



**CODE OF CONDUCT AS AN ALTERNATIVE TO  
REFORMATION OF THE UN SECURITY COUNCIL  
BM GÜVENLİK KONSEYİ'NİN REFORM EDİLMESİNE  
ALTERNATİF OLARAK DAVRANIŞ KODU**

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**ABSTRACT**

The United Nations Security Council's (SC) intermittent failure to perform its main duty of maintaining international peace and security has led to a longstanding debate about its reform. The ongoing Syrian crisis has resulted in a significant number of casualties, and has cost the international community heavily. The SC has thus become the subject both of severe criticism and of calls to take action. The inertia that results from an insistence on the use of the veto power has stimulated politicians to develop alternative methods. In this regard, some argue that there must be a Code of Conduct for the Council in order to enable it to react in cases of genocide, crimes against humanity and war crimes. Proponents of a Code of Conduct for the SC have naturally directed their attention to the veto power, the main suggestion being that it must be restricted in these extreme circumstances. Three main initiatives have consequently been developed and have received a considerable degree of support from states. Yet their deficiencies, including a specific procedural trigger and a process by which an alternative course of action could be initiated should one or more of the permanent five Council members (P5) refuse to refrain from using their veto power, have largely been overlooked. The current proposal aims to

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examine these initiatives and make suggestions to remedy these shortcomings. It first outlines previous efforts to reform the Council, then examines the suggested Code of Conduct, and finally proposes a new Code of Conduct and explains why a procedural trigger and a backup procedure must be provided. To the best of the author's knowledge, there is no academic work on the Code of Conduct for the Council; there are only a few comments by politicians. This study will therefore make a contribution to the literature.

**Keywords:** UN Security Council, Code of Conduct for Veto Power, Responsibility to Protect (R2P), Mass Atrocity Crimes, International Peace and Security.

### ÖZ

Birleşmiş Milletler Güvenlik Konseyi'nin uluslararası barışı ve güvenliği koruma görevini yerine getirmede bazen başarısız olmasından dolayı, bu yapının reform edilmesi ile ilgili uzun tartışmalar yapılmıştır. Devam etmekte olan Suriye krizi çok ciddi kayıplara neden olmuştur. Bu krizin uluslararası topluma da çok büyük maliyeti olmuştur. Bu yüzden, Konsey'in mevcut yapısı için hem ciddi eleştiriler hem de Suriye krizi için harekete geçme çağruları yapılmıştır. Konsey'in ısrarlı veto gücünün kullanımından dolayı devam etmekte olan krizle ilgili harekete geçmemesinden dolayı, bilim adamlarını ve politikacıları alternatif yöntemler geliştirmeye sevk etmiştir. Bu bağlamda, bazıları Konsey için 'Davranış Kodu' olması gerektiğini savunmuştur ki bu kod soykırım, insanlığa karşı işlenen suçlar ve savaş suçları durumlarında Konsey'in hareket etmesini sağlayacak. Davranış Kodu savunucuları doğal olarak dikkatlerini veto yetkisine çevirmişler ve bu yetkinin soykırım, insanlığa karşı işlenen suçlar ve savaş suçları durumlarında sınırlandırılması gerektiğini savunmuşlardır. Bu bağlamda, üç tane önemli teklif geliştirilmiş ve kayda değer destek görmüşlerdir. Bununla birlikte, bu geliştirilen üç önemli önerilerle ilgili bazı eksiklikler söz konusudur; öyle ki, bu önerilerin, 'harekete geçirecek usul' ve konseyin bazı daimi üyelerinin veto yetkisini sınırlandırmayı reddetmesi durumunda nasıl bir 'alternatif yol' izlenecek gibi hususları gözden kaçırdıkları tespit edilmiştir. Bu makalenin amacı bu üç önemli öneriyi

değerlendirmek ve eksiklikleriyle ilgili çözümler sunmaktır. İlk önce Konsey ile ilgili daha önceki reform çalışmalarının arka planı sunulmuş, sonra daha önce önerilmiş olan Davranış Kodları incelenmiş, en son olarak neden 'harekete geçirecek usul' ve 'alternatif yol' özelliklerinin gerekli olduğu açıklanarak yeni bir Davranış Kodu önerilmiştir. Yazarın bilgisine göre, bu konuda, Davranış Kodu ile ilgili bazı politikacıların görüşleri dışında herhangi bir akademik çalışma bulunmamaktadır. Bu mevcut çalışmanın o nedenle literatüre bir katkı yapacağı düşünülmektedir.

**Anahtar Kelimeler:** BM Güvenlik Konseyi, Veto Gücü İçin Davranış Kodu, Koruma Sorumluluğu, Kitlel Suçlar, Uluslararası Barış ve Güvenlik.

## INTRODUCTION AND STATEMENT OF THE ISSUE

A failure to maintain international peace and security could cost much more than can be imagined, as the ongoing Syria crisis demonstrates. The number of casualties in Syria now equals the population of many countries. Reports of mass atrocities in that country have emerged since the civil war began in 2011. The violence there has forced more than 12 million to flee their homes and has killed more than half a million – numbers equal to or greater than the populations of some 120 and 30 nations respectively. These figures clearly demonstrate the seriousness of the casualty numbers in Syria. The conflict has many further negative ramifications for the world community, including political and economic factors.

