TWQ   Routledge
Taylor & Francis Group

Check for updates

When responsibility to protect 'hits home': the refugee crisis and the EU response

Stefania Panebianco and Iole Fontana

Department of Political and Social Sciences, University of Catania, Catania, Italy

ABSTRACT

While the Syrian refugee crisis unravels at the EU's doorstep and as the death toll in the Mediterranean continues unabated, questions about the international community's duty to act on behalf of the afflicted people inevitably arise, thereby fuelling convoluted debates about Responsibility to Protect (R2P). In light of the international community's inertia and of the EU's incapacity to adequately manage the worst humanitarian crisis of recent times, this article argues that time is ripe to explore other ways to implement R2P. There is a 'missing' link between R2P and refugee protection and the duty to protect refugees can be framed within the R2P discourse. Building on the idea that asylum is central to the implementation of R2P, we suggest that the acknowledgment of the linkage between R2P and refugee protection is helpful not only to improve the EU management of the current crisis, but also to uphold R2P when the international community is at a stalemate.

1. Introduction

In recent years, Europe has witnessed a dramatic increase of migrants and refugees arriving by sea, with over 1 million arrivals across the Mediterranean in 2015. This great mass movement unsurprisingly reflects the number of globally displaced people[1] who flee their home because of poverty, deprivation, persecution and armed conflicts, and who represent today an unprecedented world record since the aftermath of World War II. The civil war in Syria unavoidably fuelled this displacement, by devolving into a humanitarian catastrophe with over 250,000 people killed in five years and over 4.8 million Syrian refugees.[2] In addition to these dramatic figures, thousands of people have died in their desperate attempt to reach Europe, making 2016 the deadliest year ever.[3] The Mediterranean entry route to the EU has therefore entered the EU agenda as a top priority compelling the EU to take action.

While one of the biggest and challenging refugee crises ever unravels on the EU borders, and as the death toll in the Mediterranean continues unabated, troubling questions about the international community's moral duty to act on behalf of the afflicted people inevitably arise, thereby fuelling convoluted debates about the Responsibility to Protect (R2P) nascent norm.[4] Launched in 2005, the R2P principle has now 'turned 10' and has become a widely

CONTACT Stefania Panebianco ✉ stefapnb@unict.it

discussed international norm.[5] Its implementation, however, remains thorny and problematic.[6] The UN Security Council (UNSC) paralysis over action in Syria, with a divided international community which dithered about military intervention in spite of the visible and growing escalation of violence, is a case in point. Consequently, the international community's failure to respond in a timely and decisive manner to the Syrian crisis was widely described as a failure of R2P.

In light of the international community's inertia and of the EU's alleged incapacity to adequately manage what is considered as the worst humanitarian crisis of recent times, this article suggests that time is ripe now to explore other ways to implement R2P.[7] As the Libyan case demonstrated, military interventions can be ineffective while the duty to protect those in need remains a priority. Building on the emerging idea that asylum is central to the implementation of R2P,[8] we argue that there is a 'missing' and yet poorly explored link between R2P and refugee protection and that initiatives aimed at protecting displaced people escaping from war, conflict, persecution and human rights' violation can be framed within the R2P discourse. Receiving refugees can represent a prudent option to provide humanitarian assistance to those in need.[9]

Whereas the greatest bulk of political and academic debates gave preponderant attention to R2P third pillar, which foresees the potential use of collective force, this article claims that it is reductive to conceive R2P merely in terms of international (military) intervention to stop genocide or ethnic cleansing. The fascinating debates on the use of force for humanitarian purposes stem from a narrow interpretation of R2P, while the conception of R2P as the duty to protect refugees – by focusing on non-coercive and non-violent aspects of the human protection norm – opens new theoretical and empirical research perspectives. A broader view of R2P is more appropriate to understand current crises such as the Syrian refugee crisis and to critically explore the initiatives adopted by the international community, particularly the EU. Therefore, the article critically reviews and assesses the EU response to address the refugee crisis. It suggests that the acknowledgment of the linkage between R2P and refugee protection is helpful not only to improve the EU management of the current crisis, but also to uphold R2P when the international community is at a stalemate. Reacting to the argument that R2P contains no requirements to grant asylum,[10] we acknowledge that R2P per se cannot guarantee refugee protection, but there is an increasing scholar attention to the need to reform and adapt the refugee protection regime to the requirements of populations vulnerable to atrocity crimes. By drawing from the on-going theoretical debate, therefore, we believe that alongside the normative implications of spoken foreign policy acts, it is fruitful to look at the practices of R2P and its three pillars.[11] Overall, the purpose of the article is to think out of the box and, while engaging with current scholarly debates, devise tools that could help policy-makers and other stakeholders to re-conceptualise existing systems of protection.

The article is organised as follows: Section 2 and 3 provide a brief overview of R2P and demonstrate why and how asylum and refugee protection relate to R2P core elements. Section 4 focuses on the EU management of refugee crisis. Section 5 and 6 assess its effectiveness and explore the linkage between R2P and the EU response to protect refugees.

2. To intervene or not to intervene? The R2P dilemma

The R2P principle was firstly conceptualised in 2001, when the International Commission on Intervention and State Sovereignty (ICISS) issued the report entitled 'The Responsibility

to Protect', attempting to reconceptualise the seemingly contradictory notions of state sovereignty and humanitarian intervention. The report was unanimously endorsed by the Heads of state and government in 2005, at the 60th UN anniversary. According to its main founding documents,[12] R2P has been proclaimed as a new norm which affirms the protection of people at risk and shifts the focus from the security of the state to the security of the individual. Its rationale is that the notion of State's sovereignty implies 'responsibility', hence State's authorities are responsible for protecting their people's safety and lives.

This is why R2P's first pillar affirms that States carry the primary responsibility for the protection of populations from four specific 'atrocity-crimes'[13] – genocide, war crimes, ethnic cleansing and crimes against humanity. Therefore, the concept of 'responsible sovereignty' implies that any State's failure to exercise its sovereign duty to protect leads to a corresponding diminution of its right to non-interference by outside forces.[14] In this sense, R2P's second pillar states that the international community has the responsibility to assist States in fulfilling their responsibility to protect, by either persuading them to do what they ought to do or by helping and assisting them to build their capacity to protect.[15] Ultimately, if a State fails to protect its populations or is in fact the perpetrator of crimes, the international community should adopt appropriate measures, either peaceful (e.g. diplomatic means, humanitarian aids, targeted sanctions) or non-peaceful, including the use of collective force mandated by the UNSC. More specifically, R2P's third pillar suggests that if a population is suffering serious harm and the State is unwilling or unable to halt it, the principle of non-intervention yields to R2P, including the use of force as a last resort tool, if peaceful means are inadequate or if national authorities are manifestly failing to protect the population.

