From: Rob Boswell, Policy Advisor, Global Centre for the Responsibility to Protect
To: Amb. Nicolas de Rivière, Permanent Mission of France to the UN in New York
Subject: Security Council Reform: Create a Subsidiary Organ to Help End Mass Atrocities
Date: 4 March 2020

Dear Amb. Nicolas de Rivière,

I am writing to ask whether the French Republic would support a new Security Council (SC) reform proposal and discuss it with your fellow ambassadors from the Permanent 5 (P5) SC member states: the creation of a permanent SC subsidiary organ — an *independent* advisory body on halting mass atrocities, hereafter called the "Mass Atrocities Division" (MAD). The MAD would comprise experts on international humanitarian and human rights law, mediation and peacebuilding, sanctions regimes, and emergency humanitarian intervention operations. Creating this subsidiary organ would mark an important step toward the goal of ultimately ending genocide, crimes against humanity, war crimes, and ethnic cleansing worldwide.

France's Role on SC Reform:
The Global Centre for the Responsibility to Protect greatly appreciates France's leadership among SC members in seeking to reform how the P5 addresses crises involving mass atrocities. Since 2013, France has strongly advocated for the P5 to voluntarily refrain from using the veto in cases involving mass atrocities. We also value France and Mexico's joint "Political Statement on the Suspension of the Veto in Case of Mass Atrocities" at the 70th session of the UN General Assembly (GA) in 2015, supported by over 100 member states. France and the UK's backing of the July 2015 Accountability, Coherence, and Transparency (ACT) Code of Conduct — which urges permanent and non-permanent SC members not to oppose any credible resolution aimed at halting mass atrocities — was another positive step toward eliminating such crimes. We believe that our reform proposal, outlined further below, will complement and reinforce these initiatives.

Unmet Aspirations of the Responsibility to Protect:
The Global Centre for the Responsibility to Protect aims to encourage the Security Council (SC) to establish the MAD subsidiary organ and advocate for UN policy changes to strengthen and enforce the Responsibility to Protect (r2p) as a global norm. Despite r2p's unanimous endorsement by UN member states at the 2005 World Summit — which renewed hope for decisive international action against atrocities — over 86 million people have died from genocide, crimes against humanity, and war crimes in the 21st century (Coalition for the International Criminal Court). From 2006 to 2017, an average of 80,000 "targeted mass killings" occurred annually, defined as incidents where organized armed forces kill at least 25 noncombatant members of a political, ethnic, or religious group within a year to destroy or intimidate the group by threatening its survival (Butcher et al., 2020).

Key Problems Preventing Rapid and Effective Security Council Action on Atrocities:
SC Member States' Geopolitical Interests Interfere
A major factor leading to the SC's failure to fulfill its responsibilities under r2p has been the fact that some P5 members have threatened to (or actually) vetoed resolutions aimed at halting or preventing mass atrocities by their allies. For example, due to its geopolitical ties with Syria, Russia has vetoed 14 SC resolutions addressing the Syrian conflict since 2011, enabling atrocities that, according to the Syrian Observatory for Human Rights, have resulted in over half a million deaths. Perpetrating states like Syria and Myanmar know they can count on P5 allies blocking any meaningful resolutions aimed at stopping them from committing atrocities.

SC Members *Independently* Decide if Atrocities are Occurring, Using *Extraneous* Criteria
Secondly, each SC member state decides on its own whether *it* believes atrocities are occurring. The 2005 World Summit Outcome Document recognized that *all* member states "are prepared to take collective action [up to and including the use of force], in a timely and decisive manner, through the [SC] …" when a state "manifestly fails" to protect its populations from mass atrocities. Yet, since each SC member's decision on whether mass atrocities are likely occurring often rests on their geopolitical interests and level of political will to take action, they often neglect to base such decisions *objectively* on recognized standards of jurisprudence. SC deadlock or apathy usually result.

Why Early SC Action is Critical:
Due to the preceding factors the SC almost never acts in a "timely" or "decisive" manner as stipulated in r2p. Yet, the *beginning* stage of conflicts involving mass atrocities is the optimal time for the international community to engage in mediation efforts and, if needed, humanitarian intervention to press parties to resolve conflicts in ways that limit civilian death tolls. According to William Zartman's widely accepted theory among conflict resolution practitioners, armed conflicts are "ripe" for resolution *early on* in their duration. If outside action to help bring the conflict parties to the negotiating table is not taken early on, such a conflict *cannot* be resolved until after it has greatly intensified, and the conflict parties finally perceive a "*mutually* hurting stalemate" has been reached. Thus, early SC action is essential to minimizing mass atrocities. The SC must begin adopting reform measures that pressure the P5, *in spite of* their geopolitical interests or level of political will, to make agreements rapidly, when crises first emerge, on how to effectively pressure warring parties committing atrocities to stop and to instead negotiate.

