

**The Onus of Protection: Evaluating the Role of ‘Responsibility to Protect’ in Promoting
Human Security as a Solution to the Syrian Refugee Crisis**

Iman Tahir
M00423510

LLM General Law
LEX 4165

Dr. Ludaigh Kerin
Dr. Elvira Dominguez-Rodondo

May 2017
Middlesex University

17,882 words

Abstract

The conflict in Syria has resulted in the biggest refugee crisis since WWII, with millions displaced by mass atrocity crimes. The ensuing humanitarian situation presents significant threats to the lives of the refugees, regional and international peace and security. However, despite the gravity of the crisis, developed states have been reluctant to offer protection and assistance to the refugees. In this regard, the EU response has been characterized by increasingly restrictive policies and the externalization of borders to prevent refugees from reaching Europe. This thesis seeks to investigate whether the R2P principle and the associated concept of human security can play a role to strengthen international protection for refugees. For this purpose, it will examine the EU's response to the Syrian refugees in order to investigate whether European policy could be guided by the R2P and the human security approach. Although the R2P is not a legal obligation on states, it represents a moral consensus of the International community to act collectively to protect vulnerable populations should sovereign states fail to act responsibly. The implementation of this responsibility would include facilitating safe passage and granting asylum to Syrian refugees, as well as providing an equitable system of burden sharing with host countries. The paper suggests that, despite some weaknesses, the principles of R2P and Human Security can play an important role in developing international policies for safeguarding refugee rights. However, these concepts will have to be developed further in order to provide frameworks for supplementing the international refugee regime.

Keywords: Responsibility to Protect, Syrian Refugee Crisis, Human Security

Dedicated to my Mother and Father,
Thank you for always supporting me.

CONTENTS

Acknowledgements.....	6
Chapter 1: Introduction	7
1.1 Introduction.....	7
1.2 Research Focus	9
1.3 Research Aims and Objectives	10
1.4 Outline of the Dissertation	10
Chapter 2: Methodology.....	11
2.1 Introduction.....	11
2.2 Research Strategy.....	11
2.3 Limitations and Potential Problems	12
Chapter 3: Literature Review.....	14
3.1 Introduction.....	14
3.2 International Law	15
3.3 State Action & Implementation	21
3.31 Human Security	21
3.32 Responsibility to Protect	24
3.33 State Action & Implementation	28
3.4 Conclusion	29

Chapter 4: Findings and Discussion.....	31
4.1 Introduction.....	31
4.2 EU Policies.....	32
4.3 Limitations and Barriers towards the Protection of Refugees	38
4.4 Human Security vs. National Security within the EU	46
4.5 The Role of R2P in shaping EU Policies towards the Syrian Refugees	51
4.6 The Weaknesses of R2P in promoting Solutions	56
4.7 Conclusion.....	60
 Chapter 5: Conclusion.....	 63
5.1 European Response to the Crisis.....	65
5.2 Research Objectives: Findings and Conclusions.....	68
 Bibliography	 69
Appendices.....	79

Acknowledgements

I would like to thank my supervisor, Dr. Elvira Dominguez, for all her help and support during my research. In addition, thank you to all my teachers for guiding me with support and patience in this learning process. I would like to thank Middlesex University for facilitating this research project.

Furthermore, I would like to thank my family for all their support. Thank you to my parents for all their help, support and guidance along the way. I could not have done it without them. Thank you to my Grandparents for their endless encouragement and prayers. In addition, thank you to all my friends for all the encouragement and support.

The Onus of Desperation: Evaluating the Role of ‘Responsibility to Protect’ in Promoting Human Security as a Solution to the Syrian Refugee Crisis

‘The defense of human dignity knows no boundaries’

Emilio Mignone

INTRODUCTION

1.1 Introduction

The Syrian civil war has resulted in the ‘biggest humanitarian and refugee crisis of our time’¹ resulting in the UNHCR’s greatest operation in recent years.² Most of the 4.8 million refugees to date, have sought refuge in neighboring countries such as Lebanon, Jordan, and Egypt,³ whereas thousands have made perilous journeys across the Mediterranean in desperate attempts for protection.⁴ Tragically, the global response in the face of this crisis has been fragmented and apathetic.⁵ Moreover, in the absence of long-term solutions, the Syrian refugee crisis is becoming a protracted situation.⁶ This humanitarian crisis is of global concern, since not only does it impact the lives and rights of millions, it presents a threat to international peace and security.⁷ Refugees escaping from life-threatening situations, are vulnerable to abuse as rights of citizenship do not protect them,⁸ and the international community has a responsibility to protect them under customary international law.⁹

Furthermore, developed states have been particularly reluctant to provide refugee protection in this ongoing humanitarian crisis, in spite of their human advocacy.

Particularly notable is the response of the EU; which has demonstrated a ‘collective failure’ to implement measures to safeguard refugee protection, according to Filippo Grandi, the UNHCR

¹ William Spindler, ‘UNHCR sets out detailed plan to solve refugee situation in Europe’, *UNHCR News* (Geneva, 4 March 2016).

² Tendayi Achiume, ‘Syria, Cost-sharing, and the Responsibility to Protect Refugees’ (2015) 100 *Minnesota Law Review*, 687; Jan Egeland, ‘A Way Out of the Syrian Carnage’ (2015) 12(1) *Brown Journal World Affairs* 297-304

³ Achiume (n 2)

⁴ Elizabeth Collette, ‘Outlook on Migration in Europe in 2015’ (2015) 4(5), *Migration Policy Practice*.

⁵ Egeland (n 2)

⁶ 3RP, Mid-Year Report (2016) UNHCR

⁷ 3RP, Mid-Year Report (2016) UNHCR

⁸ H. Day, ‘Refugee and migrant crisis: the deficient global response’ (*The Lancet*, August 2016)

⁹ Day (n 7)

High Commissioner¹⁰. Many have argued, that this exposes the weakness of the refugee protection regime under international law, which, based on the Westphalian system of state sovereignty, prioritizes state interests over humanitarian principles¹¹. According to Barnett (2002), refugee rights are compromised due to the ‘inherent power of states to control their own borders and thwart international efforts.’¹²

The ongoing crisis has exposed the insufficiency of the international refugee protection regime, which is based on the 1951 Convention relating to the Status of Refugees and its 1967 Protocol¹³. It has thus appeared as an outdated and ‘incomplete legal regime of protection’ in the present global scenario¹⁴, partly due to its ambiguity which allows it to be manipulated by states¹⁵. Although it is possible to manage the refugee crisis effectively, through global collaboration, Achiume (2015) argues that international law ‘offers no basis for achieving this cooperation.’¹⁶ Therefore, the refugee regime needs to be adapted to meet the requirements of current global needs.¹⁷ This necessitates looking towards other approaches to supplement this regime. In this context, R2P represents a promising approach, as it is based on the values of human security and represents a shift towards the protection of people over states. This is especially important in today’s globalized world, where security is not limited by borders.

This paper will be investigating the contribution that can be made by R2P to strengthen international refugee protection. For this purpose, EU policies will be analyzed in order to understand the applicability of the R2P and the human security approach, to the Syrian refugee crisis. The dissertation will begin with the methodology to discuss the way the research will be conducted. Following the methodology, the literature review will seek to answer the questions in the first three research objectives concerning the relationship between international law, R2P and the Syrian refugee crisis. This will be further analyzed through a case study, where EU policies

¹⁰ Spindler (n 1)

¹¹ Alperhan Babacan, ‘Citizenship Rights in a Global Era: The Adequacy of International Human Rights Law in Providing Protection to Asylum Seekers’ (2007) 3 *International Law and Politics* 9, 158-170; Perveen Ali, ‘States in crisis: sovereignty, humanitarianism, and refugee protection in the aftermath of the 2003 Iraq War’ (2012) LSE; Tendayi Achiume, (n 2).

¹² Laura Barnett, ‘Global Governance and the Evolution of the International Refugee Regime’ (2002) 14(2/3) *International Journal of Refugee Law*. 238-261

¹³ Day (n 7); Babacan (n 11).

¹⁴ Goodwin in Babacan (n 11)

¹⁵ Day (n 7)

¹⁶ Achiume (n 2)

¹⁷ Alexander Betts, ‘Our refugee system is failing. Here’s how we can fix it.’ (2016) Ted Talks.

will be examined to demonstrate the applicability of R2P. Finally, the research objectives will be summarized in the conclusion.

1.2 Background

The Syrian refugee crisis has been described as the ‘biggest refugee and displacement crisis of our time’¹⁸. The perilous civil war that has overtaken the country has resulted in human rights violations, war crimes, and crimes against humanity¹⁹. Almost half a million people have been killed and the death toll continues to rise²⁰. The UNHCR (2016) reports that there has been a massive internal displacement crisis, and that 4.9 million people have fled Syria, seeking refuge mainly in Syria’s five neighboring countries, namely Lebanon, Jordan, Iraq, Turkey and Egypt.²¹ even though Lebanon, Jordan and Iraq have not acceded to the UN Refugee Convention and its Protocol²². The magnitude of the refugee influx has put an enormous strain on communities and risks destabilizing the host countries²³. The UNHCR has cautioned the Security Council of the risk of conflict and destabilization in the region, which could overwhelm the international response capacity²⁴.

The refugees face situations of extreme poverty and require urgent humanitarian assistance to meet their basic needs, such as shelter and health²⁵. Countries hosting the refugees also need urgent assistance to cope with the strain on infrastructure and services²⁶. A consideration of the scale and complexity of the Syrian refugee crisis reveals that a more collaborative approach is needed in order to achieve humanitarian provision for refugees and international security.

¹⁸ UNHCR, ‘Syria Conflict at 5 years: the biggest refugee and displacement crisis of our time demands a huge surge in solidarity’ (UN, 15 March 2016)

¹⁹ UNHCR, ‘Chief Urges States To Maintain Open Access for Fleeing Syrians’ (UNHCR, 16 July 2013),

²⁰ Achiume (n 2)

²¹ UNHCR (n 18)

²² Jeff Crisp et al., ‘From slow boil to breaking point: A real-time evaluation of UNHCR's response to the Syrian refugee emergency,’ (2013), 10 PDES

²³ Achiume (n 2)

²⁴ Achiume (n 2)

²⁵ Tim Midgley et al., ‘World Vision, Advocacy Report: Under Pressure – The Impact of the Syrian Refugee Crisis on Host Communities in Lebanon.’ (2013).

²⁶ European Commission, ‘Humanitarian Implementation Plan – Syria Crisis’ (2015).

1.3 Research Focus

The purpose of this dissertation is to investigate solutions for international cooperation for refugee protection through the implementation of the ‘Responsibility to Protect’ with the human security paradigm. The significance of the study is to investigate whether the R2P doctrine can be useful in shaping state policies emphasizing human security as opposed to national security. This will provide a clear route towards guiding EU policies towards refugees. This dissertation projects the idea that the conceptual framework of human security as opposed to national security is important for states to fully realize the importance of action as opposed to inaction with regards to the urgent Syrian refugee crisis.

1.4 Research Aims and Objectives

The research aims that will guide the dissertation are listed below:

1. To investigate whether R2P can contribute to the international refugee protection regime for the Syrian Refugee Crisis.
2. To understand and identify how R2P and human security can provide solutions for the Syrian Refugee crisis.
3. To evaluate the strengths and the weaknesses of the concept of R2P.
4. To explore the conceptual framework in a case study of the European Union policies.
5. To recommend possible solutions for using R2P for solutions for the Syrian refugee crisis.

METHODOLOGY

2.1 Introduction

The methodology will specify the choice of research methods used for the empirical research. The aims and objectives of this research are to understand the strengths and weaknesses of using R2P as a framework to provide solutions for the Syrian refugee crisis. In this regard, the European Union has faced much criticism for not contributing sufficiently towards refugee protection. The case study that will be conducted will research whether R2P can shape EU policies for refugee solutions. This information will lead to recommendations for the Syrian refugee crisis.

This section will discuss the selection of the research strategy and will justify the choice of the methods used. Furthermore, it will discuss the data collection strategy and the framework for data analysis. It will conclude with an understanding of the limitations.

2.2 Research Strategy

This research uses a qualitative approach, which ‘emphasizes words rather than quantification in the collection and analysis of data.’²⁷ Denzin and Lincoln (1994) believe that qualitative research involves studying ‘things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them.’²⁸ The qualitative approach is more suitable for understanding R2P and human security, in the current legal and political global situation. This study is therefore, based on a literature review, and an empirical case study, in order to explore the potential of R2P for providing solutions for the Syrian refugee crisis.

The case study method is used to explore a contemporary issue in depth. According to Simons (2009), this generates an ‘in depth understanding of a specific topic, programme, policy, institution or system to generate knowledge and/or inform policy development, professional practice and civil or community action.’²⁹ According to Thomas (2011), ‘the case study method is a kind of research that concentrates on one thing, looking at it in detail, not seeking to

²⁷ Alan Bryman, ‘*Social Research Methods*’ (4th edn, OUP 2012).

²⁸ Peter Clough & Cathy Nutbrown, ‘*A Student’s Guide to Methodology*’ (2nd edn, Sage 2010)

²⁹ Simons in Gary Thomas, ‘*How to do your Case Study: A Guide for Students and Researchers*’ (1st edn, Sage 2011)

generalize from it.³⁰ Thus, the case study analysis will be used to examine EU policies, and the potential of R2P in shaping them in view of the Syrian refugee crisis. In addition, since qualitative research methods also focus on the social understandings from the findings, this will allow an analysis of EU policy in terms of the wider social and political context. This will enable a contextual understanding for the practical application of the R2P approach.

Thus, the research strategy will employ a socio-legal case study method. According to Salter & Mason (2007), the socio-legal approach has no fixed definition, however, it aims to ‘investigate the impact of law in action, and the key role played by ideological factors, including public policy.’³¹ More specifically, Eekelaar and Maclean state in Salter & Mason (2007), that “socio-legal study imposes the unifying discipline of observing the way in which law works through those who believe themselves to be acting out the law.”³² Therefore, this method will help to analyse the context in which the law is applied within EU countries.

For the purpose of the research, data, which included facts and figures, was collected from EU public policy papers, journal articles and previous studies. The data was then analyzed using themes based on the literature review. These themes are described below:

- 1) EU policies for the Syrian refugee crisis
- 2) Barriers and limitations faced by the refugees, as a result of EU policies
- 3) The application, or absence of the human security paradigm in the EU
- 4) The potential role that R2P can play in promoting solutions
- 5) The weaknesses of R2P in practical situations.

2.3 Limitations and Potential Problems

The limitations of the case study approach is that it may be insufficient for answering detailed questions of the strengths and weaknesses of applying the R2P approach. Using the socio legal case study method, for example, may be weaker than utilizing a mixed method approach because this will be broader in its scope for understanding R2P in a qualitative and a quantitative manner. Moreover, the drawback of the single case study design is that it may be unable to provide a summative conclusion, because of its broad focus. To cover this drawback,

³⁰ Thomas (n 29).

³¹ Michael Salter & Julie Mason, ‘*Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*’ (1st edn, Pearson 2007)

³² Salter & Mason (n 31)

the conclusion will be cumulative to show what the case study has revealed concerning R2P and EU policies.

Lastly, there are no ethical considerations, as the data collection process does not involve interviews.

LITERATURE REVIEW

3.1 Introduction

The purpose of this literature review is to understand the underlying theoretical issues of the key research aims. There is an abundance of literature on the matter of R2P and its utility, the weaknesses of the refugee regime and human security, however the gap in literature involves the lack of a link made between these three themes all together. Furthermore, there is insufficient literature on the utility of R2P for the refugee regime. Therefore, this literature review will specifically look at these themes and the relationship between them. These key research aims will allow us to build an understanding of the strengths and the weaknesses of R2P in promoting human security as a principle for state action as a solution to the Syrian refugee crisis.

The literature review elaborates on International Law, R2P and Human Security, in order to gain insights in the weaknesses of international law in providing protection for refugees. Additionally, it will seek to understand the value of Human Security, as opposed to traditional notions of national security. This chapter will also analyze the R2P doctrine, in order to understand its theoretical foundations, and its association with human security. The diagram below represents the links between international law, human security and R2P for implementation in the Syrian refugee crisis.

Figure 1: A Diagram of the Link between International Law, Human Security and R2P and the Syrian Refugee Crisis.



Figure 2: Analysis of Research Aims

Research Aims

1. To investigate whether R2P can contribute to the international refugee protection regime for the Syrian Refugee Crisis.
(Section 3.2, 3.32)

 2. To identify the ways in which the concept of R2P as a mechanism can be used to reinforce human security within the context of the Syrian Refugee Crisis.
(Section 3.3, 3.31, 3.32)

 3. To evaluate the strengths and the weaknesses of the concept of R2P within the context of the Syrian Refugee Crisis.
(Section 3.32, 3.4)
-

3.2 International Law

This section will identify how international law can make use of the concept of R2P as a mechanism to reinforce human security within the context of the Syrian refugee crisis. It will also look at the weaknesses of International Law in this regard, and the potential of human security to reinforce the refugee protection system.

Refugees have rights under international law; even though they do not have the citizenship of a state.³³ As refugee situations are humanitarian issues, the duty to protect refugees is recognized as a global responsibility³⁴. This is enabled through the international refugee regime which establishes laws and measures for the protection of refugees. The 1951 Convention Relating to the Status of Refugees (Refugee Convention) and the 1967 Optional Protocol relating to the Status of Refugees (1967 Optional Protocol) form the foundation of this regime³⁵. The Refugee Convention, which was originally created for the protection of European refugees after World War II had geographical and time limitations, which were removed through the adoption

³³ Eric Fripp, *Nationality and Statelessness in The International Law of Refugee Status* (1st edn, Bloomsbury, 2016).

³⁴ Agnes Hurwitz, *The Collective Responsibility of the State to Project Refugees* (OUP, 2009) [e-book].

³⁵ Fripp (n 33)

of the 1967 Optional Protocol.³⁶

The Refugee Convention provides a global definition of a refugee and outlines the basic rights of refugees and the obligation of states. The refugee definition is provided in Article 1.2; “... owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”³⁷ This definition enables the identification of refugees and entitles them to the rights and protections of the Refugee Convention. It seeks permanent solutions for refugees by resettling them; or through voluntary repatriation or granting of asylum³⁸

International refugee Law is supported by International Human Rights Law and International Humanitarian Law which uphold a person’s right to security, freedom and dignity.³⁹ Other legal instruments that contribute to international refugee protection include the Universal Declaration of Human Rights, and the United Nations Convention of the Rights of the Child. In addition, regional instruments such as the 1969 Organization of African Unity (OAU) Convention, the 1984 Cartagena Declaration; as well as the 2004 EU Directive on the right to seek asylum supplement the Refugee Convention. However, since these are regional, they do not apply to all countries of asylum⁴⁰. The refugee protection regime also includes an international organization, the Office of the United Nations High Commissioner for Refugees (UNHCR), which has the responsibility to supervise state cooperation for the provision of refugees rights.⁴¹

The 1951 Refugee Convention (Article 3) requires states to protect the basic human rights of refugees without discrimination, as endorsed in the UDHR.⁴² The main principles of the

³⁶ Convention Relating to the Status of Refugees (adopted 28 July 1951); Protocol Relating to the Status of Refugees (adopted 31 January 1967).

³⁷ Convention Relating to the Status of Refugees (1951). 189 UNTS p137, Art. 1.2

³⁸ Laura Barnett, ‘New Issues in Refugee Research: Global Governance and the Evolution of the International Refugee Regime’ (2002) UN Working Paper.