Two facts regarding the Syrian crisis are acknowledged by the world community:

1. How crucial it is to act in a timely manner when there is a threat to international peace and security.
2. How important it is for all relevant actors to participate in order to provide all the necessary measures for the maintenance of international peace and security, rather than leaving this essential issue in the hands of a few states.

The United Nations Security Council (SC) is responsible for the maintenance of international peace and security. The Council's responsibilities in this regard have grown as new international challenges have emerged (Therien & Belanger-Dumontier, 2009). These include global environmental issues, refugee flows and mass migration across borders, the rapid spread of infectious

diseases, civil war that threatens international peace and security, global terrorism, transnational crime and illegal stocks of nuclear, biological and chemical weapons. However, because of the practices of a few privileged states, the Council has been struggling to perform its primary responsibility; indeed, it could not do this in Syria. The SC has thus become the subject both of severe criticism and of calls for its structural reform.<sup>1</sup>

A variety of proposals for reform have been made by scholars and politicians, almost all of which have mostly focused on amending the size of the Council (Winkelmann, 1997; Cox, 2009; Kelly, 2011). Such suggestions are enlarging the size of the SC by adding more permanent member states with or without veto power, adding more non-permanent member states and limiting or abolishing the veto power. The movement *Uniting for Consensus* was particularly developed to oppose states seeking permanent seats on the Council. There are also regional groups, including the *Ezulwini Consensus* that consists of African governments. This group suggests increasing number of Council members by taking regional divisions into account. There is also the *Five Small Groups (S-5)* consisting of Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland. This group has focused mostly on the reformation of the Council's working methods rather than enlarging its size (Kelly, 2011).

Edmund Burke pointed out in the eighteenth century that “power rarely reforms itself” (Bredvold & Ross, 1960). This seems borne out by the permanent SC members who are inclined to discourage reform. France and the UK seem to be more amenable to negotiating veto powers. As will be discussed later, a French initiative in this regard received support from UK. The only reform since the SC's inception in 1945 was an increase in the number of non-permanent members from six to 10 in 1965. The main obstacles to the implementation of any reform requiring amendments to the UN Charter are the veto power and the consensus problem. Any Charter amendment would require the affirmative votes of all the permanent members in accordance with Articles 108 and 109, the second of which originated in disagreement among members of the UN General Assembly. The lack of progress regarding Council reform has prompted scholars and politicians to develop alternative methods. In this regard, some argue that there must be a Code of Conduct for the Council in order to enable it to react to cases of genocide, crimes against humanity and war crimes.

Some liberals argue that international cooperation has long been an important factor in the maintenance of states' interests (Zacher & Matthew, 1995). It is believed that this would increase the benefits to individual states. Those that refuse to work together consider only their short-term interests. Lack

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<sup>1</sup> Particularly the conflict in Syria and the developing refugee crisis in Europe.

of cooperation in the Syrian crisis has already caused serious problems such as the emergence of a refugee influx and of new terrorist groups that threaten international peace and security.<sup>2</sup> For instance, the crisis provided advocates of Brexit with support. The UK is on course to exit the EU, which would likely weaken both. Had the European states taken effective action in Syria, they may have saved the EU from such difficulties, which are likely to dominate the public agenda for some time. The lack of international cooperation in the Syrian case may constitute a demonstration of how states' long-term interests could be adversely affected. It is therefore important for states to cooperate so as to deal with international problems. Developing a Code of Conduct based on states' political commitment in this regard is an important step towards international cooperation in dealing with international peace and security issues.

There are, however, also realist views that suggest the presence of two main obstacles to the establishment of international cooperation: cheating and relative gains (Grieco, 1988: 487). Realists argue that a state's perception of a risk that other states might cheat would prevent it from cooperating with them. In addition, states pay more attention to relative accrual of benefits rather than to absolute interests. A state would aim to gain more benefits than others by participating in a proposed cooperative venture in order to forestall the risk to its security posed by a relatively greater advantage being gained by others. Being very concerned with their own security, states are wary of their competitors' future behaviours, believing that "today's friend may be tomorrow's enemy in war, and fear that achievements of joint gains that advantage a friend in the present might produce a more dangerous potential foe in the future" (Grieco, 1988: 487). In addition to these two concerns, realists also see international cooperation as inadequate instruments by which to maintain peace and security. They suggest that there should be one hegemonic power to establish cooperation among states, viewing such a power as necessary for continuing cooperation.

Nevertheless, liberals suggest that international institutions are the best answer to states' concerns regarding cheating and the uneven accrual of benefits. They argue that states would favour their own absolute interests over each other's gains. Neoliberals see international institutions as important mechanisms for the prevention of cheating and the punishment of cheaters (Grieco, 1988: 495). They also regard the support of international institutions as enabling enduring cooperation. Keohane (1984) therefore emphasises the need to highlight international institutions rather than a hegemonic power.

