

REFUGEES WITHIN THE FRAMEWORK OF THE RESPONSIBILITY TO
PROTECT: A COMPARISON OF THE CASES OF LIBYA AND SYRIA

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ABSTRACT

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The Arab uprisings and subsequent civil wars have influenced many countries in the Middle East, and over time led to one of the largest refugee movements since World War II. Libya and Syria, which have been the greatest sources of mass movements of refugees and asylum seekers, have had considerable impact on the neighbouring countries. The policies developed by the international community, especially by the European Union, in response to the mass movement of peoples have remained weak, and eventually the situation has turned into a protection crisis. This thesis aims to reveal the link between refugee protection and the Responsibility to Protect (R2P) principle. Accordingly, it addresses the international responsibility for the protection of refugees within the framework of R2P, which as a principle establishes that sovereignty brings with it the responsibility of a state towards its population, and if

that state is unable or unwilling to fulfil this responsibility, then it should be undertaken by the international community. In this context, the R2P is presented as a complementary element to tackle with the deficiencies of the existing refugee protection legislation, wherein the responsibility for the protection of refugees is to be included within the peaceful measures of the principle. To this end, the cases of Libya and Syria, which are widely accepted in the literature as two prominent R2P cases are analysed comparatively in relation to the refugee protection crisis over the last six years.

Keywords: Responsibility to Protect (R2P), Refugees and Asylum Seekers, Syria, Libya, European Union and Refugee Crisis

ÖZ

MÜLTECİLERİ KORUMA SORUMLULUĞU ÇERÇEVESİNDE ELE ALMAK: LİBYA VE SURİYE ÖRNEKLERİNİN KARŞILAŞTIRILMASI

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Orta Doğu'da pek çok ülkeyi etkisi altına alan Arap ayaklanmaları ve devamında yaşanan iç savaşlar, İkinci Dünya Savaşı'ndan bu yana karşılaşılan en büyük mülteci hareketlerinden birini de beraberinde getirmiştir. Bu akımın en önemli kaynak ülkelerinden olan Libya ve Suriye'den özellikle komşu ülkelere önemli bir mülteci hareketi yaşanmıştır. Uluslararası toplumun, özellikle Avrupa Birliği'nin, sorunu çözmek adına geliştirdikleri politikalar yetersiz kalmış ve nihayetinde bu durum uluslararası bir koruma krizine dönüşmüştür. Bu tez, egemenlik kavramının devletlere buldukları topraklar içerisindeki insanları korumaya yönelik bir sorumluluğu da beraberinde getirdiğini ve bir devletin bu sorumluluğu yerine getirmekte yetersiz kaldığı veya isteksiz olduğu durumlarda uluslararası toplumun bu sorumluluğu üstlendiğini ileri süren Koruma Sorumluluğu (R2P) kavramının

mülteciler ile ilişkisini ortaya koymayı ve mültecileri korumaya yönelik uluslararası sorumluluğu R2P kapsamında ele almayı amaçlamaktadır. Bu kapsamda, R2P mevcut mülteci hukukunun kimi eksikliklerine tamamlayıcı bir unsur olarak sunulmuş ve mültecileri korumaya yönelik sorumluluk, R2P kapsamındaki barışçıl tedbirlere dahil edilmiştir. Arap ayaklanmaları döneminde koruma sorumluluğu kapsamında askeri müdahale yapılan Libya ve bu kapsamda herhangi bir müdahale yapılmaması sebebiyle sıklıkla kıyaslamalara tabi tutulan Suriye örnekleri, bu kez son altı yılda yaşanan mülteci koruma krizi açısından karşılaştırmalı olarak ele alınmıştır.

Anahtar Kelimeler: Koruma Sorumluluğu, Mülteci ve Sığınmacılar, Suriye, Libya, Avrupa Birliği ve Mülteci Krizi



To My Family

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LIST OF ABBREVIATIONS

BDB	Bengazi Defence Brigades
BRICS	Brazil, Russia, India, China, South Korea
CSDP	Common Security and Defence Policy
DGMM	Ministry of Interior Directorate General of Migration Management
DTM	Displacement Tracking Matrix
EU	European Union
EUNAVFOR	European Union Naval Force
GNA	General National Accord
GNC	General National Congress
HoR	House of Representatives
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of Red Cross
IDPs	Internally Displaced Persons
IRO	International Refugee Organization
IOM	International Organization for Migration
IS	Islamic State
LN	League of Nations

LPA	Libyan Political Agreement
NATO	North Atlantic Treaty Organization
NTC	National Transition Council
OHCHR	Office of the High Commissioner for Human Rights
P5	Permanent Five Members of the United Nations Security Council
R2P	Responsibility to Protect
RwP	Responsibility While Protecting
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner of Refugees
UNSC	United Nations Security Council
UNSMIL	United Nations Support Mission in Libya
UNSMIS	United Nations Supervision Mission in Syria
USA	United States of America

CHAPTER 1

INTRODUCTION

In the aftermath of the Cold War, the increase in the number of mass atrocities taking place within the borders of states ignited debates regarding the acceptability of humanitarian interventions and the limit of states' sovereignty. Based on "the question of when, if ever, it is appropriate for states to take coercive—and in particular military—action against another state for the purpose of protecting people at risk in that other state",¹ the principle of the "Responsibility to Protect" (R2P) was developed in 2001 by the International Commission on Intervention and State Sovereignty (ICISS). Four years later, R2P was unanimously adopted by the United Nations (UN) General Assembly under Paragraphs 138 and 139 of the World Summit Outcome Document, which was significant event in terms of the normative acceptance of the doctrine. With this, it was accepted that each state has a responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity (hereinafter atrocity crimes). Meanwhile, the international community was given the responsibility to encourage and assist states to fulfil this task, as well as to use appropriate diplomatic, humanitarian and other peaceful means, and when necessary coercive measures, to protect the population at risk. Accordingly, it can be observed that R2P is a principle that aims to prevent atrocity crimes from happening or escalating. Therefore, in terms of its scope and methods, R2P is different from the doctrine of humanitarian intervention, which aims to stop mass atrocities after they have peaked. As the idea of the protection of populations is at the core of the R2P principle, there are various aspects to consider for determining how to achieve the goals of prevention and protection at different stages. Accordingly, this thesis focuses

¹ICISS, "The Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty", *International Development Research Centre*, Ottawa, 2001, p. vii.

on one of the underexplored aspects within the framework of R2P, namely the question of refugees.

After the 1990s, states began to approach the issue of refugees as a matter of security, in line with their concerns about the growing number of mass movement of refugees. While the Convention Relating to the Status of Refugees (hereinafter, the 1951 Convention) and its 1967 Protocol established the foundations about the rights relating to refugees, the security oriented and sovereignty prioritising perspective of states started to present granting of asylum as a privilege rather than a right. Similarly, especially over the last decade, the differences of opinion between states in terms of their approaches to accepting refugees to their countries have created an imbalanced picture in terms of states' assumption of their pre-existing legal duties towards refugees from various countries. In this regard, with the new millennium the international community has faced with refugee "crises", wherein many states failed to fulfil their legal duties under the well-established 1951 Convention, the 1967 Protocol and other international conventions.

While the framework for the status and protection of refugees exists independently, the question of the protection of refugees can also be viewed from an R2P lens. In cases where mass atrocities are taking place within a country, it is a natural outcome that the targeted population would seek ways to escape the conflict, and even the country. As this is a case wherein the state is failing to protect its population, there arises the need for the international community to uphold its responsibility towards the unprotected population. Hence, under such circumstances, the international community not only needs to react to stop the atrocity crimes, but also to protect the people who have been displaced, or left their country, as well as those who have remained in the area of conflict. In this vein, arguing that the protection of refugees is a question which not only pertains to the existing legal framework established under the 1951 Convention and its Protocol but also to the responsibility to protect, this thesis compares and contrasts the cases of Libya and Syria to showcase why and how the R2P framework can be utilised as a complementary tool to the existing refugee law.

In the R2P literature, the question of military intervention has been studied widely,² as this aspect has been considered the most controversial one not only by scholars but also by states. Most recently, there have been increasing numbers of works debating the future of R2P³ in light of the problems related to the implementation of the principle in the cases of Libya and Syria. While there are also works criticising⁴ the principle or discussing its legality,⁵ the international community's responsibility towards people fleeing from conflict remains an underexplored aspect.

An early example of a study linking R2P to the protection of refugees and asylum seekers is that of Brian Barbour and Brian Gorlick. In the article, they argue that vis-à-vis the coercive measures of R2P, granting asylum and ensuring protection of refugees and internally displaced persons (IDPs) are less controversial ways to protect potential victims of mass atrocities.⁶

After 2011, with the escalation of the conflict in Syria that led to an increasing number of IDPs and refugees, important contributions to the R2P literature began to emerge. Angus Francis's 2012 study entitled "The Responsibility to Protect and the

²Alex J. Bellamy, "The Responsibility to Protect and the Problem of Military Intervention", *International Affairs*, 84(4), (2008), pp. 615-639; Eve Massingham, "Military Intervention for Humanitarian Purposes: Does the Responsibility to Protect Doctrine Advance the Legality of the Use of Force for Humanitarian Ends?", *International Review of the Red Cross*, 91(876), (2009), pp. 803-831.

³See David Chandler, "The R2P Is Dead Long Live the R2P: The Successful Separation of Military Intervention from the Responsibility to Protect", *International Peacekeeping*, 22(1), (2015), pp. 1-5; Pinar Gözen Ercan, *Debating the Future of the 'Responsibility to Protect': The Evolution of a Moral Norm*, (Basingstoke: Palgrave Macmillan, 2016); Spencer Zifcak, "The Responsibility to Protect After Libya and Syria", *Melbourne Journal of International Law*, 13, (2012), pp.1-35.

⁴Hilary Charlesworth, "Feminist Reflections on the Responsibility to Protect", *Global Responsibility to Protect*, 2, (2010), pp. 232-249; Mojtaba Mahdavi, "A Postcolonial Critique of Responsibility to Protect in the Middle East", *Perceptions*, XX(1), (2015), pp. 7-36.

⁵Carsten Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?", *The American Journal of International Law*, 101 (1), (2007), pp. 990-1020; 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(4), (2008), pp. 533-566.

⁶Brian Barbour and Brian Gorlick, (2008), "Embracing the 'Responsibility to Protect': A Repertoire of Measures Including Asylum for Potential Victims," *International Journal of Refugee Law* 20, no. 4, pp. 533-566.

International Refugee Regime”⁷, as well as Tendayi Achiume’s and Alise Coen’s works in 2015 are some of the few examples addressing the issue of mass movement of refugees after the Syrian civil war.⁸ Moreover, William Maley’s 2015 article and James Souter’s 2016 articles are conceptual contributions that discuss refugees within the framework of R2P.⁹ Nevertheless, a comprehensive study of the protection of refugees in relation to R2P is still missing. In this context, this thesis aims to contribute to the growing literature by showcasing the interrelation between the protection of refugees and the responsibility to protect. Accordingly, diverging from the mass R2P literature, which has mainly focused on the coercive means of R2P, this thesis underlines the peaceful means of the concept, and places the protection of refugees as a concern for the international community that requires the adoption of decisive non-coercive measures. To this end, the analysis of this thesis is built on a comparison of the cases of Libya and Syria.

As two major humanitarian crises of the greater Middle East, which emerged at the same time period, the cases of Libya and Syria have evolved differently due to the differences in international community’s response and broader international political dynamics. On the one hand, due to the nature of the crimes committed in these countries by different groups/parties, both cases are examples of R2P crises, which resulted with mass movements of populations. On the other hand, there are many points of contrast between the two cases, especially in terms of the international community’s way of operation. In the case of Libya, the United Nations Security Council (UNSC) authorized a military intervention under Resolution 1973 (2011), and

⁷Angus Francis, “The Responsibility to Protect and the International Refugee Regime,” in Angus Francis, Vesselin Popovski, and Charles Sampford, ed., *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction* (Tokyo: United Nations University Press, (2012).

⁸Tendayi Achiume, (2015), “Syria, Cost-Sharing and the Responsibility to Protect Refugees,” *University of Minnesota Law Review* 100, no. 2, pp. 687–761; Alise Coen, (2015), “R2P, Global Governance, and the Syrian Refugee Crisis,” *International Journal of Human Rights* 19, no. 8 (2015), pp. 1044–1058.

⁹William 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) 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.

this became the first example of R2P's implementation through the use of force in a timely and decisive manner.¹⁰ However, the way the sanctions of Resolution 1973 was carried out by the North Atlantic Treaty Organization (NATO) and the intervening states sharpened the differences of opinion between the permanent members of the UNSC (P5), while it led to the rise of alternative proposals by Brazil, Russia, India, China and South Africa (BRICS) countries on how the principle of R2P should be interpreted and exercised.¹¹ In contrast, during the civil war in Syria, which has been continuing since 2011, no decisive R2P action has been taken. Whilst inaction in Syria led to critiques of R2P to increase in number, political debates in the UNSC regarding the case of Syria reflected the concerns that arose during the Libyan intervention. Although the two cases have been analysed together in various works in the R2P literature with regard to action and inaction, or in terms of R2P's failure, the aspect of refugees have been under explored.

As the final analysis of the thesis will demonstrate, although the mass movement of refugees and asylum seekers from Libya seems more limited in comparison to those from Syria, the two cases have been intertwined also because Libya is a transit country, that has been negatively affected by the movement of refugees and asylum seekers from Syria in pursuit of reaching the European route. Both cases have additional qualities related to the refugees that allow for comparison from an R2P lens due to the way the international community has assumed/disregarded its responsibility to protect the Libyan and Syrian populations outside the two countries. Whilst the failure to bring stability to Libya with the military intervention led to the attempts of refugees and asylum seekers of different origin to cross the Mediterranean to reach European countries—especially frontline states such as Malta and Italy through Libya—mass refugee movements from Syria resulted with a worldwide protection crisis.

¹⁰Ramesh Thakur, "R2P after Libya and Syria: Engaging Emerging Powers", *The Washington Quarterly*, (2013), p. 69.

¹¹See Oliver Stuenkel, "The BRICS and Future of R2P: Was Syria or Libya the Exception?", *Global Responsibility to Protect*, 6, (2014), pp. 3-28.

In light of the comparative analysis, first the interrelation between the R2P framework and the current regime for refugees will be clarified. Afterwards, it will be argued that a wider perspective connecting the R2P and refugee frameworks would allow the international community to be more efficient and effective in future cases without resorting to the controversial coercive measures requiring the UNSC authorization.

In terms of methodology, in comparing and contrasting the two cases, it is important to note that for purposes of data collection and accuracy, the time frame for comparison is limited to the period between February 2011 and April 2017. Given the limited number sources of data, as for statistical information the United Nations High Commissioner of Refugees (UNHCR) and the International Organization for Migration (IOM) data are used as primary references for indicating the number of refugees and IDPs.

This thesis consists of four chapters. In the first chapter, the conceptual framework of the responsibility to protect and the legal regime for refugees is presented. Beginning with the evolution of the R2P principle what the individual and international responsibilities entail of are discussed. Subsequently, independent from the framework of R2P, the current refugee regime and its deficiencies are examined to understand the established duties of states. It is important to note that, this thesis does not argue for replacing the current refugee regime by placing it under the R2P framework. What is proposed is to utilise the R2P framework to raise awareness about the immediacy of humanitarian crises and to make sure that states, as well as the international community would uphold their legal responsibilities in terms of the protection of populations, including refugees. Such a complementary approach would also allow overcoming a mischaracterization of R2P as a strategy devoid of peaceful measures or as a synonym for humanitarian intervention. Creating an infrastructure for effective protection of refugees under the R2P framework will contribute to change these perceptions and be a step for R2P towards its main objective of protecting populations at risk. After discussing the shortcomings of the current refugee regime, in the last part of the chapter, the R2P principle is presented as a complementary framework for ensuring the protection of refugees.

Following the conceptual analysis, the second chapter focuses on the first case of this thesis, namely the case of Libya. Following an overview of the case's evolution, the post-civil war process in the region and the ongoing instability which have triggered the mass refugee movements and refugee protection crisis are studied.

The third chapter is devoted to the analysis of the second case study, Syria. After referring to the development and break points of the Syrian civil war, the UNSC's failure to take a decisive R2P action is discussed. Subsequently, the mass refugee movements from Syria to the region and its impact on the neighbouring countries vis-à-vis the response of the European Union (EU) and European countries to the developments are discussed.

Following from the cases analyses, the fourth chapter establishes the link between R2P and refugees. In this context, comparative aspects of the two cases, as well as main points of contrast are underlined. The misconception of R2P—owing to the case of Libya—as nothing more than humanitarian military intervention is evaluated on grounds of the interrelation between R2P and the protection of refugees. Finally, the thesis concludes with a general overview and presents the main argument of the thesis.

CHAPTER 2

THE RESPONSIBILITY TO PROTECT AND THE INTERNATIONAL REFUGEE REGIME

2.1. The Responsibility to Protect

2.1.1. Emergence of the Responsibility to Protect

Although the roots of the humanitarian intervention doctrine in the modern era can be traced back to the 19th century,¹² the normative framework for state sovereignty began to change with the end of the Cold War. In the wake of this normative change, the disintegration of the Soviet Union, the end of bipolarity and reinterpretation of international peace and security—including human rights and values—played important roles. The basic conditions and obligations that a sovereign state must fulfil were reinterpreted, and the failure of a state to protect its population’s fundamental rights within its borders emerged as a subject requiring the attention of the international community, not only as a moral principle but also in relation to the maintenance or preservation of international peace and security. Such transformation brought into debate the notion of an “absolute” sovereignty of states within their national borders.

In traditional approaches to interstate relations, which are based on the Westphalian notion of sovereignty, the state has full jurisdiction within its borders, and thus, is the highest decision-making authority over the people and resources on its territory. Following from this, in the aftermath of World War II, the new international system established under the UN Charter put forth the principles of sovereign equality of states

¹²Alexis Heraclides, “Humanitarian Intervention in the 19th Century: The Heyday of a Controversial Concept”, *Global Society Journal*, 26(2), (2012), pp. 215-240.

(Article 2/1), as well as non-intervention in the affairs of states as basics for regulating interstate relations.¹³ Thereby, from a state-centric view, it was perceived that international law has given the sovereign state absolute authority within its borders, while forbidding states from interfering with each other's internal affairs. Although the transition from a bipolar world order by the 1990s ostensibly paved the way for intervening in cases of internal turmoil in sovereign states, in the face of ongoing mass atrocities such as in Rwanda, Somalia and Srebrenica, the UN proved ineffective to respond.

NATO's 1999 humanitarian intervention in Kosovo, and the 2003 Iraqi operation of a coalition of the willing—during which human rights concerns were pronounced to seek legitimacy for the military action—without a UNSC authorisation led to serious criticisms of the UN, besides the doctrine of humanitarian intervention. While inaction was criticised in many cases of the 1990s, in the 2003 case of Iraq, the abuse of humanitarian justifications led to criticisms about humanitarian intervention, and was considered by some as an attack on sovereignty and portrayed as an imperialistic “foreign policy tool”.¹⁴ Following large-scale human rights violations and massacres in different parts of the world during the 1990s, in 1999 and 2000, the UN Secretary-General Kofi Annan brought the following question to the agenda of the international community: “If humanitarian intervention is indeed an unacceptable attack against sovereignty, how should we respond to large-scale and systematic human rights violations affecting every basic rule of our common humanity, such as Rwanda and Srebrenica?”¹⁵ In response to this question, in 2000, the ICISS sponsored by the Canadian Government and supported by Chicago's Mac Arthur Foundation began to prepare a report which was completed in 2001. The main objective of this report,

¹³United Nations, Charter of the United Nations, 24 October 1945, Article 2; UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, A/RES/2625(XXV).

¹⁴Pinar Gözen Ercan, *Debating the Future of the 'Responsibility to Protect': The Evolution of a Moral Norm*, (Basingstoke: Palgrave Macmillan, 2016), p. 19.

¹⁵ICISS, “The Responsibility to Protect”, p. vii.

named “the Responsibility to Protect” (R2P), was to establish a satisfactory and reliable guideline under the guidance of which the international community would respond to domestic human rights violations.¹⁶

In the introduction of the report of the ICISS, R2P’s aim is established as to draw the lines of resorting to coercive means, in particular the use of military force, to protect the people whose lives have been put in danger by the state.¹⁷ Arguably, one of the most important contributions of this report concerns the approach to state sovereignty. The R2P understanding sees the main task of sovereign states as protecting their citizens from mass atrocities. Hence, it departs from the traditional approach to sovereignty suggesting the free will of states over their citizens within their borders.¹⁸ In this regard, the report follows from the notion of “sovereignty as responsibility” which was developed by the former Special Representatives Roberta Cohen and Francis Deng in 1996 for displaced persons.¹⁹ Their study posited that besides the rights of the state over its territory, sovereignty includes responsibilities, among which comes the duty to protect the population living on the territory of the sovereign states. Borrowing from this understanding, the report adopts the understanding of sovereignty as responsibility and establishes a broader framework on how to respond to mass atrocities. According to R2P, the primary responsibility to protect the population lies with the state, and if state authorities are unable or unwilling to fulfil this

¹⁶Gareth Evans, “From an Idea to an International Norm”, in Juliette Voinov Kohler, Richar H. Cooper, *Responsibility to Protect: The Global Moral Compact for the 21st Century*, (Palgrave Macmillan US, 2009), p. 19.

¹⁷ICISS, “The Responsibility to Protect”, p. viii.

¹⁸ICISS, “The Responsibility to Protect”, p. 13.

¹⁹Francis M. Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild and I. William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa*, (Washington: The Brookings Institution, 1996); Roberta Cohen, Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement*, (Washington: The Brookings Institution, 1998).

responsibility, the international community should undertake it.²⁰ In this regard, the report has created an exception to the “non-intervention” principle.²¹

R2P comprises of three specific responsibilities in which different actors of the international system are involved. The first is the “responsibility to prevent”, which refers to states’ responsibility to protect their citizens from mass atrocities. It is intended to act on the “early warning” signs that approaches to a problem before it transforms into an actual humanitarian crisis. The second is the “responsibility to react”, which comes into question when the preventive measures fail, and hence, the international community is to assume the responsibility to adopt either peaceful or coercive measures to react to the crisis.²² The third is the “responsibility to rebuild”, which aims to ensure that peace, stability and assistance is provided during the reconstruction phase in the country, particularly after a military intervention.²³

The ICISS places the emphasis on the prevention of grave violations of human rights and mass killings as the primary responsibility to clarify that R2P is much more than military intervention. The report underlines prevention as the most important and crucial step which should be borne by the state itself; if prevention fails, according to the report the responsibilities to react and to rebuild can be realised by the international community.

Within this framework, humanitarian interventions may be undertaken as a last measure under the responsibility to react. Due to the controversies surrounding the question of military use of force, the ICISS suggests specific criteria for military intervention, and considers military intervention as a legitimate mode of action when the six criteria are met. These criteria are “just cause” (there should be large scale loss of life or large scale ethnic cleansing), “right intention” (the intervention should aim

²⁰ICISS, “The Responsibility to Protect”, p. xi.

²¹ICISS, “The Responsibility to Protect”, p. viii.

²²ICISS, “The Responsibility to Protect”, p. xi.

²³ICISS, “The Responsibility to Protect”, p. xi.

primarily to stop human suffering), “last resort” (preventive measures or peaceful solution methods should have been exhausted before a military intervention), “proportional means” (military intervention’s scale, intensity and duration should be limited to the minimum required that is enough to achieve the objective), “reasonable prospects” (there should be true chance of success and the intervention should improve the conditions of the people), and “right authority”(the report considered the UNSC as the primary authority, and suggested that the P5 should not to use their veto power in the cases where human protection is needed, while proposing the General Assembly option as an alternative to the UNSC in cases of deadlock).²⁴ Although the report achieved to draw considerable attention, it was not until R2P was carried to the UN General Assembly’s agenda that the principle was internationally recognised.

2.1.2. From the 2005 World Summit Outcome Document to the 2009 Report of the UN Secretary General

After it was introduced by the ICISS, R2P did not receive extensive support until it began to be discussed within the framework of the UN. In 2004, R2P was placed in the report entitled “A More Secure World” published by the High-Level Panel on Threats, Challenges and Change with the initiative of UN Secretary-General Kofi Annan.²⁵ In the third part of the report, Annan addressed R2P in the context of collective security and use of force issues, wherein he claimed that the understanding of “sovereignty as a responsibility” began to be accepted, and he endorsed the responsibility to protect under the authority of the UNSC.²⁶ Later on, Annan mentioned R2P in the 2005 “Report on UN Reform: In Larger Freedom”. In this report Annan discussed R2P under the title of the “Rule of Law” in the “Freedom to Live in Dignity”

²⁴ICISS, “The Responsibility to Protect”, pp. 32-38.

²⁵UN General Assembly, Report of the High-Level Panel on Threats, Challenges and Change: “A More Secure World: Our Shared Responsibility”, A/59/565, 2 December 2004, p. 61.

²⁶UN Report of the High-Level Panel on Threats, Challenges and Change, (2004), pp. 66-67.

part,²⁷ and drew attention to the aspect of the responsibility instead of the use of force, due to responsibility's more peaceful connotations, which would allow for more support from the member states.²⁸

In October 2005, R2P was formally placed within Paragraphs 138 and 139 of the World Summit Outcome Document, and members of the UN unanimously embraced the idea that every state has a responsibility to protect its citizens from genocide, war crimes, ethnic cleansing and crimes against humanity, and when a state clearly fails to fulfil this obligation, the international community has a responsibility to protect these people.²⁹ A year later, R2P was reaffirmed in Article 4 of the UNSC Resolution 1674.³⁰

One of the most important differences brought by the Outcome Document was related to the scope of the doctrine according to which R2P was limited to four specific crimes (herein after referred to as atrocity crimes). Aforementioned Paragraph 138 deals with the responsibility of each state to protect its population from atrocity crimes, and the international community's responsibility to assist states to this end.³¹ According to Paragraph 139, the international community, through the agency of the UN, has the responsibility to use appropriate peaceful means in accordance with Chapters VI and VIII of the Charter, with the aim of protecting populations from atrocity crimes. The Paragraph also establishes the UNSC as the only authority for the sanctioning of the use of force under the provisions of Chapter VII of the UN Charter.³² Unlike the report of the ICISS suggested, the Outcome Document neither mentions alternatives to the

²⁷Report of the Secretary-General, In Larger Freedom: Towards Development, Security and Human Rights for All, A/59/2005, p. 34.

²⁸Pınar Gözen Ercan, "İkinci On Yılına Girerken Koruma Sorumluluğunu Yeniden Düşünmek: Lex Ferenda Olarak R2P", *Hacettepe HFD*, 5(2), (2015), p. 170.

²⁹UN General Assembly, 2005 World Summit Outcome, A/60/L.1, 15 September 2005.

³⁰UNSC, Resolution 1674, S/RES/1674, 28 April 2006, Article 4.

³¹UN, World Summit Outcome, para.138.

³²UN, World Summit Outcome, para.139.

UNSC, nor asks from the P5 to restrain them regarding the veto in R2P situations.³³ As will be seen in the following chapters, especially in the case of Syria, the veto right of the P5 is a main source of controversy regarding R2P's implementation.

Moreover, on grounds of Paragraph 140, which prescribed that the General Assembly should continue its work on R2P, under the leadership of the Secretary-General the discussions regarding the implementation of the principle have been continuing.³⁴ In light of ongoing cases, beginning with 2009, the UN Secretary-General has so far published eight annual reports that addressed the issue of the implementation of R2P. The purpose of the 2009 report was not to re-interpret or debate the conclusions of the World Summit but to ensure the implementation of the principle under the UN framework.³⁵ The report was adopted on 14 September 2009, by 67 States with Resolution 63/308 of the General Assembly.³⁶ Most importantly, the report set out a three-pillar strategy for R2P's implementation.

Pillar 1 establishes that in accordance with Paragraph 138, the primary responsibility to protect populations from atrocity crimes lies with each state. Following from this, again in relation to Paragraph 138, Pillar 2 states that the international community has the responsibility to support and assist states in order to increase their capacities in fulfilling their responsibilities. This Pillar places an emphasis on preventive aspects of R2P.³⁷ In this context, the international community should encourage a state to fulfil its responsibilities under Pillar 1, for example by reminding their responsibilities. Besides, the international community is also expected to take initiative in capacity building and protection assistance. This protection may also include support for IDPs and refugees in the region.

³³Gözen Ercan, *Debating the Future of the Responsibility to Protect*, p. 64.

³⁴Gözen Ercan, *Debating the Future of the Responsibility to Protect*, p. 65.

³⁵Report of the Secretary-General, *Implementing the Responsibility to Protect*, A/63/677, 12 January 2009, p. 4.

³⁶UN General Assembly, *The Responsibility to Protect*, Resolution A/RES/63/308, 7 October 2009.

³⁷Gözen Ercan, *Debating the Future of the Responsibility to Protect*, p. 66.