³⁹ Vanessa Holzer, *Refugees from Armed Conflict: the 1951 Refugee Convention and International Humanitarian Law*. (Intersentia, 2015).

⁴⁰ Fripp (n 33)

⁴¹ Fripp (n 33)

⁴² United Nations Declaration of Human Rights (adopted 10 December 1948) 217 A (III).

international refugee regime, include prohibition of forced return (*non-refoulement*) to a country where they could face persecution (Article 33); and the right of the refugee to seek asylum from persecution. Therefore, refugees are not to be penalized for entering illegally (Article 31). Furthermore, states must allow refugees freedom of religion, and freedom of movement for refugees, and provide access to courts in accordance with the nationals of the receiving country. Essential rights such as food, shelter and medicine are also to be accorded; along with employment, elementary public education and housing in a manner accorded to other foreign nationals in the country.⁴³

The Refugee Protection Regime

Burden Sharing

Burden-sharing is the equitable distribution of responsibilities among states in response to refugee flows, and is a core principle of the refugee regime⁴⁴. However, it is not a legally-binding obligation on states⁴⁵. It entails providing help to refugees through different measures, such as financial assistance, protection and resettlement⁴⁶, on the basis of international solidarity and shared responsibility in order to avert disproportionate burdens on countries⁴⁷.

The Principle of Non-Refoulement

The principle of *non-refoulement* (*non-return*) is considered an inviolable part of international customary law⁴⁸; and is a key provision of the 1951 Convention Relating to the Status of Refugees. Non-refoulement prohibits the return of refugees to territories where their lives and freedoms could be threatened⁴⁹. Both the Geneva Convention relating to the Status of Refugees and the United Nations Convention against Torture and Other Cruel, Inhuman or

⁴³ See note 37, Art. 33, Art. 31.

⁴⁴ UNHCR, 'Burden Sharing' (2000) UNHCR Fifth Annual Plenary Meeting of the APC.

⁴⁵ Achiume (n 2)

⁴⁶ UNHCR (n 44)

⁴⁷ Christina Boswell, 'Burden-sharing in the New Age of Immigration' (2003), The Online Journal of the Migration Policy Institute.

⁴⁸ Philip C.W. Chan, 'The Protection of Refugees and Internally Placed Persons: Non Refoulement under Customary International Law' (2006) 10 International Journal of Human Rights, 231.

⁴⁹ Chan (n 48)

Degrading Treatment or Punishment forbid *refoulement*.⁵⁰ Article 33 of the Refugee Convention states that no refugee shall be returned to any country, ‘where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.’⁵¹ Although the prohibition of *refoulement* applies to refugees who are already on the territory, whether it also applies to refugees who are at the border and seek admission into the territory is debated⁵².

Asylum

Asylum, is the protection granted to refugees by a State on its territory. It is a known state practice and is established in international law⁵³. Article 14 (I) of the Universal Declaration of Human Rights, which forms the foundation of international human rights law and helps determine customary international law, states that ‘everyone has the right to seek and enjoy in other countries asylum from persecution’.⁵⁴ Therefore, a State which is presented with an asylum request, at its borders or on its territory, has the responsibility to admit the refugee temporarily; and provide access to fair asylum procedures⁵⁵. However, there is no corresponding obligation on states to grant asylum.⁵⁶ Moreover, an increasing number of states have transferred the responsibility to examine asylum applications to “safe third countries” and grant temporary protection instead of permanent asylum to refugees.⁵⁷

Current State practice

With the exponential increase in refugee numbers in recent years, countries have increasingly undertaken measures to prevent refugee access to their territories⁵⁸. This has resulted in asylum policies which are inconsistent with the international protection framework, with restrictive interpretations of the 1951 Convention and its 1967 Protocol. Such measures,

⁵⁰ Fripp (n 33)

⁵¹ See note 36.

⁵² Catherine Phuong, ‘Identifying states’ responsibilities towards refugees and asylum seekers’. (2005) ESIL Research Forum on International Law.

⁵³ Barnett (n 38)

⁵⁴ Universal Declaration of Human Rights (adopted 10 December 1948) 217 A(III) Art 14(I).

⁵⁵ UNHCR, ‘Convention Plus Issues Paper Submitted by UNHCR on Addressing irregular secondary movements of refugees and asylum-seekers’ (2004) Forum/CG/SM/03, p7.

⁵⁶ Frelick et al (n 56)

⁵⁷ Frelick et al (n 56)

⁵⁸ Amnesty International, ‘The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe’s Borders’, (2014).

along with detentions, and reduction of benefits and rights, deprive refugees of the rights provided to them in the Refugee Convention.⁵⁹

Although refugee protection is a humanitarian issue, crucial for global security; states have been reluctant to accept responsibility, and have attempted to deter refugees rather than fulfil their rights.⁶⁰ While States are not directly in violation of international refugee law, the humanitarian intent of the 1951 Convention is not being followed.⁶¹ In this regard, refugee rights have been strengthened by human rights law⁶². This has resulted in cases in the European Court of Human Rights, where EU states have been held accountable for human rights violations concerning refugees; such as *M.S.S. v. Belgium and Greece* and *Hirsi Jamaa and Others v. Italy*. Nevertheless, it is still difficult to make states accountable for the violations of refugees' economic, social and cultural rights⁶³.

Although the Vienna Convention on the Law of Treaties confirms that states must fulfil treaty obligations in good faith⁶⁴, state policies have focused on legal technicalities instead of the spirit of the Refugee Convention⁶⁵. Thus States have interpreted the 1951 Refugee Convention to serve their interests, such as by narrowing the definition for refugees in order to restrict the number of refugees⁶⁶. States have also tried to prevent access to refugees; thus trying to stay within the parameters of the law without fulfilling treaty obligations.⁶⁷ In this regard, Hurwitz (2009) states that the responsibility of protecting refugees, is unconditional and does not rely on the refugee's presence on the state's territory⁶⁸.

Weaknesses of the International Refugee Regime

The 1951 Convention is the only universal binding refugee protection instrument, and has

⁵⁹ Ibid.

⁶⁰ Olivia A. Loveland, 'International Refugee Law' (2016). University Honors Theses. Paper 282.

⁶¹ Loveland (n 60)

⁶² Guy S. Goodwin-Gill & Jane McAdam, *The Refugee in International Law*, (3rd edn, OUP 2007).

⁶³ Bonita B. Sharma, 'Revisiting the United Nations' 1951 Convention Relating to the Status of Refugees: A Critical Analysis of the International Refugee Law.' (2015) 37 Social Development Issues 2, 80-94.

⁶⁴ Goodwin-Gill & McAdam (n 62).

⁶⁵ Erin K. Wilson, 'Protecting the Unprotected: reconceptualising refugee protection through the notion of hospitality.' (2010) 8(1) *Local Global*, 100-122.

⁶⁶ Emma Haddad, *The refugee in international society: between sovereigns*, (CUP 2008) p. 79.

⁶⁷ Loveland (n 60).

⁶⁸ Hurwitz (n 34).

a great deal of legal, political as well as ethical significance. However, it is limited in its scope since it was originally intended to address the status of refugees, not solutions or causes⁶⁹. Although it establishes a broad legal framework for global co-operation to find solutions for refugee problems⁷⁰, it needs to be supported by regional legal instruments and state policies in order to be effective⁷¹. Furthermore, important gaps remain in the protection regime which States can exploit in their own interest⁷². The use of vague language, for example, allows states to interpret it more narrowly and create policies to evade their obligations⁷³.

The International Refugee regime has been criticized for being outdated, and there are calls to reform it in response to new global realities, as well as to take into account the legitimate concerns of states⁷⁴. Furthermore, as international refugee protection relies on the cooperation of states⁷⁵; it is challenged by the principle of state sovereignty⁷⁶, and the self-interest and lack of cooperation of states. Another major challenge is that the refugee regime is not implemented consistently worldwide, and it is hampered by ad hoc national frameworks which are not in accordance with international refugee law⁷⁷. Furthermore, it is also hampered by the difficulty to create effective supervisory mechanisms⁷⁸.

It has been recommended that the definition of a refugee in the Refugee Convention, should be modified in view of changing global realities. However, while activists propose a broader definition of the refugee; politicians support a narrower one⁷⁹. The lack of clarification for the terms “persecution” and “well-founded fear,” in the definition of a refugee⁸⁰ has resulted in biased and subjective interpretations. Furthermore, since, the refugee definition has not been uniformly interpreted, a person may be recognized as a refugee in one country, but not in

⁶⁹ Erika Feller, ‘Evolution of International Refugee Protection’ (2001) 5 Journal of Law & Policy 129

⁷⁰ Feller (n 69).

⁷¹ Loveland (n 29).

⁷² Goodwin Gill & McAdam (n 62).

⁷³ Eduardo Arboleda and Ian Hoy, ‘The Convention refugee definition in the West: disharmony of interpretation and application’ (1993) 5 International Journal of Refugee Law, 1.

⁷⁴ Wilson (n 65)

⁷⁵ Feller (n 69)

⁷⁶ Barnett (n 38).

⁷⁷ James C. Hathaway, ‘*The Rights of Refugees under International Law*’ (CUP, 2005).

⁷⁸ Joan Fitzpatrick, ‘Revitalizing the 1951 Refugee Convention’ (1996) 9 Harvard Human Rights Journal.229 -231

⁷⁹ Fitzpatrick (n 78).

⁸⁰ Sharma (n 63)

another⁸¹. The international refugee protection system has also been criticized as being inefficient for allocating equitable responsibility sharing between states for refugee protection⁸². The immediate problem raised by the lack of responsibility-sharing is that countries in regions of origin bear the overwhelming responsibility to protect most of the world's refugees. There is also a gap between the right to asylum and the lack of a corresponding state duty to grant asylum. It is generally argued that states have a right, rather than a duty, to grant asylum, which follows from their sovereign right to control admission into their territory⁸³. Therefore, the Refugee regime will have to reconsider its definitions and policies to be more relevant.

3.3 State Action and Implementation

3.31 Human Security

Human Security is the result of a radical change in the concept of security after the Cold War.⁸⁴ It refers to the security of people in terms of their physical safety, their economic and social wellbeing, their dignity and worth, and the protection of their human rights and freedoms⁸⁵. Kofi Annan stated in 2000 that “human security in its largest acceptance is more than the absence of violent conflicts. It includes human rights, good governing, access to education, medical care and individual opportunities and choices to achieve one's potential.”⁸⁶ According to Edwards, after the Cold War, notions of security were no longer limited to territorial sovereignty, national interest and military force.⁸⁷ A new concept of security, entered the discourse, which allowed for transnational post-Cold War challenges to be taken into account⁸⁸. When the realist political agenda ‘failed to solve the majority of the world's security concerns’, it became evident that there was a need for a change in thought⁸⁹. Indeed, the idea of human security is described as ‘the most important attempt to reconceptualize security’.⁹⁰

⁸¹ Phuong (n 52)

⁸² Goodwin-Gill & McAdam (n 31)

⁸³ Haddad (n 66).

⁸⁴ Alice Edwards, ‘Human Security and the Rights of Refugees: Transcending Territorial and Disciplinary Borders.’ (2009) 30(3) Michigan Journal of International Law, p 763

⁸⁵ ICISS report, ‘The Responsibility to Protect’ (2001) International Commission on Intervention and State Sovereignty.

⁸⁶ Kofi Annan in Gareth Evans, ‘The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All’, (2nd edn, Brookings Institution Press 2008).

⁸⁷ Edwards (n 84).

⁸⁸ Edwards (n 84).

⁸⁹ Edwards (n 84)

⁹⁰ Edwards (n 84).

Context and Background

“Increasing interconnectivities in global economic, social, and environmental systems have created impacts for citizens around the world and challenges for state regulation” explains MacArthur (2008) when explaining the changes in the post-Cold War security discourse.⁹¹ She further explains that human security gained prominence due to the end of the Cold War and the acceleration of globalization, where the traditional state-centric framework of security no longer proved adequate⁹². Thus national security can no longer protect states and their citizens from global threats, such as terrorism, poverty, disease and environmental degradation.⁹³ ‘Security threats are no longer confined to the military realm’; the shift from national security to human security is therefore one of the attempts to reconfigure security in an interconnected world⁹⁴

Definition and Concept

Human security is described by Nasu (2016) as ‘the protection of people from critical and pervasive threats and situations, and the empowerment of people to develop their potential, through concerted efforts to develop norms, processes and institutions that systematically address insecurities.’⁹⁵ According to Peter Hough, human security is the ‘deepening’ of security, where individual persons are placed at the center of security concerns and policy making.⁹⁶ The concept of human security gained recognition in 1994 in the UNDP report on Human Development, where it was described in its broadest conception to include seven types of security: economic, food, health, environment, personal, community and political. Focusing the security paradigm on people, development and the environment, is evidently a major shift and a ‘direct challenge to the traditional paradigm.’⁹⁷

MacArthur (2008) argues that there is a broad and a narrow concept of human security,

⁹¹ Julie MacArthur, ‘A Responsibility to Rethink? Challenging Paradigms in Human Security.’ (2008), 63(2) *International Journal*, 422-443

⁹² MacArthur (n 91)

⁹³ ICISS report (n 85).

⁹⁴ MacArthur (n 91)

⁹⁵ Hitoshi Nasu, ‘Human Security and International Law: The Potential Scope for Legal Development within the Analytical Framework of Security’ in Mary E. Footer et al (eds), *Security and International Law*, (Bloomsbury 2016).

⁹⁶ Nasu (n 95)

⁹⁷ MacArthur (n 91)

which is supported by both Nasu (2016) and Edwards (2009).⁹⁸ The narrow concept of human security looks at R2P as a political basis for humanitarian intervention and security of civilians against the four mass atrocity crimes.⁹⁹ The broader concept of human security looks at the wider causes of underdevelopment that threaten the sanctity of the individual.¹⁰⁰ This is supported by Edwards (2009) who states that ‘at a minimum, human security means security of persons from threats to life, freedom and dignity. At its broadest, it includes humanitarian imperatives for joint action on a wide range of issues based on understandings of shared humanity.’¹⁰¹

Human security therefore ‘provides a complex but more realistic account of the causes and conditions of global security.’¹⁰² This is because human security changes the concept of threats and protection¹⁰³. William Bain explains the “moral bankruptcy of national security” which in the context of refugee protection prevents states from their international responsibility of accommodating Syrian refugees.¹⁰⁴

Criticisms of Human Security

Human security lacks a clear definition¹⁰⁵ and includes a very broad range of threats, such as wars, poverty, crime, terror and environmental crises¹⁰⁶. It also lacks standardized indices for quantitative measurements¹⁰⁷. It can also be difficult to reconcile with national security, and presents some political challenges¹⁰⁸. Indeed, stretching the concept too far creates confusion¹⁰⁹. The mistrust of the R2P doctrine, have made states skeptical about adopting it as a policy¹¹⁰.

⁹⁸ MacArthur (n 91); Edwards (n 84); Nasu (n 95).

⁹⁹ MacArthur (n 91)

¹⁰⁰ MacArthur (n 91)

¹⁰¹ Edwards (n 84).

¹⁰² MacArthur (n 91)

¹⁰³ MacArthur (n 91)

¹⁰⁴ Bain in MacArthur (n 91)

¹⁰⁵ Yaniv Roznai, ‘The Insecurity of Human Security’, (2014) 32(1) Wisconsin International Law Journal; Edwards (n 84).

¹⁰⁶ Roland Paris, ‘Human Security: Paradigm Shift or Hot Air?’ (2001) 26(2) International Security, 87- 102.

¹⁰⁷ Edward Newman, ‘A Normatively Attractive but Analytically Weak Concept’ (2004) 35 Security Dialogue 358.

¹⁰⁸ Anna Katharina Scheffler ‘The Externalisation of European Migration Control - How can Human Security of Asylum Seekers be Achieved? (2015) Thesis. Roskilde University

¹⁰⁹ Mary Martin, & Taylor Owen, ‘The second generation of human security: lessons from the UN and EU experience’. (2010) 86(1) International Affairs, 211–224.

¹¹⁰ Shahrbanou Tadjbakhsh, ‘Human security twenty years on.’ (2014) The Norwegian Peacebuilding Resource Centre, Expert Analysis

3.32 Responsibility to Protect

This section will look at the concept of the Responsibility to Protect doctrine and its influence upon international law. Furthermore, it will analyze its link to human security and how this can provide solutions to the Syrian refugee crisis. It will also explore the strengths and the weaknesses of the R2P, in order to understand its efficiency as a framework for state action.

The Emergence of R2P

The Responsibility to Protect is a legal norm, which emerged after the Cold War,¹¹¹ as a result of debates surrounding the responsibility of states, and the notions of sovereignty.⁵ The failure of the international community to avert humanitarian tragedies resulted in the perspective of sovereignty as responsibility; when the state is unable or unwilling to protect its population the responsibility falls on the global community.¹¹² This signifies a moral commitment for collaborated action for protecting vulnerable populations in the face of mass atrocity crimes for international peace and stability¹¹³. According to Francis (2013), the conceptualization and promotion of the R2P has been the ‘most important development’ for the international community’s response to mass atrocities.¹¹⁴ The core documents of the R2P include the ICISS report (2001) that initially introduced the idea, and the World Summit Outcome document of 2005, where the idea was accepted by the United Nations.¹¹⁵

According to the ICISS report (2001), the ‘responsibility to protect’ was supposed to be an improved means for international action, based on the lessons learnt from the four cases of Rwanda, Kosovo, Bosnia and Somalia.¹¹⁶ R2P is a comprehensive doctrine that incorporates a broader understanding of security crises.¹¹⁷ It allocates responsibility in a three pillared approach to interpret humanitarian intervention under international law, which allows for a way for states to ‘prevent and respond to these human rights catastrophes in a potentially much more acceptable way.’¹¹⁸

¹¹¹ Evans (n 86)

¹¹² ICISS report (n 85)

¹¹³ Evans (n 86)

¹¹⁴ Agnus Francis, ‘The Responsibility to Protect and the International Refugee Regime.’ In Angus Francis, Vesselin Popovski & Charles Sampford (eds.), ‘Norms of Protection: Responsibility to Protect, Protection of Civilians and their Interaction’, (1st edn, UN University 2013) [e-book].

¹¹⁵ UN General Assembly, 2005 World Summit Outcome, (adopted 24 October 2005), A/RES/60/1.

¹¹⁶ ICISS report (n 85)

¹¹⁷ ICISS report (n 85).

¹¹⁸ ICISS report (n 85)

The ICISS report reframes sovereignty as responsibility in order to change the way states act towards their populations, and associates it with the broader concept of human security.¹¹⁹ The notion of sovereignty as responsibility is a core principle of the R2P doctrine, which determines that individual states have the responsibility to protect their civilians from mass atrocity crimes.¹²⁰ According to Francis (2013), this principle builds upon existing legal norms¹²¹. The idea was further endorsed by the United Nations in paragraph 138 of the World Summit Outcome document (2005). The significance of this idea being accepted by the United Nations by theory is that it signifies a change in the traditional Westphalian concept of sovereignty, and also shows that there is more of a progress from realist national security paradigms to human security and R2P.