Finally, R2P principle unfolds through three main responsibilities: (a) responsibility to prevent the causes which might put populations at risk; (b) responsibility to react to situations of human needs with all the necessary means; and (c) responsibility to rebuild by providing recovery and reconstruction.[16]

From the outset, the R2P debate has presented the international community with acute 'moral dilemmas'[17] about the choice of intervening or not, on the idea that intervention provokes international consequences and not necessarily mitigates abuses. At the same time, non-intervention entails the risk of becoming complicit bystanders in atrocity crimes. It is for this intrinsic controversial character that the international community has always been a hesitant – more than an enthusiastic – supporter of the R2P doctrine, making implementation inconsistent.[18] Syria is the glaring example of these dilemmas. On the one hand, many UN countries deplored Syrian authorities' violent repression of protests as a crime against humanity and recalled the basic principle of R2P: if a State manifestly fails to protect its population from serious international crimes, the international community has the responsibility to step in by taking protective action.[19] On the other hand, many others opposed the meddling into a state's internal affairs, rejected violations of sovereignty and called for the respect of Syria's independence and territorial integrity.[20] In Syria, the pendulum of R2P eventually swung away from the application of military intervention. The opposite views that heated the debates over Syria were not so much different from those that had characterised discussions over Libya few months before.[22] In this sense, discourses on R2P seem to have been set to travel 'back to the future' with traditional dilemmas being re-proposed over time and with the old overwhelming attention on military intervention at the heart of the political debate, which turns out to be inadequate to address key challenges such as the current refugee crisis.

3. R2P and refugee protection: looking for the missing link

Syria represents the biggest humanitarian crisis of our times, not only for the gruesome death toll provoked by the civil war, but also because it has the largest refugee population under the UNHCR's mandate. The number of refugees overwhelmed neighbouring countries,[23] with Lebanon and Jordan hosting around 1 million people and Turkey around 3 million. A staggering number of refugees fled abroad since the outbreak of the conflict and dramatic statistics show an increasing number of people dying in the dangerous attempt to take the sea route across the Mediterranean. In such a context, the EU experienced massive arrivals with hundreds of thousands people reaching its shores in the attempt to find a safe heaven. The European Council of December 2016 acknowledged the gravity of the 'Eastern Mediterranean route' in terms of arrivals being fuelled by the Syrian crisis, while the 'Central Mediterranean route' has the highest death toll[24] (Table 1). Distinct tools have been adopted to address the two different entry routes, namely the EU–Turkey Agreement in the former case and migration compacts in the latter.[25]

In light of these developments, debates on the application of R2P to the refugee crisis naturally arise[26] bringing to the fore the thorny issue of asylum as an instrument of R2P.[27] Traditional discussions on R2P have mainly focused on the military aspects of its third pillar and framed it as a foreign policy matter that concerns the protection of vulnerable population abroad and across international borders. Yet, the migration and humanitarian crises sparked by the Syrian war prompted questions on the *inward* application of the R2P,[28] i.e. the protection of peoples who *come from* states unwilling or unable to ensure their protection from atrocity crimes.

Whereas the original documents[29] do not explicitly explore this aspect, the conditions for applying the principle of R2P to refugee crises are closely related to the very essence of the international norm. First, it is worth recalling that the legal framework of the international refugee protection system is grounded in the responsibility of the States to protect their citizens and, when States fail to do so, the international community has to step in to ensure that the basic rights of the individual forced to leave home are respected. International protection is therefore intended as a way to make up for the failure of the State to protect its people.[30] In this sense, as stated by the former UN Secretary General, R2P first pillar builds on – and seeks to – strengthen compliance with existing States' obligations under international and humanitarian law, including refugee law.[31]

Secondly, R2P was narrowly conceptualised to apply only to four specific atrocities (war crimes, crimes against humanity, ethnic cleansing, genocide). Yet, there is an unavoidable link between atrocity crimes and mass displacement.[32] Fleeing atrocities is a self-protection strategy that can be nonetheless extremely risky because of the journey's potential casualties, and when foreign countries refuse to permit refugees to land on their territory they contribute to the death toll.[33]

Table 1. The Eastern Mediterranean entry route to the EU.

	2013	2014	2015	2016
Sea Arrivals to Europe	59,421	216,054	1,015,078	361,709
Eastern Route Sea Arrivals	/	41,038	856, 723	173,450
Deaths in the Eastern Mediterranean sea	/	59	799	441
Asylum Applications in EU Member States	431,000	627,000	1,322,825	1,170,145

Source: UNHCR and FRONTEX

Thirdly, according to R2P first pillar, a State is responsible for the protection of its population, *whether nationals or not,* and the fundamental notion of 'responsible sovereignty' is based on the politics of inclusion and not exclusion.[34] To grant asylum to people fleeing atrocity crimes and to refrain from their *refoulement* are constitutive elements of the effort to fulfil R2P, as directly entailed by the legal obligations that correspond to states' sovereignty (first pillar). This means that the international community's collective responsibility is something more than a mere foreign policy matter, but rather implies the protection of people escaping from atrocity crimes regardless of their territorial location outside their country of nationality.[35] R2P is therefore significant for refugees and internally displaced persons as these are among those at most risk of mass atrocities; when states commit to protect refugees they exercise their responsibility to protect.[36] This is also a way to operationalise responsibility to prevent humanitarian crises, insofar as the key element behind prevention is to forestall what is perceived to be an impending catastrophe.[37] In this sense, humanitarian admission programmes and asylum policies allow preventing atrocity crimes on fleeing people who otherwise would not be protected. As said by the UN Assistant Secretary General for Human Rights, the starting point of R2P is human rights for everyone[38] and R2P implies an evaluation of the issues from the point of view of those seeking or needing support, rather than those who may be considering intervention.[39] By adopting this perspective, refugee policies can be a tool of R2P's first pillar and namely of responsibility to prevent, by allowing victims to find a temporary safe haven as soon as they cross the border of the state in which their life is potentially at risk.[40]

In terms of R2P's second pillar – i.e. helping states to protect their people – the starting point is solidarity.[41] This means that a state, which welcomes refugees on its territory and recognises temporary asylum, respects the principle of solidarity and assists other states who are instead failing in their duty of protection. Hence, adequate refugee policies can be an instrument to operationalise R2P's second pillar. Moreover, with its focus on assistance, R2P's second pillar paves the way to international cooperation in order to share the costs of protecting refugees, i.e. helping to relieve the burden of front-line and neighbouring states who cannot deal alone with massive refugee influxes fleeing their home country.[42] Resettlement and relocation programmes are crucial in this sense.