Pillar 3 focuses on the international community's responsibility to react in a timely and decisive manner, which is invoked when the state is unable or unwilling to fulfil its responsibility. Accordingly, the response of the international community should involve political, economic and/or humanitarian measures in accordance with Chapter VI and/or Chapter VIII of the UN Charter.³⁸ There is no specific limitation on the peaceful measures, and the list of methods is exhaustive. When the peaceful measures prove to be inadequate, then the international community should be prepared to take coercive action under Chapter VII of the UN Charter, in accordance with Paragraph 139, but only as a last resort. So, the decision to undertake a humanitarian intervention can be on grounds of Pillar 3, and adopted only by the UNSC.³⁹ Pillar 3 can be divided into two stages; pacific measures which are a very important but insufficiently understood element of R2P, constitutes the first part of this Pillar.⁴⁰ Since there is no limit or duration mentioned when talking about the peaceful means, the measures to be used while protecting populations from atrocity crimes are various. Due to the fact that there is no guideline for which methods are to be used in which cases, the choice of method shows variety from case to case, based on the discretion of the actors undertaking the initiative.⁴¹

In light of this three-pillar implementation strategy for R2P, this thesis will place the protection of refugees within the peaceful aspects of the R2P framework. At this point, it is important to differentiate between the status of IDPs and refugees. Since IDPs are people who are displaced within their countries, and do not cross an international border, they should be examined under Pillar 2, that is in relation to international assistance so that states can fulfil their responsibilities. On the other hand, with regard

³⁸Chapter VI of the UN Charter enlists some of the peaceful measures as follows: negotiation, mediation, conciliation, commission of inquiry, arbitration, judicial settlement or any other peaceful means that can be adopted.

³⁹Moreover, considering the deadlock situations previously experienced, in order to ensure implementation, Ban Ki-moon invited the P5 to refrain from vetoing decisions in critical situations on a voluntary basis (Report of the Secretary-General, Implementing the Responsibility to Protect, p. 27).

⁴⁰Alex Bellamy, "The First Response: Peaceful Means in the Third Pillar of the Responsibility to Protect", The Stanley Foundation, (2015), p. 11.

⁴¹Bellamy, "The First Response: Peaceful Means in the Third Pillar...", pp. 12-13.

to the protection of refugees, which constitutes the main focus of this thesis, the responsibility should be considered within the frameworks of Pillar 2 and Pillar 3⁴² because what is of concern here is the people who have crossed international borders in order to seek refuge in another country and who are in need of assistance in the case of taking refuge in countries with insufficient conditions. As will be discussed in the next section, there is already a legal framework regulating the status of refugees. So, while placing the question of refugees within the R2P framework, this thesis does not try to propose an alternative legal setting. Instead, it suggests a way to complement the existing machinery through the invocation of the international responsibility to protect for the purposes of the protection of refugees. It should also be noted that R2P itself has not yet evolved into a legal norm, or a rule under customary international law.⁴³ While states' individual responsibilities are grounded on well-established laws, the international community's responsibilities are not. Regarding this issue, the former Secretary-General underlined in his 2013 Report that every act that falls within the scope of offenses and violations associated with R2P has been banned by customary international law, which is binding for all states, regardless of the tasks arising from existing treaties. Moreover, he reminded that although ethnic cleansing has not been defined as a separate crime under international criminal law, it often emerges as a result of genocide, war crimes and crimes against humanity.⁴⁴ For example, states' responsibilities are established under International Humanitarian Law, as well as genocide conventions, such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.⁴⁵ Therefore, all states have common duties arising from international law regarding the protection of human rights. As a result, whether it is a

⁴²This subject will be detailed in 1.3 and 4.2.

⁴³Alex J. Bellamy, Ruben Reike, "The Responsibility to Protect and International Law", in Alex J. Bellamy, Sara E. Davies and Luke Glanville (ed.), *The Responsibility to Protect and International Law*, (Boston, Leiden: Martinus Nijhoff Publications, 2011), p. 82; Carsten Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?", *The American Journal of International Law*, 101 (1), (2007), pp. 990–1020; Gözen Ercan, *Debating the Future of Responsibility to Protect*, p. 80.

⁴⁴Bellamy and Ruben, "The Responsibility to Protect and International Law", p. 90.

⁴⁵138 states are party to the 1948 Convention; moreover, prohibition of genocide is accepted as a *jus cogens* rule.

legal norm or not, R2P is regarded as a fundamental framework for protecting vulnerable populations against most serious crimes, as the Secretary-General suggests.

The 2016 report of the Secretary-General mentions the situation regarding displaced people at the global level, and expresses that today the world has reached the highest IDP and refugee numbers. He also underlines that each member state is responsible for a timely and decisive solution, and the UNSC deadlocks cannot be an excuse for inaction.⁴⁶ So, the responsibility of protecting refugees will be a timely and decisive way to achieve a more sustainable and rapid solution that will respond to the two deficiencies mentioned in these reports. Before discussing R2P as a means to assist refugees and displaced people, the current refugee regime and its controversial aspects, which are arguably influential in the current situation, will be examined in the next section.

2.2. International Refugee Protection Regime

2.2.1. Historical Background on the 1951 Convention Relating to the Status of Refugees

Although the concepts of asylum and refugee have their origins, in the 19th century; the actual development took place after the First World War, when the number of people displaced reached serious levels. From the early years of the 1920s, there were only treaties consisting of two or more states as parties in order to define the legal status of the refugees within the framework of the League of Nations (LN).⁴⁷ Since a few states became part to these treaties (with reservations), the application of the relevant conventions and their importance in the development of the refugee law

⁴⁶Report of the Secretary General, *Mobilizing Collective Action: The Next Decade of the Responsibility to Protect*, A/70/999-S/2016/620, 22 July 2016, p. 5.

⁴⁷Agnes Hurwitz, *The Collective Responsibility of States to Protect Refugees*, (Oxford: Oxford University Press, 2009), p. 10.

diminished. Then in 1938, member states of the LN decided to establish an inter-governmental Committee on Refugees to assist immigrants from Germany, but the Committee could not reach a consensus on the definition for refugees.

Severe human rights violations during and after World War II made the refugee law the one of the most important items on the agenda of the UN. In 1946, the International Refugee Organization (IRO) took the place of the Intergovernmental Refugee Committee to fill this gap. Later on, on 10 December 1948 the Universal Declaration of Human Rights was adopted by the UN General Assembly.⁴⁸ This declaration, which is a fundamental document in the evolution of international human rights law, recognizes asylum as a right alongside other human rights.⁴⁹ On 14 December 1950, the UN General Assembly established the UNHCR to provide international protection and permanent solutions to problems of refugees; the UNHCR took office on 1 January 1951. On 28 July 1951, the Convention Relating to the Status of Refugees (hereinafter, the 1951 Convention), which is the main convention on the status of refugees, was adopted in Geneva by twenty-six states. The 1951 Convention entered into force on 22 April 1954.⁵⁰ The Convention had a time limitation, thus it covered “the events that took place before 1 January 1951”, and also introduced a “geographical limitation” by emphasizing the “events that took place in Europe or elsewhere”.⁵¹ In other words, it gave the signatory states the authority for application under the scope of “the events that took place before 1 January 1951” and the “events which took place in Europe”. Thus, it excluded incidents that occurred before the 1951 Convention and limited obligations of states, hence provided a legal framework for Europeans that were harmed during World War II.⁵²

⁴⁸UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

⁴⁹Ann Vibeke Egli, *Mass Refugee Influx and the Limits of Public International Law*, (Hague: Martinus Nijhoff Pub, 2002), p. 82.

⁵⁰UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189.

⁵¹UN General Assembly, Convention on the Status of Refugees, Article. 1/B(1)-a.

⁵²Hurwitz, *Collective Responsibility*, p. 14.

Over time, new developments and the rapid increase in the number of people seeking asylum led to the need for a revision of the Convention. Accordingly, the 1967 Protocol Relating to the Status of Refugees was adopted, and the phrase “as a result of events that took place before 1 January 1951” was removed from the text.⁵³ The time limitation was therefore lifted by all signatory states of the 1967 Protocol. Since the Protocol is based on the idea that people, who are in need of protection, should be included in the refugee status without any limitation, the Protocol also removed the geographical limitation.

Before discussing the limitations of the current refugee regime, it is important to identify some key terms. According to the definition of the 1951 Convention, under Article 1(a), a refugee is a person who crosses the border of his/her country of origin because of “a well-founded fear of persecution” arising from their “nationality, religion, race, membership of a social group or political opinion” and who are “unable to or unwilling to benefit from the protection” of their country of origin due to such fear.⁵⁴

One of the most important points of this definition is that, a refugee should cross an international border and people who meet this requirement become an international concern.⁵⁵ People, who comply with the criteria of being a refugee but have not crossed any border, are considered as IDPs but no international document officially defines such status. On the other hand, an asylum seeker is a person who seeks protection in a foreign country by taking shelter in that country (or that country’s diplomatic representative, war ships or aircraft) because of various pressures or discriminatory legal proceedings in his/her home country. The asylum demands of these people have not yet been completed and they have not received the refugee status yet.⁵⁶ Grasping

⁵³UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, Article 1/2.

⁵⁴Convention Relating the Status of Refugees, Article 1/A-2; Protocol Relating the Status of Refugees, (1967), Article 1/2.

⁵⁵Emma Haddad, “The Refugee: Individual Between Sovereigns”, *Global Society*, 17(3), (2003), p. 311.

⁵⁶Hüseyin Pazarcı, *Uluslararası Hukuk*, (Ankara, Turhan Kitabevi, 2005), pp. 185-186.

the meaning of these concepts well and placing an emphasis on the legal difference of refugees from other status are important in terms of avoiding any conceptual confusion.

2.2.2. The Basic Elements and Shortcomings of the International Refugee Law

The “*non-refoulement* principle”—which constitutes the cornerstone of refugee law—obliges states to refrain from sending back the people who have taken refuge within their borders as they have left their country because of a fear of persecution.⁵⁷ In the narrowest sense, it is a principle of international law that provides protection for those who want to live in a safe country by escaping certain adverse conditions in their own countries. In legal terms the principle of *non-refoulement* is enshrined in Article 33 of the 1951 Convention on the Status of Refugees, which reads that no state party shall expel refugees, on the basis of their race, religion, nation, or membership of a political group, to the territory of a country in which life or liberty of them would be endangered, by any means.⁵⁸ Likewise, asylum-seekers shall be assessed in this regard, and until the decision on their refugee status is made they are not to be expelled from a country, this is an integral part of the process of recognition of the Convention.⁵⁹ Irregular entrance of asylum-seekers to a country does not abolish the realisation of the principle of *non-refoulement*.⁶⁰ In other words, the principle is not limited only to those who are refugees; it is valid for anyone who is under the threat of torture or death,

⁵⁷UN Convention Relating the Status of Refugees, Article 33; UN General Assembly, Resolution A/RES/57/187, 6 February 2003, para. 4.

⁵⁸Convention Relating the Status of Refugees, Article 33.

⁵⁹Guy S. Goodwin-Gill, Jane McAdam, *the Refugee in International Law*, (Oxford: OUP, 2007), p. 232.

⁶⁰James C. Hathaway, *the Rights of Refugees Under International Law*, (Cambridge: CUP, 2005), p. 303-4.

in cases of forced repatriation like deportation; so it is not a must for the person to be a refugee to be considered within the scope of *non-refoulement*.

Moreover, the obligations of states arising from the 1951 Convention are valid in the areas where they use exercise sovereignty, so the protection provided by Article 33(1) of the 1951 Convention is not absolute. The second clause of the same article establishes the exception to the *non-refoulement* principle and indicates that there are serious reasons for a specific refugee to be considered as dangerous for the security of the hosting country. Especially if he/she continues to pose a danger to the people of the country under the condemnation to have committed a serious crime, then, the person cannot claim to benefit from this provision.⁶¹

Many international law texts, notably the 1951 Convention, explicitly refer to the principle of *non-refoulement*. For example, Article 45(4) of the 1949 Geneva Conventions on the Protection of Victims of War (i.e. the Fourth Geneva Convention) notes that protected persons cannot be sent back to a country where they face the fear of persecution because of their political or religious status.⁶² Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment underlines that any state shall not return or extradite a person to another country in where he/she is believed to have danger of being subjected to torture.⁶³ It is stated in the United Nations Covenant on Civil and Political Rights Article 13 that an alien in the borders of the state party can legally be expelled from that country only in matters regarding national security.⁶⁴ American Convention on Human Rights Article 22 also grants every person's right to seek asylum and prohibits the returning or deportation of an alien to another country that endangers his or her right to life on

⁶¹Convention Relating the Status of Refugees, Article 33(2).

⁶²ICRC, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), (1949), Article 45(4).

⁶³UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, Treaty Series, (1984), vol. 1465, Article 3.

⁶⁴UN General Assembly, International Covenant on Civil and Political Rights, (1966), Treaty Series, vol. 999.

grounds of race, religion, political view or nationality, while forbidding collective expulsion.⁶⁵

Beyond its contractual basis, it is arguable that *non-refoulement* is a *jus cogens* norm, besides it constitutes a part of customary international law.⁶⁶ Adoption of it as a *jus cogens* norm means that states which are not bound by the 1951 Refugee Convention or any other international treaty on refugees, shall also be subject to the principle as it is accepted as a general practice beyond law and, that it is non-derogable. In spite of this widespread acceptance of the principle and its close relation to international human rights law, there has been an increase in alleged violations or infringements. Steps taken by states in relation to security or economic interests and most importantly, the treatment to refugees or asylum seekers gave birth to discussions about *non-refoulement*.

Although states are not free to return refugees; they are not obliged to grant refugee status either. Such absence of a sense of legal obligation has allowed states to gradually become reluctant to grant refugee status and they began to seek alternatives to avoid this responsibility. For instance, the concept of “temporary protection” and “the safe third country principle”⁶⁷, which are developed by the EU member states. The Temporary Protection concept was first applied by Australia,⁶⁸ and then developed by the EU under the “Temporary Protection Directive”⁶⁹ to provide a structured framework for the Member States while confronting mass movements, especially after the dissolution of Yugoslavia.

⁶⁵Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", (1969), Article 22.

⁶⁶Sir Elihu Lauterpacht, Daniel Bethlehem, “The Scope and Content of the Principle of Non-Refoulement: Opinion”, *Cambridge University Press*, (2003), p. 163.

⁶⁷The Council of the European Union, Directive 2005/85/EC, 1 December 2005, Article 27.

⁶⁸Catherine Phuong, “Identifying States’ Responsibilities towards Refugees and Asylum Seekers”, *Finnish Yearbook of International Law*, 20, (2009), p. 4.

⁶⁹The Council of the European Union, Directive 2001/55/EC, 20 July 2001.

According to the definition of the safe third country in the EU's Asylum Procedures Directive,⁷⁰ it is possible to send asylum seekers coming from countries that are supposed to be safe, without an evaluation of their application. This "safe third country" term, which was not regulated by the 1951 Convention, emerged during the research process of the EU Common Asylum System and led to serious drawbacks.⁷¹ If a country where the asylum seeker is located first while travelling to the Member States of the EU, even for a short period of time, is considered as "safe", the applicant's request can be rejected without consideration of the merits. This approach, which is based on the premise that the asylum application can only be done in this safe country, also brings with it a very important "standard determination problem": which country would be considered "safe" according to what criteria.

Another precaution taken by the EU countries in this context was the Dublin Convention which was signed in 1990 and entered into force in 1997. According to this convention, if an asylum seeker, who has applied to a member state of the EU, moves to another member state in an irregular manner, he/she will be sent back to the former country for the assessment of his/her application.⁷² This Convention, preventing an asylum seeker from seeking asylum in more than one EU country, aims to prevent asylum seekers from travelling from country to country constantly, and prevent "asylum shopping" which is a practice used by asylum seekers to apply for asylum in more than one country. The European Commission expanded the scope of the Dublin Convention, and in 2013 it began to cover all the EU countries except for Denmark. Accordingly, all the EU countries had commitments to comply with the Convention. Criticism about reform necessity of this system reached its peak with the recent mass refugee movements, and relative ineffectiveness has been interpreted as the collapse of this system.

⁷⁰The Council of the European Union, Regulation 604/2013, OJ L. 180/31-180/59, 29 June 2013.

⁷¹Hurwitz, *Collective Responsibility*, p. 47.

⁷²The Council of the European Union, Regulation 604/2013, OJ L. 180/31-180/59, 29 June 2013.

Temporary protection is a concept applied to mass refugee flows, and has been used by member states exposed to mass movements of refugees. This concept has become a remedy for the countries who do not want to grant refugee status to people despite their compliance with the definition of refugee. On the one hand, it provides a protection system in accordance with humanitarian principles; on the other hand this practice blocks the “permanent” settlement of asylum seekers within their countries, and thus, stands as an obstacle to the recognition of them as refugees. These people do not acquire rights given to refugees. Hence, this concept does not create a long-term solution for them and it can only be regarded as an effective protection for asylum seekers before being sent to their country of origin. Also, with regard to the subject of safe third country practice, since there is not a tool for determining which third country is safe or not, labelling a country as “safe” is a completely subjective term and it is open to interpretation. In short, the EU has begun to develop policies that could surpass *non-refoulement* principle, not legally since they do not send the person directly to the country of origin, but morally because of transferring their own responsibility to another state. Furthermore, refugee rights advocates see such practices as threats to the principle of *non-refoulement*.

Burden sharing, which was essentially an idea of solidarity with the first country of asylum dealing with high number of refugees, constitutes one of the missing points of international refugee law. The 1951 Convention does not include an article related to burden sharing but has made an indirect reference to the concept. In its Preamble, the Convention states that granting asylum may impose too much burden on certain states, and according to the UN, this problem cannot be overcome without international cooperation.⁷³ For this reason, burden sharing is only an advisory attempt for the UN. Since its recommendatory characteristic, the neighbouring countries largely carry the burden of refugees not only financially but also socio-politically. The host state should know that a significant portion of the burden is under their responsibility, but it is also clear that regional and international actors should support them by creating new

⁷³Phuong, “Identifying States’ Responsibilities”, p. 8.

alternatives. According to the data of 2016, 86 percent of the world’s refugees live in economically less developed countries⁷⁴ and although there are many attempts at sharing the burden, none have suggested proper burden distribution.

Civil wars in the Middle East—which took place in countries such as Yemen, Libya and Syria as an extension of the Arab uprisings—, the subsequent instabilities, the Islamic State (IS) terror having global reach have caused the emergence of new refugee flows in the world. According to the UNHCR data, in 2016 the number of forcibly displaced people has exceeded 65,000,000⁷⁵ and has reached the highest number since the Second World War. As it becomes a global crisis, the weak sides of the concepts of burden sharing and *non-refoulement* emerged once more. When the UNHCR was founded after the war, the number of people thought to be protected by Europe was only 2,000,000,⁷⁶ but according to UNHCR’s estimation 2,750,000 Syrians and 350,000 non-Syrian refugees are in Turkey as of the first months of 2017.⁷⁷

The existing refugee legislation remains inadequate and merely “advisory” to overcome today’s mass refugee movements because of the reasons mentioned above and it is entirely dependent on good faith of the states. For this reason, obtaining asylum is not so easy for asylum seekers. While some forcefully displaced people struggle to survive inside or outside the refugee camps since the frontline states that they move to generally cannot lift the burden because of their insufficient economic conditions; others resort to go to Europe by crossing the sea with boats risking their lives. However, despite all this struggle, the danger of forcible repatriation continues

⁷⁴International Food Policy Research Institute, accessed October 10, 2016, <http://www.ifpri.org/>.

⁷⁵UNHCR, “Figures at Glance”, accessed October 9, 2016, <http://www.unhcr.org/figures-at-a-glance.html>.

⁷⁶Başak Kale, “Kral çıplak! 2.3 milyon Suriyeli mültecimiz var”, *Birgün*, December 13, 2015, accessed December 25, 2016, <http://www.birgun.net/haber-detay/kral-ciplak-2-3-milyon-suriyeli-multecimiz-var-97697.html>.

⁷⁷UNHCR, “Global Focus, Turkey”, accessed March 10, 2017, http://reporting.unhcr.org/node/2544#_ga=1.149346046.977058824.1484999573.

on the one hand and, therefore, these people are still vulnerable to crimes which are called as atrocity crimes and still open to ongoing threat in their own country.

2.3. Placing Refugees within the R2P Framework

When an atrocity crime is being committed in a region towards a certain population, the people of the region usually resort to move away to ensure their security. People who have been forcibly displaced (internally or externally) are still vulnerable at this point because they are most often unable to meet their basic needs such as shelter, food, and health services. So, they choose the fastest way for self-protection, and move away from the area. Although in the short-term this may seem like a relief, in the long term these people are still under-protected and vulnerable; meanwhile civilian casualties occur during their attempts to flee. Because of the shortcomings of the existing refugee protection regime, that were mentioned in the previous section, host states prefer repatriation of refugees to their countries more to alternatives such as resettlement or local integration in host countries. Also, there has been unequal burden distribution between states. In particular, developing countries have the large portion of this burden not only because of their geographical proximity to the country of origin but also because of developed countries' policies aiming to prevent refugees from arriving on their territories.⁷⁸ Because of the ever-tightening refugee and immigration policies that developed countries adopt, 86 percent of world refugee populations are living in low- and middle-income countries that are close to regions of conflict.⁷⁹ This is where R2P contributes to the situation in a positive manner. By invoking the international responsibility, prevention of civilian casualties through the peaceful measures of R2P can be accomplished.

⁷⁸Alise Coen, "R2P Global Governance, and the Syrian Refugee Crisis", *the International Journal of Human Rights*, 19(8), (2015), p. 1054.

⁷⁹Adrian Edwards, "Global forced displacement hits record high", accessed April 3, 2017, <http://www.unhcr.org/afr/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html>.

According to Bellamy, the relationship between the protection of refugees and R2P was something that existed from the very beginning.⁸⁰ There have been a few attempts, especially in the last few years, to propose this overlooked link for the agenda; according to former UN Secretary-General Ban Ki-Moon, the proper implementation of the international refugee law will be a stepping stone to the states to fulfil their responsibility to protect. In other words, this overlooked link between R2P and refugee protection is quite strong and forced migration movements, are actually the first indicator of a state's insufficiency to protect its citizens from an armed conflict occurring in that region and therefore the vital concern of the civilians. Refugees are generally endangered by the risk of mass atrocities,⁸¹ the persecution stories of refugees are regarded as an important barometer of whether a conflict can evolve into mass atrocity crimes.⁸² Similarly, people, who return to their country of origin after their displacement, can be an important indicator that the situation there has returned to normal. In other words, mass movements of IDPs and refugees are quite important symptoms that the state cannot fulfil its responsibility to protect those living in that country.⁸³ On the other hand, inadequate responses to people escaping from situations such as genocide or human rights violations in their own countries and seeking asylum in another country cause a considerable number of deaths.⁸⁴

Considering examples of World War II, the Vietnam War, the Rwandan genocide and the Balkan conflicts, the international community sometimes ignored or paid no attention to the connection between protection of refugees and civilian casualties. For instance, a great majority of states did not accept Jewish and other refugees and rejected their asylum request during the Holocaust; as a result, most of them lost their

⁸⁰Alex J. Bellamy, "Safe Passage and Asylum Key to Fulfilling Responsibility to Protect", accessed October 20, 2016, <https://theglobalobservatory.org/2015/09/syria-refugees-unhcr-aylan-kurdi/>.

⁸¹Davies and Glanville, *Protecting the Displaced*, p.2.

⁸²Barbour and Gorlick, (2008), "Embracing the Responsibility to Protect", p. 540.

⁸³Coen, "R2P, Global Governance and the Syrian Refugee Crisis", p. 1052.

⁸⁴Barbour and Gorlick, "Embracing the Responsibility to Protect", p. 556.

lives in Nazi camps.⁸⁵ If the outcomes of asylum seekers requests have been favourable, the number of deaths might not have been that devastating. Benjamin Valentino supports these ideas as well and claims that the vast majority of the twentieth century genocide can be overcome by giving a more significant international response to refugees.⁸⁶

R2P is a principle which is to be primarily applied at the risk of atrocity crimes or before they are heightened. Hence, the protection of refugees or assisting the protection of IDPs constitute important ways to protect civilians during conflict and will be a significant step for achieving “prevention”, which is accepted as the core idea of R2P. In other words, since protecting populations against mass atrocities is the main objective and the most emphasized aspect of R2P, protection of refugees will be a complementary and effective way to achieve this purpose while assisting victims of mass atrocities.⁸⁷ As Kofi Annan as a former UN Secretary-General, noted R2P includes “potential or actual victims of massive atrocities”.⁸⁸ R2P by providing protection to refugees and IDPs will accomplish a preventive task against potential genocide, ethnic cleansing, war crimes and crimes against humanity; and also can overcome the criticism brought against R2P regarding its deficiencies in implementation.

This thesis does not suggest R2P as a substitute for the existing refugee protection regime. Instead considering the gaps for protection in the existing refugee law, it offers R2P as a complementary mechanism to invoke international responsibility. These deficiencies, as mentioned in the previous section, became clear especially in responsibility sharing and in the policies which do not legally violate the *non-refoulement* principle but contradict with its aim in essence. So, R2P is not considered

⁸⁵Barbour and Gorlick, “Embracing the Responsibility to Protect”, p. 563.

⁸⁶Alise Coen, “The Responsibility to Protect and the Refugee Crisis”, accessed October 30, 2016, <https://sustainablesecurity.org/2016/03/09/the-responsibility-to-protect-and-the-refugee-crisis/>.

⁸⁷Coen, “R2P, Global Governance and the Syrian Refugee Crisis”, p. 1053.

⁸⁸Barbour and Gorlick, “Embracing the Responsibility to Protect”, p. 25.

as a means to replace any existing legal instrument; but rather to strengthen those legal instruments, to close the gaps and ensure their implementation by states.

The question of under which pillar responsibility to protect refugees should be included is another matter to be addressed. As Pillar 2 deals with the international community's responsibility to support and assist the states in order to increase their capacities in fulfilling their responsibility to protect their populations, protection of IDPs in the first instance and the international community's assisting role in ensuring the security of both refugees and IDPs should be considered under this Pillar. In case of the failure of a state to protect its populations under Pillar 1, according to Pillar 3, international community is to assume its own responsibility and should act in a timely and decisive manner, with pacific or coercive measures. A growing number of people fleeing their countries to seek asylum indicate that there are states which are unable or unwilling to fulfil their responsibility. Thus, the international community should assume its responsibility to react. Receiving refugees, in this regard, can be seen as part of the international responsibility to protect.⁸⁹ Accordingly, if a host state is facing difficulties in fulfilling the basic needs of people who fled from their country of origin, such as shelter, food, the international community should assist the host state and share the burden; for instance by providing permanent or temporary protection in the third countries as well as providing financial assistance.

In other words, states have two responsibilities in this context; the first responsibility is, under Pillar 2, assisting states in their responsibility to protect IDPs, resisting creation of asylum seekers and supporting the host states, who are experiencing capacity insufficiency or are reluctant to protect asylum seekers, by sharing the financial burden of them and thus providing a more secure environment for those populations. The second is, under Pillar 3, accepting forcibly displaced populations as refugee since a timely and decisive reaction may include peaceful means and due to

⁸⁹Tendayi Achiume, "Cost-Sharing and the Responsibility to Protect Refugees", *Minnesota Law Review*, (2015), p. 722.

granting asylum is a right of states rather than an obligation this Pillar will play a role in promoting it.

It is clear that there is a tendency for R2P to be frequently confused with military intervention as mentioned in following sections. This understanding and by extension, labelling many irrelevant activities such as South Ossetia(2008), Cyclone Nargis case of Myanmar (2008) as R2P activities and “regime change” discussions in the Libyan case harm the reputation of it,⁹⁰ stand as a threatening element against the legitimacy of R2P and moreover, as an obstructive element to effective protection of vulnerable populations, as it will be discussed in the following chapters.⁹¹ Any sort of action under Chapter VII including military operation decisions as displayed in various resolutions on Syria, usually come to a deadlock due to political disagreements between P5 and this leads to comments on the ineffectiveness of R2P itself as it will be examined extensively in the Chapter 3.

Military interventions that have been undertaken within the framework of R2P caused serious concerns about civilian harm. There is also a view that considers R2P as an attempt of a political regime change, as it was experienced in the case of Libya. However, as a forward looking concept, to think the refugees within the framework of the R2P will not only be a means to invoke the international responsibility for the refugees, to revitalize existing refugee regime and a preventing mechanism for further victimization, it will also be an important attempt for the normative evolution of R2P.

As R2P has been seen as an evolving concept and this make it possible to discuss and broaden the scope of R2P. On the other hand, the international refugee regime is accepted as inadequate to solve today's mass refugee influx situations since it was arranged to meet the necessities of the World War II. The clear relationship between the concept and protection of refugees is not sufficiently addressed and has not been

⁹⁰Barbour and Gorlick, “Embracing the Responsibility to Protect”, p. 21.

⁹¹James Souter, “Bringing Human Rights Home: Refugees, Reparation, and the Responsibility to Protect”, *Contemporary Challenges in Securing Human Right*, Institute of Commonwealth Studies, School of Advanced Study, University of London, (2015), p. 32.

studied by R2P scholars much so far. The consideration of the responsibility to protect refugees in the context of R2P will help states to take responsibility for crises resulting from some of the current international refugee regime’s deficiencies. Beyond that, this attempt will be a step towards protecting vulnerable populations from the danger of mass atrocities which is the main purpose of R2P. In this context, since Syria and Libya cases will be used to place refugees within the framework of R2P; while examining these cases, it is necessary to look at the applications and the controversies of R2P in these regions and examine the reflections of the refugee movements in these countries.