ICISS report, 2001

The ICISS report states that the international community has a collective responsibility to ‘prevent’ humanitarian crises from emerging, to ‘react’ in order to help vulnerable populations, and to help ‘rebuild’ communities in such situations.¹²² The four crimes that are specified within the doctrine include genocide, war crimes, crimes against humanity, and ethnic cleansing; these crimes, according to the principles outlined in the ICISS report, are all related to state failures.¹²³ It is therefore the responsibility of the sovereign state and the wider international community to prevent and respond to them, in order to protect territorial populations.¹²⁴ Sovereignty is a key element discussed within the doctrine.¹²⁵ Moreover, the ICISS report, explains that the lack of provision of civil and political rights by the sovereign state leads to human insecurity.¹²⁶ By introducing the idea of sovereignty as responsibility, R2P reframes the very purpose of the state.

R2P and the Three Pillars

The World Summit Document which was released by the United Nations in 2005 helps to elaborate upon the concept, explaining the three pillars of the R2P doctrine in its first two

¹¹⁹ ICISS report (n 85)

¹²⁰ ICISS report (n 85)

¹²¹ Francis (n 114).

¹²² ICISS report (n 85).

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

paragraphs.¹²⁷ Paragraph 138, elaborates that ‘each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.’¹²⁸ This includes to prevent its incitement and to react to it with appropriate and necessary means. According to the UN Report on ‘Implementing the Responsibility to Protect’, the foundation of Pillar 1 is strongly embedded within international law. The protection of citizens and non-citizens by individual states is therefore the main feature of the first pillar.¹²⁹

Furthermore, paragraph 139 elaborates upon the duties of the international community by explaining how they can exercise this duty through ‘appropriate diplomatic, humanitarian and other peaceful means’.¹³⁰ It also advocates for collective action to help states that are ‘manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.’¹³¹ The core of pillar 2 is ‘international assistance and capacity building’, which extends to international assistance for protecting populations from R2P crimes, regardless of borders.¹³²

Finally, pillar three describes the responsibility of the international community to ‘respond collectively in a decisive manner’ in response to when a state is ‘manifestly failing’ to fulfil its responsibility to protect based on pillar 1.¹³³ These measures are to be in accordance with the UN Charter and are based on the UN principles for promoting global peace and security through appropriate means, which could also include coercive measures.¹³⁴ According to Achiume (2016), the function of R2P within the context of the Syrian refugee crisis would require the ‘international community (to) take action. This action would include sharing the cost of protecting the refugee population and its hosts, where the host state lacked the capacity to do so.’¹³⁵ This is important to understand because it allows us to note that refugees do fall within the ambit of pillar 3 of the framework of R2P.¹³⁶ To conclude, all of these three pillars are intended to complement one another in order to prevent or react to the dangers of conflict upon the lives

¹²⁷ World Summit Outcome Document (n 115).

¹²⁸ Ibid.

¹²⁹ Achiume (n 2); UN General Assembly, ‘*Implementing the responsibility to protect : report of the Secretary-General*’, (12 January 2009), A/63/677

¹³⁰ World Summit Outcome Document (n 115)

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Achiume (n 2).

¹³⁵ Ibid.

¹³⁶ Ibid.

of ordinary citizens such as the refugees of Syria.¹³⁷

R2P and International Law

Even though R2P was globally accepted and endorsed as a norm, it is not legally binding on states.¹³⁸ As a ‘soft law’ it has its basis in customary international law; yet it cannot be enforced and serves the purpose of clarifying existing legal obligations and promoting their enforcement¹³⁹. According to Christine Chinkin quoted in Welsh & Banda (2010), soft law leaves room for interpretation, and so does not create precise legal rights and obligations.¹⁴⁰ Welsh and Banda (2010) further discuss: ‘(R2Ps) primary function today is to remind all states of the obligations they have to their own citizens and to clarify the extraterritorial responsibilities they have to strangers.’¹⁴¹

The Strengths and the Weaknesses of R2P

The fact that R2P is soft law means that it has both strengths as well as weaknesses in applicability. According to Welsh and Banda (2010), soft laws have the ability to ‘signal the direction of future legal developments, act as a precursor to binding treaties, or ‘harden’ into custom over time by mobilizing state practice or providing evidence of *opinio juris*.’¹⁴² This means that R2P, whilst currently a framework to interpret state responsibility towards citizens, may have the potential to form treaty based law and thus have even greater influence in the decisions of states¹⁴³. This is supported by Norooz (2015), who claims that although, R2P may never evolve into a wholly legal binding responsibility, ‘it may continue to remind the UN member states to abide by their individual legal obligations as set forth in the UN Charter – to observe the relevant human rights Conventions and international humanitarian laws already in place to prevent future atrocities and keep its people safe.’¹⁴⁴

Additionally, as soft law, R2P can help to shape legal interpretations of existing laws to

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Jennifer M. Welsh & Maria Banda, ‘International Law and the Responsibility to Protect: Clarifying or Expanding States’ Responsibilities?’ (2010) 2(3) Global Responsibility to Protect 213-231

¹⁴⁰ Chinkin in Welsh & Banda (n 139).

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Erfaun Norooz, ‘Responsibility to Protect and its applicability in Libya and Syria’ (2015).9(3) ICL Journal

clarify the understanding of international conduct¹⁴⁵. There is no international treaty to stress the protection of civilians against mass atrocity crimes war crimes. Thus R2P has great influence in filling this legal gap¹⁴⁶. However, as soft laws carry no legal obligation, states can deny them to prevent them from hardening into actual enforceable law¹⁴⁷. This weakens the R2P, as states fear it will erode sovereignty and further the aims of Western power.¹⁴⁸

3.5 The International Response to the Crisis

The international response to the humanitarian crisis has fallen short of the overwhelming need of the refugees. Moreover, the challenge facing the international community to protect refugees is partly a moral one. Despite UN Secretary-General Ban Ki-moon's call for 'monumental solidarity' to face the 'monumental crisis'¹⁴⁹, the refugees face multiple border camps and barriers to entry. The UN Refugee Agency has appealed to the international community for funds, as well as commitments to resettle the Syrian refugees in their territories.¹⁵⁰

Owing to the scarcity of resources, there has been a dramatic rise in the number of Syrians seeking refuge in Europe. In desperation, over 300,000 people risked their lives in 2015 to reach Europe through the Mediterranean Sea, with over 2500 perishing in the attempt to do so¹⁵¹. Unlike Jordan and Lebanon, European States have legal obligations towards refugees, because they have ratified the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol which provide "dignity, worth, and freedom, in equality, to those who are displaced"¹⁵². These also require states to extend protection to refugees within their jurisdiction. However, citing security risks and the threat to Europe's ideology, Europe's reaction towards the refugee crisis has been one of shifting responsibility¹⁵³. This is evident by measures such as the use of

¹⁴⁵ Welsh & Banda (n 139)

¹⁴⁶ Evans (n 86).

¹⁴⁷ Welsh & Banda (n 139)

¹⁴⁸ Ibid.

¹⁴⁹ Ban Ki Moon, 'Remarks on Forced Displacement: A Global Challenge', (Washington DC, UN News, 15 April 2016).

¹⁵⁰ UNHCR, 'Resettlement and Other Forms of Admission for Syrian Refugees' (Oct. 2, 2015),

¹⁵¹ Stephen O'Brien, Statement to the Security Council on Syria New York, (21 November 2016)

¹⁵² Sharma (n 63).

¹⁵³ Hanouf Talal Khallaf, 'Veto Syria: Explaining the Power of the United Nations Security Council and the Syrian Refugee Crisis' (2016).

force and border restrictions to prevent refugees from crossing borders within Europe¹⁵⁴.

Moreover, the EU has been criticized for a new deal which allows the EU to deport refugees to Turkey, which is seen as a violation of the 1951 Refugee Convention.¹⁵⁵

Moreover, this humanitarian crisis threatens to endanger regional and international security and create conditions for radicalization.¹⁵⁶ The failure of international assistance for Syrian refugees is partly due to the absence of a framework to facilitate an equitable distribution of costs and responsibilities among states.¹⁵⁷ This also reveals the inadequacy of the refugee regime which does not provide for the equitable responsibility sharing of refugees and needs to be re-examined¹⁵⁸. R2P as a principle for responding to mass atrocities when states have failed to protect their populations, presents an opportunity for international collaboration.

3.4 Conclusion

This section investigated the first three research objectives. It divided the research into three main chapters, namely International Law, State action and implementation, and the International Response to the Crisis.

The literature review shows that R2P is a form of ‘soft law’, which, although cannot have the impact of international law, can help to supplement it in encouraging states to take up their responsibilities. It offers a system of collaboration and moral responsibility which promotes states to look to their human rights obligations. Since human security and R2P are not limited by borders, it has the advantage of global endorsement and essentially will lead to the broadening of the refugee concept.¹⁵⁹ The impact of broadening the refugee concept is that Syrian refugees’ rights will effectively be recognized as an obligation that the international community owes to the people of Syria, due to the fact that they are fleeing from war crimes and conflict in their home country. The refugee status is crucial to allowing their rights to be realized, because it is

¹⁵⁴ UNHCR, ‘States Parties to the 1951 Convention and Its 1967 Protocol’, (UNHCR News, 2016)

¹⁵⁵ Achiume (n 2)

¹⁵⁶ UNHCR, UNHCR Chief Urges States To Maintain Open Access for Fleeing Syrians, (UNHCR News, July 16 2013).

¹⁵⁷ Achiume (n 2)

¹⁵⁸ David Hollenbach, ‘Borders and Duties to the Displaced: Ethical Perspectives on the Refugee Protection System’ (2016) 4(3).JMHS, 148-165

¹⁵⁹ Dorothy Estrada-Tanck, ‘*Human Security and Human Rights under International Law: The Protections Offered to Persons Confronting Structural Vulnerability*’, (Bloomsbury, 2016).

under the dismissal of the refugee status that current state practice gets away with breaches to *refoulement*. This is because states and refugees, according to Biondi, have differing interests when it comes to security protection and rights.¹⁶⁰ Therefore, when R2P is linked together with human security, not only does it offer a framework for interpreting international obligations, but it offers a moral stronghold for the rights of refugees and other non-citizens to be realized.

R2P and human security are related in a simple way; R2P has the potential to strengthen the resolve of human security by being a practical approach to the broad concept of human security. Although it is criticized by some to be considered too narrow, it has the impact of yet focusing on the urgent issues that face populations, such as the Syrian refugees. It can therefore help to streamline the concept into state action. This will be further examined in the case study that will follow.

¹⁶⁰ Paolo Biondi, 'Human Security and external burden-sharing: the European approach to refugee protection between past and present.' (2016), 20(2) The International Journal of Human Rights, 208-222.

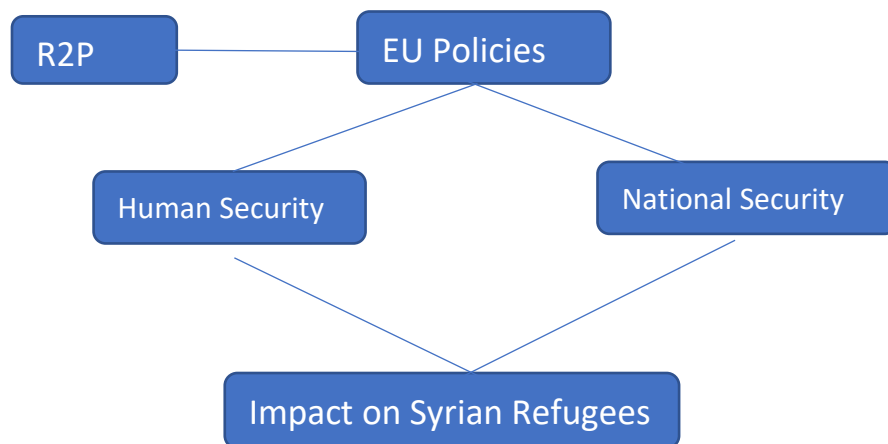
FINDINGS AND DISCUSSION

4.1 Introduction

This chapter will use the socio-legal case study, to focus on the policies of the EU, to highlight their legal components; their strengths and weaknesses, and their association with human security and national security. Furthermore, this section will analyze the impact of EU policies on the Syrian refugees. Most importantly, it will discuss how these policies could be guided by R2P, along with the strengths and weaknesses of R2P in this regard. This has been explained in the diagram below (Figure 3).

The research strategy of the socio-legal case study primarily involved a document analysis approach, where statistics, key documents, and journal articles were used to come to an understanding of the impact of EU policies on Syrian refugees. The document analysis was based on five key thematic questions to analyze the EU policies for the fundamental purpose of the research. The five key questions will be addressed with key findings from other chapters as well as the literature review.

Figure 3: A Conceptual Diagram on the Key Aspects of the case study conducted.



The discussion will examine EU policies,¹⁶¹ with a focus on their impact on Syrian refugees, as well how the elements of human security versus national security influence these policies. This will resolve the issue of whether human security can play a productive role in assisting the Syrian refugees, as well as R2P's role in promoting human security within EU policies. It seeks to understand the strengths and weaknesses of R2P as a form of soft law in

shaping policies that impact the Syrian refugees.

4.2 European Union Policies

This section will critically analyze EU policies that have been implemented in order to deal with the refugee influx that, since 2015, has been the greatest that Europe has witnessed since World War 2¹⁶². In the Syrian humanitarian crisis, while frontline countries are hosting most of the Syrian refugees,¹⁶³ the EU with greater capacity and resources has tried to deflect the refugees to other countries, instead of sharing the responsibility.¹⁶⁴ However, the EU is providing humanitarian assistance and development aid, by funding projects as well as countries that are hosting refugees.¹⁶⁵ The EU has dedicated more than 10 billion Euros from the EU budget to help the refugee crisis in 2015 and 2016.¹⁶⁶ More importantly, the EU is also reforming its asylum policy; the Common European Asylum System has been developed based on the EU's ratification of the 1951 Refugee Convention.¹⁶⁷ The right to asylum that the European Union has adhered to de facto is in agreement with TFEU Article 78¹⁶⁸. This will be described in greater detail in the section below.

The European Refugee Law Framework

The ECHR

The Council of Europe legal system comprises of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is also known as the European Convention on Human Rights¹⁶⁹. Whilst the 1951 Refugee Convention is the primary customary form of international law that relates to the rights of refugees for *non refoulement*, there are additional protective rights within the ECHR that protect people from *refoulement*¹⁷⁰.

¹⁶² Ali Albassam, "Europe's Refugee Crisis: Assessing the Factors Preventing a Coordinated EU Response" (2015). *Master's Theses*. 161; Tendayi Achiume, 'Syria, Cost-sharing, and the Responsibility to Protect Refugees.' [2015] 100 Minnesota Law Review, 687

¹⁶³ Jan Egeland, 'A Way Out of the Syrian Carnage' [2015] 12(1) Brown Journal World Affairs 297-304

¹⁶⁴ Biondi (n 160).

¹⁶⁵ Cynthia Orchard & Andrew Miller, 'Protection in Europe for refugees from Syria', (Policy Briefing, Oxford, 2014).

¹⁶⁶ Orchard & Miller (n 165).

¹⁶⁷ Albassam (n 162).

¹⁶⁸ Ibid.

¹⁶⁹ Eric Fripp, 'Nationality and Statelessness in The International Law of Refugee Status', (1st edn, Bloomsbury, 2016).

¹⁷⁰ Orchard & Miller (n 165)

The ECHR and *non-refoulement*

Non-refoulement is interpreted in the ECHR under Article 3, which states that ‘no one shall be subjected to torture or to inhuman or degrading treatment or punishment.’¹⁷¹ Hence, despite the fact that there is no clause on the granting of asylum in the Convention, according to Hurwitz (2009), Article 3 suffices to prevent the *refoulement*, expulsion or extradition of an alien by a State, suggesting a right to de facto asylum.¹⁷² The Commission (1961) supported this in their statement: ‘the Contracting States have [...] accepted to restrict the free exercise of their powers under general international law, including the power to control the entry and exit of aliens, to the extent and within the limits of the obligations which they have assumed under the Convention.’¹⁷³

There are some cases to suggest that whilst Article 3 does relate to *non refoulement*, the conditions need to be ‘exceptional circumstances’ to be included under Article 3.¹⁷⁴ For example, in *Soering v UK*, the Court stated that for *refoulement* to be made evident, there would need to be substantial grounds for believing that there were real risks of being subjected to torture or to inhuman or degrading treatment or punishment.¹⁷⁵ Similarly, in *Vilvarajah & Others v UK*, the applicants had been previously threatened and some of them tortured as they had been removed by the British authorities to Sri Lanka.¹⁷⁶ However, the Court nevertheless considered that: ‘A mere possibility of ill-treatment, however, in such circumstances, is not sufficient to give rise to a breach of article 3.’¹⁷⁷ Therefore, this suggests that whilst Article 3 of the ECHR does include *non-refoulement*, it is under great exception that it is used for *de jure* protection of refugees.¹⁷⁸ Hurwitz (2009) argues that the ‘current implementation of these arrangements entails serious risks for refugees’ rights.¹⁷⁹

The EU Legal System

The EU legal system is mainly founded on the relevant provisions of the Charter of

¹⁷¹ ECHR art 3.

¹⁷² Agnes Hurwitz, *The Collective Responsibility of the State to Project Refugees*, (OUP 2009) [e-book].

¹⁷³ Hurwitz (n 172).

¹⁷⁴ *Ibid.*

¹⁷⁵ *Soering v. The United Kingdom*, 1/1989/161/217 (ECHR, 1989)

¹⁷⁶ *Vilvarajah and Others v. The United Kingdom*, 45/1990/236/302-306 (ECHR, 1991)

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

Fundamental Rights of the European Union and EU asylum regulations and directives¹⁸⁰. The relevant convention and protocol relating to the rights of refugees under international law are incorporated into EU Law within the Treaty on the Functioning of the European Union (TFEU), specifically within Article 78, as well as the Qualification Directive¹⁸¹ (Orchard & Miller, 2014). In 2000, the Charter of Fundamental Rights of the European Union codified the right to asylum in Europe under Article 18, as well as an explicit prohibition on *refoulement* in Article 19. Effectively, EU law allows for refugee status and subsidiary protection for persons who meet the criteria of a refugee under the Refugee Convention.¹⁸²

Securitization of Migration

In practice, the implementation of the EU asylum legislation has been criticized as insufficient.¹⁸³ Thus, 40 infringement decisions were taken against 19 member states by the EC.¹⁸⁴ This is because the EU asylum law takes security concerns into consideration¹⁸⁵. This has been termed as the ‘securitization of migration.’ According to Davies et al (2014), borders are seen as ‘important cultural markers of sovereignty and important policing points.’¹⁸⁶ In a joint case of *Melki & Abdeli* (2010)¹⁸⁷, it was seen as permissible to do border checks on refugees which were not relevant for purposes of security. According to O’nions (2014), the EU’s rising asylum numbers in the 1990s has led to the emergence of asylum as a highly politicized issue.¹⁸⁸ Furthermore, after the 9/11 attacks, xenophobia and the fear of the ‘Arab problem’ in Europe has been on the increase, resulting in further prevention of hosting refugees through the lens of national security¹⁸⁹. ‘Refugee law and the refugee are constructed as oppositional to the national interest...popular press frequently reminds citizens that a generous asylum policy does not serve the national interest’, argues O’nions (2014)¹⁹⁰. Therefore, it is increasingly difficult within EU

¹⁸⁰ Orchard & Miller (n 165).

¹⁸¹ Orchard & Miller (n 165)

¹⁸² Ibid.

¹⁸³ Alexandru S. Zodian, ‘EU Migration Policies and their Outcome – the Syrian Refugee Crisis, (2015), *Phd thesis*, The Bucharest University of Economic Studies.

¹⁸⁴ Zodian (n 183).