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<sup>2</sup> The apparent cooperation in Syria concerns only one consequence of the crisis, namely ISIS, rather than the crisis as a whole.

The contrasting views of realism and liberalism on the establishment of international cooperation can also be seen from states' attitudes to the initiation of the Code of Conduct. Firstly, some southern states are not opposed to cooperation, but do have concerns regarding the implication of the Code, one being that it might diminish their sovereignty if it were misused. This response might reflect the realist concerns with cheating. Secondly, examination of the historical responses by the big powers (the US, Russia and China) affirms the realist's view that a state would not join a cooperative venture if it thought other actors would benefit from this cooperation to the extent of risking its security. Finally, and more broadly, the realist preference for a hegemonic power managing the international order would also be reinforced. The P5, with its integral veto, could be considered as just such a hegemonic power in the maintenance of international peace and security. Responses by the US, Russia and China as the Council's major permanent members<sup>3</sup> could be understood in this way.

On the other hand, some states might not choose to participate in the Code's initiation, their responses conforming to some extent with realist views on cooperation. Yet, such reservations do not necessarily entail rejecting cooperation out of hand. In fact, the difficulty is in finding common ground, particularly between big powers. For example, Russia's preferred solution includes the Assad regime while China sees interference in internal relations without the consent of the government and regional organizations as illegitimate (Odgaard, 2013). It could moreover be said that big powers have a certain amount of common interest in counter-terrorism. It can therefore be concluded that even though states' preferences might conflict, they still see cooperation as being in their long-term interests.

The number of states supporting the Code is around 120. This may indeed show that the majority of states seek absolute interest, reflecting the liberal view. Even though certain responses do justify some realist views on international cooperation, yet the liberal viewpoint's dominance is demonstrated by the high number of states that have supported cooperation by developing the Code as an alternative means by which to maintain international peace and security. Only time will further show whether the realist or liberal views will predominate in the Code's implementation.

## 1. PROPOSALS FOR THE CODE OF CONDUCT

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<sup>3</sup> "Major permanent members" refers to those permanent members that have recently applied their vetoes.

The literature on Council reform is huge, so the present study focuses on those proposals that aim to developing a Code of Conduct for the Council. It thus limits itself to the literature on previous code of conduct proposals.

There is no recognised definition of codes of conduct (Keller, 2008). These can be considered as regulatory instruments, as they generally aim to determine certain principles that can be applied to participants' behaviours (Keller, 2008). In Cragg's (2004) words, codes of conduct have historically been "formulated with a view to guiding the behaviour of individuals, groups, organizations, governments, societies, and, most, recently, corporations". Their main feature is to formulate 'voluntary commitments' made by entities (Bell, 2005). They could include a broad range of regulatory concerns, being established on the initiative of governments, international organizations, individuals, and private organizations (Shelton, 2003).

The development of such codes could become appropriate in situations where "the relevant international law does not apply, or because existing international law is not respected, or because there is no adequate regulation in international law" (Bogdandy, 2008). Some initiatives aim to develop a Code of Conduct for the SC. The main reason behind these initiatives is that the Council does not respond efficiently to cases of mass atrocity as required by Article 24 of the UN Charter because of the permanent members' use of their vetoes. The idea of developing such a code for the Council might be prompted by this disrespect for existing international law.

The Code of Conduct has been distinguished from the majority of reform proposals, as it does not require any amendment to the Charter. Its concern is more with obtaining states' consent. The Code's proponents have naturally directed their attention to the veto power<sup>4</sup>, most of them suggesting that this power must be restricted in cases of genocide, crimes against humanity and war crimes. It mainly concerns requesting P5 members to pledge to refrain from using their veto power in cases of genocide, crimes against humanity and war crimes.

The suggestion that the veto power must be restricted in cases of atrocities was first made in the context of the Responsibility to Protect (R2P) by French Foreign Minister Hubert Védrine in the International Commission on Intervention and State Sovereignty (ICISS) in 2001. Védrine firstly emphasised that sovereignty is not absolute, while also recognising that it is not possible to establish a world order in which intervention is considered as a right. He

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<sup>4</sup> Calls for SC reform have been made since its establishment. The Council's structure is the main subject of criticism, with the use of the veto power at the heart of the problem.

indicated that the Kosovo intervention may have been legitimate, but it did not constitute a precedent for international law. He made his proposal for a Code of Conduct regarding the use of the veto power to the SC (ICISS, 2001). According to this proposal, the P5 would not apply their veto in matters where the vital interests of its members were not at stake (Report of ICISS, 2001). This idea has subsequently been advocated by various people and groups. In 2004 the restriction of veto power was rearticulated in the report of the High-Level Panel appointed by Secretary-General Kofi Annan (Blatter, 2014). The idea of the restricting the veto power did not appear in the report of the well-known World Summit 2005 despite its discussion during Summit debates. The reason for this non-inclusion was pressure from the P5 (Blatter, 2014).