CHAPTER 3

THE CASE OF LIBYA

3.1. Early International Response to the Libyan Conflict, Resolution 1970

The uprisings that began on 17 December 2010 in Tunisia with the self-immolation of Mohammed Bouazizi spread to many countries in the region. These uprisings affected Libya as well. The incidents began with demonstrations in Benghazi on 15 February 2011.⁹² The Libyan government tried to find solutions to the demonstrations that were triggered by rebellions and uprisings in many Arab states. However, as demonstrators began to demand regime change and the resignation of Muammar Gaddafi—who held power since the 1969 coup—security forces' mode of response turned violent. On 15 February, the government harshly responded to the protests in Benghazi which were organized for the release of the human rights defence lawyer Fethi Terbel. On 17 March, the demonstrations spread to four cities: Beyida, Zentan, Benghazi and Tripoli, and six people lost their lives.⁹³ From this date on, violence began to increase and according to Human Rights Watch, at least 173 people lost their lives on the fourth day of protests.⁹⁴

In cities like Benghazi and Derne, attacks on security forces, government buildings, and authorities increased; the Gaddafi government became more severe as the movements grew into an armed rebellion. On 22 February, President Gaddafi said he would not surrender; in his first speech after the protests, he used the word

⁹²Simon Adams, "Libya and the Responsibility to Protect", Global Centre for Responsibility to Protect, Occasional Paper Series No: 3, (2012), p. 5.

⁹³Al Jazeera, "Day of rage' kicks off in Libya", accessed February 2, 2017, <http://www.aljazeera.com/news/africa/2011/02/201121755057219793.html>.

⁹⁴Angelique Chrisafis, "Libya protests" *The Guardian*, accessed February 2, 2017, <http://www.guardian.co.uk/world/2011/feb/21/libyaprotests-blood-fears-gone>.

"cockroaches" to describe the protestors.⁹⁵ Muammar Gaddafi's son, Saif al-Islam Gaddafi, also pointed out in his statement for a Libyan television that if the rebellions did not stop "the rivers of blood would overflow".⁹⁶ Hence, it was assumed that the regime would not step down and civilian casualties would continue to increase.

Libya was de facto divided between the National Transition Council (NTC), which was declared by the regime opponents on 27 February and Socialist People's Libyan Arab Jamahiriya. The opponents seized Libya's second largest city, Benghazi, and as conflicts turned into acts of violence against civilians, hundreds of civilians lost their lives.

In the days during and immediately following these events, many international organizations and states expressed their concerns about the situation. On 22 February, the UN High Commissioner for Human Rights Navi Pillay urged Libyan authorities to immediately put an end to human rights violations and reminded Libya of her obligations under Pillar 1 of R2P.⁹⁷ Moreover, regional organizations reacted quickly, as the Arab League and the African Union condemned these interventions against civilians, and the Arab League suspended Libya from taking part in its Council meetings.⁹⁸ On 25 February, former UN Secretary-General conveyed his concerns to the UNSC about the situation in his briefing, called for urgent ratification of the UN sanctions against Libya, and emphasized Navi Pillay's reminder to the member states that if a state manifestly fails to protect its population from atrocity crimes, the

⁹⁵Kareem Fahim and David D Kirkpatrick, "Qaddafi's Grip on the Capital Tightens as Revolt Grows", *The New York Times*, accessed February 3, 2017, <http://www.nytimes.com/2011/02/23/world/africa/23libya.html?pagewanted=all>.

⁹⁶Al Arabiya, "Gaddafi's son warns of "rivers of blood" in Libya", accessed January 10, 2017, <https://www.alarabiya.net/articles/2011/02/21/138515.html>.

⁹⁷UN News Centre, "Libya: Security Council, UN officials urge end to use of force against protesters", accessed February 2, 2017, <http://www.un.org/apps/news/story.asp?NewsID=37583#.WOQSGDvyjIU>.

⁹⁸Reuters, "Arab League deeply concerned by Libya violence", February 2, 2017, <http://www.reuters.com/article/libya-arabs-moussa-idUSLDE71K1W520110221>.

responsibility should be borne by the international community.⁹⁹ In addition, Ban Ki-moon drew attention to the rising number of Libyan refugees and displaced persons, underlining UNHCR's data which at the time showed 22,000 people fleeing to Tunisia and 15,000 to Egypt since 22 February. He also shared his concern about this increase and emphasized the importance of neighbouring states, including Europe, accepting those who escaped from the insecurity of Libya.¹⁰⁰ On 26 February, the UNSC unanimously adopted Resolution 1970 that urged Libya to end the conflicts immediately and decided to refer the situation to the International Criminal Court (ICC). Resolution 1970 also implemented an arms embargo against Libya and froze assets of some Libyan officials, including President Gaddafi, who were believed to be responsible for the incidents.¹⁰¹ The legal framework of Resolution 1970 was based on Chapter VII of the United Nations Charter and Article 41, and the sanctions aimed primarily to find a solution to the problem through peaceful means. However, the Resolution could not put an end to the conflict in the country, and the severity of the situation continued to increase.

3.2. Resolution 1973 and the NATO Operation

Since the Gaddafi regime did not end the acts of violence, the increase of civilian deaths and the explicit threats rose. On 12 March, the Arab League called the UNSC to declare the airspace of Libya a no fly-zone.¹⁰² Shortly after Resolution 1970, on 17

⁹⁹Secretary-General's Remarks to UNSC Meeting on Peace and Security in Africa," New York, accessed March 3, 2017, http://www.un.org/apps/news/infocus/sgspeeches/search_full.asp?statID=1095; Statement by Navi Pillay, Human Rights Council, 15th Special Session, Geneva, accessed March 3, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10760&Lang=I>.

¹⁰⁰BBC News, "Libya: Barack Obama Announces Gaddafi Sanctions", accessed March 3, 2017, <http://www.bbcnews.com/news/world-africa-12585949>.

¹⁰¹UNSC, Resolution 1970, S/RES/1970, 26 February 2011.

¹⁰²Marlise Simons and Neil MacFarquhar, "Hague court seeks warrants for Libyan officials", *New York Times*, accessed February 10, 2017, http://www.nytimes.com/2011/05/05/world/africa/05nations.html?_r=2&ref=world.

March 2011, the UNSC adopted Resolution 1973.¹⁰³ The resolution was proposed by France, Lebanon and the United Kingdom (UK); and while ten UNSC members, Bosnia and Herzegovina, Colombia, Gabon, Lebanon, Nigeria, Portugal, South Africa alongside permanent members France, the UK and the United States of America (USA), voted in favour of the resolution; Brazil, Germany, India, China and Russia who questioned the limits of use of force and how to enforce the no-fly zone, abstained from vote.¹⁰⁴

With this decision, the Libyan airspace was declared a no-fly zone; member states called for a ceasefire and an end to violence against civilians, and in case of failure to provide these measures, the protection of civilians was ensured under the provision of "taking all necessary measures". This means that, for the first time, the UNSC decided based on R2P, on a military intervention against a state which had effective control over its territory.¹⁰⁵ In fact, with Resolution 1706, which was adopted on 31 August 2006, the UNSC deployed UN Peacekeeping Forces in the Darfur Region located in the north-east of Sudan to protect civilians in an armed conflict under the framework of R2P for the first time.¹⁰⁶ However, the implementation of Resolution 1706 was dependent on the Sudanese government's acceptance, whereas Resolution 1973 authorised the adoption of "all necessary measures" including military intervention in order to protect the civilians at risk. Unlike other cases, as Bellamy notes, the intervention developed without the consent of the host state and therefore it has been the first application area of this concept, which makes the Libyan intervention a vital part of the R2P debate.¹⁰⁷

¹⁰³UNSC, Resolution 1973, S/RES/1973, 17 March 2011.

¹⁰⁴UNSC, mtg 6498, UN Doc S/PV.6498.

¹⁰⁵Sarah Brockmeier, Oliver Stuenkel and Marcos Tourinho, "The Impact of the Libya Intervention Debates on Norms of Protection" *Global Society*, 30(1), (2016), p. 113.

¹⁰⁶Brockmeier, Stuenkel and Tourinho, "The Impact of Libya", p. 115.

¹⁰⁷Alex Bellamy, "Libya and the Responsibility to Protect: The Exception and the Norm", *Ethics and International Affairs*, 25, (2011), pp. 263-264.

Only two days after Resolution 1973 was adopted, with the decision taken at the Paris conference to protect the civilians and to establish a no-fly zone, coalition states formed by the USA, the UK, and France began the "Operation Odyssey Dawn" military operation. French warplanes entered Libyan airspace and began bombardment while the talks in Paris were continuing as to how to conduct the supervision of the no-fly zone.¹⁰⁸ Upon Turkey's decision to ratify the decision on 22 March, the operations were totally driven by NATO.¹⁰⁹ On 1 April, NATO announced in a statement that the Libyan mission consisted of three elements: supervision of international arms embargo applied to Libya, application of the no-fly zone, and the protection of civilians against the threat of an attack or an actual attack.¹¹⁰ It also stated that foreign troops would not be deployed on land in any region of Libya after this operation¹¹¹ and by doing so NATO implied that this military intervention did not intend to invade the territory of Libya.

Coalition forces consisting of Belgium, Canada, Denmark, France, Italy, Norway, Qatar, Spain, England and the USA participated in military intervention in Libya.¹¹² While coalition forces were supporting the rebels in the air with the sorties, they also surrounded the Mediterranean coast of Libya by naval forces. In a short period of time, the number of coalition forces increased with the participation of new states providing military logistical support.¹¹³

¹⁰⁸BBC News, "Libya unrest: West moves to enforce no-fly zone", accessed March 18, 2017, <http://www.bbc/news/world-africa-12783347>.

¹⁰⁹The Telegraph, "Libya: Ceasefire declared in the wake of UN Resolution", accessed February 5, 2017, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8390550/Libya-ceasefire-declared-in-wake-of-UN-resolution.html>.

¹¹⁰NATO, "NATO and Libya", accessed February 4, 2017, http://www.nato.int/nato_static/assets/pdf/pdf_2011_04/20110402_110402-oup-update.pdf.

¹¹¹UNSC, S/RES/1973, Preamble para. 12.

¹¹²Claire Taylor, (2011), "Military Operations in Libya", UK Parliament House of Commons Library, pp. 14-15.

¹¹³BBC News, "Libya: Where do NATO Countries Stand", accessed February 10, 2017, <http://www.bbc.co.uk/news/world-africa-13092451>.

The reactions against the NATO operation arose shortly after the operation began. In particular, BRICS countries often expressed their concerns that this operation would go beyond protection.¹¹⁴ In May, when Gaddafi's son and three grandchildren were killed by bombardment,¹¹⁵ this attack was found to be disproportionate and increased the unrest within the UNSC.¹¹⁶ South African permanent representative to the UN, Baso Sangqu, who voted in favour of both resolutions, expressed his concern about the implementation of the Resolution at the 6595th meeting of the UNSC on 28 July; he also said that a step towards taking sides and regime change would damage the reputation of the UNSC.¹¹⁷ At the 6620th meeting, Russian permanent representative to the UN, Vitaly Churkin, drew attention to the no-fly zone violations, offhanded bombings and the resulting civilian casualties.¹¹⁸

Following the attack on 20 October, Muammar Gaddafi was arrested by the rebels while he was about to flee from the country and he was lynched. Shortly after rebels killed Gaddafi, the international community decided to end their mission in the country. For this reason, although the new government in Libya demanded the coalition forces' support for the security of the country for a while; as of October 2011, the UNSC ended the mandate to NATO for military intervention in Libya and the intervention in Libya was officially completed.¹¹⁹ Thus, to rebuild stability in the country, the UN Support Mission in Libya (UNSMIL) became active, as a result of the

¹¹⁴See Oliver Stuenkel, "The BRICS and Future of R2P: Was Syria or Libya the Exception?", *Global Responsibility to Protect*, 6, (2014), pp. 3-28.

¹¹⁵Tim Hill, "Muammar Gaddafi Son Killed by NATO Air Strike — Libyan Government", *The Guardian*, accessed February 10, 2017, <http://www.guardian.co.uk/world/2011/may/01/libya-muammar-gaddafi-son-nato>.

¹¹⁶Julian Borger, Ian Traynor and Ewen MacAskill,, "Gaddafi family deaths reinforce doubts about Nato's UN mandate", *The Guardian*, accessed February 11, 2017, <https://www.theguardian.com/world/2011/may/01/gaddadi-family-deaths-reinforce-doubts>.

¹¹⁷UNSC, Report, S/PV/6595, 28 July 2011, p. 5.

¹¹⁸UNSC, Report, S/PV/6595, 28 July 2011, p. 3.

¹¹⁹NATO, "NATO and Libya", accessed February 4, 2017, http://www.nato.int/cps/en/natohq/topics_71652.htm.

2009th decision of the UNSC on 16 September 2011.¹²⁰ On 27 October, UNSC members adopted Resolution 2016 emphasizing Libya's sovereignty and territorial integrity.¹²¹

Completion of the intervention immediately after Gaddafi's death strengthened the criticisms of the military interventions as regime change operations because, on the other side of the country, clashes were continuing.¹²² In addition, despite the statements at the beginning of operations that there would be no deployment in the territory of Libya, according to coverage by *The New York Times* in August, Britain and France and other nations deployed Special Forces to help rebels in Libya. Qatar did more and sent hundreds of troops to oppose Gaddafi's forces.¹²³ Although these are not directly considered violations; they have been seen as a betrayal of the "spirit" of Resolution 1973.

The idea that the role of NATO in Libya shifted from protecting civilians to overthrowing the regime and abusing humanitarian rationale has been expressed very often, especially by the BRICS countries.¹²⁴ The claims that coalition operations were far from targeting threats to the civilian population, aimed to provide military aid to rebels,¹²⁵ and dismissed the African Union's ceasefire efforts between Gaddafi and rebels during the intervention¹²⁶ have also provided support for these regime change arguments. Along with the claims that R2P is a smokescreen used to put the idea of

¹²⁰UNSC, Resolution 2009, S/RES/2009, 16 September 2011.

¹²¹UNSC, Resolution 2016, S/RES/2016, 27 October 2011.

¹²²UNSC, Report, S/PV.6620, 16 September 2011.

¹²³Eric Schmitt and Steven Lee Myers, "Surveillance and Coordination with NATO aided Rebels", *New York Times*, accessed February 5, 2011, <http://www.nytimes.com/2011/08/22/world/africa/22nato.html>.

¹²⁴Justin Morris, "Libya and Syria: R2P and the Spectre of the Swinging Pendulum", *International Affairs*, 89(5), (2013), pp. 1265-1283.

¹²⁵Gareth Evans, Ramesh Thakur and Robert A. Pape, "Correspondence: Humanitarian Intervention and the Responsibility to Protect", *International Security*, 37(4), (2013), pp. 199-214.

¹²⁶Patrick Cockburn, "African Union's ceasefire talks rejected while dictator remains", *Independent*, accessed March 20, 2017, <http://www.independent.co.uk/news/world/africa/african-unions-ceasefire-talks-rejected-while-dictator-remains-2266461.html>.

regime change into practice,¹²⁷ in the following process, debates on whether Libya paved the way for the end of R2P began.

The next month after the intervention began, British Prime Minister David Cameron, US President Barack Obama and French President Nicolas Sarkozy stated in their joint declaration that the goal of the operations was to protect the civilians and overthrowing Gaddafi regime was not the main purpose; but they also underlined that they did not see a future for Libya with Gaddafi.¹²⁸ Thus, it can be argued that military operations used regime change as a necessary means to protect civilizations. However, Gareth Evans and Ramesh Thakur, the leading academics of the R2P, expressed their criticisms of NATO's operation and stated that regime change cannot be a part of the aims of military intervention.¹²⁹

Many of those who approach the intervention in a critical way have been arguing that Libya's geopolitical position had an important role in the decision to intervene because Gaddafi's Libya contained various natural resources including oil and had a financial capital that exceeded its small population.¹³⁰ In addition, the government funds managed by the Libyan Investment Authority were the world's largest in kind and it is also known that the Libyan National Bank had considerable gold reserves.¹³¹ This information had serious effects on the justification of the idea that Western powers intervened in order to control the region.

In March 2012, Vitaly Churkin noted another subject of debate: that the intervention which aimed to protect civilians actually caused the death of civilians and that NATO

¹²⁷Andrew Garwood-Gowers, "The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm?", *UNSW Law Journal*, 36(2), (2013), p. 609.

¹²⁸BBC News, "Libya letter by Obama, Cameron and Sarkozy: Full text", accessed February 10, 2017, <http://www.bbc.com/news/world-africa-13090646>, 15 April 2011.

¹²⁹James Pattison, "The Ethics of Humanitarian Intervention in Libya", *Ethics & International Affairs*, 25(3), (2011), p. 272.

¹³⁰Adams, "Libya and the Responsibility to Protect", p. 8.

¹³¹Andrew Walker, "Libya Holding Huge Gold Reserves IMF Data Shows", BBC News, accessed February 10, 2017, <http://www.bbc.com/news/business-12824137>.

should compensate for that.¹³² However, these accusations were denied by the USA Representative Susan Rice who stated that standards were not exceeded, and by representatives of France, who expressed that the airstrikes were meticulously conducted and saved thousands of lives.¹³³ In addition, according to the UN Human Rights Council's report published in 2014, prepared by a commission of inquiry, NATO's campaign was highly precise and avoided civilian casualties¹³⁴ while NATO announced the number of civilians killed during the airstrikes as sixty.¹³⁵

The decision to intervene in Libya is arguably the first intervention decision taken by the UNSC that can be included within R2P framework as it was to protect civilians from atrocity crimes,¹³⁶ and the intervention was made immediately after the beginning of grave human rights violations, in a timely and decisive manner.¹³⁷ In addition, the UNSC endorsement, which is specified as the decision-making authority for use of force exceptions in Chapter VII of the UN Charter, has great importance for the legality of the decision.¹³⁸ Although the decision-making process was standard, problems arose in the implementation phase. The accusations that NATO lost its impartiality by taking the side of opposition groups and ignored serious calls for ceasefire have led to criticisms and concerns. The debates on the way the Libyan military intervention was carried out caused some of the P5 members to approach draft resolutions on Syria with suspicion.

¹³²UNSC, Report, S/PV.6731, 7 March 2012, p. 8.

¹³³UNSC, Report, S/PV.6734, 12 March 2012, p. 5.

¹³⁴UN Human Rights Council, "Report of the International Commission of Inquiry on Libya, A/HRC/19/68, 28 January 2014, p. 2.

¹³⁵UN Human Rights Council, A/HRC/19/68, p. 16.

¹³⁶Bellamy, "Libya and Responsibility to Protect", pp. 263-264.

¹³⁷Spencer Zifcak, "The Responsibility to Protect After Libya and Syria", *Melbourne Journal of International Law*, 13(1), (2012), p. 11.

¹³⁸Andrew Garwood-Gowers, "The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm?", *UNSW Law Journal*, 36(2), (2013), p. 603.

At this point, it is necessary to mention new approaches that some states put forward to reform R2P, for instance the Responsibility while Protecting (RwP) initiative that Brazil presented at the UN General Assembly on 21 September 2011. Interpretations of the Libyan operation as an abuse of the norm and criticisms of R2P's susceptibility to manipulation have been echoed internationally and for this reason the demands for the development of measures to prevent abuse have been raised. In her speech in the 66th Session of UN General Assembly, Brazilian President Dilma Rousseff stressed that the current structure of responsibility is inadequate and the international community should develop it together.¹³⁹ This proposal, referred as the RwP initiative, simply emphasizes the necessity of the criteria for a legitimate military operation, which was already emphasized by ICISS; thus it advocated the use of military intervention as "the last resort" and the implementation of peaceful methods in the first place. This initiative also suggested that military operations should be subject to an independent control mechanism during the implementation phase.¹⁴⁰ RwP, which foresees the development of the norm, rather than creating an alternative to R2P, is supported by Ban Ki-moon, as well as the BRICS states.¹⁴¹ Additionally, Gareth Evans, co-chair of ICISS, regarded the RwP as a promising step in the future for the protection of civilians by using "preventive means" rather than coercive measures.¹⁴²

The implementation of R2P in Libya is of great importance not because it led to arguments suggesting the death of R2P, but because it signals that R2P's methods of implementation and conceptual limits as to what sorts of responsibilities are included within the understanding need to be reconsidered. This experience also reignited

¹³⁹UN General Assembly, "Statement by H. E. Dilma Rousseff, President of the Federative Republic of Brazil", the 66th Session, 21 September 2011.

¹⁴⁰UN General Assembly, "Letter from the Permanent Representative of Brazil to the UN", A/66/551-S/2011/701, 9 November 2011.

¹⁴¹UN General Assembly, "Report of the Secretary-General, Responsibility to Protect", A/66/874, 25 July 2012. pp. 13–15.

¹⁴²Gareth Evans, "R2P down but Not out after Libya and Syria", accessed February 3, 2017, <http://www.project-syndicate.org/commentary/gareth-evanson-moves-by-china-and-other-brics-countries-to-embracehumanitarian-intervention>.

debates on the use of force and the misperception of R2P as an equivalent of military intervention. As a senior UN official puts it, Libya didn't end R2P; however it paved the way for new political debates and indicated that there is much to do in this regard.¹⁴³ Thus, it was highlighted that R2P needs to be reformed.

3.3. Political Instability and the Migration Crisis in Libya

3.3.1. Post-Operation Political Situation in Libya

After the intervention, instability continued to increase in Libya. With the appearance of radical Islamist and jihadist factions in the region, a clash environment prevailed in the country. Although initially the repercussions of these conflicts intensified only in Benghazi and Tripoli, the conflicts eventually turned into a second country-wide civil war.¹⁴⁴ At the end of August 2014, Egyptian and United Arab Emirates' aircrafts started bombing Islamist factions in Tripoli and thus, foreign powers also started to be included in this civil war.¹⁴⁵

Starting in October 2014, radical groups, in which the IS¹⁴⁶ is actively involved, seized Derna and some groups that emerged in this area of conflict in the country declared their commitment to the IS.¹⁴⁷ With the capture of the city of Sirte in June 2015, the

¹⁴³Jennifer Welsh, "Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP", *Ethics & International Affairs*, 25(3), (2011), pp. 255, 261.

¹⁴⁴Chris Stephen, "Five years after Gaddafi, Libya torn by civil war and battles with Isis", *The Guardian*, accessed February 1, 2017, <https://www.theguardian.com/world/2016/feb/16/libya-gaddafi-arab-spring-civil-war-islamic-state>.

¹⁴⁵David D. Kirkpatrick and Eric Schmitt, "Arab Nations Strike in Libya, Surprising U.S.", *The New York Times*, accessed February 1, 2017, <https://www.nytimes.com/2014/08/26/world/africa/egypt-and-united-arab-emirates-said-to-have-secretly-carried-out-libya-airstrikes.html>.

¹⁴⁶Islamic State is the name of a salafi jihadist militant group which aims to establish a state governed by Sheria.

¹⁴⁷David Stout, "Report: ISIS Takes Control of a Libyan City", *Time*, accessed February 3, 2017, <http://time.com/3593885/isis-libya-iraq-syria-terrorism-derna/>.

USA, the UK and regional states increased their involvement in Libya through military operations against the strengthening radical forces.¹⁴⁸ Sirte, Gaddafi's hometown, in particular, has been a very important conflict area for fighting against IS and as of December 2016, the interim Government of National Accord announced the removal of IS elements from Sirte with the support of US air attacks.¹⁴⁹

While these conflicts continued and escalated, the political situation also became increasingly unstable. The General National Congress (GNC), which was formed by parliamentary election in 2012, ruled Libya until 2014.¹⁵⁰ In the elections of 2014, the government of the House of Representatives (HoR), also known as the “Tobruk government”, was elected and recognized internationally. The rival Islamist-backed GNC or “National Salvation Government”, based in the capital Tripoli, refused to hand over power and the conflicts between the two became increasingly intractable because both sides had legally formed their parliament, army and government.¹⁵¹

In December 2015, the two political camps, the Tobruk and Tripoli governments, met in Skhirat, Morocco to sign the Libyan Political Agreement (LPA).¹⁵² According to the agreement, a Presidency Council consisting of nine members and an interim Government of National Accord (GNA) consisting of seventeen members would be formed, and elections would be held within two years. The UNSC recognized the Presidential Council as the sole legitimate representative of Libya with Resolution

¹⁴⁸BBC News, “What next for Islamic State in Libya after Sirte?”, accessed February 10, 2017, <http://www.bbc.com/news/world-africa-37188226>.

¹⁴⁹BBC News, “Libyan forces 'retake Sirte port from IS militants’”, accessed February 10, 2017, <http://www.bbc.com/news/world-africa-36505935>.

¹⁵⁰Mohamed Aljarh, , “Libya’s Islamists Go for Broke”, *Foreign Policy*, accessed January 20, 2017, <http://foreignpolicy.com/2014/07/22/libyas-islamists-go-for-broke/>.

¹⁵¹Mustafa Fetouri, Al Monitor, “Four years after Gadhafi, is Libya better off?”, *Al Monitor*, accessed February 9, 2017, <http://www.al-monitor.com/pulse/originals/2015/10/libya-gaddafi-death-four-years-better-worse-hrw-bayada-city.html>.

¹⁵²UNSMIL, “Libyan Political Agreement”, accessed February 10, 2017, <https://unsmil.unmissions.org/LinkClick.aspx?fileticket=miXuJYkQAQg%3D&tabid=3559&mid=6187&language=eng>.

2259.¹⁵³ Fayeze al-Sarraj became the Chairman of the Presidential Council of Libya and Prime Minister of the GNA of Libya. However, because the HoR did not give a vote of confidence to the GNA, a new crisis questioning the legitimacy of the Presidential Council has been added to the disputes between the Tripoli-based GNC and the Tobruk-based HoR. The reason for the HoR withholding approval of the GNA is their insistence on certain provisions such as excluding Article 8 from the LPA, which requires transferring all sovereignty rights of HoR's MPs to the Presidential Council.¹⁵⁴ The government proposals that were offered by the Presidential Council conducted their duties by proxy since they were not approved by the HoR in Tobruk, which is accepted as the legislative body. This issue has not yet been resolved.

Another controversial topic about the political process in Libya is the duty term of the GNA. While one group of Libyans insists that the GNA has completed the term of office since one year has passed since the LPA, others say that the one-year period set out in the LPA will start from the date on which the agreement is accepted by a constitutional declaration. However, Article 1(4) of the LPA proposes that the term of the GNA shall be one year after receiving a vote of confidence from the HoR and if the constitution process is completed at this time, automatically an additional year for duty shall be added. This article negates the unclarity.¹⁵⁵

In March 2017, the Tobruk government's announcement that they withdrew their support from LPA and GNA brought an end to this already fragile political agreement process.¹⁵⁶ Meanwhile, the civil war in the country entered into a new stage, with a race to control the oil terminals. The Libyan National Army (LNA) of the HoR, led by General Khalifa Haftar, who gained an important territory that includes the oil

¹⁵³UNSC, Resolution 2259, S/RES/2259, 23 December 2015.

¹⁵⁴UNSMIL, "Libyan Political Agreement", Article 8.

¹⁵⁵UNSMIL, "Libyan Political Agreement", Article 1(4).

¹⁵⁶Al Arabiya, "Libya's Eastern Parliament Quits UN Peace Deal with Tripoli", accessed March 10, 2017, <https://english.alarabiya.net/en/News/north-africa/2017/03/08/Libya-s-eastern-parliament-quits-UN-peace-deal-with-Tripoli.html>.

crescent in 2016,¹⁵⁷ lost two key oil terminals, Sidra and Ras Lanuf, to the Benghazi Defense Brigades (BDB), an Islamist faction which had controversial discussions about its relation with GNA at the beginning of March 2017.¹⁵⁸ Although in the middle of the same month the LNA retook control of these two terminals,¹⁵⁹ there are allegations that General Haftar received special support from Russia and Egypt, and that Russia deployed Special Forces to an Egyptian airbase near the Libyan border.¹⁶⁰ This shows that the second civil war of Libya has crucial importance for both regional and international actors and it will be on the agenda for a long time.

As a result, in Libya where political stability has not yet been ensured, conflicts between the factions and the two governments still exist. On the other hand, clashes between the two sides on the oil crescent¹⁶¹ and the fight against terrorist organizations in the region continue to dominate Libya's agenda. In the midst of this instability, in which regional and international actors are actively involved, Libya has become a harbour for smugglers and extends the boundaries of the current refugee protection crisis from the Mediterranean to Europe. With the rise of human trafficking activities in the region, Libya became a centre of another crisis that needs to be resolved.

¹⁵⁷UN Office for the Coordination of Humanitarian Affairs, "Libyan oil wars and the battle for Tripoli", accessed March 15, 2017, <http://www.unocha.org/aggregator/sources/86>.

¹⁵⁸Daily Mail, "Libya Rivals Battle for Key Oil Region", accessed March 15, 2017, <http://www.dailymail.co.uk/wires/afp/article-4279894/Libya-rivals-battle-key-oil-region.html>.

¹⁵⁹Al Jazeera, "Pro-Haftar forces launch offensive to retake Libya oil terminals", accessed March 15, 2017, <http://www.aljazeera.com/video/news/2017/03/pro-haftar-forces-launch-offensive-retake-libya-oil-terminals-170314151134313.html>.