¹⁸⁵ Gareth Davies et al, ‘*European Union Law – Text and Materials*’, (3rd edn., CUP 2014).

¹⁸⁶ Davies et al (n 185).

¹⁸⁷ cases C-188/10 and C-189/10 *Melki & Abdeli v France*, App no. I-5667 (ECHR, 2010)

¹⁸⁸ Helen O’nions, ‘*Asylum - A right denied: A critical analysis of European asylum policy.*’, (Ashgate, 2014). [e-book]

¹⁸⁹ Albassam (n 162).

¹⁹⁰ O’nions (n 188).

asylum law to gain the status of a refugee, which is further construed by the Directive 2011/95/EU. This can be exemplified by the joined cases of *Y and Z* (2012),¹⁹¹ where Ahmadi Pakistanis were not given refugee status despite their reported fears for being treated inhumanely in their home country.

CEAS

The Common European Asylum System (CEAS) was initiated in 1999 in accordance with the TFEU, Article 78¹⁹². The system is based on ‘the full and inclusive application of (CSR51), as supplemented by (PSR67) thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.’¹⁹³ The Common European Asylum system is based on the European Union’s interpretation of the 1951 Geneva Convention¹⁹⁴. Its purpose is to guarantee a minimum level of international protection to all its Member states, and to grant the right of asylum that has been established under international law.¹⁹⁵

The CEAS consists of directives such as the Asylum Procedures Directive, the Reception Conditions Directive, the Qualification Directive, the Dublin Regulation and the Eurodac Regulation.¹⁹⁶ Part of the CEAS, is a primary EU instrument that relates to the refugee status under the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need protection.¹⁹⁷ It has recently been updated as the new Qualification Directive, Directive 2011/95/EU of 13 December 2011, where there is a basis for defining and selecting refugees that are entitled to international protection¹⁹⁸.

There have been many criticisms, however, regarding the effectiveness of the CEAS. While in theory it seems to fulfill the criteria for protecting refugees under customary international law, it is in reality, reluctantly practiced; it is heavily guarded with counterproductive policies such as extraterritorial rules and regulations. According to Albassam (2015),

¹⁹¹ C-71/11 and C-99/11 *Y and Z v Germany* [2012] ECR

¹⁹² Orchard & Miller, (n 165).

¹⁹³ Fripp (n 169).

¹⁹⁴ European Commission (2017) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Main_Page>

¹⁹⁵ European Parliament Policy Department, ‘Current Challenges for International Refugee Law, with a Focus on EU Policies and EU Cooperation with the UNHCR’, (2013)

¹⁹⁶ EC, 2014.

¹⁹⁷ Fripp (n 169).

¹⁹⁸ EC, 2014.

the CEAS has responded poorly to refugees arriving in Europe.¹⁹⁹ Because of its ‘prominent focus’ on preventing irregular movements of refugees, the CEAS proves to render itself inaccessible due to ‘indiscriminate border and migration controls deployed extraterritorially that block prospective beneficiaries *en route* or through the operation of procedural devices.’²⁰⁰ He further argues that the poor EU response can be blamed directly as a result of the CEAS, where ‘its failures have forced the EU to put forward ineffective ad-hoc responses’.²⁰¹

The Dublin II Regulation

The Dublin II Regulation is an important, yet highly criticized instrument within the CEAS that monitors asylum procedures between EU Member states. The Dublin II Regulation (2003) developed as part of the Dublin Convention, determines which member state is responsible for processing the applications of asylum seekers²⁰². It places the responsibility for assessing of asylum claims on the member state where the application for residence or entry is made²⁰³. Thus asylum seekers are dependent on the first EU country that they arrive in for their asylum procedures and residence²⁰⁴. There are criticisms that the Dublin regulation breaches the principle of *non-refoulement*²⁰⁵. For example, the case of *M.S.S v Belgium & Greece*, the Dublin Convention was responsible for the transfer of a migrant, Mr. M.S.S from Belgium to Greece for the processing of the relevant asylum procedure. However, in Greece, Mr M.S.S was detained, and deprived of his rights to live in a home, or to access any facility. In violation of the right to life (Article 2) and the right to be safeguarded against torture (Article 3), the Dublin Convention clearly abrogated his human rights.²⁰⁶ Wollmer (2014) argues that the Dublin Regulation leads to different results, depending on the country as well as the situation of the asylum seeker, which leads to ‘systematic deficiencies’ and ultimately the right to *non-refoulement* under international

¹⁹⁹ Albassam (n 162).

²⁰⁰ EPPD (n 195).

²⁰¹ Albassam (n 162).

²⁰² Madeleine Byrne, ‘Fortifying Europe – Poland & Slovakia under the Dublin System’ in Matt Killingsworth (ed.), *‘Europe: New Voices, New Perspectives’*, (Contemporary Europe Research Centre, 2007).

²⁰³ Byrne (n 201).

²⁰⁴ Byrne (n 201); Anna Wollmer, ‘International refugee law and the common European asylum system: Conformity or human rights violation?’ Masters thesis.

²⁰⁵ Wollmer (n 203)

²⁰⁶ *M.S.S v Belgium and Greece* App no 30696/09 (ECHR, 21 Jan 2011).

law²⁰⁷.

Impacts of EU refugee law on Syrian refugees

Forms of Protection

The number of asylum claims for the European Union nations skyrocketed in 2014, with 50% more claims compared to 2013²⁰⁸. However, instead of perceiving the Syrian refugees as entitled to protection and assistance, the EU have conflated them with migrants²⁰⁹.

Refugee resettlement is granted to persons who qualify for refugee status in a third country due to the risk of persecution in their country of origin²¹⁰. The European Commission defines resettlement as: ‘The process whereby, at the request from UNHCR based on a person’s need for international protection, third country nationals or stateless persons are transferred from a third country to a Member State where they are permitted to reside with refugee status (within the meaning of Article 2(d) of the European Union ‘Qualification Directive’) or a status which offers the same rights and benefits under national and Community law as refugee status.’²¹¹ However, Collette (2015) notes that as responsibilities for migrants are spread unevenly across the region, there is continued pressure on the EU asylum system.²¹² In 2014, the most popular route for the Syrian refugees to enter the region was through the Mediterranean²¹³, and 87,915 refugees had arrived in Italy till July 2014. In 2015, this increased to 8% from that time, where there were 93,542 Syrian refugees. Furthermore, in Greece, there was a 750% increase of arrivals of Syrian refugees between January to July 2015 compared to the same period in 2014.²¹⁴ Fourteen European countries have legislated resettlement or humanitarian admission programs; these include Belgium, the Czech Republic, Denmark, Finland, France, Germany, Iceland, Ireland, the Netherlands, Norway, Portugal, Romania, Spain, Sweden.²¹⁵

²⁰⁷ Albassam (n 162).

²⁰⁸ Elizabeth Collette, ‘Outlook on Migration in Europe in 2015’, (2015), 4(5), Migration Policy Practice.

²⁰⁹ Collette (n 207).

²¹⁰ Orchard & Miller (n 165).

²¹¹ Ibid.

²¹² Collette (n 207).

²¹³ Albassam (n 162).

²¹⁴ Orchard & Miller (n 165)

²¹⁵ Ibid.

Temporary protection is defined as ‘the right to enter or remain in a country for a limited time due to risk of serious harm in a person’s home country. This is usually granted to large groups of people under expedited procedures and is normally renewable if adverse conditions persist; the beneficiaries should also be able to claim asylum and have their claims assessed on an individual basis.’²¹⁶

EU policy has issued a Temporary Protection Directive in 2001, which established a framework and minimum standards for participating states to follow when implementing a programme of temporary protection. However, Orchard & Miller (2014) explain that temporary protection ‘should not displace asylum, but should be an intermediary, immediate measure of protection, and persons granted temporary protection should be able to apply for and be granted refugee status if eligible (para (10), Arts 4, 19).’²¹⁷ The UNHCR’s guidelines on temporary protection which were issued in February 2014 have been further described as ‘generally in alignment’ with the EU Temporary Protection Directive (2001/55/EC).²¹⁸

4.3 Limitations and Barriers towards the Protection of Syrian refugees

This section will look at the limitations of the EU policies as well as the barriers faced towards protection for the Syrian refugees in Europe. To do so, this section will analyze the issues that Europe faces, which provide the context for the lack of assistance shown in the Syrian refugee crisis.

‘Fortress Europe’

‘Fortress Europe’ refers to the way Europe has attempted to bar its borders from the influx of refugees. Amnesty International (2014) notes that the EU’s priorities regarding migration policy have been ‘focused on sealing its borders rather than its human rights obligations.’²¹⁹ It refers to the ‘sum total of these policies and practices, within, at and outside the EU’s borders’.²²⁰ Between 2011 and 2015, Europe hosted only 7% of registered Syrian

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Nevena Nancheva, ‘The Common European Asylum System and the failure to protect: Bulgaria’s Syrian refugee crisis’, (2015) 15(4) Southeast European And Black Sea Studies, 1-17.

²¹⁹ Amnesty International, ‘The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe’s Borders’ (2014).

²²⁰ AI, (n 219).

refugees²²¹. The presence of such a small proportion of refugees, is due to the EU's externalization policies, which make it difficult for refugees to have access to asylum; and is the main reason that there are such few refugees in Europe.²²² This section will mainly look at how different European countries have responded to the Syrian refugee crisis with the intention to block the flow of immigrants by propping up 'fortress Europe.'

According to Orchard and Miller (2014), the European response to the Syrian refugee crisis has mainly focused on 'contain(ing) the refugee crisis within countries neighbouring Syria, providing significant (but inadequate) support for refugees in those countries, and to strengthen European borders.'²²³ Although differences in capacity have resulted in differing response to the crisis; the EU has been criticized for not managing the crisis properly²²⁴. There are differing scales of admission of refugees, treatment and adherence to international standards of refugee law in all of the European countries; whilst Germany and Sweden have been particularly welcoming, other countries such as Sweden, Norway, Germany and UK have developed externalization policies and forms of international protection²²⁵. Furthermore, Yildiz and Eralp (2016) describe a lack of coordination between the European nations for sharing the burden of refugees.²²⁶

European Union Statistics

In 2016, there were 34,800 Syrian refugees that sought asylum in Europe, where more than 40% (15,200) registered for asylum in Germany²²⁷. Germany is considered one of the 'leaders in refugee protection', and represents a good example of how Europe is showing solidarity with the refugees in the ongoing crisis²²⁸. Greece, in comparison, hosted the second largest Syrian refugee population in Europe, with 9560 refugees, or 28% of the Syrian refugee population²²⁹. Nearly 30% registered in Greece (9,600).²³⁰ Greece is one of the first countries of access to

²²¹ Aysel Yildiz & Atila Eralp, 'Rethinking Asylum Policies in the EU: Lessons from the Syrian Refugee Crisis', (2015) EUSA Conference Paper.

²²² Ibid.

²²³ Orchard & Miller (n 165).

²²⁴ Yildiz & Eralp (n 221); Orchard & Miller (n 165).

²²⁵ Orchard & Miller (n 165).

²²⁶ Yildiz & Eralp (n 221).

²²⁷ EC, 2017.

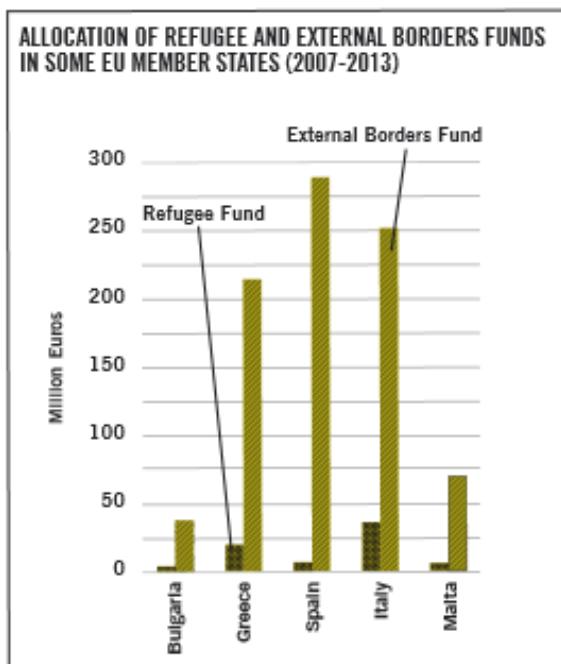
²²⁸ Orchard & Miller (n 165).

²²⁹ EC 2017.

²³⁰ EC 2017

Syrian refugees, and, as a result of increased migration, Greece created a 12.5km fence along its border with Turkey with 2000 border guards between 2012-2013²³¹. This diverted 90% of the flow of irregular migrants and had resulted in numerous deaths due to unsafe conditions ²³². Greece has been spending more on externalization policies, as shown in the graphs below:

Graph 1: The Allocation of Refugee and External Borders Funds in Some EU Member States (2007-2013) (Source: Amnesty International, 2014).

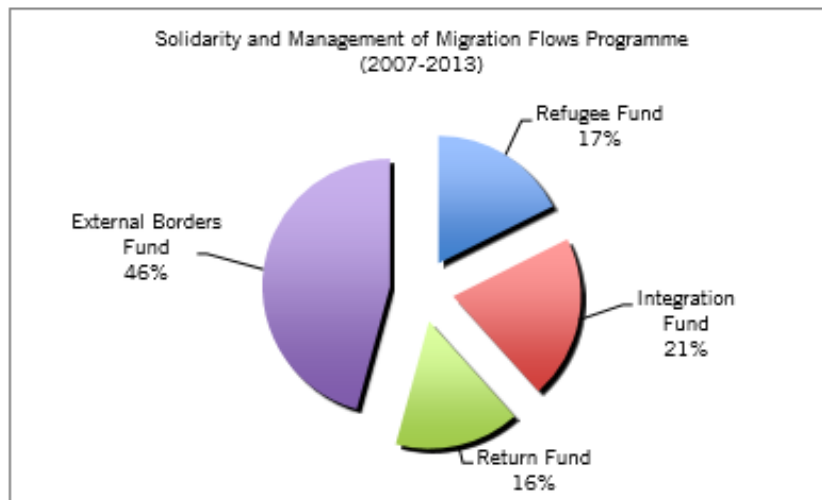


This graph shows that the sum of funds spend on external borders funds by the 5 European countries are much higher in comparison to that spent on refugee funds. Spain is a particularly surprising example due to the contrast of funds between the refugee fund and the external border fund, showing that national security is a greater priority.

²³¹ Orchard & Miller (n 165).

²³² Orchard & Miller (n 165).

Graph 2: Solidarity and Management of Migration Flows Programme (2007-2013) (Source:



Amnesty International, 2014).

These statistics show that whilst efforts were made to help refugees, as evidenced by Germany, there were also opposing efforts to resist the influx of refugees. The overall effect of these measures is that ‘fortress Europe’ is preventing refugee settlement in Europe, depriving refugees of their rights and thus placing a greater burden on developing frontline states such as Jordan, Lebanon and Iraq. The policies that are utilized to promote the buffer zone are explained in the Section below.

Externalization and Burden shifting

According to Peers et al (2015), assuring access to protection for refugees and asylum seekers is a very controversial issue for debate.²³³ It is widely acknowledged by scholars that Europe has played a particularly inefficient role in the maintenance of the refugee crisis; which has been characterized by mismanagement, apathy and a lack of a vision. Furthermore, the refugee crisis has put the European human rights rhetoric to the test. According to Kalaydzhieva (2012), ‘member states, prompted mostly by political reasons, are developing policies and measures, which are in odds not only with the international human rights treaties but also with EU basic treaties.’²³⁴ This is represented by the fact that a very small proportion of refugees from Syria have been able to obtain protection in Europe as Europe’s borders are repressively

²³³ Steve Peers, Elspeth Guild & Jonathan Tomkin, (eds.), *EU Immigration and Asylum Law: Text and Commentary*, (2nd Edn., Brill Nijhoff Publishers 2015) [e-book].

²³⁴ Varka Kalaydzhieva, ‘Right to Asylum and Border Control: Implications of European Union Policies on Access to EU Territory of People in Need of International Protection.’ (2012) Thesis.

controlled²³⁵. It is estimated that in 2014, Europe hosted fewer than 4% of the 2.8 million registered refugees of Syria²³⁶. Furthermore, according to Betts (2016), the system of refugee protection is ‘failing’, because of its inability to adapt to the circumstances that we now are faced with.²³⁷

“In theory, refugees have a right to seek asylum. In practice, our immigration policies block the path to safety. In theory, refugees have a right to a pathway to integration, or return to the country they've come from. But in practice, they get stuck in almost indefinite limbo. In theory, refugees are a shared global responsibility. In practice, geography means that countries proximate the conflict take the overwhelming majority of the world's refugees. The system isn't broken because the rules are wrong. It's that we're not applying them adequately to a changing world, and that's what we need to reconsider.” (Betts, 2016).²³⁸

Betts (2016) gives a brief outlook on the contradictions that are embedded within the European Union policies, that ultimately serve state sovereign interests as opposed to refugee rights²³⁹. Control mechanisms refer to migration related laws, policies and practices that restrain people's international movements with the intention to limit irregular migration flows²⁴⁰. Peers et al (2015) describes the EU's restrictive policies for preventing access to refugees, as among the ‘cruel ironies’ that prevent asylum seekers from obtaining their right to seek refuge.²⁴¹ According to Peers et al (2015), it is estimated that because of repressive policies which counter the EU's rhetoric of human rights, almost 90% of asylum seekers who have reached Europe have had to rely on illegal means²⁴². Externalization of migration controls are essentially when the state uses extraterritorial measures to prevent migrants, as well as asylum seekers, from entering their territories by making them legally inadmissible – either through direct means such as preventive policies, or indirect means such as providing support for programmes that readdress refugees to ‘third countries,’²⁴³. The externalization of borders has mainly occurred in the form of moving

²³⁵ Orchard & Miller (n 165).

²³⁶ Ibid.

²³⁷ Alexander Betts (Ted talks).

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Orchard & Miller (n 165).

²⁴¹ Peers et al (n 233).

²⁴² Ibid.

²⁴³ Bill Frelick, Ian M. Kysel, & Jennifer Podkul, ‘The Impact of Externalization Controls on the Rights of Asylum Seekers and Other Migrants,’ (2016) 4(4) *Journal of Human Security* 190-220.

asylum applications out of Europe; promoting regional protection programs (RPP) and keeping asylum; encouraging the return to ‘safe third countries’ and signing ‘readmission agreements’,²⁴⁴

Such policies can be interpreted as going against International law, in particular international human rights law.²⁴⁵ Of great relevance is the case of *Hirsi v Italy* (2006)²⁴⁶, where the Somali migrants had been intercepted at sea by Italian authorities on their way to Italy. They complained of being extradited to Libya, without being informed of where they were going, nor asked about their condition. The ECHR interpreted the actions of the Italian authorities as in violation of Article 3, as they were given to Libyan authorities in Tripoli without ensuring the safety of the migrants. Although Italian authorities argued that this was part of their bilateral agreement, it was confirmed by the ECHR that any interception must be conducted with access to an individual procedure as well as with the appropriate remedies to address the situation to return them back to their country. Italy, it was argued, could not evade responsibility of human rights and the 1951 Refugee Convention by relying on its obligations that were from bilateral agreements with Libya²⁴⁷.

This case tells us that even externalization policies run the risk of great human rights abuses that should be taken more seriously. Particularly in times of conflict, it is important to realize that Syrian refugees are at grave risk in their home countries and therefore any measure that causes difficulty to their refuge in Europe should be considered as a human rights abuse, as is also interpreted under Article 1 of the Convention as part of European law. The risk of *non-refoulement* should be examined even more closely within the externalization policies that are being conducted in Europe.