The issue of constraint on the veto in cases of genocide and mass atrocity was raised in the initiative of the Genocide Prevention Task Force in 2008 (GPTF, 2008). The Task Force points out that "...the five permanent members have unique responsibilities to fulfil the mission of the Charter" (p.106). It offers a voluntary mutual restraint of veto in cases of mass atrocity, suggesting that a majority principle be applied to the use of veto in such situations. They recommend that the veto should not be used or threatened in both cases or if a resolution were passed by two-thirds of the General Assembly, unless three P5 members were to cast vetoes. By contrast to the World Summit 2005, the UN Secretary-General made reference shortly after publication of the Task Force's report to the restriction of the veto power, stating

*I would urge them to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect...* (Ban Ki-moon, 2009).

He also emphasized that the General Assembly should play a leading role in determining the UN's response in dealing with the R2P as defined in paragraphs 138 and 139 of the World Summit 2005's Outcome.

The Small Five Group (S5) consisting of Switzerland, Costa Rica, Jordan, Liechtenstein and Singapore published a draft resolution in 2012. The group also suggests restricting the veto power in cases of genocide, crimes against humanity and severe breaches of international humanitarian law. It underlines the importance of developing relations between the SC and the General Assembly, and recommends that P5 members should explain to the UN why they are using the veto (Reform Center, 2012). The draft resolution was later retracted because of pressure from the P5 and the requirement for a two-thirds affirmative vote of UN members (ACT, 2013). In fact, the expectation was only for a simple majority, but when the S5 tabled their resolution to the General Assembly in May 2012, Undersecretary General for Legal Affairs Patricia O'Brien



controversially ruled that the resolution required a two-thirds affirmative vote in order to be adopted (Security Council Report, 2015). Individual countries have also stated their support for these initiatives to restrict the veto.

Finally, the failure of the SC to provide an effective response to the significant number of casualties in the Syrian crisis since 2011 has given significant impetus in the UN to request the restriction of the veto power in cases of mass atrocity. Three major proposals have recently been submitted: the French and Mexican initiative, the ACT Group initiative and the Elders' Proposal.

### **The French and Mexican Initiative**

French Foreign Minister Hubert Védrine's initial suggestion of the restriction of the veto in 2001 was repeated by French president François Hollande at the UN General Assembly in 2013, and was finally published in detail in the New York Times by French Foreign Minister Laurent Fabius on 4 October 2013. This proposal is that the P5 should voluntarily enact a regulation regarding the use of their veto power. There would be no need for a Charter amendment, as the proposal would be implemented by a joint commitment of the veto-wielding powers. The proposal includes a procedural trigger.

The French proposal provides a Code of Conduct for situations of mass crime. The Code would be triggered after at least 50 member states request the UN Secretary General to determine the nature of the crime. Once the Secretary-General confirms the existence of a mass crime, the Code of Conduct would be activated. The P5 would be asked to refrain from using their veto powers. Védrine suggested considering the P5's vital interests in 2001; the 2013 proposal also considers this, suggesting that the Code of Conduct would not be invoked if the essential national interests of a member of the P5 were at stake, a provision that makes the idea feasible in practice. Fabius (2013) predicted that the Code would help maintain the Council's credibility, encourage the international community to prioritize the protection of human life, enhance the power of discussion and constructive negotiation, and prevent member states from using their status as protection.

After France had defined the Code's structure, that country and Mexico arranged a ministerial-level meeting subsidiary to the opening session of the UN General Assembly on 30 September 2015. They made a political declaration regarding the suspension of the use of the veto in cases of mass atrocity. The statement was open to support from UN member states. Like Ban Ki-Moon's 2009 report, France and Mexico's declaration made reference to the statements

of the World Summit 2005. Regarding regulation of the use of the veto, the declaration states that:

*We therefore consider that the Security Council should not be prevented by the use of veto from taking action with the aim of preventing or bringing an end to situations involving the commission of mass atrocities. We underscore that the veto is not a privilege, but an international responsibility.*

The announcement received support from about 80 member states.

### **The Accountability, Coherence and Transparency Group's (ACT) Initiative**

ACT is a cross-regional group that has been endeavoring to improve these three aspects of the Council since its launch by 27 small and mid-sized countries in 2013. The group has advocated the SC's adoption of a Code of Conduct, submitting a proposal open to support by UN member states.

ACT first specifies that the Code would be applied in cases of genocide, crimes against humanity and war crimes. It also calls on the P5 to waive their veto power to block resolutions regarding the prevention or ending of the commission of these crimes. ACT's Code is broader in scope than the French and Mexico initiative, which only applies to the P5, as it would apply all of the UN's present or potential Council members. It suggests that all SC members should promise to support timely and decisive Security Council action aimed at preventing or ending the commission of genocide and crimes against humanity and war crimes.

