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Innovating to Restrain the Use of the Veto in the United Nations Security Council

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INNOVATING TO RESTRAIN THE USE OF THE VETO IN THE UNITED NATIONS SECURITY COUNCIL

By Christian Wenaweser & Sina Alavi¹

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The veto power originates in article 27(3) of the United Nations Charter, which establishes that all substantive decisions of the Security Council must be made with “the concurring votes of the permanent members.”² Already controversial at the time of the 1945 San Francisco Conference,³ the veto today often negatively impacts on the work and functioning of the Security Council. The proliferation of the use of the veto in recent times has prevented the Security Council from exercising its functions with respect to some of the gravest threats to international peace and security – often in clear contravention of the purposes and principles of the UN Charter. Even the mere threat of the veto has prevented the Security Council from addressing situations that squarely

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2. U.N. Charter art. 27, para. 3.

3. See UN History: Getting to an Agreement, U.N. FOUND., <https://unfoundation.org/blog/post/un-history-getting-to-an-agreement/> [<https://perma.cc/FV9B-7M6C>].

fall within its mandate – sometimes resulting in devastating humanitarian costs. Below we outline two innovations – one already implemented, and the other in the process of being officially presented to the UN membership – that have the potential to help restrain the [mis]use of the veto by permanent members of the Security Council. They both acknowledge the existence of the veto, and rather than aiming for its abolition they aim to bring its use more in line with the intentions of the drafters of the UN Charter.

I. INNOVATION ONE: A CODE OF CONDUCT REGARDING SECURITY COUNCIL ACTION AGAINST GENOCIDE, CRIMES AGAINST HUMANITY OR WAR CRIMES

Genocide, war crimes and crimes against humanity are among the most serious crimes of international concern, as evidenced by their recognition as crimes falling under universal jurisdiction.⁴ All States have a responsibility to ensure that such crimes are prevented and that they are ended and punished where they occur, as follows from the 1948 Genocide Convention, the 1949 Geneva Conventions, and customary international law.⁵ Permanent members of the Security Council have a particular responsibility in this regard,⁶ given the Security Council's sweeping powers to decide on appropriate measures to restore international peace and security, and in doing so, preventing or ending such crimes and the human suffering that they entail.⁷

Past failure of the Council to act in the face of atrocity crimes, due to the use or threat of the use of the veto (in Srebrenica, Rwanda and Syria, to name a few)⁸ have done enormous damage to the standing of the Organization.⁹ Therefore, in 2015, the Accountability,

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4. *Basic Facts on Universal Jurisdiction*, HUMAN RIGHTS WATCH, <https://www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction#> [<https://perma.cc/R6J7-V8X4>].
 5. *Id.*
 6. Ambassador Wenaweser, Letter dated 14 December 2015 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General, Annex 1, U.N. Doc. A/70/621-S/2015/978 (Dec. 14, 2015) [hereinafter ACT Code of Conduct].
 7. *Roll of the Security Council*, U.N. PEACEKEEPING, <https://peacekeeping.un.org/en/role-of-security-council> [<https://perma.cc/285D-BGTB>].
 8. *See Adapt Peacemaking, Security Tools to Overcome Humanitarian Crisis, Emerging Crisis Worldwide, Particularly in Syria, Speakers Urge Security Council*, U.N. MEETINGS Coverage AND PRESS RELEASES, <https://www.un.org/press/en/2018/sc13216.doc.htm> [<https://perma.cc/AD63-GNVB>].
 9. *See id.*