Finally, even if the R2P doctrine entrusts the UNSC with the primary responsibility to act, its inaction may not render crimes lawful. This implies that in the case of UN paralysis, the members of the international community should step in to guarantee the fulfilment of R2P with other peaceful means, including guaranteeing in their own territory the protection of those who are escaping persecutions. Although states' action to fulfil R2P can be hindered at the international level if the international community is at stalemate, they can still address their R2P duties at the domestic level, by reframing refugee policies as an instrument to uphold international R2P. Granting asylum and other protection measures is important, insofar as they are devoid of the traditional discussion on military intervention and emerge as the most practical and least controversial response to protect the victims of atrocity crimes.[44]

People on the move require adequate protection measures[45] and States need new legal and operational frameworks to fulfil their responsibility to protect people who flee their home country. The first of these measures is a fair and efficient process to determine the asylum seeker's status and guarantee asylum to potential victims of mass atrocities.[46] Moreover, as displacement inevitably increases potential casualties for people fleeing

Table 2. R2P applied to refugees' protection.

	R2P: Pillar I	R2P: Pillar II	R2P: Pillar III
	A state is responsible for the protection of its population whether national or not.	Asylum as an application of the principle of solidarity, assisting the states that fail in their duty of protection	Asylum as an alternative peaceful mean to military intervention
R2P/asylum linkage	Asylum to people fleeing from atrocity crimes is entailed by the obligations that correspond to States' sovereignty.		
Potential measures	*Asylum to people in need; efficiency and fairness of legal procedures to determine asylum-seeker status; non-refoulement; SAR operations*	*Resettlement, relocation and temporary protection schemes; humanitarian aid to support countries with high arrivals*	*New legal and operational frameworks to implement protection measures*

Source: Authors' elaboration.

atrocities, Search and Rescue operations (SAR) help reducing the risk of harm's exposure,[47] allowing to uphold responsibility to prevent. Resettlement, relocation and temporary protection schemes, as well as humanitarian aids, are other key actions that permit to uphold the principle of solidarity and international cooperation beneath R2P's second pillar, by allowing burden-sharing among different states (Table 2).

Refugee protection is therefore extremely relevant for the implementation of R2P, insofar as it implies instruments and measures that allow for alternative peaceful ways to uphold R2P, devoid of sterile controversial debates and able to protect potential victims of atrocity crimes even in the case of UN paralysis. However, when one explores the 'missing link' between R2P and refugees, the arising question is not only what refugee protection means to R2P, but also what R2P means to the international regime of refugee protection. If refugee protection is relevant for the implementation of R2P, what is the significance of R2P for refugee law?

R2P can pave the way to a collective duty to protect a specific category of refugees, i.e. those fleeing from atrocity crimes. More generally, it helps to expand the responsibility of states towards the so-called 'war refugees'[48] not covered by the 1951 Refugee Convention's definition.[49] As suggested by Tendayi Achiume,[50] the existing international refugee regime which currently governs States' obligations does not provide for any duty of assistance to those countries that are overwhelmed by refugees' arrivals due to their geographical proximity to conflicts. This impinges upon refugees' safety, insofar as affected states are not necessarily able to guarantee adequate protection and living conditions to refugees. In this sense, the acknowledgment of the link between R2P and refugee protection is relevant as long as R2P's II pillar and its embedded duty of assistance can be used to facilitate international cooperation to share the costs of protecting refugees.

4. The EU and the Syrian refugee crisis

In the heated debates that have divided the international community in two opposite factions – 'responsibility-for-Syria' versus 'respect-for-Syrian sovereignty' – the EU arguably joined the first group. In its discourses within the UN Human Rights Council, it explicitly upheld R2P and recognised that 'when a state fails to meet its responsibility to protect, the international community must step in and take a proactive action in an interactive, collective and timely manner'.[51] In light of international inertia, questions arise on possible alternative

peaceful ways for the EU and its Member States to uphold R2P, paving the way to the issue of refugees' protection and asylum policies as a tool of R2P.

Whereas the situation in Syria worsened and an increasing number of people arrived to European coasts, the EU long hesitated to recognise the humanitarian dimension of the migrant crisis. It was only after the launch of the Italian operation *Mare Nostrum* that it adapted its discourses and practices accordingly.[52] Following Lampedusa's tragedy in October 2013, when over 360 people lost their lives in the desperate bid to reach the Italian soil, Italy recognised the humanitarian aspect of the crisis and, despite European reluctance, was able to put the issue high on the EU agenda.[53] Eventually, the European Council stated that 'determined action should be taken in order to prevent the loss of lives at sea and to avoid that such human tragedies happen again', in light of 'the imperative of prevention and protection' and 'the principle of solidarity'.[54] The EU gradually recognises the responsibility to protect refugees as a 'duty' and a 'principle of solidarity and shared responsibility'.[55] It implemented this shared responsibility by allocating over €230 m in 2012 and €300 m in 2015 to address the needs of Syrian people, and by assisting Lebanon, Jordan and Turkey that were hosting the greatest bulk of refugees. Moreover, in order to prevent further loss of lives at sea, the EU significantly enhanced its maritime presence with the FRONTEX Joint Operations Poseidon (Eastern Mediterranean) and Triton (Central Mediterranean) to strengthen border surveillance as well as increase SAR operations.