Our Proposal:
Under Article 29 of the UN Charter, the "Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions." In order to counterbalance SC members' diverging geopolitical interests or lack of political will to act in cases of mass atrocities — which interferes with their ability to make objective and unified judgments on whether such crimes are likely occurring and how to respond — the MAD would contain an *independent* body of internationally recognized experts on international humanitarian and human rights law that would be tasked with forming such conclusions. Unlike a tribunal — which would normally take years to decide whether mass atrocities have indeed occurred and who is responsible — the MAD's judicial experts would need to make such judgements rapidly, on a "preponderance of evidence" standard of proof rather than "beyond a reasonable doubt." The objective would be to stop mass atrocities from occurring — not to decide who precisely is guilty of such crimes or punishments that should be meted out.

The MAD would be allowed to assess any intelligence and early warning information which states voluntarily share with them, and which Secretariat entities (e.g., UNOCC, UN peacekeeping mission JMACs, OHCHR, and the UN Office of Genocide Prevention and the Responsibility to Protect) would be required to share with them, and they would also conduct research of their own to assess the likelihood and severity of alleged situations involving mass atrocities.

After the legal experts in the MAD make a formal determination of the likelihood and severity of ongoing or imminent mass atrocities, experts on mediation and peacebuilding, international sanctions regimes, as well as humanitarian intervention would meet with the legal experts to determine, through detailed discussions and by supermajority vote, the most effective course of action needed to deter and halt atrocities. Together, the MAD experts would determine whether any peaceful options would likely be sufficient to halt the atrocities and bring the conflict parties to negotiate before considering options involving the use of force.

The MAD would be entitled to be party to all SC discussions on crises involving atrocities and potential responses being considered, call emergency sessions of the SC at any time, require SC members to listen to its findings and consider its recommendations, create draft resolutions that must be considered by the SC, make press statements regarding its own findings and views on what SC action, if any, should be taken, and comment publicly on whether it believes newly drafted or passed resolutions by the SC would be sufficient to adequately address any crisis involving mass atrocities.

The advantage gained by creating the MAD rests on it being *independent* and free from geopolitical interests. Members could not be nationals of, permanent residents of, or have financial ties or other conflicts of interest with any member state on the SC, and SC states would be prohibited from pressuring, intimidating, or financially enticing MAD members to take a stance on a given crisis. The GA would elect MAD members for two-year terms at the same time the GA votes on which states will be the next non-permanent SC members. The creation of SC subsidiary organs that operate *independently* from the SC is not without precedent, nor is the election of individuals to such a subsidiary organ by the GA. E.g., the ICTY was created as an independent SC subsidiary organ with judges elected by the GA.

To overcome concerns from Russia and China that the MAD would promote "Western" views or "Western interventionism", candidates for MAD membership would come from diverse geographic backgrounds, and the MAD could not advocate intervention into P5 homelands or regime change anywhere. Instead, MAD draft resolutions would be required to seek to bring conflict parties to negotiate; resolutions recommending force would only be allowed after MAD experts determine attempts to prevent atrocities without using force will fail. Because of the MAD's independence, and because it would have the ability to make its own public statements, SC states would feel pressured to appear to closely consider the MAD's findings and recommended actions before developing their own stances.

All P5 member states, as veto holders, must either vote in favor or abstain on the draft resolution to create the MAD, with at least 9 total votes from permanent and nonpermanent SC members required for adoption. Once established, the veto power ensures the MAD's longevity, as no subsidiary organ can be dissolved without the consent of all P5 members. While creating the MAD would not prevent P5 members from vetoing resolutions on mass atrocities, it would increase the political and public costs of doing so. SC members would face pressure to align with the MAD's independent analysis and publicly justify dissenting positions without directly invoking their geopolitical interests. By establishing the MAD, P5 members that have historically shielded allies could enhance their international reputation by demonstrating credible action against mass atrocities, while SC members demonstrating actions consistent with MAD proposals would gain greater international legitimacy.

The Assistance We Seek from France:
We kindly request your help to begin discussing the proposal of creating the MAD as a SC subsidiary organ with your fellow P5 ambassadors to the UN, and in particular the ambassadors of the U.S., Russia, and China. We also ask if you would write follow-up "dear colleague" letters to the P5 ambassadors laying out arguments, including those in this letter, that you feel would most effectively persuade them to endorse this initiative. After such discussions, and after the P5 and a sufficient number of non-permanent SC members (at least 4) have agreed to create the MAD, we also ask that France take the lead in drafting and tabling the resolution to establish it.

With appreciation,

Rob Boswell
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