Regional Protection Programs and ‘Safe Third Countries’

Regional Protection Programs were introduced by the European Commission in September 2005, with the intention to strengthen the protection capacity in the regions close to refugee flows²⁴⁸. Regional Protection Programs developed from an initial concept suggested by

²⁴⁴ Yildiz & Eralp (n 221).

²⁴⁵ Kim Rygiel, Feyzi Baban & Suzan Ilcan, ‘The Syrian Refugee Crisis: The EU-Turkey ‘Deal’ and Temporary Protection’, (2016) 16(3), Global Social Policy, 315-320.

²⁴⁶ *Hirsi Jamaa and Others v. Italy*, App no. 27765/09, (ECHR, 2012).

²⁴⁷ See note 246.

²⁴⁸ Frelick et al (n 243).

Tony Blair in 2003²⁴⁹. The idea was that instead of hosting large populations of refugees, the European Union could resettle them in ‘protected zones’ in safe third countries, where they would find protection outside the responsibility of the European Union²⁵⁰. The RPP is a development program that aims on assisting refugees and communities as opposed to resettlement²⁵¹. The concept of ‘safe third countries’ became part of the key element of the EU’s Common European Asylum System in 2005 under the Asylum Procedures Directive²⁵². Now, it has been observed that externalization policies form the ‘main plank of EU migration policy.’²⁵³

These policies were criticized from the start by the UNHCR, which condemned it as inconsistent with international refugee law²⁵⁴. Furthermore, Human Rights Watch noted that the ‘effective protection (of refugees) could not be guaranteed’ when such policies would readmit the refugees to ‘safe third countries’²⁵⁵. The concept of the ‘safe third country’ is meant to be another country that respects the law of *non-refoulement* and so is party to the rights of refugees. However, this is often not the case²⁵⁶. During the refugee crisis, the European Union renewed a deal under the EU-Turkey Agreement in December 2013, through which the EU managed to shift responsibility to Turkey to accept refugees and thus reduce migration to Europe²⁵⁷. Rais (2016) analyses this as the ‘domino-effect’; resending refugees to countries that do not respect their human rights means that there are further problems with guaranteeing their safety, hence reinforcing their predicament.²⁵⁸

Readmission Agreements and Non-refoulement

Readmission agreements based from the EU allow for the facilitation of returns of undesirable aliens to their country of origin in accordance with the principle of state sovereignty.²⁵⁹ According to Rais (2016). ‘legal authorities and some researchers believe that readmission agreements, whether they are bilateral or across the EU, infringe the rules of

²⁴⁹ Yildiz & Eralp (n 221).

²⁵⁰ Yildiz & Eralp (n 221).

²⁵¹ Orchard & Miller (n 165)

²⁵² Orchard & Miller (n 165)

²⁵³ Yildiz & Eralp (n 221).

²⁵⁴ Frelick et al (n 243).

²⁵⁵ Frelick et al (n 243).

²⁵⁶ Yildiz & Eralp (n 221)

²⁵⁷ Frelick et al (n 243).

²⁵⁸ Mehdi Rais, “European Union Readmission Agreements.” (2016), Forced Migration Review 51

²⁵⁹ Rais (n 258).

international law on asylum, in particular the principle of *non-refoulement* which is recognised in both the Refugee Convention of 1951 and the European Convention on Human Rights.²⁶⁰ This stems from the fact that based on the definition of the concept of ‘illegal immigrant’, the decision to readmit any person who does not fulfil the entry or residence conditions that are applicable for the requested state, may be problematic²⁶¹. Furthermore, it does not make a lawful distinction between immigrants who no longer find themselves in a lawful situation and the principle of *non-refoulement*, whereby refugees are supposed to be protected from being returned if their safety is at risk.²⁶² Moreover, it also shows signs of illegality, since the readmission request may not provide a fair opportunity for the individual to explain themselves as there is no case by case review of their situation due to the Dublin Regulation system²⁶³. In effect, Rais (2016) explains that there is no information that clarifies the reasons why someone is being returned.

‘...Several EU Member States have removed asylum seekers using a readmission procedure that involved refusing access to an individual review of their case, in violation of international law. This is a dangerous situation insofar as it helps to legalise the removal of asylum seekers in spite of the principle of *non-refoulement*.’²⁶⁴

Therefore, it is clear that readmission programs go against the concept of *non-refoulement*, and can abuse the rights of refugees²⁶⁵. This is supported by Amnesty International (2014), where the NGO describes that ‘when individuals are readmitted to countries of which they are not nationals, they risk being stranded there without legal status at risk of violations of their rights, such as right to asylum, right to liberty, and right to work.’²⁶⁶

Europe has invested heavily in the creation of readmission programs. According to Amnesty International, the EU has signed readmission agreements with 17 countries since May 2014.²⁶⁷ The EU-Turkey Agreement is an example of the prominence of such types of externalization policies in Europe. The EU-Turkey Readmission Agreement (2013) allows Turkey to take back irregular migrants in the EU if they have travelled through Turkey.²⁶⁸

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Wollmer (n 203); Jennifer Welsh, ‘Fortress Europe and the Responsibility to Protect: Framing the Issue’, (2014).

²⁶⁶ AI (n 219)

²⁶⁷ Ibid.

²⁶⁸ AI (n 219)

Furthermore, on April 16th 2014, the Prime Minister of Turkey issued an order to create new removal facilities, and the expansion of existing centers, to facilitate the detaining of irregular migrants.²⁶⁹ According to Amnesty International (2014), this is a ‘worrying move’ because there are grave risks of human rights abuses²⁷⁰. This move ‘highlights the potential negative consequences of the failure of the EU to carry out human rights impact assessments before entering into migration control agreements with non-EU countries’,²⁷¹ or in other words, it is an example of the domino effect as described by Rais (2016).²⁷²

Frelick et al (2016) provide recommendations against the use of readmission agreements whereby the Dublin Regulation system is at fault to determining asylum claims based on the country of first arrival, suggesting that it should instead be replaced with a mechanism for assigning responsibility for examining asylum claims based on the member state’s assessed capacity, and the wishes of the refugees.²⁷³

4.4 Human Security vs. National Security within the EU

Building upon the findings of the previous chapters, this section will seek to understand EU policies in terms of human security and national security, in order to understand how the two concepts have been utilized in shaping policies. This will help us to understand the nature of the EU policies, as well as how human security can help to provide solutions for the Syrian refugee crisis, which is part of the research aims. This section will be divided into two parts, where Part 1 will look at human security and the cosmopolitan paradigm, and Part 2 will seek to understand the alternative paradigm of national security and communitarianism.

Human Security and the Cosmopolitan Paradigm

Human security has been defined by the Commission on Human Security in 2003 as a concept ‘to enhance human freedoms and human fulfillment’, which emphasizes a shift in paradigm from state-centricism in security to people- centricism²⁷⁴. The broad definition of

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Rais (n 258).

²⁷³ Frelick et al (n 243).

²⁷⁴ Okolo Ben Simon, ‘Human Security and the Responsibility to Protect Approach: A Solution to Civilian Insecurity in Darfur’, (2008) 7 Human Security Journal, 46-60.

human security includes all non-traditional threats to security, such as hunger, diseases and a lack of access to the basic necessities of life.²⁷⁵ Similar in its stance to cosmopolitanism, it sees that the purpose of state sovereignty is the protection of the people. Cosmopolitanism acknowledges moral responsibilities to all humankind, and not only to fellow citizens²⁷⁶ It sees that borders are ‘not morally legitimate’, although necessary to some degree²⁷⁷. Moreover, it values open borders, and espouses equal rights for all, transnationally. This is embodied in the international laws and obligations, such as the right to *non-refoulement*²⁷⁸.

Human Security and the Refugee Regime

Many scholars have evaluated the potential of human security in fostering long term solutions to the problems of refugees. Scholars have interpreted human security alongside as well as in contrast to the situation of depending on the legal regime for protection alone, arguing that human security offers benefits to the protection of refugees that should be recognized. Edwards (2009) argues that there is convergence between human security and human rights, so that ‘human security can only be realized by a robust system of human rights; and similarly, human rights are meaningless without a secure environment in which to enjoy them.’²⁷⁹ Edwards (2009) further states that whilst human rights offers the principle for protection, ‘without political will, (it) cannot solve the many and expanding causes and incidences of human displacement that exist in the world today.’²⁸⁰ She argues that:

‘Human security offers space to rethink and to reconceptualize security and protection challenges; and may plug some of the protection gaps in international law on an ad hoc or temporary basis....Human security, as a fluid and broad ranging concept compatible with human rights and supplementary to international law, may be one means through which the rights, dignity, and security of refugees can be furthered. Human security speaks to state interests, while reinforcing human rights objectives....Human security,...offers added benefits in terms of its flexibility, conceptual appeal, and location in the political

²⁷⁵ Ibid.

²⁷⁶ Ingeborg Haukvik, ‘Communitarianism vs. Cosmopolitanism? Refugee and Asylum Policy of the Conservative ‘blue-blue’ government’ (2014).

²⁷⁷ Haukvik (n 276)

²⁷⁸ Ibid.

²⁷⁹ Alice Edwards, ‘Human Security and the Rights of Refugees: Transcending Territorial and Disciplinary Borders.’ (2009) 30(3) Michigan Journal of International Law, 763

²⁸⁰ Edwards (n 279).

corridors of the mainstream United Nations.’²⁸¹

The main conclusion that Edwards (2009) has described is that human security is productive to the cause of human rights in protecting the rights of refugees.²⁸² Edwards (2009) provides four key arguments, which have been supported by the works of other scholars such as Nicholson (2009) and Odutayo (2016)²⁸³. Whilst Odutayo (2016) notes that although national security interests seem to overpower human security interests, in reality, it is not wise to ignore the theoretical advantages that human security offers as a lens to the refugee crisis.²⁸⁴ Furthermore, Berti (2015) argues that there have been disadvantages of ignoring human security in the policies towards the refugee crisis, which dampen efforts to tackle the emergency and prevent a long-term strategy for dealing with regional instability.²⁸⁵ This will be explained in greater detail in the following argument.

Firstly, Edwards (2009) argues that human security offers a people-centred approach which allows ‘non-citizens’ to be provided their rights, while a state-centric approach, would typically differentiate and alienate them from obtaining rights such as those given to citizens.²⁸⁶ This is because of the broad focus of human security.²⁸⁷

‘The security of all people is seen as equally valid and mutually dependent, unlike under the current state-centric international system, which sees refugees as non persons or outsiders. Instead they are treated as equal citizens in a global community facing interdependent and universally relevant threats.’²⁸⁸

The stateless people and refugees are therefore included in the framework where securing their rights and needs will guarantee greater human security. As opposed to the reality of the ‘criminalisation of migration’,²⁸⁹ as seen throughout the EU policies, this fits more with the concepts of human rights. Human security sees the security of the individual as more important

²⁸¹ Edwards (n 279).

²⁸² Ibid.

²⁸³ Frances Nicholson, ‘Protection and Empowerment: Strategies to Strengthen refugees’ human security,’ in Alice Edwards & Carla Ferstman, (eds) ‘*Human Security and Non-Citizens: Law Policy and International Affairs*’, (CUP, 2009); Aramide Odutayo, ‘Human Security and the International Refugee crisis’, (2016) 12(3) *Journal of Global Ethics*. 365-379.

²⁸⁴ Odutayo (n 283).

²⁸⁵ Benedatta Berti, ‘The Syrian Refugee Crisis: Regional and Human Security Implications’, (2015) 4(17). *Strategic Assessment*.

²⁸⁶ Edwards (n 279).

²⁸⁷ Nicholson (n 283); Odutayo (n 283).

²⁸⁸ Odutayo (n 283)

²⁸⁹ Davies et al (n 185).

than the security of the state, which challenges the legal, institutional, and political status quo and attempts to overcome the limiting boundaries of sovereignty²⁹⁰. Furthermore, human security sees that insecurity is also caused by the instability of citizens outside the nation's borders²⁹¹. Therefore, human security can help to reconceptualize refugees from people being 'a risk' to people 'at risk'²⁹². When human security is taken into consideration, in addition to human rights, the protection of refugees is more inclusive and the dignity of the refugees, accorded by human rights law is safeguarded. The shift in reference from the state to the people, also allows greater emphasis on the prevention rather than the reaction to the results of a refugee crisis²⁹³.

Edwards (2009) observes that human security recognizes that the insecurity of refugees impacts national security, regional security as well as global security; and therefore should be dealt with as a priority. Thus mass displacement, and its causes lead to insecurity, and states should give priority to dealing with these elements as potential threats to the stability of the state.²⁹⁴ Human security can help prevent, respond to and solve the issues of displacement if it is taken into consideration by policy makers²⁹⁵. The broad scope of human security thus presents an advantage for the potential protection of refugee rights by sovereign states²⁹⁶. The focus of human security on the protection and the empowerment of the people as key strategies, can help to strengthen refugee protection and provide useful solutions²⁹⁷.

'For refugees, the human security concept presents more than a useful analytical tool to understand the complex and interlinked challenges they face. Ultimately, these two strategies can help support refugees to build on their own resilience and courage and thereby realise fully the rights of refugees.'²⁹⁸

Thirdly, the transnational character of human security allows for a closer analysis of the causes of insecurities. A framework that acknowledges that insecurity is transnational is

²⁹⁰ Aidan Hehir, 'From Human Security to the Responsibility to Protect: The Co-option of Dissent?' (2015), 23(3) *Michigan State International Law Review*, 675-699.

²⁹¹ Odutayo (n 283)

²⁹² Nicholson (n 283).

²⁹³ Edwards (n 279).

²⁹⁴ Ibid.

²⁹⁵ Nicholson (n 283).

²⁹⁶ Nicholson (n 283).

²⁹⁷ Nicholson (n 283).

²⁹⁸ Nicholson (n 283)

fundamental for the changing climate of issues that we see in the contemporary world today.²⁹⁹ According to Edwards (2016), ‘refugees are a litmus test for the state of human security worldwide.’³⁰⁰ It is believed that ‘no matter how vigorously a State defends its national borders, today’s global threats...do not respect them.’ Human security follows the belief that people need to be the focus of concern as opposed to borders, because ‘threats to human security in one part of the world affects persons in other parts regardless of state borders.’³⁰¹ However, its weakness in this regard is that since it is not legally binding, it is difficult to persuade governments to take a moral stance and look beyond their borders, even if it means that there are valid reasons for doing so.³⁰²

To conclude, human security and the paradigm of cosmopolitanism are significant concepts that favor the protection of refugees, and further reinforce the legal framework of human rights. Therefore, they have great potential to influence state policy for safeguarding the rights of refugees. State interests that ignore human security tend to focus on short term goals as opposed to long term problems, such as regional instability. It is important, however, that human security is seen alongside national security as well to analyze the motives behind EU policies.

National Security and the Communitarian Paradigm

National security entails the protection of the state and its borders, for its own citizens, thereby focusing on a territorial and traditional concept of security. However, the deprivation of human security, also weakens national security; because when people encounter threats to their peace and their lives, there is very little security to be enjoyed³⁰³. National security is likened to the communitarian paradigm, where it suggests that states owe limited responsibility to ‘outsiders’, and that states ought to protect the economic interests of the population.³⁰⁴ Furthermore, Haukvik (2015) claims that the contemporary world is communitarian, because national self-interest prevails.³⁰⁵ According to Haddad, the EU represents the communitarian system.³⁰⁶ This is supported by Odutayo (2016), who argues that EU policies show that national

²⁹⁹ Edwards (n 279).

³⁰⁰ Edwards (n 279).

³⁰¹ Edwards (n 279).

³⁰² Odutayo (n 283)

³⁰³ Simon (n 274).

³⁰⁴ Haukvik (n 276)

³⁰⁵ Haukvik (n 276)

³⁰⁶ Haddad (n 66)

security ultimately overpowers human security concerns because of realpolitik in international affairs.³⁰⁷

The aggressive externalization policies and ‘fortress Europe’ are all examples of how the EU is pursuing national security as a priority.³⁰⁸ According to Odutayo (2016), European nations have legitimized their actions under national security, where ‘preventative protection’ keeps them from saving refugees.³⁰⁹ ‘This deliberate misinterpretation has been entrenched using a comprehensive set of policies to externalize asylum’ argues Odutayo (2016).³¹⁰ Europe has used extraterritorial responses to de-territorialize the requirement of protecting refugees under international law, where asylum seekers are effectively excluded from EU members’ sovereign territory³¹¹. This demonstrates the weaknesses in enforceability of the human security paradigm³¹². However, it is important to note that incorporating a policy on human security is not impossible, as it does not explain why the majority of the world’s refugees are being hosted in less developed nations; according to Cautain (2016), 86% of the world’s refugees are being hosted in developing nations, compared to 25% in developed nations³¹³. Such a statistic shows great inequality and it is inexcusable to say that national security needs justify this.

4.5 The Role of R2P in shaping EU Policies towards the Syrian Refugees

This section focuses on the role of R2P in shaping EU policies, as part of an attempt to understand how R2P and human security can build on solutions towards the Syrian refugee crisis, as part of the research aims.

The rights of Syrian refugees have been severely impacted by the increasingly restrictive EU policies and the declining standards of international protection. While, historically international assistance for refugees has focused on humanitarian objectives, this has now been replaced by mechanisms to contain and limit refugees. This is particularly apparent in the EU, where the rights-based approach has been taken over by security- based concerns.³¹⁴ Such an

³⁰⁷ Odutayo (n 283).

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Edwards (n 279); Odutayo (n 283)

³¹³ Jean Francois Cautain, ‘Refugee Crisis and its Ramifications for Global and National Security.’ (EC, 2016).

³¹⁴ Hurwitz (n 172); Monica Hakimi, ‘Toward a Legal Theory on the Responsibility to Protect’ (2014) 39 Yale Journal of International Law, 247.

approach, however can not be justified in the face of an escalating humanitarian emergency and is potentially destabilizing for international peace and security. In this context, new approaches, such as the R2P may contribute solutions for the protection of refugees, by providing strategies for burden-sharing and allocating global responsibilities. Thus, even though R2P is not legally binding, it could help to facilitate international cooperation on behalf of refugees through timely action and support³¹⁵.

R2P and protection of refugees

The UN member states endorsed the Responsibility to Protect doctrine, in the World Summit Outcome Document, and committed themselves to protecting vulnerable populations when a sovereign state fails to protect them from atrocity crimes, such as genocide, war crimes, ethnic cleansing, and crimes against humanity.³¹⁶ Since these crimes are considered *jus cogens*, preventing them is binding on all states.³¹⁷ The international community, therefore has a responsibility to protect Syrian refugees, who are fleeing persecution as a result of these crimes. The commitment to R2P, also includes a responsibility to assist and protect civilians fleeing such situations³¹⁸. However, although the R2P has been invoked for military intervention in Syria in order to protect its population³¹⁹, it has not been engaged in the international response to the Syrian refugee crisis. Nevertheless, according to the R2P, the international community bears a responsibility to protect Syrian refugees whether they are within their country or elsewhere³²⁰.

The R2P can be an important mechanism for refugee protection, as it calls for collective responsibility and encourages a culture of accountability³²¹. Moreover, its human security framework, which is people-centered and universal, focuses on refugee protection by promoting early prevention and responsibility sharing³²². Additionally, since displacement of populations is linked to mass atrocity crimes, R2P could contribute to both the prevention of displacement and

³¹⁵ Welsh (n 265)

³¹⁶ World Summit Outcome Document, (n 115).