The refugee crisis was framed as a 'common obligation'[56] and as an urgent and global responsibility requiring a strong European asylum policy based on solidarity and fairly shared responsibility among Member States, who have to welcome asylum seekers in a dignified manner.[57] Moreover, in her speech at the UN, in May 2015, the High Representative Federica Mogherini called for the EU's duty to intervene and urged to adopt a common response. The imperative to 'protect those in need' was also clearly recognised by the Agenda for Migration, which emphasised the importance of a coherent Common European Asylum System to implement the duty of protection uniformly,[58] assuming that no matter where an asylum-seeker applies, the outcome will be similar.[59] In terms of asylum applications, over 1 million first instance decisions were adopted in 2016 (EU28). The recognition rate of refugee/subsidiary protection status was 62%, against the 51% of 2015 and the 46% of 2014 (Figure 1). Syrians had generally the highest recognition rate with the 98% of positive decisions only in the third quarter of 2016.[60]

In terms of relocation, following Commission's proposals of May and September 2015, in the first months of 2016 the European Council agreed to implement relocation schemes in order to relieve the burden of Italy, Greece and Hungary, as front line states overwhelmed
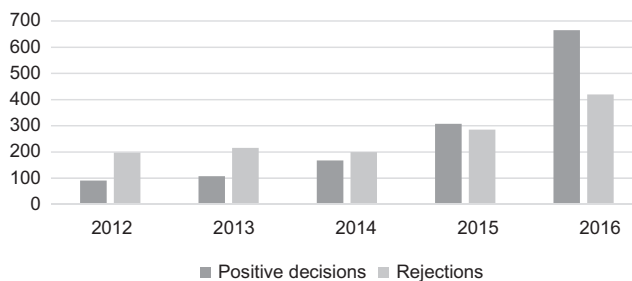

Figure 1. Asylum applications: number of first instance decisions (2012–2016). Source: Eurostat.

by arrivals and asylum applications.[61] According to these relocation schemes, 160,000 persons would be relocated from front-line states in other EU Member States following criteria based on population size, GDP, average number of past asylum applications and unemployment rate. As a complementary tool, a temporary solidarity clause was established with the purpose of allowing Member States, temporally unable to participate in the relocation scheme, to contribute to the EU budget.[62] Moreover, in terms of resettlement, it was agreed to resettle 20,000 people from outside the EU in clear need of international protection, as identified by the UNHCR.[63]

Finally, in March 2016 the EU and Turkey agreed to stop irregular migration across the Turkish border to Europe and, building on the Joint Action Plan signed in November 2015, they decided 'to step up cooperation for the support of Syrian refugees under temporary protection and their host communities in Turkey'.[64] Moreover, they accepted to reduce the number of arrivals through irregular routes by promoting legal channels for the resettlement of refugees in Europe. The Agreement establishes that Turkey has to take any necessary measure to prevent new sea or land routes for irregular migration to Europe and that all irregular migrants crossing the border to Greece, and whose asylum application is declared 'inadmissible', are to be returned to Turkey. The base of the deal is a 1:1 scheme, i.e. for every Syrian returned to Turkey from Greece, the EU resettles a Syrian from Turkey to the EU. In line with the principle of *non-refoulement*, all asylum applications to Greece are treated on a case by case basis with no automatic return for asylum seekers and only those whose application is 'inadmissible' are returned to Turkey.[65] Turkey provided assurance that all returned Syrians would be granted temporary protection. Finally, to financially sustain the Action Plan and to provide humanitarian aid to Syrian refugees in Turkey, the EU allocated €3bn through the Facility for refugees in Turkey and pledged further €3bn at the end of 2018. As the deal has now 'turned 1', one year since its initial implementation the Agreement is regarded as a 'model' of migration diplomacy.[66] The European Commission[67] praises the EU–Turkey Action Plan as 'delivering results' with a sharp decrease in the number of irregular migrants and asylum seekers from Turkey to Greece. Until April 2016, over 1740 migrants were crossing every day the Aegean Sea to Greece; in September 2016 the average daily number went down to 81 (Table 3). Moreover, the reports stress that the deal had a positive effect on the number of lives lost in the Aegean, by markedly reducing the death toll.

However, the picture is fuzzier than that and the EU–Turkey agreement has attracted fierce criticism.

Table 3. The EU–Turkey Agreement: implementation results during Year 1 (April–December 2016).

Implementation steps	Syrians resettled from Turkey to the EU	Migrants returned from Greek islands to Turkey	Migrants arrived to Greece (daily average)
4–20 April 2016 (1st implementation report)	103	325	/
21 April–15 June 2016 (2nd implementation report	408	137	47
16 June–28 September 2016 (3rd implementation report)	1103	116	81
29 September–December 2016 (4th implementation report)	1147	170	81
TOTAL	2761	748	//

Source: European Commission's Implementation Reports on the EU–Turkey Agreement.

5. Assessing the R2P-refugee protection linkage in the EU response

Assuming the existence of a linkage between R2P and refugee protection and recognising that refugee policies can be an alternative tool to implement the R2P people fleeing atrocity crimes, it has to be assessed to what extent the EU is able to uphold Syrian refugees' protection.

So far, the EU has not engaged in explicit debates on the linkage between R2P and asylum. The main reason is that R2P is still framed mainly as a foreign policy issue, i.e. as something we do 'outside' our borders rather than as something that impinges directly on the European territory.[68] Whereas not explicitly mentioning R2P in its discourses on the refugee crisis, the EU formally recognises the commitment to reinforce solidarity and responsibility, thereby endorsing both R2P's first pillar (i.e. refugee crisis as an 'imperative' and 'duty of protection') and second pillar (i.e. responsibility as solidarity, assistance towards refugees' hosting countries and shared responsibility). Moreover, by acknowledging the imperative to protect those in need it upholds one of the crucial starting points of R2P, namely the importance to evaluate issues from the point of view of those seeking support. In terms of practices, the analysis starts from the protection measures identified in Table 2 to help States fulfil their R2P people escaping from mass atrocities.

In terms of asylum, out of over 30 nationalities of asylum applicants, Syrian applications are generally granted the highest percentage of positive decisions. Yet, although EU co-operation on asylum led to a rise in the legal standards applicable to refugees[69] protection remains uneven across Member States, with a patchwork of practices, protection systems and responses.[70] In the third quarter of 2016, whereas only the 28% of asylum applications in Sweden was rejected, in France and Italy the rejection rate stood respectively at 68% and 58% for similar numbers of total applications. More generally, if Sweden provides permanent permits to the asylum seekers with temporary residency, Bulgaria has built fences on the Turkish border to prevent migrants' entries. Similarly, if Germany agrees to resettle 5000 Syrian refugees for two years, Greece deploys border guards to contain massive arrivals. Not to mention the Austrian decision to close the Brenner borders, putting on hold the EU agreements on the Schengen area. The promised 'uniform-protection-no-matter-where' is hostage of variable geometries of protection and of divisions among Member States, with an evident failure of the duty of protection entailed by the notion of sovereignty.

