on the decision-making of the permanent members of the Council. ACT's initiative applies to the wider membership of the organization, in keeping with the recognition that all member states can become Council members and that ownership of Security Council action rests with all 15 members, not just the P5. Similarly, the Elders emphasise that the search to find common ground is a collective responsibility of Council members, permanent and elected alike, although they do not broaden the focus to include potential elected members (i.e., the wider membership) in the way ACT does.

### VETO RESTRAINT INITIATIVES

	French Initiative <sup>11</sup>	ACT Code of Conduct	Elders' Proposal
Crimes Referenced:	Genocide, crimes against humanity or war crimes on a grand scale	Genocide, crimes against humanity or war crimes	Genocide or other mass crimes
Procedural Trigger:	Secretary-General determination upon the request of at least 50 members of the General Assembly	None, but the Secretary-General is invited to bring relevant situations to the Security Council's attention. The "facts on the ground" would result in the code's application.	None, but recognises the important role of the Secretary-General in informing the Council's decisions.
Applies to:	5 Permanent Council Members	All UN Member States that serve or may serve on the Council.	15 Council Members

## Security Council Decision-Making: The Veto and Beyond

The current initiatives on veto restraint reflect concern about the Council's paralysis in cases of the most egregious violations of human rights and international humanitarian law. The gridlock with respect to Syria is a stark example of this. But the inability of Council members to reach agreement on tough issues extends beyond Syria and pervades a considerable portion of the Council's work. This in turn hampers the Council's effectiveness and over time could erode its legitimacy. Clashes among the permanent members continue to undermine constructive action on a number of issues. In addition to Syria, a divided Council has been unable to mount effective responses to crises in Gaza, in Darfur, and in Ukraine.

Given the strong disagreements in the Council on Ukraine, it is curious that during their explanations of vote (S/PV.7138) on the 15 March 2014 draft resolution stating that there was no validity to the referendum Russia was planning in the Crimea (S/2014/189), members did not question whether Russia should have abstained from voting, as a party to a dispute under article 27 (3) of the UN Charter. Some of the elected members, without the institutional knowledge and experience of the permanent members, may not have been aware of this provision in the Charter, while others may have been cautious about challenging Russia without wider support in the Council on this particular matter.

The four other permanent members may have been wary of highlighting the questionable use of the veto by one of their P5 colleagues so as to avoid establishing an uncomfortable practice regarding their prerogative in future use of the veto.

The wider membership also failed to discuss this issue in any detail. There were only minimal references to it during the 27 March 2014 General Assembly meeting on Ukraine. The representative of Liechtenstein argued that Russia should have abstained under article 27 (3), saying that "It is important that the question finds the attention of the wider membership" (A/68/PV.80). The Costa Rican representative noted that the UN Charter

<sup>10</sup>This is consistent with article 99 of the UN Charter, which states: "The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."

<sup>11</sup>At press time, elements of the French Initiative, which continued to be negotiated among the permanent Council members, might be subject to change.

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“clearly defines rights and obligations in regard to which compliance is not optional;” however, while alluding to the responsibilities of the permanent members under articles 23 and 27, he did not directly refer to the Russian veto on Ukraine.

Gridlock in the Council often occurs on matters of vital interest to one or more permanent members. Just as Russia’s interests in Ukraine have hindered effective engagement on that issue, Council action on Israel/Palestine has long been constrained by the US, which traditionally protects Israeli interests, making the adoption of decisions critical of Israel’s conduct hard to achieve. During the Gaza crisis in July–August 2014, the Council was only able to produce weak outcomes, including one presidential statement (S/PRST/2014/13) and one press statement (SC/11472). While dynamics among members were complex and there was no use of the veto by the US as there had been during the 2006 Gaza crisis, the US position constricted the Council’s flexibility in response to the situation.<sup>12</sup>

At the 1 October ACT code of conduct meeting, a number of delegations noted the impact of the threat of veto. Liechtenstein stated that the while “the use of the veto is... the most extreme expression of [the Council’s] lack of unity, [this is] closely followed by the threat of the veto.” The threat of veto can prevent a draft resolution that has major support from being formally tabled for a

vote. While impossible to quantify, there are most likely instances where members do not even produce draft resolutions for consideration that could have a constructive impact, because they believe at the outset that the draft would clash with the interests of one or more of the permanent members and have no chance of being adopted. As reflected by the stewardship of Australia, Jordan and Luxembourg on the Syria humanitarian resolutions in 2014, consensus can be achieved on very difficult issues, but it requires an enormous expenditure of time and energy, and has become the exception rather than the rule in the Council.