³¹⁷ ICISS (n 85).

³¹⁸ Jason Ralph & James Souter, 'Did the UK and Australia have a special responsibility to protect the Iraqi people from Islamic States in 2014', (2015) 91(4) International Affairs, 709-723

³¹⁹ William W. Burke-White, 'Adoption of the Responsibility to Protect' (2011) University of Pennsylvania Law School, Public Law Research Paper No.11-40.

³²⁰ Achiume (n 2).

³²¹ ICISS (n 85).

³²² Edwards (n 279).

the protection of refugees³²³. In this context, the R2P Implementation Report mentions the responsibility of States to provide safe passage and asylum, as an important part of their commitment to protect refugees.³²⁴ Furthermore, the UN Secretary General has also recognized that providing asylum and the non-refoulment of refugees are important measures to help prevent atrocity crimes,³²⁵ while apathy to refugee protection in such situations often leads to great loss of life³²⁶

EU policies, R2P and Human Security

The EU's laws and values impart legal and moral obligations upon its Member states to safeguard the rights of refugees. Thus, the European Commission's 2015 European Agenda on Migration describes the CEAS as an expression of its "duty to protect," the rights of asylum seekers³²⁷. European states have also strongly supported the R2P,³²⁸ even though their response to it has been inconsistent³²⁹. At present, however, the EU perspective remains focused on a responsibility to protect its citizens, interests and values³³⁰, and it has pursued R2P mostly as a 'foreign policy issue'.³³¹ Nevertheless, European policies have aimed to assist countries in developing their capacity to protect refugees according to R2P's second pillar³³². Although EU states have contributed financial aid and called for military intervention, it is only a partial response towards their responsibility to protect. The challenge, therefore is to turn the rhetoric of human rights into practical measures. The R2P principle has the potential to bolster the international refugee regime as it is based on the universal human rights and humanitarian laws,

³²³ Alex J Bellamy, 'Safe Passage and Asylum Key to fulfilling the Responsibility to Protect.', (2015)

³²⁴ UNGA, 'UN Secretary-General's Report: Implementing the responsibility to protect,' (2009) A/63/677.

³²⁵ UN, The Responsibility to Protect: Timely and Decisive Response, Report of the Secretary General, (2012) A/66/874, Para 41.

³²⁶ Brian Barbour and Brian Gorlick, 'Embracing the 'Responsibility to Protect': A Repertoire of Measures Including Asylum for Potential Victims,' (2008) 20(4) International Journal of Refugee Law. 533; Samantha Power, *A Problem from Hell: America and the Age of Genocide* (Basic Books, New York, 2002).

³²⁷ European Commission, "A European Agenda on Migration," COM(2015) 240 final, Brussels, May 13, 2015, section III.3.

³²⁸ Welsh (n 265)

³²⁹ Jan Wouters and Philip de Man, "The Responsibility to Protect and Regional Organisations: The Example of the European Union," Working Paper No. 101 (Leuven: Leuven Centre for Global Governance Studies, 2013), p17

³³⁰ Amelia Hadfield and Andrej Zwitter Analyzing the EU Refugee Crisis: Humanity, Heritage and Responsibility to Protect.' (2015) 3(2) Politics and Governance. 129-134.

³³¹ Welsh (n 265)

³³² Dan Bulley, 'Shame on EU? Europe, RtoP, and the Politics of Refugee Protection' (2017) 31(1) Ethics & International Affairs. 51-70

and the concept of human security.

Indeed, Europe's policies and strategies for refugees weaken its 'very ethos and identity'³³³, and undermine their position as humanitarian actors. In this regard, EU measures and policies have further restricted the limited protection given to refugees through the 1951 Refugee Convention. Thus the lack of an obligation to protect refugees extraterritorially under international refugee law, has led to the understanding that asylum seekers are only to be considered when they have physically crossed into a state's territory. This has led to policies of regional containment to prevent refugees from reaching Europe in order to deny jurisdiction and any resultant obligations³³⁴. Moreover, the securitization of refugees, whereby they are seen as threats to national security and the cultural values of Europe³³⁵ has allowed states to introduce even more restrictive policies Goodwin-Gill (2008)³³⁶. However, the UNHCR recognizes the link between human security and the security of states, in that mass displacement of populations have an impact on regional stability.³³⁷ R2P, could thus play a role in reinforcing refugee rights by protecting vulnerable populations, without being restricted by borders;³³⁸ and thereby promote international stability.

R2P measures to protect refugees

UN Secretary-General Ban Ki-moon³³⁹ has stated that the implementation of international refugee law is required to fulfill the R2P. Thus, R2P reinforces refugee protection by urging states to provide refugees safe passage, temporary protection, grant asylum, and uphold the principle of non-refoulment³⁴⁰. It also calls for development assistance for countries hosting Syrian refugees under R2P's pillar two in the Secretary-General's Report (2009).³⁴¹ It also promotes an equitable distribution of global responsibility to share the costs to protect refugees, which is absent in the Refugee Convention and its Protocol.³⁴² According to Barbour and Gorlick (2008), R2P could be significant in promoting the development of legal guidelines to facilitate

³³³ Bulley (n 332).

³³⁴ Hadfield & Zwitter (n 330).

³³⁵ Alise Coen, 'The Responsibility to Protect and the Refugee Crisis', (2016).

³³⁶ Guy Goodwin-Gill, 'Refugees, Rights and Security', (2008) 1 Forced Migration, Human Rights and Security 3.

³³⁷ UNHCR, The State of the World's Refugees: A Humanitarian Agenda (1997)

³³⁸ Achiume (n 2).

³³⁹ UN (2009) Report of the Secretary General, Implementing the Responsibility to Protect

³⁴⁰ Barbour & Gorlick, (n 326).

³⁴¹ UN Report (n 339).

³⁴² Achiume (n 2).

asylum procedures, and oblige states ‘to prevent victimization, reduce statelessness’ of refugees; and increase accountability for violations of international law.³⁴³

Making Moral Decisions

In this growing humanitarian crisis, ethical considerations of the plight of refugees have been ignored, and the focus instead has been on factors such as cultural heritage, and the economy³⁴⁴. Hadfield and Zwitter(2015) note that ‘..the ethical responsibility of the EU is to move from its Westphalian heritage to spreading the lessons of both World Wars’.³⁴⁵ Buchanan (2003) opines that the central goal of the international legal system should be justice, and believes that states should not base their foreign policies solely on ‘national interest.’³⁴⁶ Instead greater consideration should be given to moral concerns³⁴⁷. In this regard, since European countries have provided arms to opposition groups in Syria, and have bombed areas controlled by ISIS to fight terrorism, they have the moral responsibility to offer asylum as reparation to refugees from Syria³⁴⁸.

Gaps in the International Refugee Regime

The gaps in the legal protection for refugees have necessitated efforts to broaden the scope of international protection. Both human rights and refugee laws offer minimum standards of refugee protection, which are selectively enforced, according to the political objectives of States³⁴⁹. Thus, the granting of asylum remains at the State’s discretion despite its importance to the refugee situation³⁵⁰. Furthermore, the International Refugee regime does not specify how states should equitably allocate legal, financial, or physical responsibilities for protection when faced with refugee crises³⁵¹. The R2P has the potential to offer solutions for these problems, even though it is nonbinding³⁵², by engaging political support and practical help from states. As David

³⁴³ Barbour & Gorlick, (n 326).

³⁴⁴ Gillian McFadyen, ‘The Contemporary Refugee: Persecution, Semantics and Universality eSharp, Special Issue: The 1951 UN Refugee Convention - 60 Years On’, (2012), pp. 9-35

³⁴⁵ Hadfield & Zwitter (n 334).

³⁴⁶ Allen Buchanan, ‘*Justice, Legitimacy, and Self-Determination: moral foundations for International Law,*’ (2003).

³⁴⁷ Filteau, Carolyn Helen, "Rights and Responsibilities: What are the Prospects for the Responsibility to Protect in the International/ Transnational Arena?" (2014). PhD Theses. Paper 7.

³⁴⁸ Achiume (n 2).

³⁴⁹ Edwards (n 279).

³⁵⁰ Hurwitz (n 172).

³⁵¹ Achiume (n 2)

³⁵² Edwards (n 279).

Miller (2001) has suggested, the next step is to develop guidelines on the distribution of this collective responsibility, in order to devise a plan for assisting refugee populations³⁵³.

4.6 The Weaknesses of R2P in promoting Solutions

This section will look at the strengths and the weaknesses of R2P in promoting solutions. Part 1 will look at the strengths of R2P and part 2 will look at the weaknesses of R2P. It will seek to evaluate R2P based on research aim 3.

Although R2P was adopted by the EU in the UN Summit Outcome in 2005 no reference was made to it during the current refugee crisis; despite the fact that the displacement of people was caused by mass atrocities in Syria. Instead EU policies sought protection for European citizens and borders, within the paradigm of sovereignty and national identity³⁵⁴. The European response thus highlights R2P's limitations among even the countries which endorse the principle. This demonstrates that despite the rhetoric, R2P as a principle is relegated to humanitarian challenges at a distance, and not to provide protection to vulnerable people closer to home³⁵⁵.

Implications in the Refugee Crisis

The R2P in its present form, does not specify a role for regional organizations such as the EU³⁵⁶. The Secretary- General's 2011 report on R2P's implementation does not determine how the R2P can assist in refugee protection, and it offers no ethical guidance for the EU to revise its response in the present refugee situation. Moreover, it imparts no requirement to grant asylum, and does not add any responsibilities on states, apart from those already determined by international law³⁵⁷. Additionally, it is limited by the absence of a procedure for sharing costs and distributing tasks to share the responsibility of refugees.³⁵⁸ In this regard, if R2P is used to allocate responsibility to states based on geographical nearness, instead of capability, it will result in burdening states beyond their capacity³⁵⁹.

³⁵³ David Miller, 'Distributing Responsibilities' (2001) *The Journal of Political Philosophy*, 9 (4): 453-71.

³⁵⁴ Chiara De Franco, 'Competing Understandings of Protection in the European 'Migrant Crisis' (2016) Middle East Institute

³⁵⁵ Welsh (n 265)

³⁵⁶ Bulley (n 332).

³⁵⁷ Bulley (n 332).

³⁵⁸ Achiume (n 2)

³⁵⁹ Ralph & Souter (n 318)

R2P is also hampered in its implementation, by the inherent tension between the sovereignty of states, and their responsibility towards their populations. Even though the EU's norms attempt to make international politics less state-centric³⁶⁰, yet, Bulley (2017) contends that despite appearances, both the EU and R2P offer protection which focuses more on the defense and reinforcement of state sovereignty, rather than the protection of the individual. In his opinion, this is borne out by the Secretary-General's 2014 report, which clarifies its intent to "reinforce, not undermine, sovereignty".³⁶¹

Moreover, even though Syrian refugees come within the scope of the R2P crimes, its focus on protection in particular situations such as, genocide, ethnic cleansing, war crimes and crimes against humanity severely limits its scope³⁶². This raises concerns about the inclusion of refugees as defined in the Refugee Convention within its application. Rimmer (2010) suggests that the prevention pillar of the R2P should be improved to be deeper and more comprehensive, to counter these challenges.³⁶³

Grant of Asylum

The granting of asylum as a preventive means of protection is not mentioned in the core documents of R2P, even though it is seen as the most effective means of protecting victims of genocide, war crimes, ethnic cleansing and crimes against humanity.³⁶⁴ Moreover, there is no direct reference to refugees in the 2005 UN World Summit Outcome document, while in the original ICISS report they are perceived as a threat to international peace and security³⁶⁵. Nevertheless, the protection of refugees is referred to in the Secretary-General's 2009 report, which relates the duty of states to provide safe passage and asylum with the global responsibility to protect.³⁶⁶

³⁶⁰ Ian Mannors, 'The Normative Ethics of the European Union,' (2008) 84(1) International Affairs p. 45

³⁶¹ Bulley (n 332)

³⁶² Francis (n 114)

³⁶³ Rimmer, S.H, Refugees, internally displaced persons and the 'responsibility to protect', (2010).

³⁶⁴ Barbour & Gorlick (n 326).

³⁶⁵ Edwards (n 279)

³⁶⁶ ICISS (n 85)

R2P's Legal Status

A major barrier which prevents R2P from playing a significant role in the refugee crisis is the fact that states do not bear a legal duty to react in mass atrocity crimes. Furthermore, R2P's legal status has been the subject of much ambiguity. Although the Responsibility to Protect is not yet binding international law, it is grounded in existing international law, and has been described variously as soft law, a political idea, and an evolving legal norm³⁶⁷. "It has not been codified in an international treaty; it lacks the state practice and sufficient *opinio juris* to give rise to customary international law; and it does not qualify as a general principal of law"³⁶⁸. However, the proponents of R2P suggest that it plays an important role in reframing the expectations of state behavior towards those in need of protection.

R2P has also been criticized for not adding anything new to the primary rules of international law, since war crimes, crimes against humanity, genocide and ethnic cleansing are already prohibited by international law and considered *jus cogens*.³⁶⁹ Thus, it follows that states already have the responsibility to protect, regardless of the R2P doctrine. In this regard, R2P can play an important role by strengthening existing legal instruments by filling gaps and encouraging their implementation.³⁷⁰

Political selectivity and self interest

The power of R2P depends on its ability to generate political pressure, which requires political cooperation in order to be successful³⁷¹. However, as state policies are influenced by political interests rather than moral considerations, this makes the R2P an increasingly vulnerable and unreliable facilitator of international cooperation.³⁷² Chimni (2002) argues that R2P allows selective application, which can harm rather than protect vulnerable populations.³⁷³

³⁶⁷ Adrian Gallagher & Jason Ralph, 'The Responsibility to Protect at Ten.' (2015) *Global Responsibility to Protect*, 7 (3-4); 239-253; Ramesh Thakur & Thomas G. Weiss, 'R2P: From Idea to Norm- and Action?' (2009) *Global Responsibility to Protect*, 1: 22-53.

³⁶⁸ William W. Burke-White, 'Adoption of the Responsibility to Protect' (30 July 2011) University of Pennsylvania Law School, Public Law Research Paper No.11-40.

³⁶⁹ Ekkehard Strauss, 'A Bird in the Hand Is Worth Two in the Bush: On the Assumed Legal Nature of the Responsibility to Protect' (2009) 1(3) *Global Responsibility to Protect*. 291-323.

³⁷⁰ Thakur & Weiss (n 367).

³⁷¹ Norooz (n 144).

³⁷² Eric A. Posner, 'Outside the Law' (2011) *Foreign Policy*.

³⁷³ B.S. Chimni, 'Globalization, Humanitarianism and the Erosion of Refugee

Thus, R2P has been criticized for having no independent influence and rendered ineffective due to selective application for the self-interest of states³⁷⁴.

Misconceptions about R2P

Internationally, R2P has been weakened as a norm, by being linked to coercive measures, after the Libyan intervention authorized by the Security Council in resolution 1973 (2011)³⁷⁵. This has raised concerns about its potential to be misused, as well as suspicions about its intent. Furthermore, the international community's inability to respond effectively to the Syrian refugee crisis, has given the impression that it is ineffective in producing collaborative action³⁷⁶. It has also been criticized for being based on political rhetoric instead of practical substance³⁷⁷. Moreover, it is seen by some as an unnecessary rehashing of established concepts of international law³⁷⁸. Yet, R2P is meant to reinforce those concepts and fill the gaps of international legal instruments, rather than displacing them³⁷⁹. Thus the R2P concept relies on a range of measures to prevent, respond and rehabilitate in the event of international mass atrocities; which include measures and protections that already exist.³⁸⁰

In spite of its weaknesses, the responsibility to protect, carries great potential for encouraging international action to prevent and respond to atrocity crimes in accordance with international law. Although Europe has provided some assistance, and capacity building in accordance with R2P's second pillar;³⁸¹ R2P faces significant challenges to its implementation in the present refugee crisis. Yet, R2P cannot help the EU deal with the current crisis without extending its scope and effectiveness. To do so, it requires the full implementation of international refugee law, and provide practical guidelines for burden-sharing³⁸². In order for R2P to become a useful mechanism of refugee and IDP advocacy, its human rights foundations

Protection'(2000) 13 Journal of Refugee Studies 243.

³⁷⁴ Posner (n 372).

³⁷⁵ S/RES/1973(2011).

³⁷⁶ World Summit Outcome Document (n 115).

³⁷⁷ Barbour & Gorlick (n 326)

³⁷⁸ Bulley (n 332)

³⁷⁹ ICISS (n 85).

³⁸⁰ Barbour & Gorlick (n 326).

³⁸¹ De Franco (n 354)

³⁸² Bellamy, A. J. "Safe Passage and Asylum Key to Fulfilling Responsibility to Protect," (2015), Global Observatory.

need to be elaborated and advanced.

4.7 Conclusion

This section has discussed the findings from the socio-legal case study conducted. Five key thematic questions were posed, that were intended to research the nature of the EU policies and how they impacted the Syrian refugees. In accordance with the first three research objectives, the latter questions of the case study looked at the influence that R2P had on EU policies, as well as their strengths and their weaknesses.

To begin with, section 4.2 looked at the European Union policies and their legal foundation in international and EU law. The section covered the legislation within the EU that concerns refugees, in particular the ECHR's regulations concerning *non-refoulement*, as well as the effectiveness of the Central European Asylum System. The Dublin Regulation was discussed, where the case of *M.S.S v Belgium and Greece* showed significant breaches of human rights law when the applicant was detained during the asylum regulations process, which violated Article 2 and 3 of the ECHR. The case of *Y and Z* over the denial of the refugee status, also showed the inefficiency of the European Asylum System. These observations support the findings that relatively few asylum seekers and refugees find their way to safety in Europe³⁸³. According to Nancheva (2015), the Europeanization and the liberalization of protection measures in the EU have result in ineffective provision of refugee protection, where the CEAS contains 'contradictions that obstruct its efficient functioning in practice and undermine the extent and quality of the protection it provides.'³⁸⁴ Because of the chasm between international refugee law and the way that European law has interpreted it, there are great differences in the treatment of asylum cases in Europe.

Section 4.3 reveals that Europe is indeed pursuing policies to keep out refugees, through externalization policies, and seeking to deflect their international protection responsibilities to other countries. Akram et al (2014) assert that Europe does indeed have a responsibility towards Syrian refugees because Syrian refugees 'do not enjoy the effective protection of their own government,...(therefore) it falls to the international community as a whole to provide the

³⁸³ Stuart Turner, 'Refugee Blues: A UK and European Perspective.' (2015), 6(1) European journal of psychotraumatology, 29328-9

³⁸⁴ Nancheva (n 218).

‘international’ protection necessary to serve to refugees the enjoyment of their rights.’³⁸⁵ ‘Fortress Europe’ is thus, denying the interdependence that results from an international community of states and the responsibilities that states have for one another in today’s globalized world. The first step, according to Nancheva (2015) is to acknowledge a universal standard of responsibility under international law without discrimination for the refugee status as well as a clear mandate over the reasons for allowing asylum to the Syrian refugees³⁸⁶.