Interestingly, countries with the lowest recognition rate such as Czech Republic and Hungary are also the same ones who oppose the Commission's relocation schemes, thereby preventing consensus on the main mechanisms for the internal distribution of asylum seekers. Until July 2016, only 3056 people were relocated (namely 2213 from Greece and 843 from Italy), falling far short of the Commission's proposed target of relocating 6000 people per month. In this sense, the EU Member States failed to adhere to the R2P's first pillar, i.e. to meet their obligations of protection on their own territory, and to R2P's second pillar, i.e. assistance and solidarity towards (Southern) states that declare to be overwhelmed and are unable to guarantee adequate protection. The overcrowded reception centres and the danger of inhuman conditions in Greece and Italy have been widely recognised.

Concerning resettlements, although the UNHCR explicitly asked the EU to provide resettlement opportunities, EU Member States are highly reluctant, preferring to provide humanitarian assistance to host countries rather than bearing directly the costs of resettlements. However, whereas aid to countries like Jordan and Lebanon is an expression of solidarity to

improve the conditions of the refugees hosted there, burden-sharing cannot turn into bur-den-shifting. This is a crucial aspect of the EU–Turkey Agreement.

The Agreement was launched to address the crisis in a spirit of burden-sharing with the EU Facility for refugees in Turkey as an expression of solidarity to improve the conditions of hosted people and to share the costs of protection in a country with over 2.8 million of Syrian refugees. Moreover, whereas patrolling Turkish borders helped to reduce the casualties asso-ciated with the desperate journey of asylum seekers fleeing atrocities, the 1:1 scheme was conceived for a better distribution of refugees. As such, the Agreement brings only partial relief in the crisis as it does not concern the refugees pouring into the EU over other routes.[71] Yet, it may represent an example of international cooperation to assist states overwhelmed by challenging conditions in the fulfilment of their duty of protection. However, doubts remain on its sustainability and smooth implementation[72] as well as on whether the EU–Turkey deal is a true expression of solidarity[73] and not a disguised form of burden-shifting. Even more concerns arise due to the authoritarian turn of the Turkish President Recep Tayyip Erdogan. In this sense, the Agreement appears also to have been set to accomplish the closure of EU borders by shifting responsibility to protect refugees to a third country and by preventing people – including asylum seekers – to reach EU territory. The very low reset-tlement numbers seem to confirm this point. In December 2016, only 2761 Syrians were resettled from Turkey to the EU against the 54,000 places proposed after the EU–Turkish agreement. When relevant issues are evaluated from the point of view of states' own security – rather than from the point of view of those seeking and needing support – the *raison d'être* behind the R2P refugees is hampered.

6. The importance of acknowledging the linkage between R2P and refugee protection to manage the Syrian crisis

The analysis of the EU response to the Syrian refugee crisis highlights several challenges and difficulties that the EU encountered to address a phenomenon of unprecedented propor-tions. More specifically, whereas the international community's paralysis hampered the definition of a common line of action to prevent and address the awful consequences of the Syrian civil war, it has become extremely clear that international asylum and refugee pro-tection systems are facing an overload which risks turning into a fatal failure.[74] While there are no easy solutions at hand, the acknowledgement of the linkage between R2P and refugee protection paves the way to new theoretical and empirical insights and helps identify pos-sible remedies to improve the management of the current crisis.

First of all, the recognition of refugees as beneficiaries of R2P – and of asylum as a tool for R2P – helps compensate for the lack of collective action at the international level, when inertia is the result of EU Member States' divergent positions. By granting asylum and wel-coming them, States can still protect people from atrocity crimes, irrespective of whether they are outside their country of nationality. Therefore, if the Syrian crisis was described as an international failure of R2P,[75] the EU and its Member States can still fulfil their duty to protect the Syrian people in distress by addressing the issue of refugees and asylum seekers on the European territory. In this sense, R2P is not a mere foreign policy issue, but it rather hits home. Indeed, the idea of a linkage between R2P and asylum is gaining growing atten-tion and making its way through scholarly debates,[76] think tanks[77] and non-governmental organisations[78] who increasingly connect the dots between R2P, on the one hand, and

refugee crisis and protection, on the other. The former UN Secretary General provided further institutional legitimacy to the linkage by stating that 'States contribute to the prevention of these [R2P] crimes […] by ensuring the granting of asylum and refraining from refoulement of persons fleeing violence'.[79]

Secondly, R2P refugees does not rely merely on the legal obligations corresponding to states' sovereignty, i.e. to protect population whether nationals or not (first pillar). R2P claims also that the international community has the responsibility to assist States in fulfilling their responsibility to protect those in need, by helping and assisting them to build their capacity to protect (second pillar). This means that the international community is responsible to assist States affected by massive arrivals of refugees and to support their protection capacity. This kind of intervention is an expression of R2P's principle of solidarity not only towards refugees fleeing mass atrocities and whose needs cannot necessarily be satisfied by a State that is overloaded, but more generally it reflects a solidarity towards front-line States. If a neighbour or front-line State fails in its duty of protection (either because unable or unwilling), the international community should be responsible to share the costs of protection. The EU frames the EU–Turkey agreement in this sense. The extent and the nature of this protection is function of refugees' vulnerability, insofar as the less hosting states are capable or willing to provide protection to refugees, the greater should be the action from the international community. After all, as suggested by Arbour, while geographical proximity matters in terms of promptness of response, it should not be used as an excuse for non-neighbours to avoid responsibility. Rather, 'the concept of responsibility to protect holds that all States are concurrently burdened with a responsibility to protect which they share irrespective of their location'.[81] In the case of the EU, this translates into the imperative on Member States to assist Southern front-line members as well as non-EU members not only through financial aids, but also through effective and truly shared mechanisms of relocation and resettlement. As argued by Achiume,[82] despite the gravity of the situation, states can manage the crisis if they cooperate to share the burden and responsibility of protecting refugees. Whereas specific obligations to proceed in this sense are missing in the international refugee regime and in EU law, R2P and the duty of assistance embedded in its second pillar can be used by international actors to facilitate international cooperation on behalf of the refugees and to share the costs of protection. As *all states* within the UN acknowledged their responsibility to use 'diplomatic, humanitarian and other peaceful means' to protect populations from atrocity crimes,[83] the recognition of the linkage between R2P and refugee protection can pave the way to a collective duty to protect 'atrocity crimes refugees'. In this sense, the principle of R2P magnifies the imperative of protection.[84]

This potentially translates into the development of instruments that could facilitate the management of the refugee crisis, such as quota systems, temporary protection and the inclusion of refugees' preferences into relocation schemes. Quotas are increasingly regarded as a helpful tool for the management of refugee flows. Yet, they find no basis either in EU law or in international refugee regime.[85]. The acknowledgement of a linkage between R2P and refugee protection, by magnifying the duty of protection and by affirming a solidarity and burden-sharing principle in the case of refugees, could sparkle new debates and prompt the development of legal bases for the definition of quota systems. It is true that quota mechanisms would only partially relieve the problem of refugees and displaced people around the world as they would be limited only to a specific category of refugees (i.e. atrocity

crimes refugees). Yet, they might represent an effective tool to facilitate crisis management and the fulfilment of duty of protection.

