Introduction: The Responsibility to Protect and the Refugee Protection Regime

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I n 2005 the UN member states unanimously agreed that they bear a responsibility to protect (RtoP) populations from the crimes of genocide, ethnic cleansing, crimes against humanity, and war crimes. While there remains debate, some believe that over the course of the last decade this agreement has developed into an important international norm.[1] Since its inception, however, RtoP has continued to be closely associated with military intervention and other *in situ* measures, with much of the recent discussion focused on the implications of the 2011 military intervention in Libya and Western inaction in Syria. As Jennifer Welsh, the former UN Special Adviser on RtoP, has put it, RtoP "is framed still very much as a foreign policy issue: i.e., as something we do 'outside' our borders." However, the "spirit behind RtoP," she suggests, could mean turning the conversation inward.[2] This raises the question of what RtoP demands when military intervention and other *in situ* measures are inappropriate or inadequate. If populations are seeking protection by fleeing atrocity crimes, does RtoP require states to open their borders to receive them? And if such action is indeed implied by this norm, are states currently failing in their responsibility to protect?

As the RtoP framework has consolidated over the last decade, atrocity crimes have continued to generate large numbers of refugees. The existing refugee protection regime—consisting of the 1951 Refugee Convention, its 1967 Protocol Relating to the Status of Refugees, and a variety of other regional instruments—has led to some of these refugees gaining protection in other states. Yet as the

numbers forced to flee their homes have dramatically risen as a result of the Syrian civil war, some states have demonstrated a marked reluctance to open their borders. Quarrels among European states center on the correct distribution of the responsibility to receive these refugees (despite the lion's share being received by states in the Middle East), and refugees have been securitized and associated with terrorism. This raises further questions: Would these states be moved to take in more refugees if the problem was framed more explicitly as an RtoP issue? If that possibility exists, then why would RtoP advocates resist expanding its meaning by turning the conversation inward? Is RtoP simply about protecting populations as long as they remain offshore?

In January 2016 we hosted a one-day workshop at the University of Leeds to discuss these issues. Here we present two of the papers that were originally delivered at that workshop. In the first, Dan Bulley argues that there is little to be gained by invoking the RtoP norm in the context of the refugee crisis. He argues that RtoP "as currently formulated" is somewhat conservative, to the extent that it contains no requirement to grant asylum. RtoP norm entrepreneurs and diffusers have only sparingly referenced the interface between asylum and the RtoP agenda, and Bulley suggests that RtoP can function as a way of outsourcing protection. Indeed, for Bulley, who focuses his attention on the European response, RtoP is part of the problem. "Rather than bettering the EU's protection mechanisms," he writes, "RtoP effectively authorizes its current treatment of refugees."

This is a telling critique. It is, however, contingent on one meaning of RtoP that is most currently in use. Recent work in constructivist international relations theory tells us that a norm's meaning is never fixed.[3] It may be "settled," but it is inherently always contestable. If RtoP *as it is currently formulated* is failing to protect populations, then that is surely a good reason to contest the formulation. Indeed, if one defines the norm simply as a responsibility to protect vulnerable populations, and if one delinks it from foreign policy discourses such as intervention, then it is possible that the RtoP norm can be used to change attitudes on refugee protection. Of course, Bulley is right: framing RtoP in this way may not have been envisaged by the original norm entrepreneurs. Reimagining the norm would be a forward-looking approach to the current problems, rather than an attempt to reinterpret what the original norm entrepreneurs intended.

In contrast to Bulley, Alise Coen's article argues that "in the wake of mass atrocity situations, facilitating access to asylum, granting temporary protection, and upholding the principle of non-refoulement represent essential steps toward

Jason Ralph and James Souter

fulfilling the international norm of RtoP." The more pressing problem for Coen is how to specify that responsibility so that the task of protecting refugees is shared fairly throughout international society. Drawing on the idea of a special responsibility, which we have applied explicitly to RtoP elsewhere,[4] Coen explores the potential role that foreign policy culpability might have as a criterion for distributing responsibilities to protect refugees. Coen argues that the United States can be seen as culpably responsible for failures associated with the Iraq war, the Syrian conflict, and its double standards in its dealings with authoritarian regimes in the Middle East, and that this is highly relevant when deciding on its responsibilities to protect refugees. Acknowledging that states may be reluctant to accept a distribution of responsibilities based on their culpability, Coen identifies ways in which the fulfillment of RtoP through refugee protection can potentially help the United States to address its problems of legitimacy in the Middle East, present refugee responsibility-sharing as a public good, and counter the narratives of extremist groups such as the Islamic State.

Whether one is ultimately convinced that a stronger linkage between RtoP and the refugee protection regime would be of value in international efforts to protect populations vulnerable to atrocity crimes, our hope is that these two articles will foster a broader and more prominent discussion on the potential of this linkage. As refugee-producing atrocities sadly show little sign of abating, the relationship between the RtoP and refugee protection regimes will continue to be an urgent question for academics and practitioners alike, as both continue to grapple with the question of how best to respond to these crimes.

NOTES

[1] Alex J. Bellamy, "The Responsibility to Protect Turns Ten," *Ethics & International Affairs* 29, no. 2 (2015), pp. 161–85.

[2] Jennifer Welsh, "Fortress Europe and the Responsibility to Protect: Framing the Issue," EUI Forum, European University Institute, Florence, November 2014, www.eui.eu/Documents/RSCAS/Papers Lampedusa/FORUM-Welshfinal.pdf. There has been a relative dearth of work exploring the links between RtoP and the refugee protection regime. For recent contributions, see E. Tendayi Achiume, "Syria, Cost-Sharing and the Responsibility to Protect Refugees," *University of Minnesota Law Review* 100, no. 2 (2015), pp. 687–761; Brian Barbour and Brian Gorlick, "Embracing the 'Responsibility to Protect': A Repertoire of Measures Including Asylum for Potential Victims," *International Journal of Refugee Law* 20, no. 4 (2008), pp. 533–66; Alise Coen, "R2P, Global Governance, and the Syrian Refugee Crisis," *International Journal of Human Rights* 19, no. 8 (2015), pp. 1044–1058; Angus Francis, "The Responsibility to Protect and the International Refugee Regime," in Angus Francis, Vesselin Popovski, and Charles Sampford, eds., *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction* (Tokyo: United Nations University Press, 2012); William Maley, "Humanitarian Law, Refugee Protection and the Responsibility to Protect," in Ramesh Thakur and William Maley, eds., *Theorising the Responsibility to Protect* (Cambridge: Cambridge University Press, 2015); Susan Martin, "Forced Migration, the Refugee Regime and the Responsibility to Protect," *Global Responsibility to Protect* 2, no. 1 (2010), pp. 38–59; and James Souter, "Good International

Citizenship and Special Responsibilities to Protect Refugees," *British Journal of Politics and International Relations* 18, no. 4 (2016), pp. 795–811.

[3] Antje Wiener, "Contested Compliance: Interventions on the Normative Structure of World Politics," *European Journal of International Relations* 10, no. 2 (2004), pp. 189–234.

[4] Jason Ralph and James Souter, "A Special Responsibility to Protect: The UK, Australia, and the Rise of Islamic State," *International Affairs* 91, no. 4 (2015), pp. 709–23.

Jason Ralph and James Souter