The responsibility not to veto

Delivered by Dr. Simon Adams, Executive Director of the Global Centre for the Responsibility to Protect, at an international colloquium, on “Regulating the use of the veto at the UN Security Council in cases of mass atrocities,” organized by the Paris School of International Affairs of SciencesPo and the Ministry of Foreign Affairs of France.

The international community has a responsibility to protect those threatened by genocide, war crimes, ethnic cleansing and crimes against humanity. And the five permanent members of the UN Security Council (P5) have a responsibility not to veto when the world needs them to respond and to act. That is the principle underlining the French government’s call for an agreement on veto restraint in mass atrocity situations.

Those who say that the UN Security Council cannot reform itself, that the politics of cynicism, national interest and narrow opportunism will always win over universal principles, will tell us that this cannot be done. But Syria has brought into stark relief the price paid by innocent civilians when the Security Council fails to act to halt mass atrocities.

Support for the French initiative is steadily growing. For example, on 25 September 2014 I spoke at an event hosted by the Foreign Ministers of France and Mexico on the margins of the opening session of the 69th UN General Assembly. I spoke on behalf of Amnesty International, Human Rights Watch, International Federation for Human Rights, the Global Centre for the Responsibility to Protect and the World Federalist Movement. There were 24 Foreign Ministers and about 200 other diplomats, journalists and observers in the room. This was a very public and important diplomatic step towards building broad high-level support for an agreement on veto restraint. But if we want further progress on this issue we need three things:

1. Good, clear arguments for veto reform.
2. Modalities for reform that are practical and workable.
3. A strategy on how to continue to build support for this initiative.

1. ARGUMENTS FOR VETO REFORM

We’ve had a lot of discussion on the issue of veto reform here today but let me reemphasize a few key points that I think most of us are in common agreement on. In 1945 veto power was conferred upon the five Permanent Members of the Security Council. These states were entrusted with the maintenance of international peace and security and commissioned to discharge these duties “in accordance with the Purposes and Principles” of the United Nations.

But it is an unfortunate reality that in the decades since 1945 the veto has sometimes been used, not to defend against “the scourge of war” or to “reaffirm faith in fundamental human rights,” to quote the UN Charter, but to shield perpetrators of mass atrocities from accountability.
In one of the most tragic examples from our times, on four occasions since 2011 the veto has been exercised by Russia and China to protect the government and armed groups in Syria from resolutions designed to confront crimes against humanity and war crimes. At a time when urgent measures should have been taken to protect civilians in Syria from mass atrocities, the Security Council was instead paralyzed regarding a conflict that has now consumed more than 220,000 lives.

This is a powerful example from history. But it is not the only one. We should keep in mind that no Permanent Member has been immune from abusing its veto prerogative. I can’t help but recall that during the Cold War the United States, United Kingdom and France at various times vetoed resolutions concerning apartheid in South Africa. Even though apartheid was condemned by the UN General Assembly in 1966 as constituting a crime against humanity, there were no less than ten draft resolutions aimed at imposing sanctions and other measures that were vetoed at the Security Council. Like the Syria vetoes, those vetoes also undermined the legitimacy of the Security Council. They were also an abdication of responsibility.

The French initiative will not remove the Permanent Members’ right to veto. But it does seek to restrict it when it comes to confronting mass atrocity crimes, regardless of when and where they may be occurring.

The Responsibility to Protect, adopted at the 2005 World Summit (the largest assembly of heads of state and government ever gathered together), means that the five Permanent Members of the Security Council have a responsibility not to veto in a mass atrocity situation. Mass atrocity crimes – genocide, crimes against humanity, ethnic cleansing and war crimes – are always an affront to the Universal Declaration of Human Rights, and are always a grave violation of international law. As such, they pose an intrinsic threat to international peace and security.

Moreover, committing these crimes (or protecting a state or non-state actor that is committing them) can never be excused, exempted or misrepresented as being a matter of “vital national interest.” Such a perspective runs counter to international law and morality. We call them “crimes against humanity” precisely because regardless of whether the victims are in Myanmar, Syria, Iraq, Sudan, Central African Republic or anywhere else, these crimes diminish us all. They are an offense against us all. They are never justifiable. They are always illegal.

Nevertheless, since 2005 the veto has been employed six times to block resolutions dealing with possible mass atrocity crimes. And let us not forget the additional abuse of the “silent veto” - meaning the threat of a veto during the negotiation phase behind closed doors at the Security Council. This has been repeatedly used to quietly kill any resolution not to the liking of the P5. This also needs to be kept in mind when we talk about veto restraint and reform.