A very similar reasoning could be applied to temporary protection. Temporary protection regimes are generally implemented as emergency responses to mass influx situations, by providing group-based protection in order to guarantee immediate protection.[86] This means that if a person belongs to a specific protected group, such as the Syrians, individualised status determination is not needed. This not only facilitates protection for people in need, but prevents the blocking of asylum systems. Whereas an EU directive in this domain entered into force in 2001, it was never implemented and not even mentioned in the EU Agenda of Migration. The acknowledgement of a linkage between R2P and refugee protection sparks new debates for the revival of the EU Temporary Protection Directive. Temporary protection scheme could be a promising tool to implement R2P refugees and to deal with mass influxes of people fleeing from mass atrocities and from a specific country of nationality that is unwilling or unable to protect them. As such, it could not only facilitate the fulfilment of States' duty of protection and but also improve the management of crises characterised by massive arrivals. R2P prompts a temporary protection mechanism where the term 'temporary' applies not to the duration of the stay, but to the interim period of this specific type of protection for people fleeing atrocity crimes.[87] The financing mechanism can rely on the Asylum, Migration and Integration fund that has allocated over 3€bn for the period 2014–2020 with the goal to support the efficient management of migration flows. Moreover, the principle of solidarity embedded in R2P's second pillar fosters an effective burden-sharing among Member States in order to make temporary protection mechanisms financially sustainable in the long run. Such burden-sharing can be determined by departing from their contribution to the EU budget and then reducing the contributions of front-line states by an amount proportionate to the cost undergone by these countries to host refugees. This very same mechanism supports the development of broader temporary protection schemes also beyond Europe and under the aegis of the United Nations.[88] Overall, the acknowledgement of a linkage between R2P and refugee protection suggests the development of legal bases for the temporary protection of atrocity crimes refugees, as well as for the definition of binding cost-sharing mechanisms.

The refugee agency represents another important aspect. Resettlement and relocation schemes are normally based on criteria that exclude asylum-seekers' preferences. This is also the case of the EU relocation mechanism that was devised on the base of the economic, social and territorial conditions of Member States. However, many asylum-seekers have specific reasons (linguistic, ethnic, cultural and/or religious) to settle in a particular part of Europe and the fact that EU asylum system does not include these factors suggests that the EU refugee protection rule is focused away from the refugee.[89] This 'computerised reallocation'[90] unavoidably fuels the practice of 'asylum shopping' across Europe,[91] with further consequences on the difficult management of the crisis. As the foundation of R2P is an evaluation of the issues from the point of view of those seeking or needing support, the acknowledgment of a linkage between R2P and refugee protection could help to better devise existing instruments, taking also into account asylum-seekers' needs among the relevant criteria for relocation/resettlement. This could facilitate the implementation of existing instruments to the extent that it would prevent asylum shopping and the multiplication of asylum applications across different EU Member States. A new regime aimed at protecting the inclusive category of people on the move from atrocity crimes would finally acknowledge their agency.

7. Conclusions

Drawing from the debates recognising that R2P implies a responsibility to provide a safe flight and asylum to those fleeing atrocity crimes,[92] this article argued that refugee protection is an essential instrument for the implementation of R2P. More specifically, R2P as applied to the Syrian refugees is an idea whose time has come and the protection of asylum-seekers is entailed by the principles at the very core of R2P norm. While the current crisis is a convoluted phenomenon with no easy solution, to acknowledge the linkage between R2P and refugee protection sparks critical reflections on the management of the crisis and on potential remedies that could attempt to improve existing tools.

EU management of the refugee crisis is held hostage of the dilemma 'border control argument' versus 'duty of protection' discourse.[93] Despite these limits, by recognising a responsibility to protect 'atrocity crimes refugees' and by implementing the duty of assistance and international cooperation embedded in R2P second pillar, the EU and its Member States can still fulfil their R2P for Syria and can improve existing management tools. In times of resurging nationalism, with EU Member States facing fear and obsession with border control, there are several challenges to the acknowledgement of a linkage between R2P and refugee protection. Yet, the crisis management tools proposed by the article in light of the R2P/refugee connection can actually mediate the opposite claims that animate the heated debates on protection versus border control. For instance, as suggested by Thorburn, temporary protection could satisfy the requirements of all sides, by 'offering protection but not full membership, permitting the individuals to seek and receive protection, but without hastily or unacceptably transgressing the boundaries of State sovereignty'.[94]

Further research and debates are needed to explore the 'missing link' between asylum and R2P and how existing and new measures could allow states to respect R2P people escaping from war and persecution, even when the UNSC is paralysed.

Disclosure statement

Funding

Notes on Contributors

Stefania Panebianco is Associate Professor of Political Science, Department of Political and Social Sciences, University of Catania, and Jean Monnet Professor on EU Med border crises and European External Action (EUMedEA). She is currently involved in the H2020 Transcrisis research project, focusing on 'Managing the Immigration Crisis'.

Iole Fontana is the tutor of the Jean Monnet Chair EUMedEA, Department of Political and Social Sciences, University of Catania. She has a PhD from IMT-Institute of Advanced Studies,

Lucca. She is a former visiting researcher at the London School of Economics and at the Université Hassan II in Casablanca.