A recent example of the threat of veto occurred in November 2014 on a draft resolution proposed by Australia that would have established a Policy and Coordination Unit within the Security Council Affairs Division of the Department of Political Affairs related to sanctions issues.<sup>13</sup> The draft was opposed by Russia, in part because it believed that this unit could become a de facto policymaking body challenging the authority of the Council. After painstaking bilateral negotiations aimed at reaching a compromise and postponements of the vote, the draft was never formally tabled because it would most likely have been vetoed.

Current calls for veto restraint are symptomatic of broader concerns about the way the Council has been managed in recent years. Elected members frequently complain

that they are treated like second class citizens on the Council, and they often believe that their input is not valued. This happens, for example, when draft resolutions and presidential statements that have been negotiated among the permanent members are circulated to the elected members shortly before a planned adoption, giving them limited time to provide input. There have also been instances in recent years when separate briefings on the same issue have been provided by the Secretariat for permanent members and elected members on issues pertaining to the Council at large.

Such examples contribute to the perception among some elected members that the permanent members at times do not meaningfully engage them in the deliberations and decisions of the Council, a point emphasised during the informal discussion on Security Council decision-making hosted by New Zealand in July. The disparities in power, knowledge, and experience between the permanent and elected members are frequently noted. Many of these disparities derive from the rights granted to the permanent members by the UN Charter. However, some of them have developed over time as a matter of culture and habit. Unless efforts are made to more assiduously include elected members in the work of the Council, the decision-making environment will continue to suffer, with negative effects on peace and security outcomes.

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## Council and Wider Dynamics on the Veto

There is a divergence of views on the current veto restraint initiatives among the permanent members of the Council. At the 1 October 2015 Accountability, Coherence, and Transparency (ACT) group code of conduct meeting, France stated that it will continue to discuss its veto restraint initiative with the other permanent members. It has argued that the veto is a responsibility and that the goal of its initiative is to strengthen political engagement

in the Council to solve crises. President Hollande said during his address to the UN General Assembly on 28 September 2015 that “France will never use its power of veto where there have been mass atrocities”. The UK, like France, is supportive of the notion of veto restraint with regard to atrocity crimes. It has reiterated on a number of occasions that it will never use its veto prerogative to block credible Security Council action aimed at

stopping mass atrocities and crimes against humanity. Both France and the UK have given their support to the ACT code of conduct on veto restraint. At press time, the UK had yet to support the French/Mexican political declaration; in part this may be because the declaration does not specify that action to prevent or stop mass atrocities would be based on a “credible draft resolution,” as does the ACT code of conduct.

<sup>12</sup>A Jordanian draft was circulated on 22 July 2014. Among other things, it called for an immediate ceasefire and the “full and immediate withdrawal of the Israeli occupying forces from the Gaza Strip,” “the lifting of the Israeli restrictions imposed on the movement of persons and goods into and out of the Gaza Strip” and “renewed and urgent efforts...to achieve a comprehensive peace based on the vision of two States...living side by side the basis of the pre-1967 borders...”. The draft was discussed several times in consultations; however, consensus was never reached as some members, particular European members, felt that a resolution ought to be sequenced after a ceasefire agreement was reached and should support the cessation of hostilities. The US did not engage on the substance of the draft. Two subsequent drafts on the crisis – one by France, the UK and Germany, and another later by the US – surfaced in late August 2014. None of the three drafts was put to a vote.

<sup>13</sup>The purpose of the unit would have been, among other tasks, to identify best practices, and identify and mobilise experts within the UN system to assist with sanctions implementation and support efforts by the Council and subsidiary organs to provide guidance and technical assistance to member states on sanctions implementation.

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## Council and Wider Dynamics on the Veto (con't)

Russia has been vocal in opposition to veto restraint initiatives. On 11 August 2015, Russian Foreign Minister Sergei Lavrov tweeted that “ideas of scrapping or limiting the...veto... have no future.” In a briefing of the UN press corps on 2 September 2015 at the outset of Russia’s Council presidency, Ambassador Vitaly Churkin said that the veto is “a tool which allows the Security Council to produce balanced decisions” and that “sometimes the absence of veto can produce disaster.” Churkin added that calling for veto restraint in cases pertaining to atrocity crimes was problematic because it did not take into account the content of specific draft resolutions, which could authorise counterproductive actions.

The US and China appear to have reservations about the veto restraint initiatives. In public, the US has catalogued its commitment to preventing mass atrocities without giving a precise explanation of its views on the proposals on veto restraint under discussion. In private, it has reportedly expressed its reservations on veto restraint to diplomats from other member states. In a 23 September 2015 article

on the veto in *The Guardian*, US Ambassador Samantha Power was quoted as saying that the credibility and functioning of the Council would be compromised if the gridlock on Syria and Ukraine spread across the board.