This, however, requires some understanding of the differences between national security and human security, as discussed in section 4.4. Whilst it is clear that human security can aid refugees if incorporated within EU policy, it is trumped by national security fears, which, according to Straubhaar (2015), are overrated³⁸⁷. Europe has endorsed human security in its security policy³⁸⁸. However, because of national security concerns, the securitization of migration has resulted in a mere 25% of the Syrian refugee flow from seeking shelter in Europe, with 86% of refugees residing in developing nations.³⁸⁹ Straubhaar (2015) argues that Europe ‘has to balance the complex field of tension between humanitarian obligations, economic costs and the social anxieties of the host societies’ and must uncompromisingly support a fair and efficient asylum procedure which allows shelter and support to refugees fleeing from persecution and human rights violations. Humanism does not stop at national borders. It is an obligation that is to be shouldered together by all EU countries.’³⁹⁰

Clearly, in response to the questions posed in the research objectives, human security is a tool that can have a great impact on the improvement of European policies under the universal framework of international refugee law, where human security can act as the *raison d’être* for the fulfillment of refugee rights. Nevertheless, it is argued that human security lacks enforceability and therefore in practical terms it is overshadowed by *realpolitik*. The EU-Turkey agreement is an example of how national security is a priority in EU policy, where Rygiel et al. (2016) argue that ‘such temporary protection regimes symbolize the failure of policies to address the Syrian

³⁸⁵ Susan Akram et al, ‘Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing’ (2014) Boston University School of Law International Human Rights Clinic.

³⁸⁶ Nancheva (n 218).

³⁸⁷ Thomas Straubhaar, ‘Towards a European Refugee Policy’, (2015) Leibniz Information Centre for Economics, Editorial.

³⁸⁸ Mary Martin & Taylor Owen, ‘The second generation of human security: lessons from the UN and EU experience.’ (2010) 86(1) *International Affairs*. 211-224.

³⁸⁹ Cautain (n 313).

³⁹⁰ Straubhaar (n 387).

refugee crisis. Indeed, they may actually lessen the likelihood that states will uphold the legal agreements set forth in the 1951 Convention and position forced migrants such as Syrian refugees in dire situations that leave them languishing in legal and social strife with insufficient rights.³⁹¹

The utility of R2P adds strength to the paradigm of implementing human security. Section 4.5 and 4.6 looked at the ways in which R2P could be implemented as well as the weaknesses of R2P to evaluate its potential. As a form of soft law, it has the ability to persuade states to take responsibility over the issue of the Syrian refugee crisis. The gap between EU asylum law and the universal standard can be covered with the use of R2P, which can encourage European states to uphold their international obligations in the case of the Syrian crisis. The situation can be mirrored to the case of *Abed El Karem El Kott* [2012]³⁹², where the Palestinian refugees were granted asylum due to the lack of safety in their home country. Similarly, R2P can remind Europe of their humanitarian obligations towards refugees escaping mass atrocities, by ensuring that *non-refoulement* is strictly adhered to and the refugee status is granted without compromise. As R2P is universal, it applies across borders, and can therefore strengthen the international provision of protection for refugees. Although R2P, is hampered by its inability to be enforced, it has the potential to be further developed in this regard, and guide the shaping of EU policy towards refugees.

³⁹¹ Rygiel et al (n 245).

³⁹² C-364/11 *Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal*, CJEU, (19 December 2012)

5. CONCLUSION

As growing numbers of refugees flee mass atrocity crimes, the Syrian refugee crisis has become a humanitarian tragedy. The global community's failure to find long-term solutions has turned into a protracted refugee situation. It has also served to expose the weaknesses of the international refugee protection regime. In the ongoing crisis, the reluctance of states to share the responsibility of protecting refugees equitably has resulted in Syria's Middle Eastern neighbors bearing the overwhelming responsibility of hosting the refugees. This situation poses a threat to the welfare of the refugees, to the struggling host countries and to international peace and security. Moreover, the exploitation by states of the gaps in the refugee regime has resulted in the deprivation of refugee rights. This paper has investigated the possibility of the R2P doctrine in providing solutions for the Syrian refugee crisis, and has focused mainly on the response of the EU. The research showed the necessity for addressing the weaknesses in the refugee protection regime, and the need to bolster it with other approaches to provide solutions for refugee protection. The ongoing crisis has demonstrated the need for a more collaborative approach by the global community to share their collective obligation, in a legal, political and moral context. In this regard, R2P, as an emerging legal norm offers an important opportunity to facilitate international cooperation.

The Responsibility to Protect refugees

The Responsibility to Protect, an emerging legal norm based on international humanitarian and human rights law, represents the political and moral commitment of the international community to protect vulnerable populations from atrocity crimes. By viewing 'sovereignty as responsibility,' it advocates national and international responsibility and accountability. Furthermore, its association with human security, makes the security of people rather than states the priority, which is particularly important to protect displaced people across national borders³⁹³. The basic concept of the R2P doctrine is that the global community has a responsibility to protect vulnerable populations elsewhere in the world, for safeguarding human rights and international security³⁹⁴. However, as a soft law, the R2P cannot be legally enforced

³⁹³ Erin K Wilson 'Protecting the unprotected: reconceptualising refugee protection through the notion of hospitality' 2010. *Local-Global* 8: 100–122

³⁹⁴ Bruce Jones, Carlos Pascual & Stephen John Stedman, *'Power and Responsibility: Building International Order in an Era of Transnational Threats'*, (Brookings Institution Press, 2009)

and is hindered by issues such as politics, state sovereignty and the self-interest of states. It has also been weakened by criticisms of selectivity and controversial coercive use³⁹⁵.

Yet, R2P offers opportunities to contribute solutions in the the present refugee crisis, due to its core values of safeguarding human protection in mass atrocity situations through collective international efforts in a timely manner. However, although R2P, endorses the importance of protecting refugees, it has not been invoked for mobilizing international support in the present refugee situation.³⁹⁶ Nevertheless, R2P represents an excellent opportunity to fill the gaps in the Refugee Convention, and encourage measures for a legal framework for the protection of IDPs. In this context, R2P would support rather than dilute the international refugee regime by measures such as non-refoulement, providing safe passage and asylum as part of the collective effort for protecting refugees.³⁹⁷

Moreover, as R2P's focus on helping vulnerable populations is not limited by borders, it recognizes the international community's responsibility towards all refugees who are at risk, regardless of their territorial location outside of Syria. R2P also provides for protection assistance for Syrian refugee hosts under Pillar two³⁹⁸, and has the potential to entail an equitable system of responsibility sharing among states for protecting refugees. This is essential to finding effective long-term solutions to the Syrian refugee crisis. R2P could also serve to increase accountability for violations of international law, and address the causes of displacement. Furthermore, Barbour and Gorlick (2008) note that 'if R2P were to be interpreted as imposing a positive obligation on states to take steps to prevent victimization, reduce statelessness, and redress the dire circumstances for those who have no human rights protection or even no national rights, this would be a significant achievement'.³⁹⁹

³⁹⁵ Posner (n 372)

³⁹⁶ Rimmer (n 363).

³⁹⁷ Barbour & Gorlick (n 326)

³⁹⁸ United Nations Development Program (UNDP) Redefining Security: The Human Dimension, (May 1994) 94. No. 592 Current History vol. 94, no. 592 (May 1995), 229 23

³⁹⁹ Barbour & Gorlick (n 326).

The Weaknesses of International Law

The international refugee regime has proved inadequate to deal with the various political, legal and moral challenges⁴⁰⁰. Safeguarding refugee rights requires the full implementation of the Refugee Convention through its existing mechanisms, including the UNHCR. However, this has been compromised by issues of state sovereignty, causing the Syrian refugee crisis to be managed in a mostly ad hoc manner. Thus the Refugee Convention has been interpreted and applied selectively, as a result of states political agendas⁴⁰¹. The refugee regime's weaknesses include the vagueness of the refugee definition, which allows it to be manipulated; and gaps in inter-state obligations, especially burden sharing through admission of refugees⁴⁰². Moreover, the UN Refugee Convention and its Protocol have no legal provision for states to grant asylum, or to assist other states with mass refugee influxes⁴⁰³. Hence wealthy countries, which may have contributed to the refugee crises, have no legal obligation to assist poorer countries shoulder the responsibility of refugee protection. In this context, human rights law has been able to supplement some of the gaps in the Refugee Convention as it is not constrained by borders, and applies to all persons without discrimination⁴⁰⁴. Whereas, international refugee law, usually applies by seeking admission to the territory of an asylum state.

5.1 European Response to the Crisis

The EU response has focused on deterring refugees through tighter border controls and restrictive policies, rather than protecting their human rights. Restrictive interpretations of the 1951 Convention by States as well as inconsistencies in the application of EU laws, have led to the exclusion of many refugees in need of international protection. The EU's assertion of sovereignty and reluctance to provide protection highlights the inherent tension between state interests and human rights. As a result, refugees have been subjected to '*refoulement*, push-backs and removal to other territories, and various state actions that amounted to denial of access to an

⁴⁰⁰ Feller (n 69).

⁴⁰¹ Edwards (n 279).

⁴⁰² Fitzpatrick (n 78).

⁴⁰³ James C. Hathaway & R. Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution- Oriented Protection', (1997) 10(115) Harvard Human Rights Journal. 143

⁴⁰⁴ Edwards (n 279).

asylum process,' in the EU, according to Amnesty International (2015/16). Additionally, EU policies have criminalized refugees, and conflated them with migrants. Due to the blocking of legal routes, refugees have been forced to adopt illegal means, such as trafficking in order to seek asylum in the EU.⁴⁰⁵ During the Syrian refugee crisis, the EU has focused more on aid money than on offers of asylum. Inequitable burden-sharing has been apparent internationally as well as within the EU, as southern European states have had to shoulder most of the asylum claims.

Furthermore, no European government has made any reference to the 'Responsibility to Protect' principle (R2P) during the current migrant crisis, although references have been made to the 'protection' of Europe's citizens and cultural values. Thus the R2P is challenged by a more traditional understanding of domestic sovereignty and national identity in the EU. Although Europe has endorsed and supported the R2P doctrine, the humanitarian obligations that flow from it are not yet evenly implemented. In the European context, the R2P could guide EU policy to be more collaborative and consistent; upholding EU principles and international law, and not deflecting its responsibility of protecting refugees to 'front-line' EU and non-EU States.

Although the EU Member States have implemented different national and transnational laws for migration and asylum resulting in an inconsistency of legal standards, the EU is guided by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter for finding common solutions to refugee rights. Since the Charter of Fundamental Rights, applies to all individuals, it also includes non-nationals. The EU response to the crisis has demonstrated the limitations of its Member States to collectively respond to issues. It has also shown the need for the EU to live up to its principles and its ethical responsibility.

The Place of Morality

The theoretical foundations of the Responsibility to Protect, focus on the need for morality, universal principles and idealism to take precedence over realist notions of the state acting in its own self-interest⁴⁰⁶. The global refugee situation calls for careful reflection on the

⁴⁰⁵ Roger Zetter, 'More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization.' (2007) 20(2) Journal of Refugee Studies. 172-192.

⁴⁰⁶ Filteau, Carolyn Helen, "Rights and Responsibilities: What are the Prospects for the Responsibility to Protect in the International/ Transnational Arena?" (2014). PhD Theses. Paper 7.

obligations that arise from our common humanity. During the crisis, protection has focused more on legal technicalities, than the ethical implications of protection. This is not the spirit in which refugee protection was originally envisaged in international law. As all human rights are universal and interdependent, hence the international community must uphold them in a fair manner. Sovereignty, and self-interest must sometimes be secondary to crises of a humanitarian nature. Although states are more concerned with national interest and national security, these notions should not override the moral concerns of an interconnected world. By accepting the R2P principle, the international community has accepted their moral responsibility goes beyond their borders.

Human Security

Human security is the principle at the heart of the R2P norm, which advocates transnational cooperation and diplomacy. It is people-centered and supports principles of universalism, responsibility sharing, and early prevention⁴⁰⁷. It acknowledges that state-centric security is no longer sufficient to deal with transnational threats, such as terrorism and infectious disease⁴⁰⁸. Moreover, it gives priority to the security of people over that of states, and includes ‘their physical safety, their economic and social wellbeing, respect for their dignity and worth as human beings, and protection of their human rights and fundamental freedoms,’⁴⁰⁹. It therefore shares many of the central beliefs of human rights and refugee protection, and may therefore help to fill some of the protection gaps in international law. Hence it presents a promising outlook for current global security and protection challenges. A basic commitment to a broad definition of human security can be seen in Article 21 of the Treaty on European Union.

Furthermore, International human rights and refugee laws contain only a minimum set of standards. These are often selectively and poorly enforced, as they mostly rely on their coinciding with the political objectives of States. Human security, as a discipline which promotes both human rights and security may be able to bolster the law in these respects.

⁴⁰⁷ Edwards (n 279).

⁴⁰⁸ UNDP (n 398)

⁴⁰⁹ ICISS (n 85)

5.2 Recommendations

The Syrian refugee crisis, is a humanitarian crisis that calls for a reassessment of international systems and values. This should include how global humanitarian concerns should take precedence over Westphalian concepts of national borders and state sovereignty. Indeed, it is possible that the R2P norm can be used to change attitudes on refugee protection. A combination of new approaches, should be used by the international community, in order to improve the implementation of the existing refugee regime and for the development of new standards to meet the special needs of refugees.

Additionally, refugee protection, should be a dynamic function and must evolve in keeping with current realities. Furthermore, while considering the legitimate concerns of states, International law must give more importance to meeting the needs of vulnerable people rather than states. However, international law alone cannot solve the many problems of human displacement in the world today without political will. The R2P offers an important opportunity in this regard, as it can be used to mobilize political will. However, the R2P's role in peace building needs to be more rigorously researched. Since although its coercive element has been extensively analyzed, very little attention has been paid to the dimension of 'rebuilding'. In this regard, the resettlement of refugees are important areas for research which need to be expanded upon. This would include formulating an equitable scheme for distributing the responsibility of accommodating populations fleeing atrocity crimes. Barbour and Gorlick (2008) suggest a range of measures in which R2P could be employed to improve refugee protection⁴¹⁰. These could include steps to reduce statelessness, the development of legal processes by states to determine the status of asylum-seekers, measures to address the protection needs of victims, as well as the causes of their displacement. The development of R2P in this context offers promising prospects to contribute solutions for the Syrian refugee crisis.

⁴¹⁰ Barbour & Gorlick (n 326).

BIBLIOGRAPHY

Primary Sources

Cases

Joined Cases C-71/11 and C-99/11 *Y and Z v Germany* [2012] ECR

Joined Cases C-188/10 and C-189/10 *Melki & Abdeli* [2010] ECR I-5667

Case C-364/11 *Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal*, (2012) ECR

Case C-394/12, *Shamso Abdullahi v Bundesasylamt* [2013] ECR

Hirsi Jamaa and Others v. Italy, App no. 27765/09 (ECHR, 2012)

M.S.S v Belgium and Greece App no 30696/09 (ECHR, 2011).

Soering v. The United Kingdom App No 14038/88 (ECHR, 1989),

Vilvarajah and Others v. The United Kingdom, App no 13163/87 (ECHR, 1991)

International Treaties

United Nations General Assembly, Convention Relating to the Status of Refugees, (adopted 28 July 1951) 189 United Nations, Treaty Series, p. 137

United Nations General Assembly, Protocol Relating to the Status of Refugees, (adopted 31 January 1967) 606 United Nations, Treaty Series, p. 267

Universal Declaration of Human Rights (adopted 10 December 1948) 217 A(III)

United Nations Documents

UN General Assembly, 2005 World Summit Outcome, (adopted 24 October 2005), A/RES/60/1.

United Nations General Assembly, UN Secretary-General's Report: Implementing the responsibility to protect, (January 12, 2009), A/63/677.

United Nations Report of the Secretary General, The Responsibility to Protect: Timely and Decisive Response (25 July 2012) A/66/874.

United Nations Security Council, Security Council resolution 1973 (2011), S/RES/1973.

EU Legislation

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) Article 3.

Secondary Sources

Books

Bryman, A. '*Social Research Methods*' (4th edn, OUP 2012)

Buchanan, A. '*Justice, Legitimacy, and Self-Determination: moral foundations for International Law*,' (OUP 2003)

Byrne, M. 'Fortifying Europe – Poland & Slovakia under the Dublin System' in Matt Killingsworth (ed.), '*Europe: New Voices, New Perspectives*', (Contemporary Europe Research Centre, 2007). [e-book]

Clough, P. & Nutbrown, C. '*A Student's Guide to Methodology*' (2nd edn, Sage 2010)

Davies, G., et al. '*European Union Law – Text and Materials*', (3rd edn, CUP 2014)

Estrada-Tanck, D. '*Human Security and Human Rights under International Law: The Protections Offered to Persons Confronting Structural Vulnerability*', (Bloomsbury, 2016)

Evans, G. '*The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*', (2nd edn, Brookings Institution Press 2008)

Francis, A. 'The Responsibility to Protect and the International Refugee Regime.' In Francis, Popovski & Sampford (eds.), '*Norms of Protection: Responsibility to Protect, Protection of Civilians and their Interaction*', (1st edn, UN University 2013) [e-book]

Haddad, E. '*The refugee in international society: between sovereigns*', (CUP 2008)

Hathaway, J.C. '*The Rights of Refugees under International Law*', (CUP, 2005)

Holzer, V. '*Refugees from Armed Conflict: the 1951 Refugee Convention and International Humanitarian Law*'. (Intersentia, Cambridge, 2015)

Hurwitz, A. '*The Collective Responsibility of the State to Project Refugees*', (OUP 2009) [e-book]

Jones, B., Pascual, C. & Stedman, S.J. '*Power and Responsibility: Building International Order in an Era of Transnational Threats*', (Brookings Institution Press, 2009)

Nasu, H. 'Human Security and International Law: The Potential Scope for Legal Development within the Analytical Framework of Security' in Mary E. Footer et al (eds), *Security and International Law*, (Bloomsbury 2016)

Nicholson, F. 'Protection and Empowerment: Strategies to Strengthen refugees' human security,' in Edwards & Ferstman, (eds)., '*Human Security and Non-Citizens: Law Policy and International Affairs*', (CUP 2009)

O'nions, H. '*Asylum - A right denied: A critical analysis of European asylum policy.*', (Ashgate, 2014).[e-book]

Peers, S., Guild, E. & Tomkin, J. (eds.), '*EU Immigration and Asylum Law: Text and Commentary*', (2nd edn, Brill Nijhoff Publishers, 2015) [e-book]

Power, S. '*A Problem from Hell: America and the Age of Genocide*' (Basic Books, 2002)

Salter, M. & Mason, J, '*Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*' (1st edn, Pearson 2007)

Thomas, G. '*How to do your Case Study: A Guide for Students and Researchers*' (1st edn, Sage 2011)

Journal articles

Achiume, T. 'Syria, Cost-sharing, and the Responsibility to Protect Refugees.' (2015) 100 Minnesota Law Review, 687

Arboleda, E. & Hoy, I. 'The Convention refugee definition in the West: disharmony of interpretation and application' (1993) 5 International Journal of Refugee Law. 1

Babacan, A. 'Citizenship Rights in a Global Era: The Adequacy of International Human Rights Law in Providing Protection to Asylum Seekers' (2007) 3(9) International Law and Politics. 158-170

Barbour, B. & Gorlick, B. 'Embracing the 'Responsibility to Protect': A Repertoire of Measures Including Asylum for Potential Victims,' (2008) 4(20) International Journal of Refugee Law. 533.

Barnett, L. 'Global Governance and the Evolution of the International Refugee Regime' (2002) 14(2/3) International Journal of Refugee Law. 238-261

Biondi, P. 'Human Security and external burden-sharing: the European approach to refugee protection between past and present' (2016) 20(2) The International Journal of Human Rights. 208-222.