ACT does not suggest a particular procedural trigger for the Code of Conduct, rather recommending that facts on the ground should play a determining role in whether the Council takes action. The Code would be applied when a state declares its commitment to it. It also attaches importance to the Secretary-General's role in bringing relevant incidents to the Council's attention, stating that it would

*[i]nvite the Secretary-General, making full use of the expertise and early-warning capacities of the United Nations System, in particular the Office of the High Commissioner for Human Rights and the Office on Genocide Prevention and the Responsibility to Protect, to continue to bring situations that, in her or his assessment, involve or are likely to lead to genocide, crimes against humanity or war crimes to the attention of the Council.*

ACT's initiative has garnered more support than the French proposal. Since the Code of Conduct was officially launched on 23 October 2015, 112 member states including two permanent members (France and the UK) have

expressed their commitment to it. It also refers to paragraphs 138 and 139 (the R2P paragraphs) of the World Summit 2005. The one important point about ACT's code is that it has been supported by actors in civil society such as Amnesty International that were panelists at the meeting.

### **The Elders' Proposal**

The Elders is an international non-governmental organization consisting of public figures such as human rights activists and previous statesmen. It defines itself as "an independent group of global leaders working together for peace and human rights" (The Elders, 2015). They commit themselves to promoting the shared interests of humanity and the universal human rights. Among serious international problems such as climate change and global health issues, they have paid significant attention to the UN's working and system, having launched proposals to develop a more efficient organization. They believe that 'when the Security Council fails, the United Nations fails'. They have adopted a statement that includes four proposals that aim to strengthen the UN. These proposals – developing a new category of member, urging the permanent members of the Council to adopt a pledge, advancing relations between NGOs and the Council, and recommending a new process for the election of the Secretary-General – are relevant to the SC. Elders, unlike the Franco-Mexican and ACT group proposals, has not made a statement that is open to support from UN member states.

The Elders' proposal of a pledge by P5 considers the most concerns of the Franco-Mexican and ACT group initiations. The proposal urges that the political will of P5 members must in particular be for preventing or at least limiting mass atrocity crimes. It calls on the P5 to show a strong commitment to find a common ground to prevent or end the commission of genocide or other atrocities. Regarding the restraint on the use of veto, the proposal states that:

*[s]tates making this pledge will undertake not to use, or threaten to use, their veto in such crises without explaining, clearly and in public, what alternative course of action they propose, as a credible and efficient way to protect the populations in question. This explanation must refer to international peace and security, and not to the national interest of the state casting the veto, since any state casting a veto simply to protect its national interests is abusing the privilege of permanent membership.*

The proposal only suggests not applying the veto, but also not 'threaten[ing] to use' it. The threat of veto is also referred as the 'pocket' or 'hidden veto' which occurs when a draft resolution is not officially tabled because of the threat of veto by one or more P5 members (Security Council Report, 2015). The proposal proposes an explanatory instrument similar to the

S5's one, emphasizing that the use of the veto must be explained with regard to international peace and security rather than national interest; the latter would constitute abuse of the veto power. It stipulates that when the veto is applied in cases of mass atrocity despite the Code, an alternative suggestion must be provided. It does not provide a means of determining this alternative course of action. Even so, this is the proposal's most important point: other proposals fail to consider what could be done if any P5 members refuse to waiving their veto in cases of mass atrocity. Finally, unlike the previous proposals, it does not refer to the R2P endorsed by paragraphs 138 and 139 of World Summit 2005. It does, however, underscore the importance of finding common ground for not applying the veto and in developing alternative courses of action when the veto is cast.

**2. EVALUATION OF THE THREE PROPOSALS**

The Security Council Research Report (2015) provides a table summarizing the similarities and differences between the three proposals as follows:

	<i>Crimes Referenced</i>	<i>Procedural Trigger</i>	<i>Applies to</i>
<i>Franco-Mexican Initiative</i>	Genocide, crimes against humanity and war crimes on a grand scale	Secretary-General's determination at the request of at least 50 members of the General Assembly	P5 members
<i>ACT Code of Conduct</i>	Genocide, crimes against humanity and war crimes	None, but the Secretary-General is invited to bring relevant situations to the SC's attention. "Facts on the ground" would result in the code's application	All present or potential UN member states
<i>Elders' Proposal</i>	Genocide and other mass crimes	None, but recognises the important role of the Secretary-General in informing the Council's decisions	All 15 SC members

It should be stated at the outset that these initiatives aiming to develop a Code of Conduct for the SC to make it more effective are very important ones, having been drawn up in response to the Council's failure to solve international crises, in particular the ongoing Syrian one. These initiatives, particularly which of the ACT group, has received support from a significant number of states. Many NGOs have also advocated the implementation of these proposals, possibly demonstrating how the R2P culture has been spreading and receiving a

remarkable degree of support from many countries, regional organizations and non-state actors in international relations. The Franco-Mexican proposal and ACT have made explicit reference to the R2P endorsed in the World Summit in 2005. These efforts indicate how the international community aspires to implement R2P. Such efforts could also pave the way for increasing the pressure on states, particularly the P5, to take action in cases of mass atrocity.

There are nevertheless some reservations that must be addressed regarding these initiatives. The French proposal underlines the necessity of taking the vital interests of the P5 into account in order to maintain a realistic prospect of success. Such a suggestion, however, raises the concern that the initiative would not alter the Council's current situation, as the P5 have already been using their veto power to further their national interests. It could lead P5 members simply to ignore calls to restraining their power by alleging that their vital interests are at stake.