China has been the most reticent of the P5 on this issue. Like the US and Russia, China has not supported the ACT code of conduct, nor the French initiative.

As in the Council, there are conflicting views among the wider membership on the proposals under consideration. As discussed, a large number of states have already given their support to the French/Mexican declaration and the ACT code of conduct. Many have expressed their frustration with what they perceive as the inability of Council members to collaborate effectively to resolve pressing problems, especially in situations in which atrocity crimes are committed. Some have said that they will make their support for candidates running for a seat on the Security Council contingent on those states supporting the ACT code of conduct.

On the other hand, there are some member

states which are concerned that the emphasis on veto restraint could be detrimental to the broader Council reform agenda. These countries see veto restraint as a piecemeal approach to a larger number of issues that should be tackled together.

In addition, some member states have argued that the current proposals do not go far enough, because they only address veto restraint in cases pertaining to atrocity crimes. These states have called for permanent members not to use the veto in other cases as well, such as with regard to the selection of the Secretary-General or with regard to requests for membership to the organisation (e.g., Palestine).

Finally, there may be concerns among a limited number of states in the Global South about misapplication of the responsibility to protect concept. These states do not like the veto, but they tend to be cautious about Council action that involves interference in the domestic affairs of sovereign states. This could cause them to have reservations about supporting the current veto restraint initiatives.

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## UN Documents

### VETOED DRAFT RESOLUTIONS SINCE 2006

[S/2015/562](#) (29 July 2015) would have created an ad hoc tribunal for prosecuting those responsible for the downing of Malaysian Airlines flight MH17 on 17 July 2014. The draft was vetoed by Russia.

[S/2015/508](#) (8 July 2015) would have commemorated the anniversary of the Srebrenica genocide. The draft was vetoed by Russia.

[S/2014/348](#) (22 May 2014) would have referred Syria to the ICC. The draft was vetoed by China and Russia.

[S/2014/189](#) (15 March 2014) would have declared the planned referendum in Crimea invalid. The draft was vetoed by Russia.

[S/2012/538](#) (19 July 2012) would have stipulated that Syrian authorities cease troop movements and the use of heavy weapons in population centres. The draft was vetoed by China and Russia.

[S/2012/77](#) (4 February 2012) would have supported

the Arab League’s 22 January decision to facilitate Syrian-led political transition. The draft was vetoed by China and Russia.

[S/2011/612](#) (4 October 2011) would have condemned the use of force by Syrian authorities. The draft was vetoed by China and Russia.

[S/2011/24](#) (18 February 2011) would have demanded that Israel cease settlement activity in the Occupied Palestinian Territories. The draft was vetoed by the US.

[S/2009/310](#) (15 June 2009) would have authorised a two-week extension of UNOMIG’s mandate to allow more time for negotiations on a new security regime in the region. The draft was vetoed by Russia.

[S/2008/447](#) (11 July 2008) would have condemned the government of Zimbabwe for a campaign of violence against civilians and the political opposition. The draft was vetoed by China and Russia.

[S/2007/14](#) (12 January 2007) would have called on

the government of Myanmar to cease military attacks on civilians in ethnic minority regions. The draft was vetoed by China and Russia.

[S/2006/878](#) (11 November 2006) and [S/2006/508](#) (13 July 2006) would have called on Israel to halt military operations in Gaza. The drafts were vetoed by the US.

### GENERAL ASSEMBLY DOCUMENTS

[A/68/PV.80](#) (27 March 2014) was a General Assembly meeting on Ukraine.

[A/66/L.42.Rev.1](#) (3 May 2012) was a General Assembly draft resolution containing recommendations for reform that was defeated.

[A/RES/60/1](#) (16 September 2005) was the World Summit Outcome Document.

[A/59/565](#) (2 December 2004) contained the report of the High-Level Panel on Threats, Challenges and Change.

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## Useful Additional Resources

David L. Bosco, *Five To Rule Them All: The UN Security Council and the Making of the Modern World*, Oxford University Press, Oxford, 2009.

Edward C. Luck, *UN Security Council: Practice and*

*Promise*, Routledge, New York, 2006.

Loraine Sievers and Sam Daws, *The Procedure of the UN Security Council*, Fourth Edition, Oxford University Press, Oxford, 2014.

James Traub, *The Best Intentions: Kofi Annan and the UN in the Era of American World Power*, Picador, NY, 2007.

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