Transparency and Coherence (ACT) Group – a collection of 25 small and medium-sized States at the UN¹⁰ – endorsed a concrete initiative developed by the Mission of Liechtenstein to help prevent such failures in the future: The Code of Conduct for Security Council Action Against Genocide, Crimes Against Humanity or War Crimes (“the ACT Code of Conduct”).¹¹ Under the ACT Code of Conduct, countries make a voluntary political commitment to support timely and decisive action to prevent or end crimes against humanity, war crimes, and genocide.¹² The ACT Code of Conduct is currently supported by 121 States, including 10 current members of the Security Council.¹³ These States commit not to vote against a credible draft resolution dealing with atrocity situations.¹⁴ The Code of Conduct is open to all Member States, as every State can, in theory, serve on the Security Council and help end and prevent atrocity crimes.¹⁵ The Code of Conduct is therefore not only about veto restraint,¹⁶ but also represents a broader pledge to support timely and decisive Security Council action against mass atrocities. In joining the ACT Code of Conduct, States simply commit to do what they can to end and prevent atrocity crimes when they serve as Council members¹⁷ – which is the least we should expect from those serving on the Security Council.

The fact that nearly two-thirds of UN States have signed up to the ACT Code of Conduct¹⁸ demonstrates their dissatisfaction with past Council failures and their willingness to do better in the future. And, it

10. ACT Code of Conduct, *supra* note 6, at 1.

11. *See id.*

12. *Id.*

13. *List of Signatories to the ACT Code of Conduct*, GLOBAL CTR. FOR THE RESPONSIBILITY TO PROTECT, <http://www.globalr2p.org/resources/893> [<https://perma.cc/PNC4-C8ZS>]. *See LIST OF SUPPORTERS OF THE CODE OF CONDUCT*, https://www.regierung.li/media/medienarchiv/2020-1-1_CoC_List_of_supporters.pdf.

14. ACT Code of Conduct, *supra* note 6, at 3.

15. *See id.* at 4.

16. *UN Security Council Code of Conduct*, GLOBAL CTR. FOR THE RESPONSIBILITY TO PROTECT, http://www.globalr2p.org/our_work/un_security_council_code_of_conduct [<https://perma.cc/Y95X-TCCP>] (describing the French/Mexico Veto Initiative as being squarely focused on veto restraint).

17. ACT Code of Conduct, *supra* note 6, at 3.

18. *List of Signatories to the ACT Code of Conduct*, *supra* note 13; *see also Membership of Principal UN Organs*, U.N., <https://www.un.org/en/sections/member-states/membership-principal-un-organs/index.html> [<https://perma.cc/V6CN-LRGL>].

shows that there is a real opportunity to change the political culture in the Security Council.

The main features of the ACT Code of Conduct are the following:

- The crimes covered by the Code of Conduct are genocide, crimes against humanity, and war crimes – all well defined in international law.¹⁹
- The Code is for all States who serve or may, at some point, become a member of the Council.²⁰ Security Council action in response to these crimes requires the support of all Council members, not just permanent members.²¹
- This Code of Conduct is thus not just about the veto, but represents a positive pledge to support timely and decisive Security Council action to end and prevent atrocity crimes.
- The general pledge above is complemented by a more specific pledge not to vote against credible draft SC resolutions that are aimed at preventing or ending genocide, crimes against humanity, and war crimes.²²
- There is no procedural trigger for the code to apply.²³ Instead, the Code would be triggered by any situation involving these crimes – in other words, the facts on the ground would be the trigger and lead to Security Council action.²⁴
- However, the Code of Conduct foresees an important role for the Secretary-General as an important authority to bring such situations to the attention of the Council, and her or his assessment of the situation would carry great weight²⁵.

19. ACT Code of Conduct, *supra* note 6, at 1.

20. *Id.* at 3.

21. *See id.* at 1.

22. *Id.* at 3.

23. *See id.* at 1 (stating that the Code of Conduct is triggered by any situation involving genocide, crimes against humanity, or war crimes that leads to Security Council action).

24. *Id.* at 1.

25. ACT Code of Conduct, *supra* note 6, at 1.

II. INNOVATION TWO: GENERAL ASSEMBLY ACTION WHEN THE VETO IS (MIS)USED

In accordance with Article 24(1) of the UN Charter, the Security Council acts on behalf of the entire UN membership.²⁶ It is thus accountable to all UN States represented in the UN General Assembly.²⁷ If the veto prevents the Security Council from acting, the Council fails to perform its functions against the will of the quantitative majority required for Council decisions – in many cases also against views of the overwhelming majority of the UN membership.