¹⁶⁰Phil Stewart, Idrees Ali and Lin Noueihed, "Exclusive: Russia Appears to Deploy Forces in Egypt", *Reuters*, accessed March 15, 2017, <http://www.reuters.com/article/us-usa-russia-libya-exclusive-idUSKBN16K2RY>.

¹⁶¹Oil crescent term is used for defining the region of Libya which extends from Ras Lanuf to Sirte and to Jufra districts and presumably 80 percent of the total oil reserves of Libya are provided by this region.

3.3.2. Mass Movements of Refugees and Libya

The instability in Libya has been threatening its neighbours through intense refugee and asylum-seeking movements from the region and also directly affects Europe's refugee protection crisis. Because Libya is one of the main departure points for migrants and refugees aiming to reach Europe by sea.

With the beginning of the civil war in 2011, Libyans took refuge in neighbouring countries such as Tunisia, Egypt and Chad, as well as in Europe by crossing the Mediterranean. The Italian island of Lampedusa was the central point of these movements.¹⁶² In the same year, the number of Libyan refugees who fled from the region was 790,000, according to February data of the IOM.¹⁶³ Although many of them returned to their country of origin when the civil war ended, the number of asylum seekers and IDPs that left the country due to the ongoing conflict continues to increase.¹⁶⁴

The IOM's March-April 2016 report indicates that there were 696,000 people of concern as of 31 August 2016; over 417,123 IDPs and over 149,160 people have recently returned to their area of origin.¹⁶⁵ According to the April-May 2017 data of the IOM- Displacement Tracking Matrix (DTM), there were 240,188 IDPs; 249,298 returnees, and 393,652 migrants in Libya in the specified period.¹⁶⁶ Even though the

¹⁶²Sue Reid, "Special dispatch: Gaddafi's diaspora", *Daily Mail*, accessed January 10, 2017, <http://www.dailymail.co.uk/news/article-1373002/Gaddafis-diaspora-Libyans-overwhelming-Lampedusa.html>.

¹⁶³Christine Aghazarm Patrice Quesada and Sarah Tishler, "The IOM Experience in Libya", IOM, (2012), p. 5.

¹⁶⁴Jonathan Clayton, "Numbers of internally displaced in Libya double since September", *UNHCR News*, accessed February 3, 2017, <http://www.unhcr.org/news/latest/2015/6/5592a8286/numbers-internally-displaced-libya-double-since-september-unhcr.html>.

¹⁶⁵IOM, Global DTM, IDP and Returnee Report Round 10, accessed June 20, 2017, [http://reliefweb.int/sites/reliefweb.int/files/resources/Libya%20Displacement%20Tracking%20Matrix%20\(DTM\)%20Round%20Three%20Report%20-%20IOM.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Libya%20Displacement%20Tracking%20Matrix%20(DTM)%20Round%20Three%20Report%20-%20IOM.pdf); IOM

¹⁶⁶IOM, Global DTM, IDP and Returnee Report Round 10.

numbers change, it is clear that there is a rising migrant population despite the instability in the country.

Table 1: Changing Migration Figures in Libya

Time Period	March- April 2016	April- May 2017
IDPs	417,123	240,188
Returnees	149,160	249,298
Migrants	234,699	351,382

Source: IOM-DTM Round 10 and Round 3 Reports¹⁶⁷

At present and historically, Libya has been both a destination and a transit country for fleeing from the region to Europe.¹⁶⁸ Libya has been a crucial spot for many years in migrating from Africa and the Middle East to Europe due to the geographical proximity of Libya’s west coast to Malta and the Italian island Lampedusa.¹⁶⁹ In 2009, Libya hosted 2,500,000 migrants, most of whom were coming from Africa, Bangladesh and the Philippines as a result of Colonel Gaddafi's open border policy to meet Libya’s work force needs.¹⁷⁰ Between 2003 and 2012, more than 190,000 migrants and asylum seekers arrived on Lampedusa and more than 16,400 migrants reached Malta from Libya.¹⁷¹ As part of its connection to these migration trends, Libya

¹⁶⁷IOM, Global DTM, IDP and Returnee Report Round 10, [http://reliefweb.int/sites/reliefweb.int/files/resources/Libya%20Displacement%20Tracking%20Matrix%20\(DTM\)%20Round%20Three%20Report%20-%20IOM.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Libya%20Displacement%20Tracking%20Matrix%20(DTM)%20Round%20Three%20Report%20-%20IOM.pdf); IOM, Global DTM, IDP and Returnee Report Round 10, accessed June 20, 2017, <http://www.globaldtm.info/libya/>.

¹⁶⁸UNHCR, “Protection Considerations with Regard to People Fleeing from Libya – UNHCR’s Recommendations”, accessed February 10, 2017, <http://www.refworld.org/pdfid/4d959bf62.pdf>.

¹⁶⁹Mattia Toaldo, “Migrations Through and From Libya”, Istituto Affari Internazionali Working Papers 15, (2015), p. 7.

¹⁷⁰Toaldo, “Migrations Through and From Libya”, p.2.

¹⁷¹Arezo Malakooti, “Mixed Migration: Libya at the Crossroads”, accessed February 12, 2017, <http://www.refworld.org/docid/52b43f594.html>.

signed agreements such as the 2008 Friendship Treaty with Italy, which was based on the provision that Libya would contain migrants and asylum seekers in exchange for resource assistance.¹⁷² However, as the turmoil of the post-Gaddafi period dragged the country into a second civil war operating under dysfunctional state institutions, this containment policy collapsed.

The EU's refugee policies, which will be addressed in the following pages, have also pushed people into irregular migrations, and after 2013 the massive influx of Syrian refugees in Libya gave momentum to human smuggling activities.¹⁷³ Combined with factors such as the inconsistency of the political situation in Libya, the existence of two governments as of 2014, and the absence of a functioning institutional structure; Libya has become an even more convenient country for trans-Mediterranean migration flows and smuggling activities. Many refugees who reached Lampedusa expressed how dangerous it is for them to stay in Libya.¹⁷⁴

As a result of increasing refugee movement, human smugglers began to cross the sea under worse conditions such as carrying people with overloaded rubber boats and fishing vessels. This has further increased the death toll resulting from maritime accidents. In October 2013, a boat sank in the Mediterranean which was carrying migrants from Libya to Italy; although 155 people were rescued, the death toll was 359. This accident demonstrates the severity of the protection crisis.¹⁷⁵

¹⁷²Human Rights Watch, "Italy-Libya Connection", accessed February 3, 2017, <https://www.hrw.org/news/2009/09/23/italy-libya-connection>.

¹⁷³Mattia Toaldo, "Libya's Migrant-Smuggling European Highway: Lessons for Europe", Council on Foreign Relations, (2015), p. 1.

¹⁷⁴Patrick Kingsley, "Risking Death in the Mediterranean: The Least Bad Option for so Many Migrants", *The Guardian*, accessed February 13, 2017, <https://www.theguardian.com/world/2015/apr/17/death-mediterranean-africans-migrant-sea-libya>.

¹⁷⁵BBC News, "Mediterranean 'a cemetery'", accessed February 13, 2017, <http://www.bbc.com/news/world-europe-24502279>.

In 2015, when the mass movements of refugees worsened, the Mediterranean death toll was around 3,771 people¹⁷⁶ and the vast majority of the sea accidents that occurred were off the coast of Libya.¹⁷⁷ Shipwrecks occurred throughout 2015 and the number of accidents continued to increase even more in 2016; according to William Spindler, a UNHCR spokesperson, the year 2016 proved to be “deadlier” than 2015 because by May 2,510 lives were lost, but in 2015, at the same time of the year, it was 1,855.¹⁷⁸ According to estimates, 4,700 people died trying to cross the Mediterranean Sea in 2016; this was the highest number of casualties at the time.¹⁷⁹ Filippo Grandi, the UN High Commissioner for Refugees said that if European countries’ policies could have been in the direction of taking more refugees instead of abandoning them on their risky journeys by boats, this could have saved a good number of lives. After the shipwreck off the coast of Libya, which resulted in the death of 240 people in November of 2016, Grandi also stressed that refugees and immigrants have no choice but to risk their lives.¹⁸⁰

While the inability of the EU to resolve the crisis was discussed, one of the most important initiatives of the EU in relation to migration and refugees from Libya was Operation Sophia in 2015. This initiative was approved by the EU Foreign Affairs Council to create a Common Security and Defence Policy (CSDP) operation against

¹⁷⁶IOM, “IOM Counts 3,771 Migrant Fatalities in Mediterranean in 2015”, accessed February 20, 2017, <https://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015>.

¹⁷⁷Missing Migrants Project, “Mediterranean Update: Shipwrecks off Libya, Greece”, accessed February 20, 2017, <http://missingmigrants.iom.int/mediterranean-update-shipwrecks-libya-greece>.

¹⁷⁸Adrian Edwards and Medea Savary, , “Mediterranean Death Toll Soars in First 5 Months of 2016”, *UNHCR News*, accessed February 10, 2017, <http://www.unhcr.org/news/latest/2016/5/574db9d94/mediterranean-death-toll-soars-first-5-months-2016.html>.

¹⁷⁹Patrick Kingsley, “100 People Feared Drowned as Boat Sinks off Libya”, *The Guardian*, accessed February 4, 2017, <https://www.theguardian.com/world/2016/nov/17/boat-capsizes-libya-medecins-sans-frontieres-mediterranean>.

¹⁸⁰Tom Miles and Marina Depetris, “U.N. Says 240 Migrants Drowned off Libya in 48 Hours”, *Reuters*, accessed February 10, 2017, <http://uk.reuters.com/article/uk-europe-migrants-italy-casualties-idUKKBN12Y1CL>.

the smugglers.¹⁸¹ Initially the name of the operation was EUNAVFOR Med, and then it took its name, Operation Sophia, from a rescued refugee's baby who was born on the ship.¹⁸² Identifying and capturing boats or assets of smugglers/traffickers have been the main purpose of the Operation Sophia in the Southern Mediterranean.¹⁸³

The UNSC also adopted Resolution 2240 on 9 October 2015 and gave authorization to member states to seize boats that are being used by human traffickers and to use all necessary measures against them under Chapter VII of the UN Charter.¹⁸⁴ However, this resolution did not include authorization for any coercive measure in Libya's territorial waters; it limited the operations to high seas.¹⁸⁵ In June 2016, the Council extended the operations until 27 July 2017 and two supporting tasks were identified: first, the training of the Libyan coastguard and navy, and second, imposing a UN arms embargo on Libya according to UNSC Resolution 2292.¹⁸⁶ Another significant response to the migrant crisis began in 2011 as the European Border and Coast Guard Agency, FRONTEX, has been organizing joint rescue operations in the Central Mediterranean route and, in a sense, aiming to protect EU borders from mass movements of refugees.¹⁸⁷

¹⁸¹Council Decision (CFSP), EUNAVFOR MED, O.J L 122/31, 18 May 2015.

¹⁸²Council of the European Union Press Releases and Statement, "EUNAVFOR Med", accessed February 10, 2017, <http://www.consilium.europa.eu/en/press/press-releases/2015/09/28-eunavfor>.

¹⁸³Council of the European Union Press Releases and Statement, "EUNAVFOR Med", Article 1.

¹⁸⁴UNSC, Resolution 2240, S/RES/2240, 9 October 2015, paras. 7-8

¹⁸⁵European Commission, Communication from the Commission to the European Parliament, "Managing the Refugee Crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration", COM(2015) 510 final, paras. 10-11

¹⁸⁶UNSC, Resolution 2292, S/RES/2292, 14 June 2016.

¹⁸⁷Luiza Bialasiewicz, "Off-shoring and out-sourcing the borders of Europe: Libya and EU border work in the Mediterranean", *Geopolitics*, 17(4), (2012), p. 845.

These operations, which have led to the capture of many smugglers and the rescue of many people's lives,¹⁸⁸ can be seen as violation of refugee rights.¹⁸⁹ Because those who escaped from Libya can be sent back to the land they abandoned by the officers of the operations, without considering whether their lives or freedoms would be in danger, this violates the protection under the principle of *non-refoulement*.¹⁹⁰ Furthermore, human rights NGOs like Human Rights Watch and the European Council on Refugees and Exiles, underline the fact that disposing of smugglers' boats can induce refugees to undertake more dangerous routes to reach Europe. These human rights agencies suggest that providing safe and legal channels to people who seek asylum in the EU is the most effective way to combat smuggling activities.¹⁹¹ On the other hand, the Subcommittee on External Relations of the British House of Lords on Operation Sophia report indicates that the restriction of the EU to implement operations only on the high seas and not in Libyan territorial waters makes operations largely ineffective since smuggling networks cannot be broken.¹⁹² However, it is also clear that in this case, if the EU exceeds its authority, the non-intervention principle will be violated. The UNSC has also stated that they do not want to breach Resolution 2240 for any purpose as that would violate protection under international human rights law and international refugee law.¹⁹³

¹⁸⁸See EUNAVFOR MED, "EUNAVFOR MED: Operation Sophia Flagship ITS GARIBALDI Rescued over One Thousand Migrants", Press release 001/2016, 30 August 2016.

¹⁸⁹See Graham Butler and Martin Ratcovich, "Operation Sophia in Uncharted Waters: European and International Law Challenges for the EU Naval Mission in the Mediterranean Sea", *Nordic Journal of International Law*, 85(3), (2016), p. 235.

¹⁹⁰Evelien Wauters and Samuel Cogolati, "Crossing the Mediterranean Sea: EU Migration Policies and Human Rights", Leuven Centre for Global Governance Studies Working Paper No. 180, (2016), p. 14.

¹⁹¹Wauters and Cogolati, "Crossing the Mediterranean Sea", p.14.

¹⁹²House of Lords European Union Committee, "Operation Sophia, the EU's naval mission in the Mediterranean: an impossible challenge", 14th Report of Session 2015–16, accessed May 7, 2017, <https://www.publications.parliament.uk/pa/ld201516/ldselect/lducom/144/144.pdf>.

¹⁹³UNSC, Resolution 2290, 31 May 2016, para. 12.

Italy has also taken a step in the crisis and signed a new treaty similar to the previous deal for migration control in Libya. The treaty also planned to establish a refugee camp in Libya and train Libyan coast guards to control the irregular movements from the country.¹⁹⁴ Although it is unlikely to meet the provisions of this agreement in the current turmoil, this initiative was also seen as a violation of the *non-refoulement* principle.

The inability of the EU to resolve the crisis and share the burden has led to comments that EU refugee policy has failed.¹⁹⁵ One of these reactions came from Bärbel Kofler, the human rights coordinator of the German government, who stated that the refugees that have been saved in the Mediterranean cannot be returned back to Libya since human rights in Libya are totally ignored.¹⁹⁶

It is obvious that this current crisis is creating an economic and political pressure on Europe; demands for overhauling their migration policies are increasingly being brought to the agenda and Europe's rescue operations and attempts to stop the crisis are not seen by many as sufficient efforts. Despite Europe's emphasis on responsibility sharing and the rhetoric of implementing resettlement policies, preventing many migrants, refugees and asylum seekers from reaching Europe causes a widespread belief that the EU has violated the principle of *non-refoulement*. In fact, apart from the international refugee law, as Article 19 of the Charter of Fundamental Rights of the EU states, no one shall be expelled from a state to another where there is the possibility of being exposed to inhumane treatments such as death penalty and torture. The European Convention on Human Rights and Fundamental Freedoms' Articles 3 and

¹⁹⁴Durham University News, "Italy and Libya Reach Agreement on Border Security and Migration", accessed February 2, 2017, https://www.dur.ac.uk/ibru/news/boundary_news/?itemno=14308.

¹⁹⁵OXFAM International, "EU-Libya Plans Shine Spotlight on European Duplicity", accessed February 10, 2017, <https://www.oxfam.org/en/pressroom/pressreleases/2017-02-02/eu-libya-plans-shine-spotlight-european-duplicity>.

¹⁹⁶UN Human Rights Office of the High Commissioner, "Human Rights Council Hears Statements by Dignitaries from 24 States and Organizations as It Continues Its High-Level Segment", accessed March 15, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17116&LangID=E#sthash.pgd6PY2D.dpuf>.

13(3) also guarantee the right to freedom from torture. Regardless of the norms of international refugee regime, regional norms also provide a basis for debates on migration and refugee policies of the EU; this has led to comments that the EU has not fulfilled its responsibility to protect refugees and has ignored its own values as well as those of international refugee law.

As a result, it is clear today that the ongoing civil war in Libya contributed to a dysfunctional democratic system in a worse state than it was before the civil war in 2011 and created a gateway for smugglers and human traffickers within the country.¹⁹⁷ In fact, the Mediterranean crossings and the political crisis of Libya indicate a failure in the rebuilding phase.¹⁹⁸ Former NATO Secretary-General Anders Fogh Rasmussen accepted this statement and pointed to failure to follow the political process in Libya as the reason behind this ongoing turmoil.¹⁹⁹ In addition, former US President Barack Obama expressed his regrets in the face of their failure to plan a new phase in Libya as a response to the question about “the greatest mistake he made” during his administration. Although he found the operation necessary, he accepted that Libya was “a mess” in the process that began with the end of the NATO operations.²⁰⁰

3.4. Conclusion

The military operation in Libya under Resolution 1973 was the first implementation of a military operation within the framework of R2P without the consent of the state itself. However, it revealed the fragility of the international consensus on Pillar 3 of

¹⁹⁷Sabrina Tucci, “Libya and International Refugee and Asylum Law: Addressing the Protection of Refugees and Migrants Displaced by the 2011 Conflict”, *Oxford Monitor of Forced Migration*, 2(2), (2011), pp. 48-54.

¹⁹⁸Coen, “R2P, Global Governance and the Syrian Refugee Crisis”, p. 1053.

¹⁹⁹Al Jazeera, “Ex-NATO boss: Libya still a 'model intervention'”, accessed February 15, 2017, <http://www.aljazeera.com/programmes/upfront/2016/10/nato-boss-libya-model-intervention-161022075802390.html>.

²⁰⁰BBC News, “President Obama: Libya aftermath 'worst mistake' of presidency”, accessed February 3, 2017, <http://www.bbc.com/news/world-us-canada-36013703>.

R2P and led to the rise of debates over the idea that the resolution was abused. Moreover, the post-operation political situation in Libya has not improved and has instead become increasingly more fragmented and the country has been dragged into long-term chaos.

The internal conflict reached the advanced stage after 2014 and Libya, which has been both a destination and transit country due to its geographical location, has become a very attractive region for transit to Europe by sea due to the confusion and instability in the country. Smugglers and human traffickers who have taken advantage of this environment have turned the country into a stop for refugees and migrants who are escaping from Middle East and Africa to Europe. The frequent maritime accidents and high numbers of losses on this route have brought the issue to Europe's agenda and led them to develop new policies to overcome it. However, this crisis could not be resolved because of reasons such as the duality in the Libyan administration, activities of terrorist organizations in the region and the controversial attitudes of EU policies towards migrants and refugees.

Although the military intervention in Libya under R2P has limited the number of asylum seekers and refugees from Libya, in the last instance a new internal disorder has erupted. Currently, the Libyan state fails to fulfil its responsibility to protect populations in the country as the number of people who lost their lives continues to increase. As a result, new alternatives which can provide a better protection of people are needed.

CHAPTER 4

THE CASE OF SYRIA

4.1. Development of Political Instability in Syria and Its Transformation into a Civil War

In 2011, the rebellion that began in Tunisia spilled over into Syria. However, unlike the general characteristic of Arab uprisings, the movement rapidly evolved into a large scale civil war in Syria, which has cost hundreds of thousands of people's lives, and created a very large number of IDPs and refugees. The civil war has been going on for six years and it was ignited in January 2011 by small-scale demonstrations against the Bashar Assad government, criticizing poverty, inequality, and restrictions imposed by the government on people.²⁰¹ In March, the allegations that a group of students who drew anti-government graffiti were exposed to disproportionate use of force led to further increase in the demonstrations and their spread to various regions of the country.²⁰²

The demands of the protestors were generally in the direction of improving living standards; releasing political prisoners; obtaining basic freedoms and democratic rights; ending pervasive government corruption; abolishing Syria's 48-year emergency law; and calling for the resignation of Bashar al-Assad, whose family has held power since 1971, and the abolition of the Ba'ath as the ruling party since 1963.²⁰³ Initially, Assad promised to implement political and legal reforms in the period

²⁰¹Adam Coutts, "Syria's Uprising Could Have Been Avoided through Reform", *The Guardian*, accessed March 1, 2017, <https://www.theguardian.com/commentisfree/2011/may/18/syria-uprising-reform-bashar-al-assad>.

²⁰²Human Rights Council, A/HRC/S-17/2, 23 November 2011.

²⁰³BBC News, "Syria's Ruling Party Baath", accessed March 1, 2017, <http://www.bbc.com/news/world-middle-east-18582755>.

between March and April. However, in April very large masses of people participated in protests and Assad reacted severely.

The government systematically used military force against the people in Dar'a and many civilians lost their lives.²⁰⁴ After this incident, military operations against the people continued. According to the data of the Office of the United Nations High Commissioner for Human Rights (OHCHR), in the period between March and November 2011 at least 3,500 civilians lost their lives and thousands were arrested and tortured by unlawful means. In this process, the cities of Homs, Hama and Dar'a were most affected.²⁰⁵ In the meantime, part of the army dissolved, as some did not want to target civilians and thus resigned. Hence, in July 2011 a group of Syrian Army officers who defected from the army officially set up the Free Syrian Army to target the Assad government.²⁰⁶

With the helicopter attacks that began in June 2012, civilians were subjected to heavy air bombardment.²⁰⁷ The use of air forces against civilians was a key point in the beginning of the civil war, and the International Committee of the Red Cross (ICRC) reported that the country was subsequently dragged into a major civil war.²⁰⁸

After the demonstrations turned into armed rebellion, institutional dysfunctions leading to a lack of government and the existence of civil war created an advantage for radical Islamist terrorist groups. Radical Islamic militants from many regions of the world, especially from North Africa and the Middle East, flocked into the country. Along with the outbreak of these events, Salafi jihadist groups such as Ahmar Al-Sham in 2011, and Jabhat Al Nusra Front in 2012—which was formerly an Al-Qaeda

²⁰⁴Human Rights Council, A/HRC/S-17/2, p. 42.

²⁰⁵UN News Center, “Death toll passes 3,500 as Syrian crackdown continues”, accessed February 20, 2017, <http://www.un.org/apps/news/story.asp?NewsID=40326#.WNDHBzuLTIU>.

²⁰⁶Basma Atassi, “Free Syrian Army grows in influence”, *Al Jazeera*, accessed February 20, 2017, <http://www.aljazeera.com/indepth/features/2011/11/20111116154829885782.html>.

²⁰⁷Human Rights Council, A/HRC/S-17/2, pp. 56-59.

²⁰⁸Human Rights Watch, “Death from the skies: Deliberate and indiscriminate air strikes on civilians”, April 2017, p. 12.

extension in Syria but then changed its name to Jabhat Fateh al-Sham and split from Al Qaeda in 2016²⁰⁹—became active in important regions. They targeted Assad’s Nusayri²¹⁰ identity at the sectarian level, and used this as their propaganda.

In a short period of time, terrorism gained an international dimension and became an international concern. Beginning with regional and international terrorist attacks, the IS²¹¹, was founded in the early years of the Iraq War. It formally declared its al-Qaeda affiliation in 2004, but then in February 2014 severed its relations with this group and aimed to establish a caliphate in the region.²¹² As a result of these acts of terrorism, civilian casualties continued to increase. According to UN High Commissioner for Human Rights Navi Pillay, 92,901 people lost their lives in Syria between March 2011 and April 2013.²¹³ In August of 2013, there were accusations that the Assad government used chemical weapons in Eastern Ghouta and thereby killed 1,500 civilians.²¹⁴ While the Assad government denied the accusations, it also argued that these allegations were purported to create a justification to intervene in Syria.²¹⁵ Meanwhile, the total number of Syrian refugees increased gradually; according to the

²⁰⁹Al Jazeera, “Al-Nusra leader Jolani announces split from al-Qaeda”, accessed February 22, 2017, <http://www.aljazeera.com/news/2016/07/al-nusra-leader-jolani-announces-split-al-qaeda-160728163725624.html>.

²¹⁰A Syria centred religious group, a twelver branch of Shia Islam; they are also called as Arab Alawites.

²¹¹It is also called as the Islamic State of Iraq and Levant (ISIL) or Islamic State of Iraq and Syria (ISIS) in this region.

²¹²Daniel Byman, “Isis Goes Global”, *Foreign Affairs*, March/April 2016, p. 2.

²¹³UN News Centre, “Nearly 93,000 People Killed in ‘Vicious’ Syria Conflict – UN Human Rights Chief”, accessed February 22, 2017, http://www.un.org/apps/news/story.asp?NewsID=45162&Cr=syria&Cr1=&Kw1=syria&Kw2=casualties&Kw3=#.WNDO_DuLTIU.

²¹⁴The Guardian, “‘Almost 1,500 Killed in Chemical Weapons Attacks’ in Syria”, accessed February 23, 2017, <https://www.theguardian.com/world/2016/mar/14/syria-chemical-weapons-attacks-almost-1500-killed-report-united-nations>.

²¹⁵The Independent, “Syria blames France for nerve gas attack in Gouta”, accessed March 2, 2017, <http://www.independent.co.uk/news/world/middle-east/syria-makes-absurd-claim-french-government-sarin-nerve-gas-ghouta-chemical-attack-2013-a7205701.html>.

UN refugee agency, the number of Syrians fleeing their country reached 1,000,000 in March 2013.²¹⁶

As discussed in the following sub-section, there has been no intervention in Syria on the basis of R2P. Nevertheless, as the IS terrorist attacks became internationalized and the group obtained great financial resources as well as advanced weapons,²¹⁷ the organization became a greater threat than other radical Islamist groups. Therefore, an anti-IS coalition was formed in 2014, and it organized air attacks on the zones controlled by the organization. First, in September 2014, the USA, Bahrain, Jordan, Qatar, Saudi Arabia, and the United Arab Emirates began airstrikes against IS targets in Syria.²¹⁸ Since then, more than 10 countries, including the USA, the UK, Australia, France and Turkey,²¹⁹ have carried out air strikes against the IS in Syria. Russia has been conducting air strikes since September 2015.²²⁰

In addition to the internal dynamics and international actors involved in Syria, the Syrian civil war brought a serious crisis to the Middle East in terms of regional geopolitical structure, as it began to be seen as a new phase of the Shi'a-Sunni conflict which has been increasing in recent years. Some of the Gulf States, such as Saudi Arabia and Qatar, supported the opposition in Syria because of the Nusayri origin of Assad, believing that a political change in Syria would negatively affect Iran's relations with that country and consequently the Iranian influence in the Mashrek

²¹⁶UNHCR, "Number of Syrian refugees reaches 1 million mark", accessed March 2, 2017, <http://www.unhcr.org/news/latest/2013/3/513625ed6/number-syrian-refugees-reaches-1-million-mark.html>.

²¹⁷BBC News, "Who is Supplying Weapons to the Warring Sides in Syria?", accessed February 22, 2017, <http://www.bbc.com/news/world-middle-east-22906965>.

²¹⁸The Guardian, "US confirms 14 air strikes against Isis in Syria", accessed February 2, 2017, <https://www.theguardian.com/world/2014/sep/23/us-launches-air-strikes-against-isis-targets-in-syria>.

²¹⁹Jethro Mullen, "U.S.-led Airstrikes on ISIS in Syria: Who's in, Who's not", *CNN*, accessed February 23, 2017, <http://edition.cnn.com/2014/09/23/world/meast/syria-airstrikes-countries-involved/>.

²²⁰CNN, "Russia launches first airstrikes in Syria", accessed February 23, 2017, <http://edition.cnn.com/2015/09/30/politics/russia-syria-airstrikes-isis/>.

region.²²¹²²² Iran began to support the Assad government considering that the loss of its single ally in the Arab world would strike a strategic blow to its regional position. On the other hand, as a non-regional ally, Russia's support to Iran and the Baath regime, along with the USA's efforts to exist in the struggle for influence over the region by supporting some groups in the region arguably allows the Syrian civil war to be defined as a proxy war.²²³ At the regional level, Iran and Saudi Arabia's regional struggles can be considered a sectarian war, and therefore a confrontation of these two states over Syria indicates another proxy war in the region.²²⁴ Ban Ki-moon has defined the situation in Syria literally as a "proxy war"²²⁵, since the delicate balances in Syria are among the greatest factors that make it difficult for the United Nations to make a decision.

The Syrian civil war has not been effectively stopped through diplomatic channels such as the Geneva talks and it has resulted in economic and political fragmentation and led to the deaths of thousands of civilians, including children. In April 2016, the UN and Arab League Envoy to Syria estimated that more than 400,000 people had lost their lives during this civil war.²²⁶ However, as will be seen in the following sections, millions of people have been displaced from their homes or fled their country altogether. At the time of writing, various groups were still fighting to control some parts of the Syrian territory and the country was split between the Assad government,

²²¹A term which is used to describe the region of Arab states located between Mediterranean Sea and Iran.

²²²Meliha Benli Altunışık, "Regional System in the Middle East and "Arab Spring", *Orta Doğu Analiz*, 5(53), (2013), p. 77.

²²³Abrulrahman al-Masri, "Syria: Proxy war, not civil war", *Middle East Monitor*, accessed March 2, 2017, <https://www.middleeastmonitor.com/20150314-syria-proxy-war-not-civil-war/>.