- Bulley, D. 'Shame on EU? Europe, RtoP, and the Politics of Refugee Protection. *Ethics & International Affairs*' (2017) 31(1) *Ethics and International Affairs*. 51-70
- Burke-White, W.W. 'Adoption of the Responsibility to Protect' (2011) University of Pennsylvania Law School, Public Law Research Paper No.11-40.
- Chan, P.W.C, 'The Protection of Refugees and Internally Placed Persons: Non Refoulement under Customary International Law' (2006) 10 *International Journal of Human Rights*. 231.
- Edwards, A. 'Human Security and the Rights of Refugees: Transcending Territorial and Disciplinary Borders.' (2009) 30(3) *Michigan Journal of International Law*. 763
- Egeland, J. 'A Way Out of the Syrian Carnage' (2015)12(1) *Brown Journal World Affairs*. 297-304
- Feller, E. 'Evolution of International Refugee Protection' (2001) 5 *Journal of Law & Policy*. 129
- Fitzpatrick, J. 'Revitalizing the 1951 Refugee Convention' (1996) 9 *Harvard Human Rights*. 234
- Frelick, B., Kysel, I.M., & Podkul, J. 'The Impact of Externalization Controls on the Rights of Asylum Seekers and Other Migrants,' (2016) 4(4) *Journal of Human Security*. 190-220.
- Gallagher, A. & Ralph, J. 'The Responsibility to Protect at Ten' (2015) *Global Responsibility to Protect*, 7 (3-4) *Global Responsibility to Protect*. 239-253
- Goodwin-Gill, G. 'Refugees, Rights and Security'(2008) 1 *Forced Migration, Human Rights and Security*. 3.
- Hadfield, A. & Zwitter A, 'Analyzing the EU Refugee Crisis: Humanity, Heritage and Responsibility to Protect' (2015) 3(2) *Politics and Governance*.129-134
- Hakimi, M. 'Toward a Legal Theory on the Responsibility to Protect' (2014) 39 *Yale Journal of International Law*. 247.
- Hathaway, J.C. & Neve, A.R. 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution- Oriented Protection', (1997) 10(115) *Harvard Human Rights Journal*. 143
- Hehir, A. 'From Human Security to the Responsibility to Protect: The Co-option of Dissent?' (2015), 23(3) *Michigan State International Law Review*, 675-699.
- Hollenbach, D. 'Borders and Duties to the Displaced: Ethical Perspectives on the Refugee Protection System' (2016), 4(3) *Journal on Migration and Human Security*. 148-165
- Kalaydzhieva, V. 'Right to Asylum and Border Control: Implications of European Union Policies on Access to EU Territory of People in Need of International Protection.' (2012)

- MacArthur, J. 'A Responsibility to Rethink? Challenging Paradigms in Human Security.' (2008), 63(2) *International Journal*. 422-443
- Manners, I. 'The Normative Ethics of the European Union' (2008) 84(1) *International Affairs*. 45.
- Martin, M. & Owen, T. 'The second generation of human security: lessons from the UN and EU experience'.(2010) 86(1) *International Affairs*, 211–224
- Miller, D. 'Distributing Responsibilities' (2001) 9(4) *The Journal of Political Philosophy*. 453-71.
- Newman, E. 'A Normatively Attractive but Analytically Weak Concept' (2004) 35 *Security Dialogue*. 358
- Odutayo, A. 'Human Security and the International Refugee crisis', (2016) 12(3) *Journal of Global Ethics*. 365-379.
- Paris, R. 'Human Security: Paradigm Shift or Hot Air?' (2001) 26(2) *International Security*. 87-102.
- Ralph, J. & Souter, J. 'Did the UK and Australia have a special responsibility to protect the Iraqi people from Islamic States in 2014', (2015) 91(4) *International Affairs*. 709-723
- Roznai, Y. 'The Insecurity of Human Security', [2014] 32(1) *Wisconsin International Law Journal*; Edwards (n 54).
- Rygiel K, Feyzi, B. & Suzan, I. 'The Syrian Refugee Crisis: The EU-Turkey 'Deal' and Temporary Protection', (2016) 16(3) *Global Social Policy*. 315-320.
- Simon, O.B. 'Human Security and the Responsibility to Protect Approach: A Solution to Civilian Insecurity in Darfur' (2008) 7 *Human Security Journal*. 46-60.
- Strauss, E. 'A Bird in the Hand Is Worth Two in the Bush: On the Assumed Legal Nature of the Responsibility to Protect' (2009) 1(3) *Global Responsibility to Protect*. 291-323.
- Thakur R. & Weiss, T.G. 'R2P: From Idea to Norm- and Action?' (2009) *Global Responsibility to Protect*, 1. 22-53.
- Turner, S. 'Refugee Blues: A UK and European Perspective.' (2015) 6(1) *European journal of psychotraumatology*. 29328-9
- Welsh, J.M., & Banda, M. 'International Law and the Responsibility to Protect: Clarifying or Expanding States' Responsibilities?' (2010) 2(3) *Global Responsibility to Protect*. 213-231

Zetter, R. 'More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization.' (2007) 20(2) Journal of Refugee Studies. 172-192.

Online Journals and Reports

3RP, Mid-Year Report, (UNHCR, 2016) <<http://www.3rpsyriacrisis.org/wp-content/uploads/2016/07/3RP-Mid-year-Report.pdf>> accessed November 2016
Accessed April 2017

Albassam, A. 'Europe's Refugee Crisis: Assessing the Factors Preventing a Coordinated EU Response' (2015). Master's Theses. 161 <<http://repository.usfca.edu/thes/161>> accessed April 2017.

Ali, P. 'States in crisis: sovereignty, humanitarianism, and refugee protection in the aftermath of the 2003 Iraq War.' (2012) LSE Thesis
<http://etheses.lse.ac.uk/631/1/Perveen_States_Crisis.pdf> accessed November 2016

Amnesty International, 'The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe's Borders' (2014). <<https://www.amnesty.ch/de/themen/asyl-und-migration/festung-europa/dok/2015/die-kampagne-sos-europa/bericht-the-human-cost-of-fortress-Europe>> accessed April 2017

Berti, B. 'The Syrian Refugee Crisis: Regional and Human Security Implications', (2015) 17(4). Strategic Assessment.
<http://www.inss.org.il/uploadImages/systemFiles/adkan17_4ENG_7_Berti.pdf> accessed April 2017.

Burke-White, W.W. 'Adoption of the Responsibility to Protect' (2011) University of Pennsylvania Law School, Public Law Research Paper No.11-40. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1960086> accessed April 2017

Cautain, J.F. 'Refugee Crisis and its Ramifications for Global and National Security.' (2016) European Commission Speech. <Jean Francois Cautain, 'Refugee Crisis and its Ramifications for Global and National Security.' (2016) European Commission Speech.> accessed April 2017

Collette, E. 'Outlook on Migration in Europe in 2015' (2015) 4(5) MPP. <<http://reliefweb.int/report/world/migration-policy-practice-vol-iv-number-5-december-2014-january-2015>> accessed November 2016.

Crisp J. et al., 'From slow boil to breaking point: A real-time evaluation of UNHCR's response to the Syrian refugee emergency'(2013) PDES/2013/10. <<http://www.unhcr.org/52b83e539.pdf>> accessed December 2016

Day, H. 'Refugee and migrant crisis: the deficient global response' (2016) The Lancet. <
[http://www.thelancet.com/journals/lancet/issue/vol388no10045/PIIS0140-6736\(16\)X0034-7](http://www.thelancet.com/journals/lancet/issue/vol388no10045/PIIS0140-6736(16)X0034-7)>
accessed April 2017.

European Commission, 'A European Agenda on Migration,' (2015) COM. 240. <
https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf> accessed
November 2016

European Commission, 'Humanitarian Implementation Plan – Syria Crisis' (2015).
<<http://ec.europa.eu/echo/files/funding/decisions/2016/HIPs/HIP%20V2%20FINAL.pdf>>
accessed April 2017

European Parliament Policy Department, 'Current Challenges for International Refugee Law, with a Focus on EU Policies and EU Cooperation with the UNHCR' (2013)
<http://www.europarl.europa.eu/RegData/etudes/note/join/2013/433711/EXPO-DROI_NT%282013%29433711_EN.pdf> accessed April 2017

Filteau, C.H. 'Rights and Responsibilities: What are the Prospects for the Responsibility to Protect in the International/ Transnational Arena?' (2014). PhD Theses. Paper 7 <
<http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1006&context=phd>>
accessed February 2017

Haukvik, I. 'Communitarianism vs. Cosmopolitanism? Refugee and Asylum Policy of the Conservative 'blue-blue' government' (2014) Thesis.
<https://brage.bibsys.no/xmlui/bitstream/handle/11250/293714/masteroppgave%20ingeborg1.pdf?sequence=1> accessed April 2017

ICISS report, 'The Responsibility to Protect' (2001) International Commission on Intervention and State Sovereignty.

Khallaf, H.T 'Veto Syria: Explaining the Power of the United Nations Security Council and the Syrian Refugee Crisis' (2016). Thesis
<<http://repository.usfca.edu/cgi/viewcontent.cgi?article=1371&context=capstone>>

McFadyen, G. 'The Contemporary Refugee: Persecution, Semantics and Universality' in eSharp, Special Issue: The 1951 UN Refugee Convention - 60 Years On' (2012) 9-35.
http://www.gla.ac.uk/media/media_234569_en.pdf accessed April 2017

Midgley T., et al., 'Under Pressure – The Impact of the Syrian Refugee Crisis on Host Communities in Lebanon.' (2013) World Vision Advocacy Report. <
<http://wvi.org/sites/default/files/UNDER%20PRESSURE%20report.pdf> > accessed April 2017.

Norooz, E. 'Responsibility to Protect and its applicability in Libya and Syria' (2015) 9(3) ICL Journal <<https://www.icl->

journal.com/download/1d60bf91da3f98e153088f67d3676e5a/ICL_Thesis_Vol_9_3_15.pdf> accessed April 2017

O'Brien, S. 'Statement to the Security Council on Syria New York' (2016) <<http://reliefweb.int/report/syrian-arab-republic/under-secretary-general-humanitarian-affairs-and-emergency-relief-53> > accessed April 2017

Orchard C. & Miller, A. 'Protection in Europe for refugees from Syria' (2014) Forced Migration Policy Briefing. < <https://www.rsc.ox.ac.uk/files/publications/policy-briefing-series/pb10-protection-europe-refugees-syria-2014.pdf> > accessed April 2017

Phuong, C. 'Identifying states' responsibilities towards refugees and asylum seekers'. (2005) ESIL Research Forum on International Law. <http://www.esil-sedi.eu/sites/default/files/Phuong.PDF>

Posner, E.A. 'Outside the Law' (2011) *Foreign Policy*. <<http://foreignpolicy.com/2011/10/25/outside-the-law>> accessed April 2017

Rimmer, S. H. 'Refugees, Internally Displaced persons and the 'Responsibility to Protect' (2010) UNHCR Working Paper No. 185. < <http://www.unhcr.org/uk/research/working/4b97b0909/refugees-internally-displaced-persons-responsibility-protect-dr-susan-harris.html>> accessed April 2017.

Scheffler, A.K. 'The Externalisation of European Migration Control - How can Human Security of Asylum Seekers be Achieved? (2015) Thesis. Roskilde University.< <https://core.ac.uk/download/pdf/43032032.pdf> > accessed April 2017

Tadjbakhsh, S. 'Human security twenty years on.' (2014) The Norwegian Peacebuilding Resource Centre, Expert Analysis.< <https://www.files.ethz.ch/isn/181368/540cb240aa84ac7133bce008adcde01f.pdf>> accessed April 2017

UNDP, 'Redefining Security: The Human Dimension', (1994) 94(592).

UNHCR, 'Burden Sharing' (2000) UNHCR Fifth Annual Plenary Meeting of the APC. < http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/rcp/APC/2000-Discussion-Paper-UNHCR-submission-5th-plenary.pdf> accessed April 2017

UNHCR, 'Convention Plus Issues Paper Submitted by UNHCR on Addressing irregular secondary movements of refugees and asylum-seekers' (2004) Forum/CG/SM/03.< <http://www.refworld.org/pdfid/471de35b2.pdf>> accessed April 2017

UNHCR, The State of the World's Refugees: A Humanitarian Agenda (1997) <<http://www.unhcr.org/uk/publications/sowr/4a4c72719/state-worlds-refugees-1997-humanitarian-agenda.html>> accessed April 2017.

Wollmer, A. 'International refugee law and the common European asylum system: Conformity or human rights violation?' Masters thesis. <<https://www.diva-portal.org/smash/get/diva2:751017/FULLTEXT01.pdf>>

Wouters J. & de Man, P. 'The Responsibility to Protect and Regional Organisations: The Example of the European Union,' (2013) Working Paper No. 101 (Leuven Centre for Global Governance Studies) 17.
<http://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp101-110/wp101-de-man.pdf> accessed April 2017.

Yildiz, A. & Eralp, A. 'Rethinking Asylum Policies in the EU: Lessons from the Syrian Refugee Crisis', (2015) EUSA Conference Paper.
<<https://eustudies.org/conference/papers/download/257>> accessed April 2017

Zodian, A.S. 'EU Migration Policies and their Outcome – the Syrian Refugee Crisis, (2015), Phd thesis, The Bucharest University of Economic Studies. < [http://www.cafee.ase.ro/wp-content/uploads/2015edition/file2015\(34\).pdf](http://www.cafee.ase.ro/wp-content/uploads/2015edition/file2015(34).pdf)> accessed April 2017.

Websites

Coen, A. 'The Responsibility to Protect and the Refugee Crisis', (2016).
<<https://sustainablesecurity.org/2016/03/09/the-responsibility-to-protect-and-the-refugee-crisis/>> accessed January 2017

Bellamy, A.J. 'Safe Passage and Asylum Key to fulfilling the Responsibility to Protect.', (2015).
< <https://theglobalobservatory.org/2015/09/syria-refugees-unhcr-aylan-kurdi/>> accessed May 2017.

Franco, C.D. 'Competing Understandings of Protection in the European 'Migrant Crisis'' (2016) Middle East Institute. < <http://www.mideasti.org/content/map/competing-understandings-protection-european-%E2%80%98migrant-crisis%E2%80%99>> Accessed May 2017.

Boswell, C. 'Burden-sharing in the New Age of Immigration' (2003) The Online Journal of the Migration Policy Institute. < <http://www.migrationpolicy.org/article/burden-sharing-new-age-immigration>> accessed April 2017

European Commission (2017) http://ec.europa.eu/eurostat/statistics-explained/index.php/Main_Page

Newspaper Articles

Ban Ki Moon, 'Remarks on Forced Displacement: A Global Challenge', *UN News* (Washington DC, 15 April 2016).

UNHCR, 'Chief Urges States To Maintain Open Access for Fleeing Syrians', (UNHCR, 16 July 2013) <http://www.unhcr.org/51e55cf96.html>.

UNHCR, 'States Parties to the 1951 Convention and Its 1967 Protocol', (UNHCR, 2016) <http://www.unhcr.org/3b73b0d63.html>.

UNHCR, 'Syria Conflict at 5 years: the biggest refugee and displacement crisis of our time demands a huge surge in solidarity'(UN, 15 March 2016)
<http://www.unhcr.org/afr/news/press/2016/3/56e6e3249/syria-conflict-5-years-biggest-refugee-displacement-crisis-time-demands.html>

UNHCR, 'Resettlement and Other Forms of Admission for Syrian Refugees' (28 February 2017), <http://www.unhcr.org/52b2febafc5.pdf>.

Spindler, W. 'UNHCR sets out detailed plan to solve refugee situation in Europe', *UNHCR News* (Geneva, 4 March 2016).

Video Transcripts

Betts, A. 'Our refugee system is failing. Here's how we can fix it.' (2016) Ted Talks. <
https://www.ted.com/talks/alexander_betts_our_refugee_system_is_failing_here_s_how_we_can_fix_it > accessed April 2016

APPENDICES

Appendix 1

Figure 1: A Diagram of the Link between International Law, Human Security and R2P and the Syrian Refugee Crisis.



Figure 2: Analysis of Research Aims

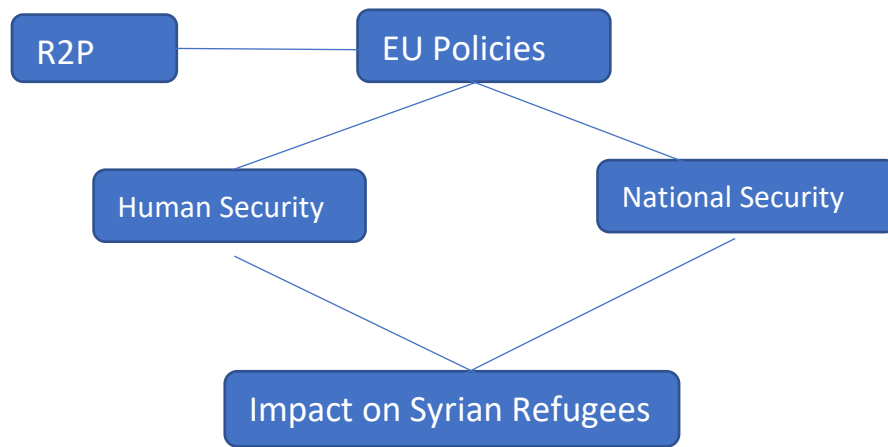
Research Aims

1. To investigate whether R2P can contribute to the international refugee protection regime for the Syrian Refugee Crisis.
(Section 3.2, 3.32)

-
2. To identify the ways in which the concept of R2P as a mechanism can be used to reinforce human security within the context of the Syrian Refugee Crisis.
(Section 3.3, 3.31, 3.32)

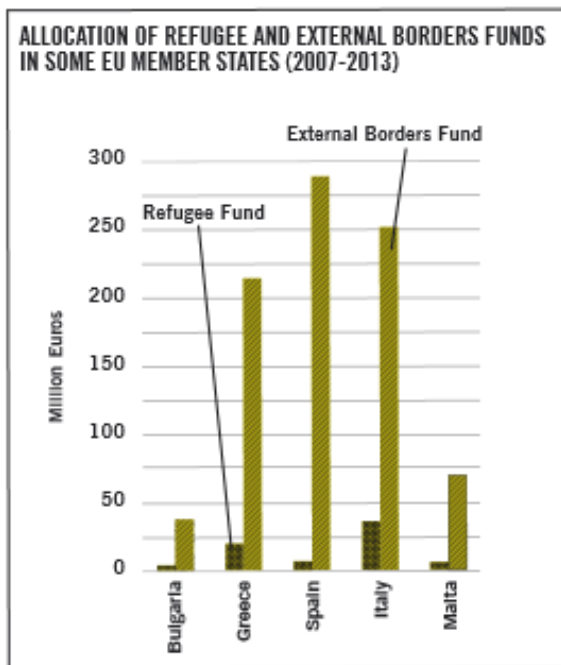
-
3. To evaluate the strengths and the weaknesses of the concept of R2P within the context of the Syrian Refugee Crisis.
(Section 3.32, 3.4)
-

Figure 3: A Conceptual Diagram on the Key Aspects of the case study conducted.



Appendix 2

Graph 1: The Allocation of Refugee and External Borders Funds in Some EU Member States (2007-2013) (Source: Amnesty International, 2014).



Graph 2: Solidarity and Management of Migration Flows Programme (2007-2013) (Source: Amnesty International, 2014).