While the Security Council has the primary responsibility for the maintenance of international peace and security, this responsibility is not exclusive.²⁸ In accordance with Article 11 of the UN Charter, the General Assembly may discuss any question relating to the power and functions of other organs, including the Security Council.²⁹ The Charter as well as UN practice encourage complementarity between principal UN organs.³⁰ Complementarity is particularly important if one organ fails to exercise its Charter functions in contradiction to the Charter's purposes and principles.³¹ Such situations include cases where the veto prevents the Security Council to act against mass atrocities. As mentioned above, the ACT Code of Conduct seeks to restrain the use of the veto in such situations and contains a positive commitment to act against mass atrocities.³² Supporting an active role for the General Assembly in such cases is thus a natural complement to the ACT Code of Conduct.

The question then becomes: How should the General Assembly deal with vetoes cast in the Security Council? Calls for an involvement of the General Assembly date back many years.³³ Another idea developed by the Mission of Liechtenstein and currently under consultation among States proposes a simple innovation: The General Assembly will always,

26. U.N. Charter art. 24, para. 1.

27. *See id.*

28. *Id.*

29. U.N. Charter art. 11.

30. *See id.*

31. *See* ACT Code of Conduct, *supra* note 6, at 1.

32. *UN Security Council Code of Conduct*, GLOBAL CTR. FOR THE RESPONSIBILITY TO PROTECT, http://www.globalr2p.org/our_work/un_security_council_code_of_conduct [https://perma.cc/Y95X-TCCP].

33. *See R2P: A Short History*, U.N. REGIONAL INFO. CTR. FOR W. EUR., <https://www.unric.org/en/responsibility-to-protect/26981-r2p-a-short-history> [https://perma.cc/ES5V-ALZW].

automatically and rapidly be convened if a proposal voted in the Security Council has failed due to the use of the veto.³⁴ The General Assembly's discussion will be without prejudice to possible outcomes – meaning that it may or may not take its own decision on the situation at hand.³⁵

Under Article 24(3), the UN Charter tasks the Security Council to submit special reports to the General Assembly when necessary.³⁶ In practice, however, such reports are almost never submitted.³⁷ Given the far-reaching effect of the veto, the Council will be invited to submit a special report to the General Assembly in every instance a veto is cast.³⁸

In order to implement this new innovation, a cross-regional group of States could champion the cause and put forward a General Assembly resolution that establishes a mechanism to convene a formal General Assembly meeting, under a dedicated agenda item, every time the veto prevents the Security Council from acting, independently of the origin of the veto or the particular situation at hand.

The main features of the veto accountability initiative are the following:

- the President of the General Assembly will be mandated to convene a formal meeting of the General Assembly to discuss a veto cast by one or more permanent members of the Security Council within two weeks from its casting.³⁹

34. Press Release, Security Council, Briefer Calls for Interactive, Direct Mandate-Renewal Consultations Focused on Political Strategy, as Security Council Considers Working Methods; Delegates Deplore Inequity, Exclusion of Meaningful Input from Elected Members, U.N. Press Release SC/13830 (June 6, 2019) (proposing that a meeting of the General Assembly be automatically convened every time a veto is cast).

35. Permanent Mission of the Principality of Liechtenstein to the U.N., letter dated Nov. 8, 2019 from the Deputy Permanent Representative of the Permanent Mission of the Principality of Liechtenstein to the United Nations addressed to the President of the Security Council (Nov. 8, 2019) (stating that a debate should take place without prejudice to any possible outcome and independently of the substance of the resolution that was subject to a veto) [hereinafter Deputy Letter].