Notes

1. In 2015 there were 63.5 million forcibly displaced people worldwide (UNHCR Report on Global Trends 2016). Due to the inter-twinning migration drivers, the traditional distinction between voluntary economic migrants (people moving to improve their quality of life and living standards) and forced migrants (people escaping wars and persecutions) de facto has been overcome. The more inclusive concept 'mixed migration' refers to people that 'experience survival needs and escape due to different conditions and problems such as droughts and famines, wars and persecution, poverty and lack of resources for life'. See Attinà, "Migration Drivers," 16.
2. UNHCR Data.
3. UNHCR, *Mediterranean Death Toll Soars*, 10/2016.
4. Bellamy regards R2P as a nascent norm because – since its adoption in 2005 – it 'has moved from being a controversial and indeterminate concept seldom utilised by international society to a norm utilised almost habitually'. See Bellamy, "Responsibility to Protect Turns Ten," 161.
5. Ibid.
6. Welsh, "Turning Words into Deeds?"
7. Welsh, "Fortress Europe"; Welsh, "Responsibility to Prevent."
8. Barbour and Gorlick, "Responsibility to Protect"; Coen, "R2P"; Bellamy, "Responsibility to Protect and the Migrant Crisis."
9. Gallagher and Ralph, "Responsibility to Protect at Ten."
10. Bulley, "Shame on EU?"
11. Bellamy, "Responsibility to Protect: Added Value."
12. ICISS, "Responsibility to Protect"; UN, "2005 World Summit"; UN, "Implementing Responsibility to Protect."
13. Sharma and Welsh, "Introduction."
14. Hoffman and Nollkaemper, "Introduction," 14.
15. Gallagher, "Promise of Pillar II."
16. See note 11.
17. Sewall, "Military Options for Preventing Atrocity," 165.
18. For the list of international interventions against mass killings (1990–2005) see Bellamy, "Responsibility to Protect Turns Ten."
19. These were mainly Western countries (US and Europe), but also Botswana and Saudi Arabia.
20. Russia, China, Iran, Venezuela and Cuba among others. According to Russia, the 'Council's mandate […] in Libya was disregarded' (UNSC, 04/2011) and it could not become 'a model for the future actions of NATO in implementing the responsibility to protect' (UNSC, 4/10/2011).
21. Morris, "Libya and Syria"; Tocci, "Libya, Syria."
22. An analysis of discourses within both the UN Human Rights Council (Special Sessions on the situation in Syria between 2011 and 2013) and the UNSC (March 2011–December 2014) confirms that the international community's approach towards R2P did not change in its substance from Libya to Syria.
23. ECHO Syria factsheet 01/2017.
24. In 2015, 2913 people died in the Central Mediterranean; 4578 in 2016; and 222 in early 2017. UNHCR data accessed 1/03/2017.
25. Panebianco, "Mediterranean Migration Crisis."
26. Ralph and Souter, "Introduction."
27. Welsh, "Fortress Europe."
28. Ibid., 3.
29. See note 12.
30. Fortin, "Meaning of International Protection."

31. 69th General Assembly, 07/2015.
32. Barbour and Gorlick, "Responsibility to Protect"; Coen, "Refugee Crisis."
33. Bellamy, "Responsibility to Protect and the Migrant Crisis."
34. See note 12.
35. Achiume, "Syria, Cost-Sharing," 693.
36. Davies and Glanville, "Protecting the Displaced."
37. Welsh, "Responsibility to Prevent," 217.
38. UN General Assembly, 09/2012.
39. See note 12.
40. Peral, "R2P in Syria."
41. See note 38.
42. See note 35.
43. See note 40.
44. See note 32.
45. Jones et al., "Interventions on the State."
46. See note 33.
47. See note 25.
48. Durieux, "Duty to Rescue Refugees."
49. According to the 1951 Convention, 'refugee' refers only to who has a well-founded fear of persecution because of race, religion, nationality or political opinion.
50. See note 35.
51. UN Human Rights Council, September/December 2011.
52. Attinà, "Migration Drivers."
53. Panebianco, "*Mare Nostrum* Operation."
54. European Council, *Conclusions 2013*.
55. European Commission, *European Agenda for Migration*.
56. European Commission, *Common European Asylum System*.
57. European Council, *Conclusions 2014.*
58. See note 55.
59. See note 56.
60. Out of over 111,780 first instance decisions concerning Syrian applicants, 65% was granted subsidiary protection and 33% was granted refugee status.
61. European Council, *Conclusions 03/2016.*
62. European Council, *Conclusions 02/2016.*
63. European Council, *Conclusions 12/2015.*
64. EU–Turkey Joint Action Plan 10/2016.
65. EU–Turkey Statement, 03/2016.
66. Seeberg, "EU–Turkey Agreement."
67. European Commission, *Second Implementation Report*; European Commission, *Fourth Implementation Report*.
68. Welsh, "Fortress Europe," 3.
69. Kaunert and Léonard, "Development of the EU Asylum Policy."
70. Geddes and Scholten, "Politics of Migration."
71. Hilpold, "Quotas as an Instrument," 15.
72. Börzel**,** "EU Governance of Crisis."
73. See note 10.
74. Hilpold, "Quotas as an Instrument."
75. Morris, "Libya and Syria."
76. Welsh and Bellamy just to name a few.
77. See Sustainable Security or Protection Gateway.
78. Human Rights Watch, among the others.
79. 66th Session, 07/2012.
80. See note 35.
81. Arbour, "Responsibility to Protect," 454.

82. See note 35.
83. Bellamy, "Safe Passage."
84. Welsh, "Fortress Europe," 6.
85. See note 74.
86. European Commission, *Study on Temporary Protection Directive*.
87. Thorburn, "Transcending Boundaries."
88. Achiume, "Syria, Cost-sharing," 730.
89. Nancheva, "Common European Asylum System."
90. See note 72.
91. See note 69.
92. See note 83.
93. See note 25.
94. Thorburn, "Transcending Boundaries," 477.

Bibliography

Achiume, T. "Syria, Cost-Sharing, and the Responsibility to Protect Refugees." *Minnesota Law Review* 100 (2015): 687–761.

Arbour, L. "The Responsibility to Protect as a Duty of Care in International Law and Practice." *Review of International Studies* 34, no. 3 (2008): 445–458.

Attinà, F. "Migration Drivers, the EU External Migration Policy and Crisis Management." *Romanian Journal of European Affairs* 16, no. 4 (2016): 15–31.

Barbour, B., and B. Gorlick. "Embracing the 'Responsibility to Protect': A Repertoire of Measures including Asylum for Potential Victims." *International Journal of Refugee Law* 20, no. 4 (2008): 533–566.

Bellamy, A. "The Responsibility to Protect: Added Value or Hot Air?" *Cooperation and Conflict* 48, no. 3 (2013): 333–357.

Bellamy, A. "The Responsibility to Protect Turns Ten." *Ethics & International Affairs* 29, no. 2 (2015): 161–185.