Furthermore, the word 'vital' might imply that the P5 should not cast veto when their less important interests are at stake. The Franco-Mexican proposal may therefore somewhat raise the cost of employing the veto by preferring the phrase 'vital national interests' rather than just 'national interests'. The lack of a suggestion as to the identity of the independent actor that would play a role in defining whose interests are at stake, and whether those interests were vital or not, is still a shortcoming. In the absence of such a procedure, the P5 would itself perform this function, thus justifying the concern that the Franco-Mexican proposal might not affect the Council's current situation.

Another cause of unease regarding this proposal is the attachment of excessive importance to the role of the Secretary-General and its definition as a determinant actor in deciding whether the Code should be activated. It is argued that this would be time-consuming, as it could prevent a timely response to emergency situations. While they do not scruple to recognize the Secretary-General's important role in bringing relevant issues to the Council's attention, ACT's and the Elders' proposals do not suggest any procedural trigger. Yet the issue of timeliness should be dealt after the deadlock in the Council is overcome. This gridlock has resulted in more than half a decade in which an efficient response to the Syrian crisis has not been forthcoming. Not identifying the parties with responsibility for deciding whether the Code should be activated could also lead to uncertainty in developing a strong response to mass atrocities. It must be borne in mind that overcoming the veto obstacle is not easy; such an outcome requires resolute negotiation. Identifying and supporting those actors could put pressure on the veto-holding powers. In any case, if it were true that the Secretary-General should not be the ultimate arbiter of the Code's application, the importance of identifying who would undertake this

responsibility becomes greater. In short, it is vital to assign responsibility for the procedural trigger as part of the Code; leaving it to circumstances could make the Code's efficient activation difficult.

Defining a specific procedural trigger is also important to forestall possible disagreement regarding the necessity for activating the Code. ACT's failure to provide a specific procedural trigger poses some potential problems for the process of implementation. The group's proposal states that the Council would need to take action 'where national or regional mechanisms fail' to prevent the commission of mass atrocities, but this leaves unresolved the question of who would decide whether national or regional mechanisms have failed. For example, it is evident that both national and regional mechanisms have been unsuccessful in the ongoing Syrian crisis. China, which attaches great importance to the role of national and regional authorities, has consistently cast its veto in the Syrian case. ACT's initiative also calls for a 'pledge in particular not to vote against a *credible* draft resolution', but this risks disagreements on the definition of such 'credibility'. As far as possible, therefore, the responsibilities of the actors and the relevant procedural matters should be clearly specified in order to avoid disagreement about whether the Code should be triggered.

Finally, the main deficiency of Code of Conduct initiatives is their failure to provide an alternative mechanism to be employed when one or more of the P5 refuse to refrain from using the veto power in cases of mass atrocity. Only the Elders' proposal raises this issue, but without defining how. Since signing up to the Code of Conduct is voluntary rather than generating an obligation under international law, the Code might be a means of exerting pressure on the Council's permanent members. Nonetheless, as advocates of code initiatives predict, there are obstacles to the Code's implementation. The Code may have achieved significant support from over 110 states and NGOs, but there are states who oppose or remain cautious about veto restraint. The Russian Foreign Minister states that "ideas of scrapping or limiting the UNSC veto power have been voiced before. We think they have no future". China and the US have not supported either the French/Mexican or the ACT Codes. The Research Report of the Security Council (2015) observes that while some southern states are not happy about the use of the veto power, they also consider that the application of the R2P concept could be problematic in that it interferes in the internal relations of sovereign states. They have reservations about a commitment to Code initiatives given the high risk that some permanent and even non-permanent members may still prevent the Council from taking action. It is therefore important that the Code include a procedure for dealing with cases in which one or more of the P5 cast their veto, or some non-permanent members refuse to support resolutions regarding the commission of mass atrocities.

### 3. THE PRESENT RESEARCH PROPOSAL

It should once more be acknowledged that Code of Conduct initiatives are very important means of raising the pressure on the veto powers to develop an effective response towards issues concerning the maintenance of international peace and security. These initiatives reflect the Liberal assumption that all states should take responsibly to negotiate for their own benefit. Liberals argue that all states are equal in terms of their status, rights and responsibilities (Henkin, 1990). Given this perspective, all states should equally be responsible for maintaining international peace and security. It is true that all of the UN's member states may not have the same rights as the Council's permanent members. Yet this should not prevent other states from taking responsibility acting in cases of mass atrocity. The liberal assumption is that international cooperation is an important factor in the maintenance of states' own long-term interests (Zacher & Matthew, 1995). It is important for states to cooperate to overcome political obstacles to the maintenance of international peace and security, in part because this would be benefit their own long-term interests. This could be made possible by adopting measures that would not require the Council's authority, such as diplomatic pressure, humanitarian aid and opening borders to refugees.

The Code initiatives could be considered as a means of bringing actors together to effectively maintain international peace and security. However, their shortcomings – namely their failure seriously to consider such suggestions as a specific procedural trigger and a backup procedure for an alternative course of action should one or more of the P5 refuse to refrain from using their veto power – has already been mentioned. These inadequacies make it necessary to refining the initiatives.