The central point is that when the abuse of the veto means that the Security Council is unable to protect threatened populations from mass atrocity crimes, then the veto has become a historical anachronism that the UN can no longer afford. This is the context in which international civil society has generally enthusiastically welcomed France’s leadership in calling upon its fellow Permanent Members of the Security Council to reach agreement to voluntarily refrain from using the veto in mass atrocity situations.

2. MODALITIES

We are calling for a “statement of principles” to be signed by the Permanent Members of the Security Council that affirms their commitment to refrain from using the veto in a mass atrocity situation. We want to increase the political cost to any Permanent Member of the Security Council who vetoes when mass atrocities are occurring. The French government, which continues to lead this initiative, should now set a clear timeline with key benchmarks for moving a statement of principles forward.

So how does it work?

• First of all, with a “statement of principles” - we don’t need to re-write the Charter.
Secondly, the agreement (in the form of a “statement of principles”) should be signed by as many of the P5 as possible by October 2015, the seventieth anniversary of the founding of the United Nations.

Thirdly, under this agreement “mass atrocities” would be restricted to the four crimes (war crimes, crimes against humanity, ethnic cleansing and genocide) and would use the internationally accepted definitions provided via the Rome Statute of the International Criminal Court. The threshold for activating the agreement would adhere to these accepted definitions to determine if mass atrocity crimes are occurring.

We should also be clear that there are two separate political tracks that we are talking about where the statement of principles is relevant. On track one, on a day-to-day level the statement of principles would inform the general practice of the Security Council as a reminder of its obligation to uphold its Responsibility to Protect in keeping with the UN Charter and paragraphs 138-139 of the 2005 World Summit Outcome Document.

The second track, the track which has received the most discussion here today, is what to do when the Security Council is blocked, mass atrocity crimes are occurring and a veto has been deployed (or threatened), immobilizing the Council’s ability to act. This is the more controversial and tricky part of the proposal.

In such situations a specific activating mechanism, reminding signatories of their commitment, would be necessary. I think there is merit in the suggestion that such a mechanism should require a triple trigger:

1. A written request from UN Office of the Special Advisors for the Prevention of Genocide and the R2P.

2. A written request from the UN High Commissioner for Human Rights.

3. A written request from at least 50 members of UN General Assembly.

This would then lead the UN Secretary-General to use his/her Article 99 powers under the UN Charter to bring the matter to the attention of the Security Council (or back to their attention). This would immunize the Secretary-General from allegations of partisanship or of passing judgment regarding whether a threshold for atrocities has been reached or not.

It is also essential to keep in mind, in terms of arguments about possible abuse of any statement of principles in order to force through bad resolutions about dubious situations, that none of the above negates the need to get a majority of the Security Council to vote for any resolution. The statement of principles and the triggering mechanism is intended to invoke the principle of restraint, not subvert the majoritarian principles of the Council. Authority to act (or not) still rests with Council and would still require nine out of fifteen ambassadors to put their hands in the air in order to pass.

3. BUILDING SUPPORT

In terms of how to practically move this forward, I think it is incumbent upon the French government to now draft and circulate the statement of principles for the P5 to debate and sign up to. It’s possible that not all of the five will commit, but the onus should be on the Permanent Members to explain why they cannot agree to this public statement of principles and why they feel they need to reserve their right to veto a resolution designed to halt the commission of crimes which are forbidden under international law.

Furthermore, I think we in civil society should do all we can to mobilize the rest of the UN membership behind this initiative. Which is why we will be urging all UN member states to sign a supportive statement calling upon the Permanent Members of the Security Council to agree to a moratorium on the use of veto in mass atrocity situations. This will help create broader moral and political support.

Overall, this initiative cannot undo history, nor correct past injustices, but is an important practical step towards gathering support behind meaningful Security Council reform. Ultimate success will rest on the ability of France to get
the P5 to agree to the statement of principles. But France should be prepared to sign up to such a statement of principles even if it is alone. That’s moral leadership. And as Nelson Mandela once said in a very different, but equally difficult political context, “It always seems impossible until it’s done.”

CONCLUSION

This October will be the 70th anniversary of the founding of the United Nations - formed under the historical shadow of Auschwitz and in the aftermath of a devastating World War. This July is the twentieth anniversary of the genocide at Srebrenica, and the one hundredth anniversary of the Armenian genocide will pass in April. This September is also the tenth anniversary of the adoption of R2P at the 2005 UN World Summit.

As we contemplate these milestones, we don’t need reminding that there is an enormous reservoir of cynicism and pessimism out there regarding the ability of the United Nations - a creaking twentieth-century organization - to confront and overcome twenty-first century problems. But there is also recognition that the UN, with all its weaknesses and blemishes, still represents the best hopes of humanity. That is why I believe that a statement of principles on Security Council veto restraint in mass atrocity situations is a practical and proximate way to reaffirm the underlying principles of the UN Charter. Let’s help prove the cynics wrong.