²²⁴As'ad AbuKhalil, "The 8 Proxy Wars Going On in Syria Right Now", *Huffingtonpost*, accessed March 2, 2017, http://www.huffingtonpost.com/asad-abukhalil/syria-proxy-wars_b_5874488.html.

²²⁵United Nations Secretary-General Ban Ki-moon, "Remarks to the General Assembly on Syria", 3 August 2012, <http://www.un.org/sg/statement/index.asp?nid=6224>.

²²⁶Al Jazeera, "Syria Death Toll: UN Envoy Estimates 400,000 Killed", accessed March 3, 2017, <http://www.aljazeera.com/news/2016/04/staffan-de-mistura-400000-killed-syria-civil-war-160423055735629.html>.

the IS, Kurdish factions in the Rojava region, Jabhat Fateh Al Sham, and several other rebel groups. Most recently, in the first months of 2017, Turkish troops conducted a land operation against the IS to expel the group from the cities in close proximity to Turkey,²²⁷ the Syrian government captured Aleppo, one of the main battlegrounds in the conflict; and Kurdish fighters achieved territorial gains in the northern part of Syria, hence reducing the amount of territory under the control of the IS.

So far, various international actors have organized military operations to combat the IS and other terrorist groups; however, despite the ongoing war crimes, which bring the crisis under the scope of R2P, there has not been any sort of coercive intervention under the framework of R2P in Syria. Neither the numbers of civilian casualties, refugees and IDPs nor the alleged use of chemical weapons against civilian populations have been sufficient for urging a decisive international action; according to some, this inaction has been the main cause of the extensive destruction of the Syrian war.²²⁸ Hence, especially with the case of Syria, recent literature on R2P has been dominated with the question is it time to say R.I.P for R2P?

4.2. International Response in Relation to R2P in Syria

Although R2P has been on the UN agenda since the beginning of the events to date, the UNSC, as the only body with the authority to make a binding decision in accordance with international law, has not passed any resolutions invoking the R2P norm in Syria. The main reason for this has been the actual or threatened vetoes of China and Russia who are members of the P5. Generally, they put forward as a reason

²²⁷Al Jazeera, “Turkish troops killed in clashes with ISIL in Syria”, accessed February 23, 2017, <http://www.aljazeera.com/news/2016/12/turkish-troops-killed-clashes-isil-syria-161221204418681.html>.

²²⁸Jean-Marc Coicaud, “International Law, the Responsibility to Protect and International Crises”, in Ramesh Thakur, William Maley (ed.), *Theorising the Responsibility to Protect*, (Cambridge University Press, 2015), p. 169.

for their vetoes mission creep in the Libya intervention. For this reason, according to Ramesh Thakur, the Syrians have paid the price of Libya.²²⁹

Initially, each member of the UNSC stated concerns about the incidents happening and called for a stop to the violence as soon as possible.²³⁰ According to the report of the Independent International Commission, which was created by the UN Human Rights Council to investigate human rights actions in Syria, the Syrian Armed Forces have used excessive force against protesters. The Council has published numerous reports on the subject to-date, beginning with Resolution S-16/1 published on 29 April 2011, which stated that the human rights violations carried out by the Assad government reached serious levels; the resolution also condemned the excessive use of force and called on the government to end human rights violations, release political prisoners, and abolish censorship.²³¹

Russia and China voted against this resolution.²³² Moreover, three months after the conflict in Syria began, on 21 June 2011, the UN Secretary-General's Special Advisors on the Prevention of Genocide and the Responsibility to Protect issued a declaration that, given their size and gravity, the violations can be regarded as crimes against humanity, and they reminded the Syrian government of its responsibility to protect their population from atrocity crimes.²³³ In December 2011, the UN Human Rights Council published its first notice condemning the continuing widespread, systematic

²²⁹Ramesh Thakur, "R2P after Libya and Syria", p. 61.

²³⁰Zifcak, "The Responsibility to Protect After Libya and Syria", p. 16.

²³¹Human Rights Council, A/HRC/S-17/2.

²³²Human Rights Council, "Report of the Human Rights Council on its sixteenth special session", A/HRC/S-16/2, 29 April 2011.

²³³"Special Advisers of the United Nations Secretary-General on the Prevention of Genocide, Francis Deng, and on the Responsibility to Protect, Edward Luck, on the situation in Syria", *UN Press Release*, 21 July 2011.

and severe violations of human rights of the Syrian authorities and reminded the Syrian government of its responsibility to protect its population.²³⁴

The first resolution proposal regarding the Syrian conflict brought before the UNSC came from four European countries on 4 October 2011, six months after the uprisings began. France, Germany, Portugal and England drafted a resolution,²³⁵ which basically reminded the Syrian government of their responsibility to protect their population and demanded an immediate end to the violence. While calling for a Syrian-led political progress, the proposed resolution also indicated the intention to apply sanctions in the case of non-abidance by the Syrian government. With nine of the UNSC members voting in favour of the resolution, and Brazil, India, Lebanon, and South Africa (which were then UNSC temporary members) abstaining from the vote, China's and Russia's vetoes blocked the resolution. The main arguments for Russia's veto were the non-intervention principle and the need to respect the national sovereignty and territorial integrity of Syria. Vitaly Churkin, Russia's former Permanent Representative to the United Nations, expressed that the situation in Syria cannot be considered independently from Libya, and so Russia had concerns that a ceasefire would turn into a full-fledged civil war as in Libya. China similarly underlined the non-intervention principle.²³⁶ Susan Rice, US Ambassador to the United Nations, said in response that this was a "cheap ruse" built by those who preferred selling weapons to the Syrian regime overacting together with the Syrian people.²³⁷ The political divisions within the UNSC arising from differing state interests fuelled new problems that could not be solved in a short time by moving the Syrian civil war to a different dimension.

²³⁴BBC, "Syria 'violations' condemned by UN Human Rights Council", accessed March 7, 2017, <http://www.bbc.com/news/world-europe-15996583>.

²³⁵France, Germany, Portugal and United Kingdom of Great Britain and Northern Ireland: Draft Resolution, UN SCOR, 66th session, UN Doc S/2011/612, 4 October 2011.

²³⁶UN SCOR, 66th session, 6627th mtg, UN Doc S/PV.6627, 4 October 2011.

²³⁷UN SCOR, 66th session, 6627th mtg.

The expected Arab League response came in November 2011, as the organization suspended Syria's membership²³⁸ and repeated demands for reforms and the release of political prisoners. Since there was no positive development, on 16 November the Arab League began to implement economic sanctions and invited all members to withdraw their ambassadors from Damascus.²³⁹ Acts of violence increased considerably during this period, and the UN Human Rights Council adopted its second condemnatory resolution, S-18/1²⁴⁰ despite objections from Russia and China, as well as Cuba and Ecuador.²⁴¹ In December 2011, the UN High Commissioner for Human Rights noted that more than 5000 civilians had lost their lives since March, 14,000 people had been detained, and 12,000 had fled to the border. In light of these facts the Syrian government had clearly failed to protect its own population and the responsibility now lay with the international community.²⁴²

According to the report of the Independent International Commission of Inquiry on the Syrian Arab Republic in February 2012, government security forces committed "widespread and systematic" human rights violations.²⁴³ In the meantime, on 4 February 2012, the UNSC experienced a second unsuccessful decision-making process regarding Syria. The draft resolution, which aimed to implement a political transition process by establishing a national unity government in Syria, was proposed

²³⁸Neil, MacFarquhar, "Arab League Votes to Suspend Syria Over Crackdown", *The New York Times*, accessed March 17, 2017, <http://www.nytimes.com/2011/11/13/world/middleeast/arab-league-votes-to-suspend-syria-over-its-crackdown-on-protesters.html>.

²³⁹Neil MacFarquhar and Nada Bakri, "Isolating Syria, Arab League Imposes Broad Sanctions", *The New York Times*, accessed March 17, 2017, <http://www.nytimes.com/2011/11/28/world/middleeast/arab-league-prepares-to-vote-on-syrian-sanctions.html>.

²⁴⁰UN General Assembly, Resolution S-18/1, UN GAOR, 18th spec sess, 2nd mtg, UN Doc A/HRC/RES/S-18/1, 5 December 2011.

²⁴¹UN General Assembly, Resolution S-18/1, p.4.

²⁴²Office of the High Commissioner for Human Rights, "Syria: Pillay Calls for Urgent Action to Halt Violence", Press Release, 12 December 2011.

²⁴³Human Rights Council, A/HRC/S-17/2.

by the Arab League, presented by Morocco, and supported by eighteen countries.²⁴⁴ Although the resolution did not put the use of force on the agenda in order to meet the concerns of BRICS countries, and despite the support of India and South Africa, Russia and China again vetoed the proposal, even as it came right after a significant airstrike against the city of Homs on 3 February.²⁴⁵ The representatives of France, Germany, Portugal and the UK harshly criticized the vetoes of China and Russia, while the latter defended their position by arguing that the resolution was unbalanced, that it did not contain any condemnation against the rebels and that it sought for regime change once again.

On 23 February 2012, the UNSC and the Arab League appointed Kofi Annan, the former UN Secretary-General, as their joint special envoy to Syria. Annan put forth a written plan to stop the clashes in Syria.²⁴⁶ This six-point plan demanded measures such as an immediate provision of a ceasefire to be observed by the UN, cooperation between the parties, and the release of arbitrarily arrested and detained persons.²⁴⁷ The plan was adopted by the Syrian regime and the UNSC on 14 April 2012 and on 21 April the UNSC adopted Resolution 2043 on the proposal of Russia to send a 90-day UN Observer Mission (UNSMIS) to observe this fragile ceasefire in Syria.²⁴⁸ The ceasefire, which started in April 2012, was broken by the Syrian government and the opposition groups in May 2012, and the conflict intensified further. On 19 July 2012, Russia and China vetoed in the UNSC yet another resolution, which raised the UNSMIS's mandate and imposed sanctions on the Syrian regime since they did not

²⁴⁴Zifcak, "The Responsibility to Protect After Libya and Syria", p.24.

²⁴⁵The Guardian, "Syria: more than 200 dead after 'massacre' in Homs", accessed March 5, 2017, <https://www.theguardian.com/world/2012/feb/04/syria-report-homs-killings>.

²⁴⁶UN News Centre, "Syria: UN and Arab League appoint joint envoy to deal with crisis", accessed March 3, 2017, <http://www.un.org/apps/news/story.asp?NewsID=41346#.WNih3DuLS00>.

²⁴⁷UN News Centre, "Six-Point Proposal of the Joint Special Envoy of the United Nations and the League of Arab States as annexed to Security Council resolution 2042", accessed March 7, 2017, http://www.un.org/en/peacekeeping/documents/six_point_proposal.pdf.

²⁴⁸UNSC, Resolution 2042, S/RES/2042, 14 April 2012.

comply with the six-point plan. In the meantime, Pakistan and South Africa abstained.²⁴⁹ Consequently, the UN observers who were sent to Syria declared that the plan was disabled. This increased the tension at the UNSC; Permanent Representative of the People's Republic of China to the UN, Li Baodong, said that the content of the draft resolution was "uneven" as it only targeted one side. The Permanent Representative of Russia to the UN Vitaly Churkin said that the conflict was strengthened with the aim of "geopolitical design" instead of developing dialogue with the Syrian counterparts.²⁵⁰

On September 2013, the UNSC managed to unanimously adopt Resolution 2118 regarding the destruction of chemical weapons in Syria.²⁵¹ The acceptance of the idea that "these weapons posed a threat to international peace and security" enabled the beginning of negotiations between the parties in Geneva in January-February 2014. Although these negotiations failed, diplomatic steps increased after these talks. Meanwhile, Resolution 2139, which was adopted by the UNSC in February 2014, condemned the rise of terrorism linked with Al Qaeda and urged all parties to end violence immediately and to allow access to UN humanitarian organizations.

According to the UN Secretary-General's report to the UNSC about the implementation of this resolution on 24 March, the violence of the government and the opposition prevented humanitarian assistance to millions of Syrians. On 22 May 2014, Russia and China once again vetoed the UNSC's draft resolution, which stipulated that the situation should be sent to the International Criminal Court.²⁵² Resolution 2254, which was unanimously adopted by the UNSC on 18 December 2015 and was the first resolution focused on a political solution led by Syria, endorsed a

²⁴⁹UN Press Release, "Security Council Fails to Adopt Draft Resolution on Syria That Would Have Threatened Sanctions", SC/10714, 19 July 2012.

²⁵⁰UN Press Release, "Security Council Fails to Adopt Draft Resolution on Syria".

²⁵¹UN Press Release, "Security Council Requires Scheduled Destruction of Syria's Chemical Weapons", SC/11135, 27 September 2013.

²⁵²UNSC, Draft Resolution, S/PV.7180, 22 May 2014.

road map and set a time table for peace talks.²⁵³ Adoption of this resolution was an important step demonstrating that both sides in the UNSC wanted a diplomatic solution process which would be led by Syria.

The fifth veto, which blocked the UNSC, came on 8 October 2016. Russia vetoed the resolution which would have put an end to conflicts in Aleppo and to military aircraft flying over the city.²⁵⁴ Out of the 15 members, 11 voted positively, while China and Angola abstained and Venezuela voted against the draft. Russia claimed that the resolution ignored an “intra-Syrian political process” and exacerbated the humanitarian crisis in Aleppo by not allowing humanitarian convoys past militants in August and September.²⁵⁵

Another veto was cast on the Resolution that was voted on 5 December 2016. Because of the allegations that many people lost their lives as a result of the Assad government’s and Russia’s air strikes in Aleppo, as well as the declaration of Aleppo as “a city without food” by the UN, Spain, Egypt and New Zealand drafted a resolution demanding a ceasefire in Aleppo. While Russia and China along with Venezuela voted against the resolution, Angola abstained.²⁵⁶ Hence, the UNSC was blocked in another case related to the Syrian crisis, and this increased the tension once again. Explaining the Russian veto, Vitaly Churkin argued that such interruptions could be used by the terrorists in the region for reinforcing their ammunition.²⁵⁷ In response to the Russian and Chinese arguments, the UK Ambassador Matthew Rycroft harshly criticized the

²⁵³UNSC, Resolution 2254, S/RES/2254, 18 December 2015.

²⁵⁴Human Rights Council, Resolution on “The current human rights situation in the Syrian Arab Republic in the context of recent events”, S-16/1., 29 April 2011.

²⁵⁵Ministry of Foreign Affairs of the Russian Federation, “Foreign Ministry statement in connection with Russia's veto”, accessed March 6, 2017, http://special.mid.ru/en/web/guest/maps/sy/-/asset_publisher/9fcjSOWMERcf/content/id/2494622.

²⁵⁶UN Press, “Security Council Fails to Adopt Draft Resolution to End Attacks on Aleppo as Two Permanent Members Cast Veto”, SC/12609, accessed March 6, 2017, <https://www.un.org/press/en/2016/sc12609.doc.htm>.

²⁵⁷Reuters, “Russia, China block U.N. demand for seven-day Aleppo truce”, accessed March 7, 2017, <http://www.reuters.com/article/us-mideast-crisis-syria-un-idUSKBN13U2LX?il=0>.

two permanent members for “their long-standing, misplaced faith in a despot who has killed nearly half a million of his own people.”²⁵⁸ On 28 February 2017, China and the Russian Federation again vetoed a draft resolution which mostly condemned any use of toxic chemicals as a weapon in the Syrian Arab Republic,²⁵⁹ and another draft resolution condemning the use of chemical weapons in the Idlib region was vetoed by the Russian Federation on 12 April 2017.²⁶⁰

The fact that the UNSC has not taken any decision under the framework of R2P in the Syrian crisis, which constitutes the highest mass of displacement and refugee flow that the UN has witnessed so far led to comments about the conceptual death of R2P.²⁶¹ Arguably, the absence of a military intervention in Syria does not arise solely from the dysfunction of the decision making process of the R2P norm which depends on the votes of P5; it stems from the more fragile situation of the Syrian case, prejudices against intervention based on the negative effect of the Libyan case, and drawback of Western powers as a controversial element in the region after the Libya operation.²⁶² The primary reason is arguably the gradual transformation of Syria into a conflict zone in which external powers support different factions and struggle to be effective in the region.²⁶³ As Russia and China have brought their concerns about reoccurrence of the abuse of UN authority as in the Libyan case into the forefront, the common arguments against them by the anti-Assad block have been in the direction that Russia intended to evade the movements of a regime change against its long-standing strategic ally in

²⁵⁸Reuters, “Russia, China block U.N. demand for seven-day Aleppo truce”.

²⁵⁹UNSC, Draft Resolution, S/PV.7893, 28 February 2017.

²⁶⁰UNSC, Draft Resolution, S/PV.7922, 12 April 2017.

²⁶¹Justin Morris, “Libya and Syria: R2P and the Spectre of the Swinging Pendulum”, *International Affairs*, 89(5), (2013), pp. 1265–1283.

²⁶²Thakur, “R2P after Libya and Syria”, p. 61.

²⁶³Geraint Alun Hughes, “Syria and the Perils of Proxy Warfare”, *Small Wars & Insurgencies*, 3(99), (2014), pp. 522-538.

the region like the one in the Libya case. These strategic and economic concerns are the reasons behind the ineffectiveness of the UNSC.²⁶⁴

The sectarian divisions between the Saudi Arabia-Qatar block and the Hezbollah-Iran block entangle this civil war in a regional dimension.²⁶⁵ Meanwhile, the possibility of a military operation that would tip the power relations in this extremely volatile region has also been a factor in the consideration of what sort of international response is to be adopted.²⁶⁶ In this vein, R2P's implementation has been a challenging task. Arguably, non-implementation of R2P in the Syrian case does not clearly suggest a failure of the norm as a whole, because the concept still has a place in the discourse of the UN Secretary-General, the Human Rights Council and the Special Advisor to the Secretary-General on the Prevention of Genocide and the Responsibility to Protect.²⁶⁷ Rather, the non-implementation highlights R2P's shortcomings and has created space for debates on whether or not R2P is dead after Syria, as well as discussion on how to proceed with R2P.²⁶⁸ The occurrence of such a large-scale refugee movement also arguably paved the way for debates about the ineffectiveness of the R2P.

²⁶⁴Thakur, "R2P after Libya and Syria", p. 71.

²⁶⁵David Carment and Joe Landry "R2P in Syria Regional Dimensions", in "Into the Eleventh Hour: R2P, Syria and Humanitarianism in Crisis", Robert W. Murray (ed.), E- International Relations (Bristol:UK, 2014), pp. 50-56.

²⁶⁶Ramesh Thakur, "Syria and the Responsibility to Protect", in *Into the Eleventh Hour: R2P, Syria and Humanitarianism in Crisis*, Robert W. Murray (ed.), E- International Relations (Bristol:UK, 2014), pp. 38-44.

²⁶⁷Gözen Ercan, "Debating the Responsibility to Protect", p. 104.

²⁶⁸See Nadir Edul Dalal, "The R2P is dead. Long Live the R2P. Libya, Syria, and the Responsibility to Protect", Law School Student Scholarship. Paper 208, (2013); Ramesh Thakur, "R2P after Libya and Syria: Engaging Emerging Powers", the Washington Quarterly, (2013), pp. 61.76.

4.3. The Syrian Refugee Protection Crisis

The civil war that started with anti-government demonstrations in March 2011, caused more than half of Syria's population of 22,000,000 to leave their homes, and became the greatest humanitarian and refugee crisis since World War II.²⁶⁹ The war has had considerable political, economic and social implications on not only Syria but also the Middle East region and has been continuing for the last six years. According to official figures, nearly 400,000 people lost their lives in Syria by 2016²⁷⁰ and there are 6,500,000 IDPs in Syria, of which 2,800,000 are children.²⁷¹ Moreover, an update from 6 April 2017 says that 5,029,562 Syrians have fled from their country; the number of refugees living in the refugee camps in host countries is 486,019, while 4,443,543 refugees live in urban, peri-urban and rural areas.²⁷²

These refugees do not have enough resources to meet their basic needs and often do not benefit from refugee rights due to the domestic policies in the countries they reside. Also, there is no right recognized by the current refugee regime for IDPs and as of February 2017, 13,500,000 people are in need of humanitarian assistance.²⁷³

The Syrian crisis has mostly affected the neighbouring countries; namely Turkey, Lebanon, Jordan, Iraq and Egypt have been hosting the vast majority of refugees. As of April 2017, with 2,973,980 people of concern, Turkey is the country hosting the

²⁶⁹UNHCR, "Syria Conflict at 5 Years", accessed March 12, 2017, <http://www.unhcr.org/news/press/2016/3/56e6e3249/syria-conflict-5-years-biggest-refugee-displacement-crisis-time-demands.html>.

²⁷⁰Al Jazeera, "Syria death toll", accessed March 15, 2017, <http://www.aljazeera.com/news/2016/04/staffan-de-mistura-400000-killed-syria-civil-war-160423055735629.html>.

²⁷¹UNHCR, "Internally Displaced Persons", accessed March 5, 2017, <http://www.unhcr.org/sy/29-internally-displaced-people.html>.

²⁷²UNHCR, "Syria Regional Refugee Response", accessed March 5, 2017, <http://data.unhcr.org/syrianrefugees/regional.php>.

²⁷³United Nations Office for the Coordination of Humanitarian Affairs (OCHA), "Syrian Arab Republic Figures", accessed March 20, 2017, <http://www.unocha.org/syria>.

largest number of registered refugees.²⁷⁴ According to data from the Republic of Turkey's the Ministry of Interior Directorate General of Migration Management (DGMM), the total number of Syrians under temporary protection staying in and outside of accommodation centres is a total number of 3,020,654.²⁷⁵ From the beginning of the Syrian civil war Turkey has implemented an "Open Door Policy".²⁷⁶ Currently Turkey hosts 256,000 in 26 temporary shelters.²⁷⁷ Since Turkey is utilizing the geographic limitation as a right arising from the 1951 Convention, only those who take refuge in the country as a result of "events occurring in Europe" are legally categorized as refugees.²⁷⁸ Thus, although Syrians who took refuge in Turkey did not initially have any official legal status, the Council of Ministers of the Republic of Turkey established their temporary protection status by a regulation published on 22 October 2014 pursuant to Article 91 of the Foreigners and International Protection Act of 04 April 2013.²⁷⁹ Temporary protection status provides a type of protection to foreigners who were forced to flee from their country, cannot return back, and crossed into Turkish borders, but an individual procedure for their international protection cannot be adjudicated.²⁸⁰ This status enables registered access to fundamental services such as health and education, but people under this status of protection have much

²⁷⁴UNHCR, "Syria Regional Refugee Response- Turkey", accessed March 20, 2017, <https://data.unhcr.org/syrianrefugees/country.php?id=224>.

²⁷⁵Republic of Turkey Ministry of Interior Directorate General of Migration Management, "Temporary Protection", accessed May 25, 2017, http://www.goc.gov.tr/icerik6/temporary-protection_915_1024_4748_icerik.

²⁷⁶Republic of Turkey Ministry of Foreign Affairs, Press Release, accessed March 6, 2017, http://www.mfa.gov.tr/no_-83_-3-april-2016_-press-release-regarding-the-allegations-that-turkey-has-sent-some-syrians-back-to-their-countries-by-force.en.mfa.

²⁷⁷"Open door policy" is used to define the policy of accepting all the people who migrate to a country regardless their nationalities or ethnic origins without implementing any restrictions.

²⁷⁸UNHCR, "Country Profiles- Turkey", accessed March 10, 2017, <http://www.unhcr.ch/world/euro/turkey.htm>.

²⁷⁹National Legislative Bodies / National Authorities, "Temporary Protection Regulation", 22 October 2014.

²⁸⁰Republic of Turkey Ministry of Interior Directorate General of Migration Management, "Türkiye'de Geçici Koruma", accessed May 20, 2017, www.goc.gov.tr/icerik6/turkiye-de-gecici-koruma_0_558_1097_icerik.

more limited rights than refugees. For instance, they need to obtain specific permissions to go to another city or another country, and they face various restrictions in order to obtaining work permits.²⁸¹ In addition, since people who are under temporary protection cannot apply for asylum, it can create secondary movements and can arguably cause instability in the long-term.

According to data from December 2016, Lebanon hosts 1,011,366 refugees.²⁸² However, according to the estimation of the Lebanese government, this number actually exceeds 1,500,000,²⁸³ and this means that Lebanon is hosting the largest number of Syrian refugees in proportion to the number of the native people. Lebanon did not sign the 1951 Convention. Therefore, refugee status cannot be granted to refugees fleeing Syria to Lebanon.²⁸⁴ A large number of Syrians are experiencing problems with their resident visa procedures. Due to the high fees apply to residence permits a large number of Syrians who had entered Lebanon but could not renew their residence permit are residing in the country illegally.²⁸⁵ As a result of their limited legal status they generally face serious problems in accessing services, particularly healthcare.²⁸⁶

According to April 2017 data, Jordan hosts 658,015 Syrians²⁸⁷ who have left their countries after the outbreak of the Syrian crisis in 2011. Jordanian official figures

²⁸¹Refugee Rights Turkey, “Temporary Protection”, accessed May 20, 2017, www.mhd.org.tr/assets/tp-booklet_eng.pdf.

²⁸²UNHCR, “Syria Regional Refugee Response- Lebanon”, accessed March 5, 2017, <https://data.unhcr.org/syrianrefugees/country.php?id=122>.

²⁸³Human Rights Watch, “Lebanon, Events of 2016”, accessed April 3, 2017, www.hrw.org/world-report/2017/country-chapters/lebanon.

²⁸⁴Maja Janmyr, “The Legal Status of Syrian Refugees in Lebanon”, Issam Fares Institute for Public Policy and International Affairs, (2016), p. 10.

²⁸⁵Janmyr, “The Legal Status of Syrian Refugees in Lebanon”, p. 13.

²⁸⁶Norwegian Refugee Council Field Assessment, “The Consequences of Limited Legal Status for Syrian Refugees in Lebanon”, (2014), pp. 5-6.

²⁸⁷UNHCR, “Syria Regional Refugee Response- Jordan”, accessed March 6, 2017, <https://data.unhcr.org/syrianrefugees/country.php?id=107>.

confirm this number. The country, which had already welcomed a very large number of refugees before the Syrian Civil War, has turned into a refugee country. Although Jordan is not a party to the 1951 Convention or its 1967 Protocol, it adheres to the general principle of international law that migrants not be sent back to the place where their lives and freedoms are threatened. Article 21 of the Jordanian Constitution also underlines the “extradition of political refugees” and perceives Syrians as guests rather than refugees.²⁸⁸ Refugees cannot continue to stay within the borders of Jordan without a resident permit, which is generally only valid for a year,²⁸⁹ and this causes a serious problem for the refugees in the region.

Iraq, which is also not a party to the 1951 Convention,²⁹⁰ hosts 236,772 Syrians, most of whom are located in the Kurdish region, in northern Iraq, as well as the cities of Dohuk and Erbil,²⁹¹ according to February 2017 data.²⁹² In its national system, Iraq has adopted two laws regarding the status of refugees, namely the “Political Refugees Law” dated from 1971 and the “Law of the Ministry of Migration and Settlement” dated from 2009. While the latter is more extensive, both have shortcomings in securing the rights of all Syrian immigrants.²⁹³ However, since refugees have been directed more towards the Kurdish region, the Iraqi central government and the Kurdistan region authorities are following different policies regarding refugees. The Kurdish region generally keeps its borders open and follows a relatively more flexible

²⁸⁸George Sadek, “Legal Status of Refugees”, the Law Library of Congress Report, Global Legal Research Center, (2013), p. 5.

²⁸⁹Sadek, “Legal Status of Refugees”, p. 5-6.

²⁹⁰International Labor Organization, “Access to work for Syrian refugees in Jordan: A discussion paper on labour and refugee laws and policies”, (2015), p. 19.

²⁹¹UNHCR, “Syria Regional Refugee Response- Iraq”, accessed March 7, 2017, <http://data.unhcr.org/syrianrefugees/country.php?id=103>.

²⁹²Ali Al Arian, “Syrian refugees cling to stability in Iraq”, *Al Jazeera*, accessed March 5, 2017, <http://www.aljazeera.com/news/middleeast/2014/04/syrian-refugees-cling-safety-iraq-201448102353645313.html>.

²⁹³ORSAM, “Suriye’ye Komşu Ülkelerde Suriyeli Mültecilerin Durumu: Bulgular, Sonuçlar, Öneriler”, Report no: 189, (2014), p. 48.

policy compared to the Iraqi central government.²⁹⁴ As a result, ambiguity in the status of Syrians continues in both regions.

Egypt, according to February 2017 data, hosts around 120,154 Syrian refugees.²⁹⁵ However, government officials argue that this number is over 500,000.²⁹⁶ Egypt is a party to the 1951 Refugee Convention and its 1967 Protocol with reservations on the clauses (namely articles 12(1), 20 and 22(1), 23 and 24) that limit access to public goods and services including personal status, rationing, education and labour legislation.²⁹⁷ In addition, every foreigner in Egypt needs to obtain a residence permit from the Egyptian authorities, and those who are not registered with the Ministry of Interior or who do not have the UNHCR blue refugee card²⁹⁸ are considered illegal, and so face the risk of being arrested.