The current work provides two suggestions regarding the procedural trigger: defining signatory states as determinant actors, and providing access to other actors such as NGOs. The present author suggests that the signatory states' implementation of the procedural trigger at the request of a two-thirds majority should recognise the important role of the Secretary-General and all other actors including NGOs in bringing relevant situations to attention of the SC or signatory states. Defining signatory states as determinant actors would be more effective than the Secretary-General or any other parties. The Code does not generate an obligation under international law, as it is a voluntary political commitment by signatory states. In other words, the Code's implementation would largely depend on signatory states. Responsibility for the Code's activation should therefore be given to parties that have already shown their commitment to the taking of effective action against mass atrocities by signing up to the Code. Another consideration is that a two-thirds majority of the current number of states supporting Code of Conduct initiatives would be around 75

states. This number could exert a greater degree of pressure on Council members than is currently possible, and could even encourage other members of the General Assembly and the Secretary-General to show their support. Achieving such a number of signatory states should not be difficult, as they have already shown their awareness of mass atrocities by signing up to the Code.

The current author also suggests an alternative means of action should one or more of the P5 lock the process. The Responsibility to Protect (R2P) principle is intended for emergency situations. It is clear that the SC has failed to take action in the case of Syria, by comparison with Libya. While it is important to exert pressure on the P5 to take action, it may not be right to restrain R2P to the will of the P5. The US's Permanent Representative to the UN, Samantha Power (2016), is a known supporter of the R2P principle; she has stated that R2P is about the world community, which implies an obligation on actors additional to the P5. The Uniting for Peace Resolution's reaction was also a response to the gridlock in the Council. While it may have been led by the US, it was an alternative action to the Council's impasse. The authority emanates from the Uniting for Peace Resolution, which stipulates that the General Assembly (GA) take an active role when the Security Council fails to solve an issue of international peace and security through inefficiency or the use of the veto. It means that the Council is not the only decision-making body of the UN in the maintenance of international peace and security. It also implies that the GA is entitled to urge member states to take action when the Council fails. More importantly, the GA has become final decision making body in issues of international peace and security (Woolsey, 1951). In fact the Uniting for Peace Resolution<sup>5</sup> could provide a legal basis, as it could be triggered at the Council's request upon the vote of any seven of its members<sup>6</sup> or of a majority of UN member states.<sup>7</sup>

There are, however, some differences between the Code of Conduct and the Uniting for Peace Resolution. The main justification for the latter was not R2P, even though it made reference to restricting the veto power. The Code of Conduct makes strong reference to mass atrocities and aims to impel the SC to take action, while the Resolution focuses on peace and security, and aims to

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<sup>5</sup> General Assembly Resolution 377 was adopted in 1950. This Resolution states that "where the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly shall seize itself of the matter" (Woolsey, 1951).

<sup>6</sup> When this resolution was adopted, the Council numbered 11 member states including six non-permanent ones. It would thus require the support of at least one of the permanent members. Since 1965 the number of Council members has increased to 15, including 10 non-permanent members, allowing the possibility of making such requests solely by the votes of non-permanent members.

<sup>7</sup> Members of the United Nations refer to members of the General Assembly (Kelsen, 1945)



empower the GA to take action. In addition, while the Code of Conduct is based on the political commitment of signature states, the resolution could engender obligations under international law.

On the other hand, signatory states could reach a consensus on applying this instrument. For example, a global coalition of 223 civil society organizations has called on UN members, in particular on supporters of the Code of Conduct initiatives, to request implementation of the Uniting for Peace Resolution for Syria crisis on December 2016 (Human Rights Watch, 2016). They might be able to implement an Emergency Special Session of the GA under the Uniting for Peace Resolution and take some measures excluding military operations, as there is no evidence to show that member states could have invoked this Resolution without the consent of one of the big powers.

The international community must develop alternative means to those available to the P5 in order to fulfil its R2P obligations. Power (2016) has explicitly stated that “the Security Council the world needs to deal with this urgent crisis [in Syria] is not the Security Council we have”. States may nevertheless not be able to undertake all their responsibilities, including military operations. The military option may pose a significant challenge without the Council’s authority or the support of one of the big powers. Yet, some courses of action such as diplomatic pressure, humanitarian aid and opening borders to refugees could be taken without waiting for the possibly forlorn hope of agreement among the P5 to withhold their veto in cases of mass atrocity. While the Council has failed to develop an efficient response to the ongoing Syrian crisis because of the veto, this should not prevent other actors from taking alternative measures. Turkey, for example, has opened its doors to more than three million refugees and provided them with significant resources.

It is therefore recommended that a backup procedure be attached to the Code, in the form of a committee that would be activated in case P5 members refuse to refrain from using their veto. The committee would consist of signatory states, regional organizations and NGOs, thereby providing access to actors other than states. This would enable the committee to obtain access to a rich resource base from a variety of actors.