Bellamy, A. "Safe Passage and Asylum Key to Fulfilling the Responsibility to Protect." *IPI Global Observatory* (2015). September 8, 2015.

Bellamy, A. "The Responsibility to Protect and the Migrant Crisis." *Protection Gateway* (2016). April 2, 2016.

Börzel, T. A. "From EU Governance of Crisis to Crisis of EU Governance: Regulatory Failure, Redistributive Conflict and Eurosceptic Publics." *JCMS: Journal of Common Market Studies* 54, no. 2 (2016): 8–31.

Bulley, D. "Shame on EU? Europe, RtoP, and the Politics of Refugee Protection." *Ethics & International Affairs* 1, no. 1 (2017): 51–70.

Coen, A. "R2P, Global Governance, and the Syrian Refugee Crisis." *The International Journal of Human Rights* 19, no. 8 (2015): 1044–1058.

Coen, A. "The Responsibility to Protect and the Refugee Crisis." *Sustainable Security* (2016). March 9, 2016.

Davies, S., and L. Glanville. "Protecting the Displaced: Introduction." In *Protecting the Displaced. Deepening the Responsibility to Protect*, edited by S. Davies and L. Glanville, 1–12. Leiden: Nejhof, 2010.

Durieux, J. F. "The Duty to Rescue Refugees." *International Journal of Refugee Law* 28, no. 4 (2016): 637–655.

European Commission. *A Common European Asylum System*. Luxembourg, 2014.

European Commission. *A European Agenda for Migration*. Brussels, 2015.

European Commission. *Fourth Implementation Report of the EU–Turkey Statement*. Brussels, 2016a.

European Commission. *Second Implementation Report of the EU–Turkey Statement*. Brussels, 2016b.

European Commission. *Study on Temporary Protection Directive*. Brussels, 2016c.

European Council. *Conclusions*. Brussels, 10/2013.

European Council. *Conclusions*, 07/2014.

European Council. *Conclusions*, Brussels, 12/2015.

European Council. *Conclusions*, Brussels, 02/2016.

European Council. *Conclusions*, Brussels, 03/2016.

Fortin, A. "The Meaning of International Protection." *International Journal of Refugee Law* 12, no. 4 (2001): 548–576.

Gallagher, A. "The Promise of Pillar II: Analysing International Assistance Under the Responsibility to Protect." *International Affairs* 91, no. 6 (2015): 1259–1275.

Gallagher, A., and J. G. Ralph. "The Responsibility to Protect at Ten." *Global Responsibility to Protect* 7, no. 3–4 (2015): 239–253.

Geddes, A., and P. Scholten. *The Politics of Migration and Immigration in Europe*. 2nd ed. London: Sage, 2016.

Hilpold, P. "Quotas as an Instrument of Burden-Sharing in International Refugee Law. the Many Facets of an Instrument Still in the Making." *SSRN*, 02/2017.

Hoffman, J., and A. Nollkaemper. "Introduction." In *Responsibility to Protect. from Principle to Practice*, edited by J. Hoffman and A. Nollkaemper, 13–25. Amsterdam: Amsterdam University Press, 2012.

ICISS. "The Responsibility to Protect. Report of the International Commission on Intervention and State Sovereignty." *International Development Research Centre*, 2001.

Jones, R., C. Johnson, W. Brown, G. Popescu, P. Pallister-Wilkins, A. Mountz, and E. Gilbert. "Interventions on the State of Sovereignty at the Border." *Political Geography* 59 (2017): 1–10.

Kaunert, C., and S. Léonard. "The Development of the EU Asylum Policy: Venue-Shopping in Perspective." *Journal of European Public Policy* 19, no. 9 (2012): 1396–1413.

Morris, J. "Libya and Syria: R2P and the Spectre of the Swinging Pendulum." *International Affairs* 89, no. 5 (2013): 1265–1283.

Nancheva, N. "The Common European Asylum System and the Failure to Protect: Bulgaria's Syrian Refugee Crisis." *Southeast European and Black Sea Studies* 15, no. 4 (2015): 1–17.

Panebianco, S. "The *Mare Nostrum* Operation and the SAR Approach: The Italian Response to Address the Mediterranean Migration Crisis." EUMedEA Online Working Paper Series, 3-2016.

Panebianco, S. "The Mediterranean Migration Crisis: Border Control Versus Humanitarian Approaches." *Global Affairs* 2, no. 4 (2016): 441–445.

Peral, L. "R2P in Syria – How to Surmount the Inaction of the UN Security Council?" *Institute for Security Studies*, 2011.

Ralph, J., and J. Souter. "Introduction: The Responsibility to Protect and the Refugee Protection Regime." *Ethics & International Affairs* 31, no. 1 (2017): 47–50.

Seeberg, P. "The EU–Turkey March 2016 Agreement as a Model: New Refugee Regimes and Practices in the Arab Mediterranean and the Case of Libya." *Global Turkey in Europe*, 16/2016.

Sewall, S. "Military Options for Preventing Atrocity Crimes." In *The Responsibility to Prevent. Overcoming the Challenges of Atrocity Prevention*, edited by S. Sharma and J. Welsh, 160–188. Oxford: Oxford University Press, 2015.

Sharma, S., and J Welsh. "Introduction." In *Responsibility to Prevent. Overcoming the Challenges of Atrocity Prevention*, edited by S. Sharma and J. Welsh, 1–20. Oxford: Oxford University Press, 2015.

Thorburn, J. "Transcending Boundaries: Temporary Protection and Burden-Sharing in Europe." *International Journal of Refugee Law* 7, no. 3 (1995): 459–480.

Tocci, N. "Libya, Syria and the 'Responsibility to Protect': A Moment of Inflection?" *OpenDemocracy*, 04/2014.

UN. 2005. "2005 World Summit Outcome." *UN General Assembly*.

UN. 2009. "Implementing the Responsibility to Protect." *Report of the Secretary-General*.

Welsh, J. "Turning Words into Deeds? The Implementation of the 'Responsibility to Protect." *Global Responsibility to Protect* 2, no. 1 (2010): 149–154.

Welsh, J. "Fortress Europe and Responsibility to Protect. Framing the Issue." Paper Presented at the Conference: The 'Lampedusa Dilemma': Global Flows and Closed Borders. What Should Europe Do? European University Institute, 2014.

Welsh, J. "The Responsibility to Prevent: Assessing the Gap between Rhetoric and Reality." *Cooperation and Conflict* 51, no. 2 (2016): 216–232.