In contrast to this heavy burden carried by regional countries; the number of Syrian asylum applications to Europe, between April 2011 and October 2016 had been around 884,461, and 456,000 of these were made to Germany.²⁹⁹ Sweden comes second with 109,970 asylum applicants. Germany and Sweden together handle 64 percent of asylum applicants in European countries, while Hungary has 76,000 asylum applications. Austria, the Netherlands, Denmark and Bulgaria happen to receive 22

²⁹⁴ORSAM, “Suriye’ye Komşu Ülkelerde Suriyeli Mültecilerin Durumu”, p. 49.

²⁹⁵UNHCR, “Syria Regional Refugee Response- Egypt”, accessed March 7, 2017, <https://data.unhcr.org/syrianrefugees/country.php?id=8>.

²⁹⁶Adham Youssef, “500,000 Syrian Refugees were received in Egypt: Al Sisi”, *Daily News Egypt*, accessed March 10, 2017, www.dailynewsegyp.com/2015/09/13/500000-syrian-refugees-were-received-in-egypt-al-sisi/.

²⁹⁷UNHCR, State Parties to the 1951 Convention Relating to the Status of Refugees and/or its 1967 Protocol, p. 7.

²⁹⁸With this document UNHCR recognizes the status of a person as a refugee. This card also asserts that the person who holds this card is protected by the government of Egypt and the UNHCR.

²⁹⁹UNHCR, “Syria Regional Refugee Response- Europe”, accessed March 10, 2017, <http://data.unhcr.org/syrianrefugees/asylum.php>.

percent of the pie, with the remaining 14 percent scattered between various other countries.³⁰⁰

It is possible to view the migration of around 320,000 Syrian people to Lebanon in April 2011 as the beginning of migration before it was transformed into a crisis.³⁰¹ The move to regional countries continued in the same month. Turkey, having hosted the vast majority of Syrian asylum seekers, saw the first major flow in June 2011³⁰² and had built five refugee camps by the end of 2011.³⁰³ As the violence in the region continued, the number of people fleeing from Syria reached over 1,500,000 thousand in March 2013.³⁰⁴

As the number of refugees has increased, the host states' facilities have become more limited.³⁰⁵ Particularly with the increase in the number of refugees in the neighbouring countries, host countries have become unable to properly meet the humanitarian needs of refugees by themselves despite support from UN agencies, NGOs and individual states. Millions of refugees in refugee camps or host communities with limited infrastructure find it difficult to meet their basic needs such as shelter, education and

³⁰⁰UNCHR, "Top Countries", accessed March 10, 2017, <http://data.unhcr.org/syrianrefugees/asylum.php>.

³⁰¹UNHCR, "Lebanese quietly welcome tens of thousands of Syrians into their homes", accessed March 10, 2017, <http://www.unhcr.org/news/latest/2013/3/5134cb086/lebanese-quietly-welcome-tens-thousands-syrians-homes.html>.

³⁰²Yacoub Khaled, "Syrian troops near Turkey border, refugees flee", *Reuters*, accessed March 10, 2017, <http://uk.reuters.com/article/uk-syria-idUKTRE75L42820110623>.

³⁰³AFAD, "Syrian Guests in Turkey", (2014), pp.10-11; Liam Stack, "Refugees From Syria Settle in for Long Wait in Turkey", *The New York Times*, accessed March 11, 2017, <http://www.nytimes.com/2011/11/15/world/middleeast/refugees-from-syria-settle-in-for-long-wait-in-turkey.html>.

³⁰⁴Amir Taheri, "Has the Time Come for Military Intervention in Syria?", *American Foreign Policy Interests*, 35(4), (2013), pp. 217–220.

³⁰⁵UNHCR, "Poorer countries host most of the forcibly displaced, report shows", accessed March 7, 2017, <http://www.unhcr.org/news/latest/2017/2/58b001ab4/poorer-countries-host-forcibly-displaced-report-shows.html>.

health.³⁰⁶ In addition, infrastructural problems particular to the host countries have also become more apparent with the refugee influx, such as the issue of water scarcity in Jordan.³⁰⁷ Furthermore, as Lebanon hosts the greatest number of refugees from Syria in proportion to its own population,³⁰⁸ a large portion of Syrian refugees in this country are unable to meet their minimal needs and the majority of them are exposed to safety risks.³⁰⁹ The vast majority of refugees are trying to live under poor socio-economic conditions in the poorest regions of the host countries, and in some places the numbers of refugees are equal to or greater than the number of local people.³¹⁰ Since a majority of these states are either not party to the Convention Relating to Status of Refugees or are a party with geographic limitation, the ambiguity in the legal status of refugees in these countries aggravates serious concerns for their future.

In the struggle that they have taken to escape from a civil war and to meet their basic needs in another country, some Syrians have tried to protect themselves by trying to reach Greece or Italy through dangerous sea routes, forcing the capacity of boats. Many such attempts have resulted in tragedies. In this context, there are certain routes used by human smugglers to reach Europe: Western Mediterranean route through Spain and Portugal; Central Mediterranean route through Libya to Italy; South Eastern Mediterranean route through Turkey to Bulgaria and Greece; and Eastern route through Russia, Moldova, Belarus and Ukraine.³¹¹

³⁰⁶UNHCR, “UNHCR report shows health services for Syrian refugees increasingly overstretched”, accessed March 7, 2017, <http://www.unhcr.org/news/briefing/2013/4/517a58af9/unhcr-report-shows-health-services-syrian-refugees-increasingly-overstretched.html>.

³⁰⁷Mercy Corps, “Water Scarcity and the Syrian Refugee Crisis”, accessed March 10, 2017, <https://www.mercycorps.org/articles/jordan/water-scarcity-and-syrian-refugee-crisis>.

³⁰⁸Deidre McPhilips, “The Tragic Numbers Behind Syria’s Refugees”, *US News*, accessed March 20, 2017, www.usnews.com/news/best-countries/articles/2016-12-19/countries-hosting-the-highest-proportion-of-syrian-refugees.

³⁰⁹UNOCHA, “Lebanon Overview”, accessed May 20, 2017, <https://docs.unocha.org/sites/dms/Syria/Lebanon%20Overview%20May%202016.pdf>.

³¹⁰Tim Midgley and Johan Eldebo, “The Impact of the Syrian Refugee Crisis on Host Communities in Lebanon”, World Vision Lebanon and WVUK Advocacy Report RR-HA-02, (2013), p. 23.

³¹¹ Europol-INTERPOL, “Migrant Smuggling Networks Report”, 2016, p. 6.

In October 2013, a boat heading from Libya to Italy and carrying hundreds of migrants including many Syrians sank near the Italian island of Lampedusa, resulting in 368 refugee deaths.³¹² While many accidents in the ongoing process revealed the severity of the crisis, the image of the lifeless body of Alan Kurdi at the shore of Bodrum, Turkey—a Syrian toddler trying to escape to Greece with his family who died in the crash of September 2015³¹³—became iconic in displaying the tragedy, caused an international outcry, and created solidarity at the international level. Many public international actors and individual private donors actively participated in campaigns related to refugees. However, 2016 data shows that the short-term solidarity and sympathy fell short. According to the UNHCR’s October 2016 data, in the year 2016, over 3,740 people who tried to cross the Mediterranean and reach Europe lost their lives. In 2015 this number was 3,771.³¹⁴ According to Alise Coen, inadequate response to the refugee crisis is a very important indicator of the failure of the R2P.³¹⁵

As the number of refugees crossing the Mediterranean and arriving at the European border has increased, the pressure on European countries has also increased, especially as of 2015.³¹⁶ In particular, the pattern of refugee migration to Italy and Greece on the one hand and Germany and Sweden on the other hand created a huge imbalance in Europe.³¹⁷ At the international level, there is a great imbalance in the sharing of the burden between developed countries, which have undertaken only a small part of the

³¹²BBC News, “Mediterranean ‘a cemetery’ - Maltese PM Muscat”, accessed March 7, 2017, <http://www.bbc.com/news/world-europe-24502279>.

³¹³UN Addressing Large Movements of Refugees and Migrants, “UN refugee agency: 2016 is deadliest year for refugees crossing to Europe via Central Mediterranean”, accessed March 2017, <https://refugeesmigrants.un.org/un-refugee-agency-2016-deadliest-year-refugees-crossing-europe-central-mediterranean>.

³¹⁴UNHCR, “Mediterranean death toll soars, 2016 is deadliest year yet”, accessed March 10, 2017, <http://www.unhcr.org/news/latest/2016/10/580f3e684/mediterranean-death-toll-soars-2016-deadliest-year.html>.

³¹⁵Coen, “R2P, Global Governance, and the Syrian Refugee Crisis”, p. 1053.

³¹⁶BBC News, “Migrant crisis: One million enter Europe in 2015”, accessed March 12, 2017, <http://www.bbc.com/news/world-europe-35158769>.

³¹⁷UNHCR Report, “The Sea Route to Europe: Mediterranean Passage in the Age of Refugees”, (2015).

burden, and developing countries, which are already overburdened. In the period that began in 2015, European countries promised to move 160,000 refugees to safety but they have only accepted less than 10 percent of them,³¹⁸ while some others have implemented restrictive policies justified by security concerns, and even built razor wire fences to control their borders.³¹⁹

The EU tried to reduce the implications of the refugee crisis by conducting a series of agreements and organizing donation programs, especially with the neighbouring countries such as Turkey, Lebanon and Jordan. On 4 February 2016 with the conference for “Supporting Syria in the region” in London, the EU adopted compacts with Jordan and Lebanon aimed at strengthening the economy of these countries so that they could help migrants. There was bilateral assistance of over 80,000,000 USA dollars to fix the negative impact of the Syrian crisis and improve the socio-economic situation of the country while encouraging Lebanon to revise the conditions of Syrians and ease their permanent existence in the country.³²⁰

On the other hand, the EU-Jordan Partnership Priorities Compact is promising 1.9 billion USA dollars in grants, donations, investments and loans to support Jordan’s economy.³²¹ Moreover, the World Bank will provide loans to Jordan between

³¹⁸Daniel Boffey, “European countries have carried out 8% of promised refugee relocations”, accessed April 18, 2017, <https://www.theguardian.com/world/2017/mar/02/european-countries-have-carried-out-8-per-cent-promised-refugee-relocations>.

³¹⁹Sarah Almuhtar, Josh Keller and Derek Watkins, “Closing the Back Door to Europe”, *The New York Times*, accessed March 12, 2017, <https://www.nytimes.com/interactive/2015/09/15/world/europe/migrant-borders-europe.html?hp&action=click&pgtype=Homepage&module=second-column-region®ion=top-news&WT.nav=top-news>.

³²⁰Council of the European Union, Press Releases and Statements, “EU and Lebanon adopt partnership priorities and compact”, accessed March 3, 2017, <http://www.consilium.europa.eu/en/press/press-releases/2016/11/15-eu-lebanon-partnership/>.

³²¹Victoria Kelberer, “The Work Permit Initiative for Syrian Refugees in Jordan: Implications for Policy and Practice”, A Joint Research and Policy Project of the Boston Consortium for Arab Region Studies and the United Nations High Commissioner for Refugees, (2017), p. 11.

100,000,000 and 300,000,000 USA dollars at concessionary rates.³²² In return, Jordan committed to creating 200 thousand jobs for Syrian refugees in areas such as construction, agriculture, and manufacturing. While the promising business opportunities seem important to Syrians, many Syrians do not even have a passport in order to apply for work permits, and the sector-based quota system is a serious obstacle in front of them; although the project promises hope for years to come, today, it displays an image far from the goal in Jordan.³²³

Another EU initiative regarding Syrian refugees has been the EU-Turkey Statement, which has an uncertain future. According to the statement, Turkey will accept all irregular migrants who fled from its own territory to the EU and are determined not to have asylum rights; the EU countries will accept one Syrian asylum seeker for every Syrian accepted by Turkey. Greece will be supported for the rapid assessment of asylum applications; 3 billion Euros of aid to Turkey will be paid 6 billion Euros by the year 2018, and this agreement will allow Turkish citizens to travel without visas to the EU in exchange for the fulfilment of certain conditions.³²⁴

This agreement has been subjected to much criticism. For instance, the Human Rights Watch finds the content of this agreement morally and legally unacceptable; it argues that what Europe needs to do is to consider the asylum claims of the Syrians and not send them back to Turkey on the grounds that Turkey is a “safe third country” or “first country of asylum”. It also emphasizes that the Syrians in Turkey are under “temporary protection”,³²⁵ so they cannot benefit from refugee rights. As they stated, the limited rights granted by temporary protection status compared to refugee rights creates an

³²²World Bank, “Partnership Framework for Hashemite Kingdom of Jordan”, accessed March 17, 2017, <http://documents.worldbank.org/curated/en/528081467900685594/0%20pdf/102746-CAS-R2016-0124-OUO-9-Box396270B.pdf>.

³²³Kelberer, “The Work Permit Initiative for Syrian Refugees in Jordan”, pp. 20-24.

³²⁴Council of the European Union, Press Releases, “EU-Turkey statement”, accessed March 13, 2017, <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>.

³²⁵Human Rights Watch, “EU: Don’t Send Syrians Back to Turkey”, accessed March 13, 2017, <https://www.hrw.org/news/2016/06/20/eu-dont-send-syrians-back-turkey>.

uncertainty for the long term and remains as a problem that demands a permanent solution.

In light of the above analysis, Europe's contribution in terms of sharing the international burden and responsibility remains arguably weak. The agreements, partnerships and compacts created for the purpose of sharing the burden through economic aid have been criticized as it is argued that economic support is not enough for sharing the responsibility, and that such an approach does not follow the requirements of the current refugee Convention. There are still millions of Syrians waiting to access humanitarian conditions with resettlement. The so-far-unsatisfactory process of burden sharing reveals the failures of the existing refugee regime. The road maps and policies to overcome this crisis could not provide a sustainable solution, and what is needed at this point is a system that will form the basis for a shared responsibility to protect refugees.

4.4. Conclusion

The anti-government protests which started in 2011 as a part of the Arab uprisings turned into a civil war in Syria. This ongoing war allowed radical Islamist groups to become active and resulted in various organizations and groups ruling over different parts of the country. Although, as the elements of terrorism in the region reached an international level, an international consensus has emerged to remove these elements and various operations have been organized by different states, no decision has yet been taken on the basis of R2P regarding the protection of civilians in the region.

The increase in the number of IDPs is an early warning sign for atrocity crimes and the beginning of a mass refugee flow from the country. Thus, the failure of the international community in fulfilling their responsibilities to protect people at risk of atrocities crimes contributed to the long-term environment of chaos and instability in the country and has caused the largest refugee movement seen since World War II.

A large number of people, who were displaced, fled to the neighbouring countries but the protection afforded by the existing refugee law in these regions was limited and a considerable part of the hosting countries are not parties to the 1951 Convention. For this reason, the refugees who fled to these countries have had difficulties in accessing the rights and services and these inadequacies have led to secondary movements of refugees from one country to another, and even to Europe through smuggling networks.

These mass movements of refugees caused social, economic and political panic in European countries and since they promote smuggler organized crime networks these movements have also created regional security concerns. The insufficient response of the European countries led to a great imbalance in the burden sharing between developed and developing countries which are already overburdened. The steps and policies taken by the European countries, especially by the EU, for sharing the burden of neighbouring countries are mostly in the direction of economic aid to these countries, and therefore they do not offer a solution in the long term. As a result, the views that see the policies of the EU as a violation of refugee rights have emerged. On the other hand, the accidents that have been occurring in the seas deepened the dimensions of this protection crisis.

For this reason, the necessity of a supporting element for the existing refugee law became prominent in order to provide primarily protection to refugees and then ensuring their access to adequate socio-economic facilities in the hosting countries. The Syrian case, in this context, points to the necessity of a supporting element for the protection of refugees. In this context, R2P will be presented as an element to support the role of international community in the current protection crisis in the next Chapter. It can invoke the states to fulfil their responsibilities to these populations and can be a promoting element for the international community in encouraging states to protect the refugees and assuming their responsibilities in situations of manifest failure.

CHAPTER 5

THE IMPLEMENTATION OF R2P AND MASS MOVEMENT OF POPULATIONS IN THE CASES OF LIBYA AND SYRIA: A COMPARISON

5.1. An Assessment of the Implementation of R2P in the Cases of Libya and Syria

In terms of the nature of the alleged crimes in the humanitarian crises in Libya and Syria, both cases have unarguably qualified as R2P situations requiring the international community to uphold its responsibilities pertaining to Paragraph 139 of the World Summit Outcome Document. While the decision authorising action in Libya at the early stages of the conflict was perceived as a timely and decisive response of the international community, the NATO-led military intervention became a source of severe criticism both in scholarly and political debates. Moving beyond the limits of the UN-sanctioning, the use of disproportionate force against the weakened Libyan government, seeking regime change, and the collateral damage caused by the air operations were among the main reasons for criticism.³²⁶ The negative implications of the military action in Libya affected the political discussions regarding the Syrian civil war, and paved the way for Russia and China to veto draft resolutions asking for adopting different sorts of peaceful and/or coercive measures. Although they are two separate cases that emerged as a result of the Arab uprisings at the same time period, the Syrian case has not been discussed independently of the Libyan case. Such intertwined understanding that owed to the states, draw attention to the negative aspects of the international response to the case of Libya.³²⁷ Before discussing why

³²⁶Gareth Evans, “The Responsibility to Protect After Libya and Syria”, *Annual Castan Centre for Human Rights Law Conference*, accessed May 25, 2017, <http://www.gevans.org/speeches/speech476.html>.

³²⁷For instance, the Russian Permanent Representative, Vitaly Churkin underlined that the Syrian case cannot be considered apart from Libya (UN SCOR, 66th session, 6627th meeting, UN Doc S/PV.6627, 4 October 2011).

R2P could not be implemented in the case of Syria at a time when the international community has taken two milestone decisions in the cases of Libya and Côte D'Ivoire, it would help to look at the way the two cases evolved.

First of all, the situations in Libya and Syria emerged consecutively; anti-government demonstrations in Syria started in the month following the events in Libya.³²⁸ Gaddafi responded to the spreading protests with provocative hate speeches, whereas Assad initially promised reforms,³²⁹ which arguably was the reason why the peaceful protests in Syria lasted longer than it was in Libya. However, as the uprisings gradually spread throughout Syria, the mild response of the government transformed into a violent one resulting with the death of civilians in the clashes between the government forces and the protestors. Furthermore, the number of people who lost their lives before the intervention in Libya, according to the estimates expressed by the Secretary-General, was more than a thousand,³³⁰ on the other hand, in Syria the death toll surpassed a thousand in the second month of the uprisings.³³¹

Another point of contrast can be observed in the military power of the two states. At the initial phases of the conflict, the Syrian government had 325,000 regular forces and more than 100,000 paramilitaries. The government forces were also stronger than the opposition groups in terms of chemical and biological weapons they had in their stocks.³³² However, prior to international intervention, the total number of the Libyan military personnel was estimated around 76,000,³³³ hence rendering Gaddafi's army

³²⁸See Ian Black and Owen Bowcott, "Libya Protests: Massacres reported as Gaddafi imposes news blackout", *The Guardian*, accessed April 22, 2017, <https://www.theguardian.com/world/2011/feb/18/libya-protests-massacres-reported>.

³²⁹Zifcak, "The Responsibility to Protect after Libya and Syria", p.15.

³³⁰UN Secretary-General's remarks to Security Council meeting on peace and security in Africa, 25 February 2011.

³³¹Al Jazeera, "Syria Death Toll Surpasses 1,000", accessed May 22, 2017, <http://www.aljazeera.com/news/middleeast/2011/05/2011524182251952727.html>.

³³²Aram Nerguizian and Anthony Cordesman, "Instability in Syria: Asserting the Risks of Military Intervention", *Center for Strategic & International Studies*, (2011), p. 17.

³³³International Institute for Strategic Studies (IISS), Report on Military Balance, (2011), p. 7.

relatively weaker compared to that of Assad in terms of military forces and armaments.³³⁴

The prevalence of sectarian breakdowns already existing in Syria, and the role of regional actors such as Saudi Arabia, Qatar and Iran, as well as non-state actors like Hezbollah in this sectarian confrontation became one of the influential factors complicating a decision on the part of the UNSC favouring a military intervention in the Syrian case. Hence, these sectarian dynamics stand out as another point of contrast differentiating the Syrian case from that of Libya, since the ethnic and religious divisions in Libya did not fuel political clashes as it did in Syria.³³⁵ A potential military intervention in Syria could have triggered these divisions, and lead to a response by Iran, which has been the most important strategic partner of Syria in the neighbourhood. Furthermore, the volatile political structure of the Middle East could have consequences in the case of an instability caused by an intervention in Syria. The actors in the region, who have already been politically divided on sectarian grounds, could have become further polarized by a possible military intervention, and the post-intervention instability in Syria could have created an opportunity for the anti-Assad wing to pursue their ambitions in the region. However, none of these factors were in question in the Libyan case. There was no actor or a long-term ally of Libya that directly opposed to an intervention in Libya. Moreover, while regional organizations such as the Arab League encouraged an immediate international response in the case of Libya,³³⁶ in the Syrian case, the Arab League placed political solution options in its agenda rather than a military response.³³⁷

The most important practical reason as to why the UNSC could not adopt the measure of military intervention within the framework of R2P or Chapter VII of the UN Charter

³³⁴Adams, “Libya and the Responsibility to Protect”, p. 9.

³³⁵Nerguizian and Cordesman, “Instability in Syria”, p. 16.

³³⁶Adams, “Libya and the Responsibility to Protect”, p. 7.

³³⁷UN News Centre, “Political solution for Syria crisis still possible, says UN-Arab League envoy”, accessed May 3, 2017, <http://www.un.org/apps/news/story.asp?NewsID=43718#.WRKphIjyIU>.

is arguably the fact that Russia and China has refused any sort of coercive action against the Syrian state. In the case of Libya, the regime of Gaddafi was not supported by any of the P5, and hence, neither Russia nor China blocked the UNSC resolutions. Instead, when the Council decided to authorise the use of force, although they did not support the idea to intervene in Libya, they abstained. On the other hand, the Assad regime has had (and continues to have) close ties with Moscow. Russia has been the basic military supplier of Syria for years; meanwhile its last naval base in the Mediterranean is in Tartus, Syria.³³⁸ In this regard, any action to overthrow the Assad regime works against the strategic interests of Russia in the region.

Since the UNSC is the only authority that can sanction a military operation within the framework of R2P against a state without the consent of that state, because of the use of veto by Russia alone or together with China, it has not yet been able to adopt any decision for timely or decisive action. It should also be noted that explaining negative vote on various resolutions, both Russia and China have referred to the importance of the Syrian state's sovereignty, territorial integrity and political independence, and expressed their concerns about the repetition of the violations that took place during the NATO intervention in Libya.³³⁹

While the lack of a timely or decisive R2P action in the case of Syria has led to criticisms that R2P was dysfunctional in the decision-making process,³⁴⁰ arguably it was the UNSC that was rendered dysfunctional with the P5 vetoes. In other words, in the absence of a military intervention in Syria, geopolitical complexities have not been the only source of inaction. The decision-making mechanism of R2P being dependent on the UNSC on the one side, and on the other, the fragmentation and radicalization of the Syrian opposition, the international and regional actors' active role in supporting

³³⁸Adams, "Libya and the Responsibility to Protect", p. 16.

³³⁹UNSC, 7785th mtg, S/PV.7785, 8 October 2016.

³⁴⁰Gözen Ercan, "Debating the Responsibility to Protect", p. 126

the different factions in the region as a result of their strategic interests, have prevented the realisation of a timely and decisive international reaction under the Pillar 3 of R2P.

While it is true that a UN sanctioned response could not be developed to date, in both cases, it is also questionable what has been achieved under Pillar 2 of R2P, or through the non-coercive means of Pillar 3. As the situations in Libya and Syria have set the scene for two major refugee protection crises that occurred in the process of Arab uprisings,³⁴¹ it is important to compare and contrast the two cases in relation to the mass movement of refugees.

5.2. Refugees within the R2P Framework in Libya and Syria Cases

The civil wars that began during the Arab uprisings caused mass movement of refugees and asylum seekers in the region. The military intervention in Libya was far from bringing stability to the region; hence it did not end the movements of refugees and asylum seekers. Meanwhile, growing violence in Syria created a mass movement of refugees, as well as asylum seekers. While the military intervention did not bring lasting peace to Libya, it is still arguable that an early international response might have limited the number of Libyan refugees vis-à-vis those from Syria.³⁴²

When analysing the two cases, it would be helpful to examine the refugee movements in Libya in two phases, which are during and after the military intervention. Because of a lack of post-intervention rebuilding process in Libya and inability to bring stability to the country, movement of peoples continued in the mode of secondary migrations from the region. The first phase started with serious mass movements from the region during the civil war process in 2011, and according to the numbers of IOM almost

³⁴¹Philippe Fargues and Christine Fandrich, "Migration after the Arab Spring", MPC Research Report, (2012), p. 1.

³⁴²William Wheeler and Ayman Oghanna, "After Liberation, Nowhere to Run", accessed May 5, 2017, <http://www.nytimes.com/2011/10/30/opinion/sunday/libyas-forgotten-refugees.html>.

800,000 people fled from Libya by November 2011.³⁴³ People sought shelter especially in the neighbouring countries such as Tunisia, Egypt, Chad, Niger, Sudan, as well as Malta and Italy. These movements included not only Libyan migrants, but also Arab and sub-Saharan migrants and *de facto* refugees living in the region.³⁴⁴ Given the ongoing turmoil in the Middle East, considering Europe a safer route, most people preferred Italy and Malta because of their proximity to the regions of conflict. As Minister of the Interior of one of the countries affected the most from the mass movement of refugees, in March 2011 Roberto Maroni expressed their concern by saying that the refugee movements from Libya would bring Italy “to its knees”.³⁴⁵ Prime Minister Berlusconi also described these mass movements of refugees to the island of Lampedusa as a “human tsunami”.³⁴⁶ The Maltese economy has also suffered a great deal from these movements and the government has called on the EU to take a step to share the burden.³⁴⁷ France and Italy offered to close borders as a precaution against these movements.³⁴⁸ The EU took steps not to share the burden but to provide security of their borders. FRONTEX, European Border and Coast Guard Agency, began joint operations to monitor the sea crossing activities in February 2011.³⁴⁹ On the other hand, Italy signed a bilateral cooperation accord with Libya to prevent irregular migrations.³⁵⁰ Gaddafi used these anxieties as a political trump card by saying

³⁴³IOM, “Migration in Egypt, Morocco and Tunisia”, (2014), p. 19.

³⁴⁴Bialasiewicz, “Off-shoring and Out-sourcing”, p. 853.

³⁴⁵Nick Squires, “Italy fears up to 1.5 Million North African Migrants”, *The Telegraph*, accessed May 25, 2017, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8345540/Italy-fears-up-to-1.5-million-North-African-migrants.html>.

³⁴⁶BBC News, “Berlusconi: 'Human tsunami' arriving in Lampedusa”, accessed May 15, 2017, <http://www.bbc.com/news/av/world-europe-13027272/berlusconi-human-tsunami-arriving-in-lampedusa>.

³⁴⁷Rebecca Bundhun, “Maltese Economy Hit by Refugee Crisis”, *The National*, accessed May 15, 2017, <http://www.thenational.ae/business/travel-tourism/maltese-economy-hit-by-refugee-crisis>.

³⁴⁸Ian Traynor and John Hooper, “France and Italy in call to close EU borders in wake of Arab protests”, accessed May 13, 2017, <https://www.theguardian.com/world/2011/apr/26/eu-borders-arab-protests>.

³⁴⁹Bialasiewicz, “Off-shoring and Our-sourcing the Borders of Europe”, p. 845.

³⁵⁰Bialasiewicz, “Off-shoring and Our-sourcing”, p. 859.

that thousands could have invaded Europe and there was no one who would stop these movements if he fell.³⁵¹ However, soon after, the regime was overthrown as a result of the military intervention. With the beginning of this new era in Libya, a considerable amount of people who fled from the country returned back.³⁵² According to data of IOM, the number of people who returned back to Libya was 249,298.³⁵³

In the post-intervention period, despite an expectance of stability, the divisions between political factions and tribes deepened in Libya. The political process left its place to conflict and as the conflict heightened the second phase of the civil war began. After 2014, in the face of continuing instability, another wave of mass movement of peoples began. While for Syrian refugees and asylum seekers Libya itself was not a preferable target to reach because of its domestic situation, its location turned it into a transit country and a gateway to Europe. In the absence of a powerful central authority in Libya, smuggling and human trafficking activities increased. This was coupled with the high number of sea accidents that were occurring during the attempts of refugees to reach to European shores by the sea.³⁵⁴

On the other hand, in the case of the Syrian civil war, since the early days, large numbers of people began moving from the region to the neighbouring countries. Europe became more critical about the impasse that the country entered into from day to day, and the mass movement of refugees from Syria became an international concern that needed to be overcome. Although there was an obvious need for a timely and decisive R2P action by the international community, it did not happen. Besides the ongoing war between the government forces and the opposition groups, the violent

³⁵¹Padraic Flanagan, “Colonel Gaddafi: Immigrants will invade Europe”, *Sunday Express*, accessed June 1, 2017, <http://www.express.co.uk/news/world/233238/Colonel-Gaddafi-Immigrants-will-invade-Europe>.

³⁵²Bialasiewicz, “Off-shoring and Our-sourcing”, p. 853.