36. U.N. Charter art. 24, para. 3.

37. *See In Hindsight: The Relationship between the Security Council and the General Assembly*, SECURITY COUNCIL REPORT (June 28, 2019) (highlighting the need for better reporting practices by the Security Council).

38. Deputy Letter, *supra* note 35, at 3.

39. Statement by H.E. Ambassador Christian Wenaweser to President of the U.N. General Assembly (Nov. 25, 2019) (stating that Liechtenstein supports a standing mandate for the General Assembly to debate any use

- A new agenda item on the use of the veto will be created.⁴⁰
- The Security Council, in accordance with article 24 (3) of the UN Charter, will have the opportunity to submit a special report on the use of veto in question to the General Assembly ahead of the Assembly's convening.⁴¹
- The veto casting member(s) of the Security Council will be invited to address General Assembly and be given priority on the list of speakers.⁴²

CONCLUSION

The veto has always been a bone of contention in the UN membership – in fact a majority of Member States, in spite of having accepted the veto when joining the UN, are formally in favor of its abolition.⁴³ That, we believe, is an unrealistic proposal. But clearly the political paralysis in the Security Council, with the use of the veto as its ultimate expression, has reached such proportions that the Council is only able to provide for peace and security in a very selective manner at best.⁴⁴ As we speak, unspeakable crimes are being committed in Syria, Yemen, Myanmar and sadly elsewhere – largely ignored by the Security Council, with massive consequences for international peace and security and with large scale impunity. In Syria alone, hundreds of thousands of people have been killed, millions have been forcibly

of the veto in a formal meeting, as a measure of accountability as well as a means to empower this Assembly) [hereinafter Wenaweser Statement]

40. *See generally* Meetings Coverage, *Calls for Greater Inclusion of Elected Security Council Members, Limited Veto Use in Addressing Atrocity Crimes Dominate Open Debate on Working Method*, 8175th Mtg., SC/13197 (Feb. 6, 2018), *available at* <https://www.un.org/press/en/2018/sc13197.doc.htm> [<https://perma.cc/3LFC-TY79>].
41. Wenaweser Statement, *supra* note 39, at 3.
42. Permanent Mission of the Principality of Liechtenstein to the United Nations New York, Liechtenstein's position on Security Council Reform (May 5, 2015), *available at* https://www.regierung.li/media/medienarchiv/unoallgemein/Lie_Positi on_on_SC_reform_final_w_attachments.pdf?t=637095471267487388 [<https://perma.cc/2H5Q-7794>].
43. Press Release, General Assembly, Member States Call for Removing Veto Power, Expanding Security Council to Include New Permanent Seats, as General Assembly Debates Reform Plans for 15-Member Organ, U.N. Press Release GA/12091 (Nov. 20, 2018).
44. *See generally id.*

displaced, and countless others require humanitarian assistance.⁴⁵ In Yemen, the humanitarian crisis and widespread suffering can be directly linked to the war crimes being committed.⁴⁶ And, in Myanmar, there has been an utter lack of Security Council action to provide for accountability for the atrocity crimes committed against the Rohingya and other minorities.⁴⁷ Innovative tools to restrain the veto can help the Security Council to break out of stalemate and live up to its responsibility under the UN Charter on behalf of the entire UN membership and in service to all of humanity. If applied consistently and supported very widely, the veto restraining tools described above can over time bring about a change in political culture in the Council – a change that is very badly needed.

45. *See generally* *Why is there a War in Syria?*, BBC (Feb. 25, 2019), <https://www.bbc.com/news/world-middle-east-35806229> [<https://perma.cc/V5J5-85S6>].

46. *See generally* *World Report 2019: Yemen Events of 2018*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2019/country-chapters/yemen> [<https://perma.cc/Z9GH-4PX9>].

47. *See generally* Press Release, Security Council, Head of Human Rights Fact-Finding Mission on Myanmar Urges Security Council to Ensure Accountability for Serious Violations against Rohingya, U.N. Press Release SC/13552 (Oct. 24, 2018).