

1 September 2015

Explanatory Note

on a Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes

UN Member States are increasingly expressing support for the idea that permanent members of the Security Council should voluntarily agree to refrain from using their veto in situations involving mass atrocity crimes. This initiative is actively being pursued by France, which is seeking the support of other permanent members.

Members of the ACT (Accountability, Coherence, Transparency) Group have consistently advocated for such a Code of Conduct to be concluded. With a view to supporting this effort, and bearing in mind that the **70th anniversary of the United Nations would provide an ideal platform** for the launch of such a Code of Conduct, the ACT Group herewith submits the final text of the Code of Conduct, as set out in the annex. The Code of Conduct has been elaborated informally by the ACT subgroup on the veto and has been further adjusted following extensive informal consultations with Member States and other interested stakeholder. It is currently supported by 25 Members of ACT (Austria, Chile, Costa Rica, Denmark, Estonia, Finland, Gabon, Ghana, Hungary, Ireland, Jordan, Liechtenstein, Luxembourg, Maldives, New Zealand, Norway, Papua New Guinea, Peru, Portugal, Rwanda, Saudi Arabia, Slovenia, Sweden, Switzerland and Uruguay) as well as Belize, the Netherlands, Spain and Ukraine. **Member States are herewith invited to formally support it, i.e. to agree to be included in the list of States that expressed their commitment to the Code of Conduct.**

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

- The crimes in question are referred to as **genocide, crimes against humanity and war crimes** – all well defined in international law.
- The Code is **not only for permanent members** of the Security Council, but for any member of the Council, as well as for any other State that may, at some point, become a member of the Council. Security Council action in response to these crimes requires the support of all Council members, not just permanent members. This Code of Conduct is thus not just about the veto, but represents a broader pledge to support timely and decisive Security Council action in such situations.
- The Code contains a general and **positive pledge to support Security Council action** against certain crimes (OP1) – both to prevent or end these crimes.
- The general pledge in OP1 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 (OP2) – no distinction is made here between permanent and non-permanent members.
- There is **no procedural trigger for the code to apply**. 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.
- The application of the Code of Conduct is subject to the assessment of a particular situation by a State that has expressed its commitment to the Code of Conduct. However, the **Secretary-General** would serve 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 weight.

Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes

We, the Member States of the United Nations listed below, who are or who may in the future serve as members of the Security Council,

Recalling that the members of the United Nations have conferred on the Security Council primary responsibility for the maintenance of international peace and security,

Determined to uphold the purposes and principles of the Charter of the United Nations,

Reaffirming the commitment by the Heads of State and Government of the Members of the United Nations contained in paragraphs 138 and 139 of the World Summit Outcome Document,¹

Acknowledging that genocide, crimes against humanity and war crimes constitute crimes of concern to the international community as a whole, are prohibited under customary international law and can constitute a threat to international peace and security,

Welcoming the Human Rights Up Front Action Plan and the Framework of Analysis for Atrocity Crimes developed by the Office on Genocide Prevention and the Responsibility to Protect,²

Convinced that, in particular where national or regional mechanisms fail, timely and decisive Security Council action may be necessary to prevent or end the commission of genocide, crimes against humanity and war crimes³,

1. *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;
2. *Pledge in particular* not to vote against a credible draft resolution before the Security Council on timely and decisive action to end the commission of genocide, crimes against humanity or war crimes, or to prevent such crimes;
3. *Invite* 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;
4. *Pledge* to fully and promptly take into account such an assessment by the Secretary-General;
5. *Also invite* all other Member States of the United Nations to express their commitment to this Code of Conduct.

New York, [24 October 2015]

[List of States supporting the Code of Conduct as at [24 October 2015]]

[List of States supporting the Code of Conduct after 24 October 2015, to be updated periodically]

¹ General Assembly Resolution 60/1, paragraphs 138 and 139, which set out the Responsibility to Protect.

² See www.un.org/sg/rightsupfront/ and www.un.org/en/preventgenocide/adviser/documents.

³ The term “war crimes” refers in particular to war crimes committed as part of a plan or policy or as part of a large-scale commission of such crimes.