³⁵³IOM, Global DTM, IDP and Returnee Report Round 10, April- May 2017, accessed June 20, 2017, <http://www.globaldtm.info/libya/>.

³⁵⁴UNHCR, “Update on two Shipwrecks in the Central Mediterranean”, accessed May 7, 2017, <http://www.unhcr.org/news/briefing/2017/5/591178294/update-shipwrecks-central-mediterranean.html>.

actions of radical Islamist factions and terrorist activities led to the largest refugee movement that the world faced after the World War II. As the UN Secretary-General Antonio Guterres said, the Syrian refugee crisis has been “the most dramatic humanitarian crisis the world has faced”.³⁵⁵ Millions of people fled from Syria, while millions of them were internally displaced. Given the scale of the conflict and the multiplicity of the parties committing atrocity crimes, the number of people fleeing from the conflict zone became much larger vis-à-vis Libya.

As Gallagher posits, mass movement of IDPs and refugees is an important sign that a state cannot fulfil its responsibility to ensure the safety and welfare of its population.³⁵⁶ Therefore, in the Syrian case it can be observed that the Syrian authorities have failed their Pillar 1 responsibility to protect the Syrian population. Given the clear failure of the Syrian state to fulfil such responsibility, it has also become clear that the international community’s responsibility to protect the Syrian population has already arisen.

In the first instance, the neighbouring countries—which have their own domestic economic and social problems—have accepted the largest number of refugees, and hence assuming the largest portion of the burden. Unlike in Libya, as the conflict in Syria has been continuing without losing haste, currently there does not seem to be a possibility for the refugees from Syria to return to their country to live safely. However, with the returnees to the country in the post-intervention period in Libya, the dimensions of the protection crisis remained more limited than it has been for the people of Syria.

Given the inadequate physical and social conditions, as well as the ambiguities regarding the status of the Syrian refugees in the hosting countries, many Syrians have

³⁵⁵UNHCR, “Remarks by António Guterres, United Nations High Commissioner for Refugees. Conference On The Syrian Refugee Situation – Supporting Stability in The Region, Berlin”, accessed May 6, 2017, <http://www.unhcr.org/admin/hcspeeches/544fb4189/remarks-antonio-guterres-united-nations-high-commissioner-refugees-conference.html>.

³⁵⁶Adrian Gallagher, “Syria and Indicators of ‘Manifest Failing’”, *The International Journal of Human Rights*, 18(1), (2014), p.9.

sought to reach Europe by using the sea route. Unlike the neighbouring countries in the Middle East, the inadequate responses of the EU, as well as individual European countries have resulted in a protection crisis. Refugee policies of European countries, as well as the EU, have been regarded as measures to keep the refugees outside Europe's borders, while providing economic aid to those countries hosting the refugees.³⁵⁷

When the two cases are evaluated together it is possible to see the necessity of a proper implementation R2P by the international community. In the Libyan case, it can be argued that the decision to intervene militarily seems have limited the refugee movement, and allowed for those who left the country in the early days of the humanitarian crises to return to the country. Nevertheless, the lack of responsible rebuilding has diminished the possible positive impact of early action.

In the case of Syria, given the considerable impact of the political dynamics of the region such as sectarian divisions, as well as the Syrian government's close ties with Russia, no R2P action, comprising either of coercive or peaceful measures, could have been possible. As more and more in the civilian population became the target of attacks by various groups in the Syrian conflict, people were not internally displaced in large numbers, but also there began mass movement of refugees and asylum seekers. Such mass movement had regional and global impact. The civilian casualties have increased gradually and a scattered population has emerged. The number of refugees seeking for protection has reached ungovernable levels, and the hosting countries have been encountering problems in providing the basic needs of refugees such as housing, access to health and education.

In comparison to the case of Libya, the protection crisis regarding Syrian refugees has continued at much higher levels. Within the framework of R2P, it can thus be argued the lack of a preventive or timely action through the use of any of the methods available

³⁵⁷Although German Chancellor Angela Merkel took initiative and guaranteed adoption of one million refugees by 2015, this commitment has not yet actualised. See https://www.washingtonpost.com/news/worldviews/wp/2016/09/30/germany-said-it-took-in-more-than-1-million-refugees-last-year-but-it-didnt/?utm_term=.311952e102b3.

in the toolkit of R2P has led to the rapid and serious escalation of the protection crisis in Syria. On the other hand, in case of Libya, while the military intervention arguably had some impact, the lack of a proper rebuilding process did render the process of transformation from civil war into peace incomplete. As noted previously, the ongoing internal turmoil in Libya is also affected by the Syrian refugee movements, as Libya is on the route to Europe.³⁵⁸ Thus, the cases of Syria and Libya, which have been the subject of comparison in terms of the reactions of the international community, once again began to be mentioned on the same agenda but this time Libya has been the side facing the results of the Syrian refugee crisis.

Though neither the case of Libya nor that of Syria can be presented as successful R2P implementations, the complete absence of an international response in humanitarian terms in the latter showcases the negative consequences in a clear manner. In this vein, this thesis argues that placing the protection of refugees also within the framework of R2P, without altering the existing legal mechanisms, would allow for the international community, to fulfil its responsibility towards vulnerable populations without resorting coercive means, even in cases of the UNSC deadlock.

Pillar 1 of R2P establishes that states are responsible for protecting their populations within their borders without looking for the condition of citizenship, as it was underlined. It is an indisputable fact that the Syrian state cannot fulfil this responsibility; for this reason, in Syria, everyone, under the danger of atrocity crimes, is under the responsibility of the international community. Therefore, Syrian refugees who have escaped from their countries and entered within the borders of another country are included within the scope of the receiving states' responsibility to protect. Former Special Adviser to the UN Secretary-General on the Responsibility to Protect,

³⁵⁸Cetta Mainwaring, "In the Face of Revolution: the Libyan Civil War and Migration Politics in Southern Europe" in Stephen Calleya, Derek Lutterbeck, Monika Wohlfeld, and Omar Grech, eds., *The EU and Political Change in Neighbouring Regions: Lessons for EU's Interaction with the Southern Mediterranean*, (Malta: University of Malta Press, 2012). pp. 431-451.

Jennifer Welsh supports this argument by expressing that Jordan is fulfilling its responsibility to protect by accepting Syrian refugees.³⁵⁹

According to Pillar 2 of R2P, the international community should encourage and assist this individual state in fulfilling this responsibility. In this regard, it is important to note the shortages of capacity of the hosting states, especially Syria's neighbouring countries—Lebanon, Jordan, Iraq, Egypt, and Turkey—which are the ones most affected by the mass refugee movement as they have expressed their concerns about overcoming the effects of the crisis and their need for international support in various forms.³⁶⁰ Therefore, the financial support of the international community to improve the living conditions of the refugees in these countries can be accepted as a responsibility under Pillar 2.

On the other hand, when it comes to Pillar 3 of R2P, the mass refugee flows from Libya, and especially Syria, reveals the manifest failure of these countries in protecting their populations, as well as the international community as the people are still facing the risk of atrocity crimes. As stated in the first chapter, according to Pillar 3 of R2P, the international community is held responsible in the situations that an individual state fails to protect its population and should take a “non-coercive action” in accordance with Chapters VI and VIII of the UN Charter. Pillar 3 does not specify territorial qualifiers or a time limitation for these measures. Therefore, the international community has the responsibility to protect the Syrian refugees who have fled from their country.

These responsibilities under Pillar 3 are also valid for the third countries to which the Syrians have fled. Financial assistance to the hosting countries is not always sufficient in terms of the fulfilment of the responsibility to protect; there are countries which are failing or reluctant to protect the refugees because of their own internal conditions or lack of resources. For example, the already existing sectarian divisions in Lebanon are

³⁵⁹Jennifer Welsh, “Fortress Europe and the Responsibility to Protect: Framing the Issue”, European Union Institute Forum, 17-18 November 2014, p. 3.

³⁶⁰Achiame, “Syria, Cost-Sharing”, p. 725.

becoming even more critical with the Syrian refugees' arrival to the region, and there is a risk of atrocity crimes against these populations as the long-term divisions become even more acute.³⁶¹

Looking at the situation specific to the Libyan case, according to Amnesty International, since the ongoing conflicts of opposing factions and the presence of the IS in the country, the region has turned into an environment where refugees and asylum seekers cannot be protected properly,³⁶² so it is clear that Libya, which is experiencing its second phase of civil war after 2011,³⁶³ cannot fulfil its responsibility to protect its populations including refugees most of whom are from Syria.³⁶⁴ Since Libya is not a party to the 1951 Convention, refugees living in the territory of this country do not have the rights arising from refugee laws.³⁶⁵ On the other hand, as a result of the turmoil and instability in the country, the number of people who lost their lives in the sea while trying to reach Europe by boats from Libya is another important indicator that Libya cannot fulfil its responsibility to protect. With the EU's desire to use Libya as a gatekeeper, the Libyan Coast Guard Personnel began to pursue boats of smugglers at the sea, however, there are widespread allegations that many refugees escaping from Libya were ill-treated by them, were arrested and put in detention centres where the refugees were subjected to torture and abuses.³⁶⁶ Some of the refugees have supported these claims and the idea that Libya is not a suitable place for refugees, by saying that

³⁶¹Achiume, "Syria, Cost-Sharing", p.700.

³⁶²Amnesty International, "Annual Report: Libya", accessed May 6, 2017, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/libya/report-libya/>.

³⁶³Chris Stephen, "Five Years after Gaddafi, Libya Torn By Civil War And Battles With Isis", *The Guardian*, accessed May 7, 2017, <https://www.theguardian.com/world/2016/feb/16/libya-gaddafi-arab-spring-civil-war-islamic-state>.

³⁶⁴UNHCR, "Global Focus: Libya", accessed May 10, 2017, http://reporting.unhcr.org/node/12003#_ga=2.249011655.1978568193.1496543980-977058824.1484999573.

³⁶⁵Bialasiewicz, "Off-shoring and out-sourcing the borders of Europe", p. 854.

³⁶⁶Matteo de Bellis, "The human cost of European hypocrisy on Libya", accessed May 3, 2017, <https://www.amnesty.org/en/latest/news/2017/03/the-human-cost-of-european-hypocrisy-on-libya/>.

they would prefer to die in the sea rather than to return to Libya.³⁶⁷ In addition, asylum seekers from Libya stated that their main objective is to be protected and they cannot find this protection in Libya, so they preferred the European route.³⁶⁸ Therefore, it is clear that Libya cannot fulfil its responsibility to protect which stems from Pillar 1 of R2P and this responsibility should be borne by the international community.

In order to determine under which pillar the international community should react to the situation in order to protect refugees in neighbouring countries, the severity of crises in these countries should be taken into consideration and capacity shortages should be classified. Thus, the cases where financial support for essential services under Pillar 2 can be sufficient and the circumstances under which the responsibility of the international community can be fully implemented under Pillar 3 can be distinguished. In the current situation, since it is expected that the crisis created by Syrian refugees for neighbouring countries will continue for a while, the financial support provided to hosting states under Pillar 2 need to go beyond short-term solutions and should be revised under an institutional framework.³⁶⁹ Thus, by placing refugees within the pillars of R2P, a conceptual framework will be introduced to invoke better refugee protection.

EU policies and attitudes towards refugees seeking to reach Europe by sea can be considered a violation of the principle of *non-refoulement* by many circles. The refusal of people seeking refuge in European countries also raises the question of the fulfilment of international community's responsibility to protect, because, when these people are asked to return, they also face the risk of persecution and/or losing their lives on the way back. It should be noted that in this thesis R2P is not proposed as a principle to replace the existing refugee law. In an environment where xenophobia is growing and asylum requests are potentially perceived in a negative way, R2P as a

³⁶⁷Natasha Ghoneim, "Refugees: Better To 'Die At Sea' Than Return to Libya", accessed May 3, 2017, <http://www.aljazeera.com/blogs/europe/2016/07/refugees-die-sea-return-libya-160718165132671.html>.

³⁶⁸Arezo Malakooti, "Mixed Migration: Libya at the Crossroads", Altai Consulting Report, p. 110.

³⁶⁹Achieme, "Syria, Cost-Sharing", p. 734.

unanimously accepted principle is of vital importance in order to create an institutional framework for cooperation for all states, including states not party to the 1951 Convention and its 1967 Protocol. Therefore, it is presented as a step towards increasing consciousness about the obligations arising from the existing refugee law.

Moreover, after the crises of Libya and Syria, R2P's utility and functions have been questioned since the international community has failed in its responsibility to protect the populations of the two countries.³⁷⁰ In this vein, in terms of discussing the way forward for R2P, the clarification of the scope of the international community's responsibilities would help R2P's normative evolution.

5.3. The Responsibility to Protect Refugees: A Non-Coercive Way to Protect Targeted Populations

Despite the fact that R2P was unanimously accepted under the auspices of the UN, the principle continued to suffer from the prejudice of the “old neo-interventionist wine in a new bottle”³⁷¹ due to its military intervention component. The Libyan intervention rekindled the negative debates about R2P, while the Syrian crisis led to comments that Pillar 3 of the norm is “conceptually weak and politically divisive”.³⁷² Hence, as Gareth Evans suggests, new methods should be produced to keep the protection objective “at the heart of response”.³⁷³

Demands to improve R2P in order to clarify its boundaries and to prevent its abuse have been increasing in number, especially after the military intervention in Libya.

³⁷⁰Jason Ralph and James Souter, “Introduction: The Responsibility to Protect and the Refugee Protection Regime”, accessed May 4, 2017, <https://www.ethicsandinternationalaffairs.org/2017/introduction-rtop-refugee-protection-regime/>.

³⁷¹Gareth Evans, “Protecting Civilians Responsibly”, accessed May 2, 2017, <https://www.project-syndicate.org/commentary/gareth-evanson-moves-by-china-and-other-brics-countries-to-embrace-humanitarian-intervention-Protecting-Civilians-Responsibly>.

³⁷²Garwood-Gowers, “The Responsibility to Protect and the Arab Spring”, p. 614.

³⁷³Evans, “Protecting Civilians Responsibly”.

The aims of RwP (proposed by Brazil)³⁷⁴ and Responsible Protection (proposed by China)³⁷⁵ reflect only few of the efforts to prevent R2P's abuse rather than abandoning the principle, which draw attention to the necessity of asserting new mechanisms for applying use of force in a controlled manner. As Ramesh Thakur points out, in order to legitimise the authorisation of international military intervention in the post-Libyan period, various criteria are needed.³⁷⁶

A fundamental issue that remains problematic in states' approach to R2P is the perception of Pillar 3 as a mechanism that is limited to the use of military force. Such misperception makes R2P's implementation vulnerable to political obstacles. Therefore, in general it is important to underline the peaceful measures that can be adopted under Pillar 3. Accordingly, the recognition of the responsibility to protect refugees and asylum seekers in the context of the peaceful measures of R2P is also considered to be an important step in the protection of populations, which is the main objective of R2P.

Among the three pillars of R2P, Pillar 3 is the most controversial one since it is associated with the coercive measures and specifically the use of force, as mentioned above but this is a misjudgement. Pillar 3 of R2P basically emphasises the use of diplomatic, humanitarian and other peaceful means to protect populations in a way consistent with Chapter VI and VIII of the UN Charter in the first place. This aspect of Pillar 3 has been overlooked and coercive elements were emphasized, although the UN Secretary-General's reports on R2P often mention peaceful measures, among others while prioritising prevention over reaction.³⁷⁷ In the second part of Pillar 3, only when the peaceful measures prove to be inadequate, it is mentioned that the

³⁷⁴See Chapter 2.

³⁷⁵Responsible Protection is a concept that offers protection of innocent people as the primary target and emphasizes providing this protection primarily through diplomatic efforts. The concept also proposes that protectors are also responsible for the post-intervention and post-protection phases of a country.

³⁷⁶Thakur, "R2P after Libya and Syria", p. 63.

³⁷⁷Bellamy, "The First Response: Peaceful Means in the Third Pillar", p. 7.

international community may take the decision of “timely and decisive action” through the use of force, which is to be authorised by the UNSC.³⁷⁸ So, the use of force should only be put into practice when the international community fails to peacefully intervene.³⁷⁹ Consequently, the necessity of application of peaceful measures in the first phase is underlined but no limit or duration has been specified for these measures. So, these measures must continue as long as the populations—whether they remain within the borders of their country or seek refuge in other countries—are in need of protection of the international community.³⁸⁰

Various peaceful measures can be implemented to protect populations within this framework. According to Bellamy, the adopted measures are to prevent and persuade perpetrators not to perform atrocity crimes, besides providing shelter to vulnerable populations and protecting them from harm.³⁸¹ The protection of refugees and sharing the burden are perhaps the most straightforward peaceful measures for states to fulfil their responsibility to protect without being blocked by a UNSC deadlock. Such consciousness may also help to prevent the violations of the *non-refoulement* principle by states on a political basis. Moreover, under Pillar 2, the assistance that would be provided to host states could help to improve the conditions of refugees in these countries. All in all, it can be argued that placing the protection of refugees also within the framework of R2P would not only help to make states receiving refugees and asylum seekers to act more responsibly, but also make the international community realise that this is a responsibility for all. Only such an inclusive understanding can contribute to the normative evolution of R2P itself, and eventually make an actual change in the behaviour of states and the international community.

³⁷⁸UN World Summit Outcome, para. 139.

³⁷⁹UN World Summit Outcome, p. 11.

³⁸⁰Bellamy, “The First Response”, p. 13.

³⁸¹Bellamy, “The First Response”, p.27.

CHAPTER 6

CONCLUSION

Libya and Syria cases have been discussed in various international platforms in relation to the R2P principle, due to the controversies in implementation in Libya and non-implementation in Syria. This thesis addressed these two cases from the aspect of the protection of refugees with the aim to place the concept within the framework of R2P. Hence, it argued for the necessity for a complementary approach to the existing refugee law. Through the two case studies, it was showed that the protection of refugees can be considered a part of the peaceful measures of R2P, through which primary purpose of the protection of vulnerable populations can be achieved.

Atrocity crimes that have been committed during the civil wars in Libya and Syria made the two cases subjects to be evaluated in the framework of the R2P. In Libya, under Pillar 3 of R2P, as a means to react to the crisis, military intervention was undertaken. Nevertheless, because of the way of operation, the Libyan case arguably turned into an example of bad implementation of R2P. Libya's negative implications have served as a roadblock against decisive and timely implementation in terms of stopping the atrocities in Syria, coupled with the political dynamics which blocked the UNSC from taking a decision in this regard. In the last instance, the climate of war has remained in Syria in which many regional and international actors have been playing an effective role, with radical organizations, the Syrian conflict become the biggest source of refugee movements from the country. On the other hand, in Libya, since the absence of an internationally supported rebuilding phase, after the 2014 elections, political tensions grew between different factions and tribes, internal conflict reignited.

Irregular migrations from Libya to neighbouring countries and Europe through the sea have created concern especially for the EU after 2011. Although there has been a relative decrease in these refugee movements after NATO military operation, the post-2014 internal turmoil triggered a new refugee movement. On the other hand, there has

been constant increase in refugee movements from Syria since there has been no effective international response which could decelerate the refugee movements. Due to the inadequate conditions in the neighbouring countries in which Syrians took refuge, a considerable number of the refugees attempt to sail to Europe. As a large part of these migrations took place through Libya, which is going through its own political turmoil, smuggling and human trafficking activities in the region took its toll on the refugees due the lack of functioning institutions in the country. Moreover, as the EU has been taking measures to keep the refugees out of its borders, the situation has turned into an international human protection crisis. The protection crisis regarding Syrian refugees has continued at higher levels since the lack of a timely and decisive action under R2P, when it is compared with Libyan case. While the international community has manifestly failed to uphold its responsibility towards these populations, from the point of the aspect of refugees, it is possible to observe a variety of responses.

R2P, which is a commitment to prevent genocide, war crimes, ethnic cleansing, crimes against humanity, adopted at the United Nations World Summit in 2005 unanimously and it has interpreted sovereignty not as a shield protecting states against external interventions but as a reflection of their responsibilities towards their populations to protect them. Thus, the responsibilities of states towards their populations and the international community came before the concept of sovereignty with R2P. The features of R2P that offers the implementation of peaceful measures in the first place while preventing the specified atrocity crimes and sees military intervention as merely a "last resort", distinguishes it from "humanitarian intervention". Although over time the implementation of R2P and the decision-making of it in the UNSC are subjected to criticisms, the fact that the discussions about the norm shifted to the implementation process indicates the norm has a general acceptance. The recent movements of refugees caused questioning the relationship between R2P and refugees and IDPs which have often been ignored or overlooked so far.

Since R2P focuses on vulnerable populations as its main concern, it is clear that the principle provides a framework for the protection of people who are trying to flee from

atrocities that are to be/being committed in their country of origin. These people are practically unable to meet their basic needs such as shelter, food, and health services; furthermore, they generally face with the danger of being repatriated due to uncertainties in their legal status in the hosting countries and thus the risk of atrocities have not been overcome yet. Since R2P addresses possible or actual victims of mass atrocities, these populations should be approached within this framework. As the former UN Secretary-General, Ban Ki-moon has repeatedly stated full implementation of international refugee law is among the steps that states should take in order to fulfil their R2P.

The 1951 Convention and its 1967 Protocol, which are the main sources of the current refugee law, reflect the conditions of the immediate post-World War II era. Hence, under the current conditions of international politics and political status of different regions of the world, there exist inefficiencies in responding to current mass movements of refugees. Over the years, states have developed policies that surpass their responsibilities arising from the refugee law. Especially after the 1990s, due to changing security perceptions, European states have started to undermine their responsibilities arising from refugee law with practices such as safe third country, temporary protection. Considering that a majority of the world's refugee population lives in low- and middle-income countries which are neighbouring the regions of conflict, there is need to assume a shared responsibility to provide proper protection for refugees. This thesis argues that there is a need for a complementary approach, and that R2P can serve this purpose by imposing a liability on the international community to fulfil existing international legal obligations, as well as to push states to assume a responsibility towards the refugees that arrived at their borders by providing protection to them.

It is also important to examine under which Pillar of R2P Syrian and Libyan refugees should be examined while placing refugees under R2P framework. Pillar 1 of the R2P refers to the state's responsibility for the population without seeking a condition of citizenship; the responsibility of the countries hosting Syrian and Libyan asylum seekers and refugees should be addressed in this context. Pillar 2 of R2P underlines

the responsibility of international community to support and assist the countries in fulfilling their responsibilities under Pillar 1; therefore, the protection assistance to the countries hosting Libyan and Syrian refugees, financial assistance to build their capacity should be assessed within this context and placed in a more regular framework.

Pillar 3, the most controversial Pillar of the R2P, suggests that if states are unable or unwilling to fulfil this responsibility towards populations, this responsibility should be borne by the international community. Therefore, the international community can be assumed responsible for the protection of populations who has lived or living in Syria and Libya due to the failure of these states, without considering their territorial location. Also, for some countries, the financial assistance under Pillar 2 cannot be sufficient to protect refugees since their own socio-political dynamics and internal conflicts, such as Libya. It is also possible to argue that the responsibility of hosting states that manifestly failed to fulfil their responsibilities under Pillar 1, should also be undertaken by the international community in the same way.

In this respect, seeing the refugees as part of R2P framework can create opportunity and consciousness to take early steps in future conflicts and prevents the protection crises that experienced in Syrian and Libyan cases. Over the last years, the UNSC decision to militarily intervene in Libya on the one hand, and the inability of the Council to take decisive action in Syria have ignited debates regarding the future of R2P on grounds of its ineffectiveness. In this vein, rethinking the conceptual limits of R2P and discussing the depths of R2P responsibilities helps the normative evolution of the principle. Pillar 3, which primarily emphasizes the application of peaceful diplomatic and other measures, has come into prominence with the coercive measures and this pillar became more controversial after the cases of Libya and Syria. Although the reports of UN Secretary-General on R2P emphasize peaceful measures under R2P, this aspect of Pillar 3 has been overlooked so far. As there are no specific list and time or duration restrictions on peaceful methods under Pillar 3 of R2P, addressing the responsibility of the international community to protect refugees within the R2P framework and adding the protection of refugees to the peaceful methods can

strengthen arguments against interventionist interpretations about the concept. Prioritising the peaceful measures of R2P during implementation would not only make R2P's practice more timely and possible at different levels; but also, would liberate the concept from being limited by the capacity and political will of the UNSC, and the deadlock situations would be bypassed. In this sense, R2P is important in terms of creating international consciousness and emphasising the importance of international community's responsibility.

As this thesis aims to identify the relationship between R2P and the international community's responsibilities towards refugees by placing it within the peaceful measures under the concept, it does not provide a comprehensive framework on how it should be incorporated into R2P mechanisms. At this juncture, the necessities of future studies which will clarify and strengthen the mechanisms of common scopes of R2P and refugees become prominent.

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APPENDICES

A. TURKISH SUMMARY/ TÜRKÇE ÖZET

MÜLTECİLERİ, KORUMA SORUMLULUĞU ÇERÇEVESİNDE ELE ALMAK: LİBYA VE SURİYE ÖRNEKLERİNİN KARŞILAŞTIRILMASI

Koruma Sorumluluğu kapsamında 2011 yılında askeri müdahalede bulunulan Libya ve bu kapsamda herhangi bir müdahale kararı çıkmayan Suriye konuları pek çok bakımdan kıyaslamalara tabi tutulmuş ve tartışılmıştır. Bu tez, bu iki örneği mültecilerin korunmasına yönelik sorumluluk açısından karşılaştırmalı analiz ışığında ele almış, öncelikle Koruma Sorumluluğu çerçevesi ile mülteciler arasındaki karşılıklı ilişki açıklığa kavuşturmuş ve bu kapsamda, mültecilere yönelik sorumluluğun Koruma Sorumluluğu kavramı çerçevesine oturtulması amaçlamıştır. Koruma Sorumluluğu, mevcut mülteci hukuku için tamamlayıcı bir unsur olarak sunulmuş; mültecilerin kavram kapsamında ele alınmasının, uluslararası toplumun Birleşmiş Milletler Güvenlik Konseyi'nin yetkilendirmesini gerektiren tartışmalı zorlayıcı önlemlere başvurmadan gelecekteki vakalarda daha etkin bir çözüm sağlayacağı savunulmuştur. Ayrıca, bu iki örnek vasıtasıyla mültecilerin korunmasına yönelik sorumluluğu, Koruma Sorumluluğu çerçevesindeki barışçıl tedbirler arasına dahil etmek ve böylece kavramı, “saldırıya açık nüfusları korumak” olan temel amacına yaklaştırmak amaçlanmıştır.

İnsani müdahale kavramının yarattığı tartışmalar neticesinde kavrama muadil yaklaşımlar aranmış, 2001 yılında Devlet Egemenliği ve Müdahale Uluslararası Komisyonu bu kapsamda “Koruma Sorumluluğu” adı verilen bir rapor ortaya koymuştur. Bu raporun temel amacı, bir ülke içerisindeki insan hakları ihlallerine hangi koşullar altında uluslararası toplumun dahil olacağına dair ikna edici, güvenilir ve tarafsız bir rehber oluşturmaktır. Koruma Sorumluluğu, egemen devletlerin ana görevlerinin, bu devletlerin kendi nüfuslarını kitlesel vahşetlerden korumak olduğunu öne sürmüştür; dolayısıyla, devletlerin sınırları içerisinde yaşayan insanlar üzerindeki iradesini ileri süren geleneksel egemenlik düşüncesine yönelik yaklaşımdan

ayrılmıştır. Koruma Sorumluluğu'na göre, belirli bir bölgedeki nüfusun korunması için birincil sorumluluk devlete aittir; devlet yetkilileri bu sorumluluğu yerine getiremiyorsa veya yerine getirmek konusunda isteksizse, uluslararası toplum bu sorumluluğu üstlenmelidir. Devlet Egemenliği ve Müdahale Uluslararası Komisyonu tarafından hazırlanan bu rapor, belirli çevrelerde ilgi görse de Birleşmiş Milletler çerçevesinde tartışılmaya başlanıncaya kadar kavram kapsamlı bir destek alamamıştır.

2004 yılında, o dönemin Birleşmiş Milletler Genel Sekreteri Kofi Annan'ın inisiyatifiyle, "Tehditler, Zorluklar ve Değişim üzerine Yüksek Düzeyli Panel" tarafından yayımlanan "Daha Güvenli Bir Dünya" başlıklı raporda Koruma Sorumluluğu yer almıştır. Raporun üçüncü bölümünde, Annan, Koruma Sorumluluğu'nu, topluluk güvenliği ve kuvvet meselelerinin kullanımı bağlamında ele almış, "bir sorumluluk olarak egemenlik" kavramının kabul edilmeye başlandığının ve bu sorumluluğun Birleşmiş Milletler Güvenlik Konseyi'nin yetkisi altında ele alınması gerekliliğinin altını çizmiştir. Ekim 2005'te Koruma Sorumluluğu prensibi resmi olarak Dünya Zirvesi Sonuç Belgesinin 138 ve 139 Paragraflarına yerleştirilmiştir. Böylece, Birleşmiş Milletler üyeleri, her devletin vatandaşlarını soykırım, savaş suçları, etnik temizlik ve insanlığa karşı suçlardan korumakla yükümlü olduğunu ve eğer bir devlet bu yükümlülüğü yerine getirmekte başarısız olursa, bu sorumluluğun uluslararası toplum tarafından üstlenilmesi gerektiği fikrini oybirliğiyle kabul etmiştir. Ayrıca Birleşmiş Milletler Güvenlik Konseyi, Koruma Sorumluluğu prensibinin 139. Paragrafı çerçevesindeki "güç kullanımı" istisnasını uygulayabilecek tek otorite olarak belirlenmiştir. Birleşmiş Milletler Güvenlik Konseyi'nin daimi üyelerine tanınan veto hakkı ve karar alma aşamasında buna alternatif herhangi bir yolun belirtilmemiş olması, daha sonra Suriye örneğinde değinileceği gibi, Koruma Sorumluluğunun uygulanış aşamasıyla ilgili tartışmalara ve anlaşmazlıklara yol açmıştır.