The committee would be tasked as follows:

- It would act when one or more of the P5 refused to withhold its veto power. In cases of mass atrocity, the Code of Conduct would be activated by a determination of a two-thirds majority of the states currently supporting the Code of Conduct initiative. This would mean that the permanent members of the Council should refrain from using their veto power. When one or more

permanent Council members cause obstructions in cases of mass atrocity, the committee would be activated to discuss alternative courses of action.

- Regional organizations and NGOs would pool their knowledge and experience in order to determine what measures not involving the use of armed force should be employed. As mentioned, in the post-Cold War period the maintenance of international peace and security has become a more challenging task for states to deal with alone, as many new threats have emerged. Many non-state actors are experts at dealing with most of these emerging threats. They could make their knowledge, experience and resources available, so their participation would facilitate states in tackling issues of international peace and security that appear on the committee's agenda. For example, the African Union (AU) could advise regarding an ongoing conflict in Africa; as the AU knows its region better than a European state, it could make more appropriate suggestions. NGOs could play key roles in providing information about conflict areas, and deploy their relief resources on behalf of people suffering from conflicts. NGOs may well be able to provide these resources without the Code of Conduct, but the support of signatory states could make their access to conflict areas easier and safer.

- Signatory states would define the measures to be finally adopted by majority decision. They would consider all proposals for measures from states, regional organizations and NGOs, then put them to vote. The proposal receiving most support from signatory states would be approved for implementation.

The structure would consist both of states and non-state actors who favour the Code of Conduct. The structure reflects the liberal argument that it is possible to take efficient action in cases of mass atrocity if all actors such as states, non-states actors, international and regional organizations cooperate. Likewise, Prof Barker (2013) considers that responsibility, in both domestic and international law, could be best understood as 'a relational concept that depends upon notions of solidarity, humanity and caring'. Such an alternative course of action that does not include the use of force is likely to attract more support from states whose sole concern is military intervention, not other measures such as humanitarian aid, diplomatic pressure and economic sanctions. In addition, developing a backup procedure could help ensure the timely implementation of measures, thereby preventing or at least lessening the number of casualties. Being aware of a backup procedure that would be triggered if the Council is prevented from acting could exert more pressure on the veto powers.

The following is an updated table that includes the current proposal:

	<i>Crimes referenced</i>	<i>Procedural trigger</i>	<i>Applies to</i>	<i>Backup procedure</i>
<i>Franco-Mexican initiative</i>	Genocide, crimes against humanity and war crimes on a grand scale	Secretary-General's determination upon the request of at least 50 members of the General Assembly	P5	N/A
<i>ACT Code of Conduct</i>	Genocide, crimes against humanity and war crimes	None, but the Secretary-General is invited to bring relevant situations to the SC's attention. The "facts on the ground" would result in the code's application	All current or potential SC member states	N/A
<i>Elders' Proposal</i>	Genocide and other mass crimes	None, but recognises the important role of the Secretary- General in informing the Council's decisions.	All 15 Council members	Search for common ground to agree on an effective course of action
<i>Current Paper's Proposal</i>	Genocide, crimes against humanity and war crimes	Signatory states' determination at the request of a two-thirds majority of signatory states; also recognising the important role of the Secretary-General and all other actors in bringing relevant situations to the attention of the SC or Signatory States.	All current or potential SC member states	The constitution of a committee to be activated should P5 members refuse to withhold their veto

#### 4. CONCLUSION

Since its establishment the SC has sometimes struggled to fulfil its prime responsibility for the maintenance of international peace and security. Its structure has been seen as the main cause of its failures, prompting the submission of many reform proposals. Yet, the only reform that took place was in 1965, when the number of non-permanent members was raised from six to 10. The Council's failure in the ongoing Syrian crisis has raised significant concerns about its structure, and the difficulty in amending the Charter has led states to consider alternative methods such as developing a Code of Conduct that does not require any such amendment. Three major initiatives – the Franco-Mexican, ACT and Elders – have been developed. Their logic is mainly a call to the P5 to voluntarily withhold their veto in cases of mass atrocity.

These initiatives represent important steps to counteract the Council's gridlock and to demonstrate the eagerness of states to implement the R2P

principle endorsed at the World Summit 2005. These initiatives do, however, have some shortcomings such as the lack of a persuasive and clear procedural trigger and a backup procedure. The current author provides a suggestion for the improvement of current Code initiatives by proposing mechanisms for dealing with these deficiencies. The study considers that the determinant actors as regards the procedural trigger should be those states that have shown their commitment by signing up to the Code. In this way, the Code could be more persuasive and could work more effectively. The present author argues that there is a high risk that the veto-holding states would not refrain from using their vetoes voluntarily in cases of mass atrocity. He thus suggests a backup procedure that could be activated and could work independently of the P5 when the Council is deadlocked in such cases. The proposed backup procedure includes the participation of other parties such as regional organizations and non-state actors. Even though the Code of Conduct is based on political commitment, it requires strong cooperation in order to generate an efficient mechanism for dealing with issues of international peace and security. As liberals suggest, it would benefit these states' long term interests if they could manage to cooperate under these conditions.

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