Birleşmiş Milletler Genel Sekreteri Ban Ki Moon'un 2009 yılında Koruma Sorumluluğu prensibinin uygulanış aşamasıyla ilgili tartışmalara cevaben yayımladığı raporda, R2P'nin uygulanma aşaması için 3 Sütunlu bir strateji belirlemiş ve rapor, 14 Eylül 2009 tarihinde Birleşmiş Milletler Genel Kurulu'nun 63/308 sayılı kararı ile 67 ülke tarafından kabul edilmiştir. Buna göre 1. Sütun, Paragraf 138 uyarınca, vahşet

suçlarından toplulukları korumadaki birincil sorumluluğun, devletin kendisine ait olduğunu ortaya koymaktadır. Yine Paragraf 138 ile bağlantılı olarak, 2. Sütun, uluslararası toplumun, devletleri 1. Sütun kapsamındaki sorumluluklarını yerine getirirken, gerek görüldüğünde, bu devletlerin kapasitelerini arttırmak için yardımda bulunma sorumluluğunun bulunduğunu belirtmektedir. Bu Sütun, Koruma Sorumluluğu'nun önleyici yönüne vurgu yapmaktadır. Bu bağlamda, uluslararası toplum bir devleti, örneğin sorumluluklarını hatırlatarak, birinci sütun kapsamındaki görevlerini yerine getirmeye teşvik etmelidir. Ayrıca, uluslararası toplumun kapasite geliştirme ve koruma yardımlarında inisiyatif kullanması da beklenmektedir ve bölgedeki yerinden edilmiş kişiler ve mültecilere yapılacak destek de bu kapsamda kabul edilebilir.

3. Sütun, uluslararası topluluğun zamanında ve kararlı bir şekilde tepki verme sorumluluğuna odaklanmaktadır; bu sorumluluk, devletin 1. Sütun kapsamındaki sorumluluğunu yerine getirememesi veya yerine getirmekte isteksiz durumunda ortaya çıkmaktadır. Buna göre, uluslararası toplumun cevabı, Birleşmiş Milletler Sözleşmesi'nin VI. ve/veya VIII bölümleri uyarınca siyasi, ekonomik ve / veya insani önlemler içerebilir. Barışçıl tedbirlerin yetersiz olduğu kanıtlandığında ise yine Paragraf 139'a göre uluslararası toplum, Birleşmiş Milletler Sözleşmesi'nin VII. Bölümü uyarınca, ancak son çare olarak, zorlayıcı eylemde bulunmaya hazır olmalıdır ve Birleşmiş Milletler Güvenlik Konseyi ise bu insani müdahale kararına dair tek yetkili otoritedir.

Libya ve Suriye'de yaşanan iç savaşlar süresince ortaya çıkan vahşet suçları bu iki örneği Koruma Sorumluluğu çerçevesinde incelenmesi ve değerlendirilmesi gereken iki konu haline getirmiştir. Arap ayaklanmalarının etkisiyle 2011 yılında Libya'da başlayan Muammer Kaddafi rejimi karşıtı hareketler, kısa sürede rejimin gösterdiği sert müdahaleler ile iç karışıklığa dönüşmüş, artan ölü sayısı ile Libya devletinin kendi halkını koruma sorumluluğunu yerine getirmediği gözlemlendiğinden, uluslararası toplum bu sorumluluğu kısa sürede üstlenmiştir. 1970 sayılı Birleşmiş Milletler kararı ile rejime yönelik yaptırımların genişletilmesi gerekliliği öne sürülse de Libya'daki kriz durulmamıştır. Devamında, 1973 sayılı Birleşmiş Milletler kararı ile Koruma

Sorumluluğu'nun 3. Sütunu çerçevesinde alınan kararlar NATO tarafından bir askeri müdahale gerçekleştirilmiştir. Fakat müdahalenin meydana geliş şekli neticesinde operasyonun yetkisini aşır rejim değıştirme amacı güttüğü eleştirileri ortaya çıkmış ve Libya örneđi hatalı bir Koruma Sorumluluđu uygulaması olarak değeriendirilmiştir. Öte yandan Suriye'de Libya'dan bir kaç ay sonra başlayan Beşar Esad rejimi karşıtı hareketler aynı hızda yayılmış, kayıp sayısı çok büyük bir hızla artmıştır. Fakat Libya örneğinde bahsedilen olumsuz sonuçlar, Birleşmiş Milletler Güvenlik Konseyi'nden karar çıkmasını engelleyen diđer politik dinamiklerle birleşerek, Suriye'de Koruma Sorumluluđu çerçevesinde kati ve zamanında yapılacak bir müdahaleye engel teşkil etmiştir. Son kertede, Suriye'de pek çok bölgesel ve uluslararası aktörün belirleyici unsurlar olarak rol aldığı ve radikal örgütlerin domine ettiği iç savaş ortamı devam etmiş ve bölgeden gerçekleşen mülteci hareketlerinin en büyük nedeni olmuştur. Diđer taraftan, Libya'da Kaddafi'nin devrilmesinin ardından uluslararası destekli bir yeniden inşa süreci olmamış ve 2014 seçimleri sonrası ortaya çıkan siyasi kutuplaşma ile ülkede ciddi bir otorite boşluğu meydana gelmiştir. Böylece Libya'da, 2011 sonrasında yeniden, çeşitli fraksiyon ve kabile çatışmalarının körüklediđi bir iç karışıklık vuku bulmuştur.

Libya'dan komşu ülkelere ve deniz üzerinden Avrupa'ya yayılan düzensiz geçişler 2011 itibariyle Avrupa Birliđi nezdinde endişe yaratmıştır. NATO operasyonu sonrası bölgeden yayılan mülteci hareketlerinde görece bir azalma yaşansa da 2014 sonrası yaşanan iç karışıklık yeni bir mülteci hareketini beraberinde getirmiştir. Öte yandan, mülteci hareketlerini olumsuz yönde etkileyecek etkili bir uluslararası müdahale bulunmadığından, Suriye'den yayılan mülteci hareketleri ise herhangi bir kesintiye uğramadan devam etmiştir. Önemli sayıda Suriyeli mülteci, buldukları komşu ülkelerdeki yetersiz koşulların da etkisiyle Avrupa'ya akın etmiştir. Bu göçlerin önemli bir kısmı halihazırda siyasi bir iç karışıklık yaşayan Libya üzerinden yapıldığından, bölgedeki insan kaçakçılığı faaliyetleri ülkenin içinde bulunduğu karışıklık ve işlemeleyen devlet kurumlarından faydalanarak etkisini arttırmıştır. Buna ek olarak, mültecilerin Avrupa'ya ulaşmaya çabalarken deniz üzerinde yaşadığı kazalar ve Avrupa Birliđi'nin mültecileri kendi sınırlarının dışında tutmak için aldığı önlemler, durumu daha da içinden çıkılmaz bir hale sokmuş ve uluslararası bir koruma

krizine dönüştürmüştür. Uluslararası toplumun mültecilere yönelik sorumluluğunu yerine getiremediği açık bir şekilde görüldüğünden, bu sorumluluğun yerine getirilmesine teşvik edecek bir unsurun gerekliliği açığa çıkmıştır.

Koruma Sorumluluğu ile ilgili zaman içerisinde Birleşmiş Milletler Güvenlik Konseyi'ndeki karar alış süreci ve uygulama aşamasına yönelik pek çok eleştiri yapılsa da; tartışmaların kavramın ana düşüncesinden ziyade uygulama aşamasına kaymış olması, kavramın genel bir kabul gördüğüne işaret etmektedir. Yakın zamandaki mültecilerin hareketleri, Koruma Sorumluluğu ile şu ana kadar görmezden gelinen veya gözden kaçırılan mülteci ve yerlerinden edilmiş kişiler arasındaki ilişkiyi sorgulamaya neden olmuştur. Bu Koruma Sorumluluğu ve mültecilerin korunması arasındaki gözden kaçırılan ilişki esasında oldukça güçlüdür çünkü zorunlu göç hareketleri, bir devletin vatandaşlarını o bölgede yaşanan silahlı bir çatışmadan korumadaki yetersizliğinin ve dolayısıyla sivillerin yaşamsal endişesinin ilk göstergesi olarak sayılabilmektedir. Mülteciler genellikle toplu zulüm riski altında olmakla birlikte, bu insanların hikayeleri, bir çatışmanın kitlesel vahşet suçlarına evrilip evrilmeyeceği konusunda önemli bir barometre olarak görülmektedir. Benzer şekilde, yerlerinden edildikten sonra ülkelerine geri dönen insanlar, durumun normale döndüğünün önemli bir göstergesi olarak düşünülmektedir. Başka bir deyişle, yerinden edilmiş kişilerin ve mültecilerin kitlesel hareketlerinin, devletin bu ülkede yaşayanları koruma sorumluluğunu yerine getiremediği konusunda oldukça önemli birer belirti olduğu savunulabilmektedir. Zorla yerlerinden edilmiş kişiler bu noktada hala savunmasız olarak kabul edilmektedir, çünkü kendilerini korumanın en hızlı yolunu seçip bölgeden uzaklaşan mülteciler, uzun vadede barınak, yemek ve sağlık hizmetleri gibi temel ihtiyaçlarıyla ilgili sorun yaşamaktadırlar ve her an terk ettikleri topraklara geri gönderilme riskiyle yüzyüzedirler. Bu sebeple, bu kişilerin vahşet suçları riskinden kurtulmuş olduklarını söylemek mümkün görünmemektedir. Koruma Sorumluluğu, vahşet suçlarının potansiyel ya da fiili mağdurlarını ele aldığından bu suçların tehdidi altında bulunan mültecilerin de bu sorumluluk altına girdiğini söylemek mümkündür.

Öte yandan, kendi ülkelerinde soykırım veya insan hakları ihlalleri gibi durumlardan kaçan ve başka bir ülkeye sığınma talebinde bulunan kişilere verilen yetersiz cevaplar, önemli miktarda yaşam kaybına neden olmaktadır. Tarihteki örneklere de bakıldığında, İkinci Dünya Savaşı, Vietnam Savaşı, Ruanda soykırımı ve Balkan çatışmalarında, uluslararası toplumun mültecilerin korunması ile sivil kayıplar arasındaki bağlantıyı göz ardı ettiği görülmektedir; örneğin, soykırım döneminde devletlerin büyük bir çoğunluğu Yahudi ve diğer mültecileri kabul etmemiş ve sığınma taleplerini reddetmiştir. Bunun bir sonucu olarak, talepte bulunanların önemli bir kısmı Nazi kamplarında hayatlarını kaybetmiştir. Koruma Sorumluluğu öncelikli olarak vahşet suçları riski altında olan kişilere yönelik önleyici bir ilke olduğundan, mültecilerin veya yerinden olmuş kişilerin korunmasına yardımcı olunması, çatışma sırasında sivilleri korumak için önemli yollardan birini oluşturmaktadır. Bir başka deyişle, mültecilerin korunması, Koruma Sorumluluğu'nun ana hedefi ve en çok vurgulanan yönü olan, kitlelerin vahşete maruz kalmadan önce korunmasına ulaşmak için tamamlayıcı ve etkili bir yol olacaktır. Nitekim Birleşmiş Milletler Eski Genel Sekreteri Ban Ki-moon, uluslararası mülteci hukukunun tam olarak uygulanmasının, devletlerin kendi Koruma Sorumluluğu'nu yerine getirmek için atması gereken adımlar arasında olduğunun pek çok kez altını çizmiştir.

1951'de imzalanan Mültecilerin Hukuki Durumuna İlişkin Sözleşme ve Mültecilerin Durumuna İlişkin 1967'de yılında imzalanan Protokol, mevcut mülteci hukukunun ana kaynakları olarak kabul edilmektedir. Tarihler göz önünde bulundurulduğunda, II. Dünya Savaşı sonrası dönemin koşullarını yansıttığını söylemek yanlış olmayacaktır. Dolayısı ile mevcut uluslararası siyasetin getirdiği koşullar altında, mülteci hukukunun bu dönemin mültecilerinin kitle hareketlerine yanıt vermedeki yetersizlikleri göze çarpmaktadır. Örneğin, devletler, yıllar geçtikçe mülteci hukukundan doğan sorumluluklarını aşan politikalar geliştirmiştir. Özellikle 1990'lardan sonra değişen güvenlik algısına bağlı olarak, Avrupa devletleri mülteci hukukundan doğan sorumluluklarını “güvenli üçüncü ülke”, “geçici koruma” gibi uygulamalarla baltalamaya başlamışlardır. Dünyanın mülteci nüfusunun çoğunluğunun çatışma bölgelerine komşu olan düşük ve orta gelirli ülkelerde yaşadığını göz önünde bulundurarak, mültecilere uygun koruma sağlamak için ortak bir sorumluluk

üstlenmeye ihtiyaç olduğunu söylemek mümkündür. Bu noktada, Koruma Sorumluluğu mevcut mülteci hukukunun yerini alacak bir unsur değil, mevcut yasal düzenlemelerin eksikliklerini göz önünde bulundurarak, uluslararası sorumluluğun üstlenilmesi için tamamlayıcı bir mekanizma olarak sunulmaktadır. Ayrıca, Koruma Sorumluluğu'nun, devletleri sınırlarına ulaşan mültecileri korumaya yönelterek, mevcut uluslararası yasal zorunlulukları yerine getirmek adına uluslararası toplum üzerine bir sorumluluk yükleyebileceği ve böylece mevcut mülteci hukukunu destekleyici bir unsur olabileceği düşünülmektedir.

Mültecileri korumaya yönelik sorumluluğu Koruma Sorumluluğu kavramına dahil ederken, kavram kapsamında uluslararası müdahale yapılan Libya ve diğerinde bu kapsamda bir müdahale kararı çıkmayan fakat her ikisinin de sonuç olarak ciddi mülteci hareketlerinin yaşadığı Suriye krizleri karşılaştırmalı olarak ele alınmıştır. Bu iki örnek aynı zamanda Libya'nın Avrupa'ya ulaşmaya çalışan Suriyeli mülteciler tarafından bir "geçiş ülkesi" olarak kullanılması sebebiyle de birbirleriyle oldukça bağlantılı görülmektedir. Bölgeden yayılan mülteci hareketleri ve yerlerinden edilmiş kişi sayısının artışı, iki vakada da devletlerin nüfuslarını korumaya yönelik sorumluluklarını yerine getirmediklerine dair önemli bir işaret olarak kabul edilmektedir. Bu nedenle sorumluluğun uluslararası toplum tarafından üstlenilmesi gerekliliği doğmuştur. İlk etapta, kendi yerel ekonomik ve sosyal sorunları olan komşu ülkeler, çok fazla sayıda mülteciyi kabul etmiş ve bu nedenle yükün en büyük bölümünü üstlenmişlerdir. Fakat Suriye'deki çatışmanın hız kesmeden devam etmesi sebebiyle Suriye'den ayrılan mültecilerin ülkelerine güvenli bir şekilde geri dönmeleri mevcut durumda mümkün görünmemektedir. Buna karşılık, Libya'daki müdahale sonrası dönemde ülkeye geri dönüşler yaşanmış ve bu sebeple koruma krizinin boyutları Suriye vakasınıninkine oranla daha sınırlı kalmıştır. Bir çok Suriyeli mülteci, barındıkları komşu ülkelerdeki fiziki ve sosyal şartların yetersizliği ve statüleriyle ilgili belirsizlikler sebebiyle, deniz yolunu kullanarak Avrupa'ya ulaşmaya çalışmıştır. Orta Doğu'daki komşu ülkelerden farklı olarak, Avrupa Birliği'nin ve diğer Avrupa ülkelerinin yetersiz cevapları koruma krizine sebebiyet vermiştir. Yani bu iki örnek birlikte değerlendirildiğinde, uluslararası topluluk tarafından Koruma Sorumluluğu'nun doğru bir şekilde uygulanmasının gerekliliğini görmek mümkündür.

Libya örneğinde askeri müdahale kararının mülteci hareketlerini kısıtladığı ve insani krizin ilk günlerinde ülkeden ayrılanların geri dönmesine imkan sağladığı iddia edilebilirken, yeniden yapılanma sürecinin eksikliğinin, zamanında yapılan bu müdahalenin olası olumlu etkilerini azalttığı görülmektedir. Suriye’de ise bölgedeki siyasi dinamiklerin mezhep bölünmeleri gibi önemli etkileri ve Suriye hükümetinin Rusya ile yakın bağları göz önüne alındığında, zorlayıcı ya da barışçıl önlemler içeren herhangi bir Koruma Sorumluluğu eylemi mümkün olmamıştır. Bu nedenle, çeşitli grupların giderek şiddetini artıran çatışmalarının hedefi sivil nüfus olmuş, böylece bölgesel ve küresel etkileri olan kitlesel mülteci ve sığınmacı hareketleri ortaya çıkmıştır. Libya örneğine kıyasla, Suriyeli mültecilere ilişkin koruma krizi çok daha yüksek seviyelerde devam etmiştir. Dolayısıyla, Suriye’de Koruma Sorumluluğu çerçevesindeki yöntemlerden herhangi birinin kullanılmasıyla önleyici veya zamanında bir müdahale yapılamamasının buradaki koruma krizinin hızlı bir şekilde artmasına neden olduğu iddia edilebilir.

Öte yandan, Libya’daki, askeri müdahale, bölgedeki çatışma ortamının gelişimini tartışmasız bir şekilde etkilemiş olsa da, bir yeniden inşa sürecinin olmaması, iç savaştan barışa giden sürecin tamamlanmamasına neden olmuştur. Daha önce de belirtildiği gibi, Libya’da devam eden iç karışıklıklar, Libya’nın Avrupa’ya geçiş yolunda olması nedeniyle Suriye’den gelen mülteci hareketlerinden de etkilenmiştir.

Sonuç olarak, ne Libya ne de Suriye örnekleri, başarılı Koruma Sorumluluğu uygulamaları olarak görülmemekte, özellikle Suriye örneği, uluslararası toplumun etkisizliğinin olumsuz sonuçlarını net bir şekilde ortaya koymaktadır. Bu bağlamda, Birleşmiş Milletler Güvenlik Konseyi’nin çıkmaza girmesi durumunda dahi, mevcut yasal mekanizmaları değiştirmeden ve zorlayıcı araçlara başvurmadan uluslararası toplumun savunmasız nüfusa karşı sorumluluğunu yerine getirmek için mültecileri, Koruma Sorumluluğu çerçevesine yerleştirmek amaçlanmıştır. Bu sebeple bu iki örnekteki mültecilerin Koruma Sorumluluğu’nun hangi sütunları dahilinde incelenmesi gerektiğini tartışmak da önem kazanmıştır.

Koruma Sorumluluğu’nun 1. Sütunu, devletlerin vatandaşlık şartı aramaksızın sınırları dahilindeki nüfusları korumakla sorumlu olduğunun altını çizmiştir. Suriye devletinin

bu sorumluluğu yerine getiremediği mevcut durumda açık bir şekilde görüldüğünden Suriye'de vahşet suçları tehlikesi altında olan herkesin uluslararası topluluğun sorumluluğu altında olduğunu belirtmek gerekmektedir. Bu nedenle, ülkelerinden kaçıp başka bir ülkenin sınırları içine giren Suriyeli mülteciler de kabul eden devletlerin koruma sorumluluğu kapsamına girmektedir. Birleşmiş Milletler Genel Sekreteri'nin Koruma Sorumluluğu eski özel danışman Jennifer Welsh de, Ürdün'ün Suriyeli mültecileri kabul ederek koruma sorumluluğunu yerine getirdiğini ifade etmiş ve bu iddiayı desteklemiştir.

Koruma Sorumluluğunun 2. Sütununa göre, uluslararası toplum devleti 1. Sütundan kaynaklanan sorumluluğunu yerine getirmesi konusunda cesaretlendirmeli ve desteklemelidir. Bu bağlamda, kitlesel mülteci hareketlerinden en çok etkilenen ev sahibi ülkelerin, özellikle krizin etkilerinin üstesinden gelinmesi ve çeşitli bakımlardan uluslararası desteğe ihtiyaç duyulması konusundaki endişelerini dile getiren Suriye'ye komşu ülkelerin (Lübnan, Ürdün, Irak, Mısır ve Türkiye) kapasitesindeki eksikliklere dikkat çekmeleri önemlidir. Dolayısıyla, bu ülkelerdeki mültecilerin yaşam koşullarını iyileştirmek adına uluslararası toplum tarafından yapılan finansal yardım, 2. Sütun altında bir sorumluluk olarak kabul edilebilmektedir.

Öte yandan, Libya'dan ve Suriye'den yayılan kitlesel mülteci hareketleri, vahşet suçları tehdidi bu popülasyonlar için hala devam ettiğinden, bu ülkelerin ve uluslararası toplumun bu toplulukları korumadaki başarısızlığını, en açık şekilde ortaya koymaktadır. Daha önce de belirtildiği gibi, Koruma Sorumluluğu'nun 3. Sütunun ilk bölümüne göre, uluslararası toplum, bireysel bir devletin nüfusunu korumakta başarısız veya isteksiz olduğu durumlarda Birleşmiş Milletler Sözleşmesi'nin VI ve VIII. Bölümlerine uygun olarak "zorlayıcı olmayan bir adım" atmakla yükümlüdür. 3. Sütun, bu önlemler için herhangi bir toprak sınırlamalarını veya zaman sınırlamalarını belirtmemektedir. Bu nedenle, uluslararası toplumun, ülkelerinden kaçan Suriyeli ve Libyalı mültecileri koruma sorumluluğu taşıdığını söylemek mümkündür.

3. Sütun dahilindeki bu sorumluluklar, Suriyelilerin kaçtığı üçüncü ülkeler için de geçerli kabul edilmektedir. Suriyelilerin barındığı bu ülkelere uluslararası toplum

tarafından yapılan mali yardımlar, Koruma Sorumluluğu'nun yerine getirilmesi açısından daima yeterli değildir. Mültecileri kendi iç koşulları veya kaynak yetersizliği yüzünden korumakta başarısız veya isteksiz olan ülkeler de mevcuttur. Örneğin, Lübnan'daki mevcut mezhep temelindeki çatışmalar Suriyeli mültecilerin bölgeye gelmesiyle daha da kritik hale gelmiş ve uzun vadeli bölünmeler daha da keskinleştiğinden bu nüfusa karşı zulüm suçları riski ortaya çıkmıştır. Bu bağlamda, mültecileri Koruma Sorumluluğu'nun bir parçası olarak görmek, gelecek çatışmalarda erken adımlar atma fırsatı ve bilinci oluşturabilir ve Suriye, Libya örneklerindeki gibi koruma krizlerinin önüne geçilmesini sağlayabilir.

Son yıllarda Birleşmiş Milletler Güvenlik Konseyi'nin Libya'ya askeri müdahale kararı sonrası yaşanan tartışmalar ve devamında buradaki Koruma Sorumluluğu kapsamındaki operasyonu "rejim değişikliği" hedefleyen bir operasyon olarak görme eğilimi, kavramın itibarına zarar vermiş ve meşruiyetine karşı bir tehdit unsuru oluşturmuştur. Dahası, Güvenlik Konseyi'nin Suriye'de Konsey'in kalıcı 5 üyesinin, arasındaki siyasi anlaşmazlıklar nedeniyle, kararlı bir şekilde harekete geçememesi, Koruma Sorumluluğu kavramının geleceği ile ilgili tartışmaları tetiklemiştir. Koruma Sorumluluğu'nun sınırlarını netleştirmek ve kötüye kullanımını önlemek için kavramı geliştirmeye yönelik talepler, özellikle bu iki vaka sonrasında artmıştır. Devletlerin Koruma Sorumluluğu'na yaklaşımında sorunlu olan temel bir konu, 3. Sütun'un askeri güç kullanımı ile sınırlı bir mekanizma olarak algılanmasıdır. Koruma Sorumluluğu'nun askeri müdahale ile karıştırılma eğiliminin olduğu açıktır ve bu yanlış algılama, Koruma Sorumluluğu uygulanmasını politik engellere karşı savunmasız hale getirmektedir. Dolayısıyla, genel olarak, 3. Sütun altında kabul edilebilecek barışçıl önlemlerin altını çizmek önemlidir. Mülteci ve sığınmacıların, Koruma Sorumluluğu'nun barışçıl önlemleri çerçevesine dahil edilmesi, kavramın mültecilere yönelik uluslararası sorumlulukların yerine getirilmesi, mevcut mülteci rejimini canlandırması ve daha fazla mağduriyetin önlenmesi için bir araç olmasını sağlamanın yanında; Koruma Sorumluluğu'nu asıl amacı olan savunmasız nüfusun korunmasına yaklaştırmak adına da önemli bir adım olarak kabul edilmektedir.

Bu bağlamda, Koruma Sorumluluğu'nun kavramsal sınırlarını yeniden düşünmek ve dahilindeki sorumlulukların derinliklerini tartışmak, kavramın normatif evrimine yardımcı olacaktır. Koruma Sorumluluğu'nun üç temel sütunu arasında 3. Sütun, yukarıda belirtildiği gibi zorlayıcı tedbirlerle ve özellikle kuvvet kullanımıyla ilişkili olduğu için en tartışmalı Sütun olmuştur. Ancak esasında 3. Sütunu iki aşamaya ayırmak mümkündür; Koruma Sorumluluğu'nun çok önemli fakat görmezden gelinmiş bir unsuru olan barışçıl önlemler bu Sütun'un ilk bölümünü oluşturmaktadır. Birleşmiş Milletler Genel Sekreteri Koruma Sorumluluğu hakkındaki raporlarında özellikle barışçıl önlemlerden ve bu önlemlerin öneminden bahsetmektedir. 3. Sütun'un ikinci bölümünde ise, ancak barışçıl önlemlerin yetersiz kaldığı kanıtlandığında, uluslararası topluluğun Birleşmiş Milletler Güvenlik Konseyi tarafından yetkilendirilecek güç kullanımı yoluyla "zamanında ve belirleyici eylem" kararını alınabileceği belirtilmektedir. Dolayısıyla, kuvvet kullanımı, ancak uluslararası toplum barışçıl yollardan müdahale edemediği zaman uygulamaya konmalıdır.

Barışçıl yollardan bahsederken herhangi bir sınırlama ya da süre kısıtlaması yapılmadığından, nüfusları vahşet suçlarından korumak için kullanılacak önlemler oldukça çeşitlidir. Hangi durumlarda hangi yöntemlerin kullanılacağına dair de herhangi bir kılavuz bulunmamaktadır. Bu nedenle, yöntemin seçimi, inisiyatifi üstlenen aktörlerin takdirine bağlı olarak, durumdan duruma farklılık göstermektedir. Uluslararası toplumun mültecilere yönelik sorumluluğunu Koruma Sorumluluğu çerçevesinde ele alarak mültecilerin kavram kapsamındaki barışçıl yöntemlerle korunmasını sağlamak, kavram hakkındaki "müdahaleci" tartışmalarına karşı argüman olarak sunulabilecektir.

Uygulama sırasında Koruma Sorumluluğu'nun barışçıl önlemlerine öncelik verilmesi, sadece kavramın uygulamasını pek çok açıdan daha vaktinde ve daha mümkün kılmayacak; aynı zamanda Birleşmiş Milletler Güvenlik Konseyi'nin kapasitesi ve siyasi iradesi ile sınırlandırılmaktan kurtaracaktır. Bu bağlamda, Koruma Sorumluluğu, uluslararası bilinç yaratma ve uluslararası toplumun sorumluluğunun önemini vurgulama açısından önemlidir. Bu noktada, Koruma Sorumluluğu ve

mültecilerin ortak kapsamlarını aydınlatacak ve güçlendirecek olan gelecek çalışmaların gerekliliđi ön plana çıkmaktadır.



B. TEZ FOTOKOPİSİ İZİN FORMU

ENSTİTÜ

Fen Bilimleri Enstitüsü

Sosyal Bilimler Enstitüsü

Uygulamalı Matematik Enstitüsü

Enformatik Enstitüsü

Deniz Bilimleri Enstitüsü

YAZARIN

Soyadı : Kul
Adı : Selin
Bölümü : Orta Doğu Araştırmaları

TEZİN ADI :

TEZİN TÜRÜ : Yüksek Lisans Doktora

1. Tezimin tamamından kaynak gösterilmek şartıyla fotokopi alınabilir.

2. Tezimin içindekiler sayfası, özet, indeks sayfalarından ve/veya bir bölümünden kaynak gösterilmek şartıyla fotokopi alınabilir.

3. Tezimden bir bir (1) yıl süreyle fotokopi alınamaz.

TEZİN KÜTÜPHANEYE TESLİM TARİHİ: