

Localising the Responsibility to
Protect? The UK and Syrian Refugees

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Abstract

This PhD seeks to understand why the UK has not linked the resettlement of Syrian refugees to the Responsibility to Protect (R2P), a political norm it continues to support. Under R2P, the UK agreed to use ‘diplomatic, humanitarian and other peaceful means’ to help protect populations from mass atrocities when a state like Syria is ‘manifestly failing’ to do so. The UK has not linked its humanitarian responses, including the Home Office’s Syrian Vulnerable Persons Resettlement programme, to R2P. This is due to different understandings of R2P within Parliament, the Home Office and Foreign Office, as well as contestation of R2P in UK civil society. Misconceptions around R2P, especially its conflation with military intervention, help explain why UK civil society has not used R2P to advocate for greater protection of Syrian refugees by the UK government. Through an analysis of official discourse and interviews with government officials and civil society representatives, this PhD makes an original contribution to knowledge. First, the research contributes broadly to critical constructivist norm theory by rebutting a permissible presumption that norms diffuse in powerful liberal states without contestation or localisation by looking at the UK’s practice of R2P. Second, it contributes to critical constructivism by illuminating how localisation and ‘meanings-in-use’ may conceal norm degeneration and thus require greater clarity in defining their limits on norm health similar to the existing limits on contestation. Third, it contributes to R2P scholarship by examining how the norm’s underlying aspirations relied upon in R2P advocacy are in constant tension with states’ conceptual understandings and practice of R2P. Fourth, the PhD shows how the R2P norm interacts with international refugee law. Finally, the findings may promote greater understanding of R2P implementation, which may lead to more robust advocacy by civil society and more coherent government policy on mass atrocity response.

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Declaration

I declare that this thesis is a presentation of original work and I am the sole author. All of the work presented in this thesis has been analysed and composed by myself. This work has not previously been presented for an award at this, or any other, University. All sources are acknowledged as References. I declare that elements of Chapter Two and Three were included in Chloë M. Gilgan, 'Exploring the Link Between R2P and Refugee Protection: Arriving at Resettlement', *Global Responsibility to Protect*, 9/4: 366-394 (2017). Elements of Chapter Five were published by the Foreign Affairs Select Committee¹ and formed the basis of a blog for the Centre for Applied Human Rights². Finally, some of the background on the politics surrounding the Syrian case, which forms part of the context in Chapter Four, was initially published in Chloë M. Gilgan, 'A Review of The Responsibility To Protect: A Defense, by Alex J. Bellamy', *Global Responsibility to Protect* 7/1: 112-114 (2015). However, the material was substantially reworked and new data added for purposes of this PhD thesis.

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¹ Chloë M. Gilgan, 'Has the UK Fulfilled its Commitment to the Responsibility to Protect?: What the Norm Requires in Practice versus Aspiration', Written Evidence (RTP0011), Responsibility to Protect and Humanitarian Intervention Inquiry, Foreign Affairs Select Committee, 3 July 2018, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries1/parliament-2017/inquiry8/publications/>, accessed 4 July 2018.

² Chloë M. Gilgan, 'The UK's Responsibility to Protect: Practice versus Aspiration', Human Rights Defender Hub, 10 July 2018, <https://www.hrdhub.org/researchblog>, accessed 10 July 2018.

1 Introduction

1.1 Introduction¹

The current situation in Syria has brought about one of the greatest humanitarian crises since the Second World War and the overall European response has threatened the normative value of the Responsibility to Protect (R2P).² According to Ban Ki-moon, Syria has become ‘the biggest peace and security [challenge] in the world’³. As of July 2018, there were over 5.6 million Syrian refugees and 6.6 million internally displaced persons (IDPs).⁴ The crisis began in March 2011 and to date it is estimated that over 400,000 have died, while over 11 million people—more than half of Syria’s total population—have been displaced either within Syria or abroad.⁵ While Syria is the crisis now and the mass flows of refugees from Syria will continue, Europe will also face significant flows of populations from other conflict-affected states like Myanmar, Libya, Yemen and Burundi, as populations flee mass atrocities. In fact, as of 2016, there were 21.3 million refugees and more than 40.8 million internally displaced persons, the highest number reached in the history of the United Nations (UN).⁶ Therefore, the case of Syria and the European response, while unique to the present, is also highly relevant to future mass flows resulting from internal conflicts already developing and those yet to develop.

As of 2018, the 5.6 million registered Syrian refugees represented more than a quarter of Syria’s pre-war population.⁷ Importantly, the number of those internationally displaced rose sharply in 2015 with 2000 refugees crossing into Greece daily by the start of 2016. The United Nations High Commissioner for Refugees (UNHCR) pleaded for ‘a far more substantial and coherent strategy’⁸. The UNHCR initially suggested European countries host 30,000 refugees each during the year of 2013 to 2014 in order to share responsibility for Syria’s mass exodus of

¹ As advised, this dissertation adopts the referencing style of *Global Responsibility to Protect*, available at https://brill.com/fileasset/files/brill.nl/specific/authors_instructions/GR2P.pdf.

² ‘2005 World Summit Outcome’, UNGA Res. 60/1, 16 September 2005, (p. 30).

³ Ban Ki-moon, Address to the General Assembly, 24 September 2013, <https://www.un.org/sg/en/content/sg/speeches/2013-09-24/address-general-assembly>, 3 June 2018; see also, Aidan Hehir, ‘Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring’, *Cooperation and Conflict* 51/2: 166-183, 176 (2016).

⁴ UNHCR, ‘Syria Emergency’, <http://www.unhcr.org/uk/syria-emergency.html>, accessed 25 July 2018.

⁵ Human Rights Watch, ‘Country Summary, Syria’, January 2018, https://www.hrw.org/sites/default/files/syria_2.pdf, accessed 3 June 2018.

⁶ Ban Ki-moon, *Mobilizing Collective Action: The Next Decade of the Responsibility to Protect*, A/70/999-S/2016/620, 22 July 2016, (p. 3-4).

⁷ UNHCR, ‘Syria Regional Refugee Response’, <http://data.unhcr.org/syrianrefugees/regional.php>, accessed 4 July 2018.

⁸ ‘UN Agency Urges Europe to Develop Coherent Response to Refugee Crisis’, *UN News*, 15 September 2015, <http://www.un.org/apps/news/story.asp?NewsID=51874#.VriVE8dsznU>, accessed 8 February 2016.

refugees and asylum seekers earlier during the conflict.⁹ However, European states largely left the hosting of Syrian refugees to the states proximate to Syria, especially in Lebanon where one in four of the population is a refugee.¹⁰ As a result, there have been reports of rising ethnic conflict and *refoulement* in some of these heavily burdened states. The ongoing conflict and the failure of European states to reach agreement on sharing responsibility for refugees from the region exacerbated the humanitarian crisis that led to the European refugee crisis, which peaked in June 2015 when the number of Syrian refugees approached 4 million.¹¹ Between January and February 2016, half a million Syrians had already crossed the Mediterranean for Europe in order to escape the conflict in Syria or to find more durable solutions than living in camps in Syria's seriously overburdened neighbouring states.¹² The situation continues to escalate with no effective political resolution in sight and UNHCR's requests to states will not effectively address the numbers of those fleeing mass atrocities in Syria.

In response to international and public pressure, the UK government pledged in 2014 to accept 20,000 refugees over the next 5 years.¹³ As of February 2018, the UK resettled 10,538 Syrian refugees of those pledged, which is a little more than half its overall target of 20,000 to be reached in 2020.¹⁴ Additionally, as of February 2016, the UK committed to doubling its current funding of £1.12 billion in the region over the next four years in order to help fund education, jobs and humanitarian protection in Syria, Jordan, Lebanon and Turkey.¹⁵ The UK continues to be the second largest bilateral donor in the world after the United States (US).¹⁶

Despite the UK's humanitarian responses to Syria and Syrian refugees, over a million Syrians remain stranded within the borders of Europe, while the ongoing conflict in Syria claims more

⁹ UNHCR, 'UNHCR Calls on International Community to Resettle 130,000 Syrian Refugees', 9 December 2014, <http://www.unhcr.org.uk/news-and-views/news-list/news-detail/article/unhcr-calls-on-international-community-to-resettle-130000-syrian-refugees.html>, accessed 8 February 2016.

¹⁰ UNHCR, 'Refugees from Syria: Lebanon', March 2015, <http://data2.unhcr.org/en/documents/details/45764>, accessed 4 July 2018.

¹¹ Alise Coen, 'R2P, Global Governance, and the Syrian Refugee Crisis', *International Journal of Human Rights* 19/8: 1044-1058, 1052 (2015).

¹² Amnesty International, 'Syria's Refugee Crisis in Numbers', 3 February 2016, <https://www.amnesty.org/en/latest/news/2016/02/syrias-refugee-crisis-in-numbers/>, accessed 8 February 2016.

¹³ Patrick Wintour, 'UK to Take up to 20,000 Syrian Refugees over Five Years, David Cameron Confirms', *The Guardian*, 7 September 2015, <http://www.theguardian.com/world/2015/sep/07/uk-will-accept-up-to-20000-syrian-refugees-david-cameron-confirms>, accessed 8 February 2016.

¹⁴ Home Office, 'Over 10,500 Refugees Resettled in the UK under Flagship Scheme', 22 February 2018, <https://www.gov.uk/government/news/over-10000-refugees-resettled-in-the-uk-under-flagship-scheme>, accessed 3 June 2018.

¹⁵ Prime Minister's Office, 'UK to Invest an Extra £1.2 Billion Supporting Syria and the Region', Press Release, 4 February 2016, <https://www.gov.uk/government/news/uk-to-invest-an-extra-12-billion-supporting-syria-and-the-region>, accessed 8 February 2016.

¹⁶ *Ibid.*

lives and displaces more refugees. As a result, the argument that states' commitment to R2P has fallen short in Syria has gained traction. The UK continues to discursively support R2P, a doctrine reflecting international commitment to protecting populations facing mass atrocities. Following the tragedies of Rwanda and Srebrenica, global consensus led to international endorsement of R2P in 2005.¹⁷ States agreed to use 'diplomatic, humanitarian and other peaceful means to help protect populations from mass atrocities' when a state is manifestly-failing to protect its own population from mass atrocities.¹⁸ Mass atrocities include any one or more of the following: genocide, crimes against humanity, war crimes, and ethnic cleansing (or their incitement).¹⁹ R2P is comprised of three pillars: Pillar I affirms a state's responsibility to protect its own populations from genocide, war crimes, crimes against humanity and ethnic cleansing (and their incitement); Pillar II concerns international assistance and capacity-building to states in order to help them maintain their Pillar I responsibilities; and, Pillar III encourages the timely and decisive response from the international community when a state is manifestly failing its Pillar I duties.²⁰ However, R2P continues to face contestation over its third pillar regarding implementation of the international community's responsibility to protect populations from mass atrocities when a state is manifestly failing. Any global R2P response involving Pillar III without the consent of the Syrian state must be authorised by the United Nations Security Council (UN Security Council), which remains unable to agree on how to protect the Syrian population from ongoing mass atrocities. As a result, there are variations across states in terms of their responses to Syria, which magnify perceptions that states lack meaningful commitment to R2P. Moreover, the failure to control the humanitarian crisis in Syria fuels arguments challenging the norm status of R2P in terms of the norm's effectiveness for protecting populations from mass atrocities.

However, state variations in interpreting R2P implementation do not necessarily negate R2P's norm status or reflect a lack of commitment to the norm. Thus far, research has mostly focused on R2P's controversial use of force, whereby contestation manifests as less powerful states' suspicions of R2P as a western hegemonic tool. While history demonstrates that powerful states may often see military options aligned with their potential interests, there is also a

¹⁷ '2005 World Summit Outcome', p. 30.

¹⁸ *Ibid.*

¹⁹ Genocide is defined under Article II of the Genocide Convention. UNGA, Prevention and Punishment of the Crime of Genocide, A/RES/260, 9 December 1948, <http://www.un-documents.net/a3r260.htm>, accessed 16 July 2018. War crimes, crimes against humanity (including ethnic cleansing) are defined under the Rome Statute. UNGA, Rome Statute of the International Criminal Court (last amended 2010), ISBN No. 92-9227-227-6, 17 July 1998, <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>, accessed 16 July 2018.

²⁰ Ban Ki-moon, *Implementing the Responsibility to Protect*, A/63/677, 12 January 2009.

tendency amongst those truly concerned with protecting populations from mass atrocities that using force is the most effective way to do it.²¹ Once the option of using force is removed, whether from disagreement in the UN Security Council or from protesting domestic constituencies, understanding how powerful liberal states have internalised R2P as the norm for responding to mass atrocities will reveal what R2P means and what kind of contestation it is facing and how this localisation of the norm may impact R2P's normative future.

R2P's requirement to exhaust diplomatic and humanitarian means to protect populations has been arguably inadequate thus far to stabilise the Syrian crisis. The complication of multiple stakeholders in Syria, including the interested and strategic position of Russia on the UN Security Council, has prevented meaningful diplomacy that can protect Syrians from ongoing mass atrocities.²² Additionally, the UK's decision to join a coalition engaging in air strikes in Syria (against Daesh in 2013 and against the regime's chemical weapons storage facilities in 2018) has arguably further endangered Syrians and encouraged more refugees to flee violence and conflict. Moreover, humanitarian responses, such as the UK's significant financial aid to Syria's overburdened neighbours²³, has not been enough to protect Syrians either, especially as *overall* humanitarian aid to the region has consistently been below what is required and pledged by states.²⁴ This is the critical juncture, where states' commitment to R2P has been judged based on how they choose to implement the norm non-coercively, if at all, when geopolitics have paralysed the UN Security Council from responding effectively. The question is whether it is fair to judge state commitment to R2P, particularly because norms mean different things to different people. Variations in norm implementation are generally accepted when evaluating norm internalisation in authoritarian states, but this condition is minimally explored in relation to liberal states, particularly powerful liberal states. Therefore, the non-consensus in the Syrian

²¹ See, Sarah Brockmeier, Gerrit Kurtz & Julian Junk, 'Emerging Norm and Rhetorical Tool: Europe and a Responsibility to Protect', *Conflict, Security & Development* 14/4: 429-460 (2014); see also, Jennifer M. Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster, 5 December 2013, part of the ESRC Series, The Responsibility to Protect and Prosecute: The Political Sustainability of Liberal Norms in an Age of Shifting Power balances, <http://iisr2p.leeds.ac.uk/current/responsibility-to-protect-and-prosecute/>, accessed 21 October 2015.

²² Martin Chulov, 'Diplomacy, Partition, Intervention – Which Future is Least Bleak for Syria?', *The Observer, Guardian*, 13 September 2015, <http://www.theguardian.com/world/2015/sep/13/syria-future-analysis-diplomacy-partition-intervention>, accessed 22 February 2016.

²³ Prime Minister's Office, 'Syria Refugees: UK Government Response', 8 October 2015, <https://www.gov.uk/government/news/syria-refugees-uk-government-response>, accessed 22 February 2016.

²⁴ 'Syria Crisis "Worsening" Amid Humanitarian Funding Shortfall, Warns Top UN Relief Official', *UN News*, 26 March 2015, <https://news.un.org/en/story/2015/03/494522-syria-crisis-worsening-amid-humanitarian-funding-shortfall-warns-top-un-relief>, accessed 3 June 2017; UNHCR, 'Syria Regional Response Plan: 2014 UNHCR Income as of 13 January 2015', <https://reliefweb.int/sites/reliefweb.int/files/resources/2015-01-13-SYRIASituation2014ContributionstoUNHCR-RRP.pdf>, accessed 20 October, 2017.

case provides an opportunity to explore what R2P means to the UK as a powerful liberal state that sits on the UN Security Council, the international institution that has been criticised as unable to effectively discharge its responsibility of maintaining international peace and security in Syria and the region. Additionally, R2P's ongoing responsibility and non-exhaustive list of non-coercive options for responding under Pillar III²⁵ warrant investigation of how the UK understands its protection responsibilities towards the Syrian population as an international guardian of peace and security. As such, the overarching aim of this research is two-fold: (1) To understand how the UK, as a powerful liberal state, is contesting R2P by how it has localised the norm, which means examining how the norm is used or not used to derive its particular meanings as understood by the UK; and (2) To understand how and whether there are any conceptual requirements or any practical value in linking refugee resettlement as 'other peaceful means' under R2P given the ongoing conflict and the ongoing Syrian refugee crisis. Such an inquiry will further inform the persistent challenges concerning the implementation and practice of R2P.

1.2 Key Questions and Context

The key question is how is the UK using the resettlement of Syrian refugees²⁶ as a method of discharging its responsibility to protect populations from mass atrocities in Syria? This question leads to several narrower questions. First, how is R2P conceptually aligned with refugee resettlement and what is the practical value-added for linking the two? Second, how has R2P shaped or not shaped refugee resettlement programs for Syrians in the UK? And finally, is there any added value for the UK to use resettlement for Syrian refugees as a method of discharging its responsibility to protect?

A discussion of the context that prompted this research follows. There is significant focus in the norms literature on the reasons for non-compliance and contestation in post-colonial and illiberal states. In contrast, there is a presumption that liberal states are like-minded and therefore accept and practice human rights norms homogeneously. The underlying assumption is that because they are liberal states, they are implementing human rights-oriented norms. As a result, their rhetorical support for the norm is often accepted as *prime facie* proof of

²⁵ This view is consistently taken by those working in the R2P policy world as per email correspondence and conferences under the Chatham House Rule; see also, Alex J. Bellamy, 'The Responsibility to Protect and the 'Migrant Crisis'', (2016), <https://protectiongateway.com/2016/04/02/the-responsibility-to-protect-and-the-migrant-crisis/>, accessed 31 October 2017.

²⁶ Resettlement is a norm within the refugee protection regime, which encompasses the body of international law pertaining to refugees, asylum and international customary law along with domestic laws and policies.

commitment. However, evidence of practical implementation may still be missing from the evaluation. Indeed, the failure of the international community to reach consensus on a response in Syria and the resulting Syrian refugee crisis, which led to 1.2 million Syrians fleeing to a mostly unwelcoming European mainland, challenge the notion that liberal states are committed to *practising* their responsibilities to protect.

As thousands of refugees began drowning at sea while seeking refuge in Europe, the scholarship on R2P increasingly turned towards addressing the potential link between refugee protection and state protection responsibilities under R2P. However, the literature linking the two frameworks has tended to rely on the link between R2P and asylum and often uses R2P as a gap-filler for protection deficits in international refugee protection²⁷, particularly as states remote from Syria have found legal ways of evading their commitment to asylum under the 1951 *Convention Relating to the Status of Refugees*²⁸ (Refugee Convention). The scholarship explores the apparent paradox between liberal states' commitment to humanitarianism through R2P, which is sacrificed to perceived interests and objectives, such as mollifying domestic constituencies hostile to immigration, and existing constraints like economic austerity.²⁹ However, the literature mostly uses normative arguments for why states need to link refugee protection to R2P and largely fails to account for why states have not done so in practice.

As such, existing norm theories have not traditionally been applied to the powerful liberal state context as a way of understanding their behaviour in the international realm. Furthermore, the R2P literature does not fully explain why powerful liberal states' responses to the largest humanitarian emergency in 71 years have not reflected the conceptual understandings around R2P and refugees that are relied upon in the literature and by R2P advocates.³⁰ Therefore, this research aims to address these gaps in order to understand a powerful liberal state's

²⁷ Chloë M. Gilgan, 'Exploring the Link Between R2P and Refugee Protection: Arriving at Resettlement', *Global Responsibility to Protect* 9/4: 366-394 (2017); 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: 533-566 (2008); see also, Sara Davies and Luke Glanville, (eds.) *Protecting the Displaced: Deepening the Responsibility to Protect* (Leiden: Martinus Nijhoff Publishers, 2010); see also, Angus Francis, 'The Responsibility to Protect and the International Refugee Regime' in Vesselin Popovski and Charles Sampford (eds.), *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction* (New York: United Nations University Press, 2012), p. 215-233, 217.

²⁸ *Convention Relating to the Status of Refugees*, UNGA, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951, art. 33.

²⁹ For example, see Edward Newman, 'The Limits of Liberal Humanitarianism in Europe: The "Responsibility to Protect" and Forced Migration', *European Review of International Studies* 4/2-3: 59-77 (2018).

³⁰ UN, 'Response to ever-shifting needs in volatile Syria requires sustained donor support-UN Relief Chief', *News*, 1 September 2015, <http://www.un.org/apps/news/story.asp?NewsID=51769#.VrhuHP19670>, accessed 9 June 2018.

commitment to R2P in the context of resettlement. This is important in light of the fact that states like the UK are responding to Syria through humanitarian aid in the region and through resettlement, which both fit within the remit of an R2P response. However, some of these peaceful responses are not linked to R2P, which makes it difficult to discern or evaluate the UK's commitment to and understanding of R2P in practice beyond its statements proclaiming support of the norm. Therefore, the claim that the UK is merely a rhetorical supporter of R2P turns on what the UK envisions R2P to require and how the norm has been contested and localised to fit within the UK domestic context. This question can be answered by using norm theory in the context of the UK, a powerful liberal state sitting on the UN Security Council that is engaging in contestation of R2P like less powerful or illiberal states, a scenario largely excluded from the research on norms. As such, this research fills a gap in both the norms literature and the R2P scholarship.

1.3 Theoretical Framework

The research engages with the literature on norms within the fields of international relations and international law. The horizontal nature of international law and its dependency on state consent means politics are inseparable from the discipline. Any study looking at state behaviour/compliance to an international norm requires analysing and understanding the interdependent relationship between politics and international law. The research is inter-disciplinary because it adopts a critical constructivist approach from international relations while using a legal lens for understanding the issues around R2P norm implementation, particularly through international refugee law. R2P is a political norm with elements of law, and refugee resettlement is a discretionary norm within the hard law of the international refugee regime, and therefore, answering the research questions requires an inter-disciplinary approach. Even so, the research takes a predominantly political perspective while drawing on international law to answer the research questions, offering a holistic approach to understanding how R2P has been internalised in the UK and then how it may be implemented during times of political impasse at the UN Security Council.

The research adopts a constructivist framework in order to understand how identities and interests are created and how their constitution influences or causes certain political behaviour and effects.³¹ 'Constructionism essentially invites the researcher to consider the ways in which

³¹ See Martha Finnemore and Kathryn Sikkink, 'Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics', *Annual Review of Political Science* 4: 391-416, 394 (2001); see also, Alexander Wendt, 'Constitution and Causation in International Relations', *Review of*

social reality is an ongoing accomplishment of social actors rather than something external to them and that totally constrains them'³². As such, the research approach acknowledges the important role of ideation in conjunction with the iterative nature of social constructions, interactions and the social and political realities of those researched. Initially, the research employs a conventional constructivist method for mapping R2P's life cycle from its formation through to its international endorsement. However, a critical constructivist lens is more appropriate for examining R2P post-institutionalisation for understanding how R2P has diffused in the UK domestically because contestation is expected and 'should therefore be considered as the access point for empirical case studies'³³. Critical constructivists operate from the presumption that norms face continuous contestation, which shapes a norm's meanings and structure and explains states' different behaviours in terms of how they implement a particular norm. Importantly, contestation is an important starting point for empirical analysis: Research truly 'concerned with normative change should not define the presumed content of a norm in advance but start from the point that its meaning and practical implications are a matter of contention among observed agents'³⁴. The idea that norms exist on a contestation continuum accepts that norms mean different things to different people, which explains the variations in norm implementation even across so-called 'like-minded states' such as liberal states.

Furthermore, as norms are constitutive, and not mere constraints on behaviour, looking at their 'meanings-in-use'³⁵ gives understanding as to how they are interpreted by the state using them. This is especially useful when a norm is ambiguous like R2P because looking at its 'meanings-in-use' allows for empirical access to how norms are understood, which underlies the constitutive quality of norms in practice.³⁶ Additionally, the dissertation relies on the norm localisation literature to help answer how R2P has been implemented in order to adapt to the UK's national context.³⁷ Amitav Acharya's approach, which addresses localisation of

International Studies 24: 101-17 (1998); Michael N. Barnett and Martha Finnemore, 'The Politics, Power and Pathologies of International Organizations', *International Organization* 53: 699-732 (1999).

³² Alan Bryman, *Social Research Methods* 4th Ed. (Oxford: Oxford University Press, 2012), p. 34; see also, Mark Neufeld, 'Interpretation and the "Science" of International Relations', *Review of International Studies* 19/1: 39-61 (1993).

³³ Antje Wiener, *A Theory of Contestation* (Heidelberg: Springer-Verlag, 2014), p. 32.

³⁴ Matthias Hofferberth and Christian Weber, 'Lost in Translation: A Critique of Constructivist Norm Research', *Journal of International Relations and Development* 18/1: 75-103, 90 (2015).

³⁵ Antje Wiener, 'Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations', *Review of International Studies* 35/1: 175-193 (2009).

³⁶ Antje Wiener, *The Invisible Constitution of Politics: Contested Norms and International Encounters* (New York: Cambridge University Press, 2008).

³⁷ For a discussion of the scholarship forming the critical label, which according to Jason Ralph, rests on a more sedimented literature like Hopf, Risse and Wiener, see, Jason Ralph, 'What Should Be Done? Pragmatic Constructivist Ethics and the Responsibility to Protect', *International Organization* 72/1: 173-

international norms in illiberal states, is transferrable to the powerful liberal state context. This is because powerful liberal states also have specific domestic contexts including powerful local norms that will potentially interact or compete with endorsed international norms. As such, adopting a critical constructivist framework helps insulate the research findings from the theoretical criticisms lodged at conventional constructivists such as a presumption that norms are static fixtures with a uni-directional trajectory resulting in institutionalisation and then ‘rule-consistent behaviour’³⁸ by states.³⁹ Instead, the role of agency and looking beyond a single definition of compliance will ‘account for both the ambiguity of norms and processes of normative transformation’⁴⁰. In sum, this research utilises the norm localisation literature to examine how the meanings of R2P are derived through practice in the UK context and how implementation has been shaped by ongoing contestation of the norm. The UK’s contestation of R2P inevitably shapes its practice and because R2P is an indeterminate and subjective norm, exploring its ‘meanings-in-use’ gives insight as to the norm’s meanings.

1.4 Research Strategy and Design

This section discusses the research strategy and design chosen to empirically answer the research questions. Therefore, the section addresses how to practically answer how R2P is localised in the UK through its meanings-in-use within the context of refugee resettlement. The section concludes with a discussion of the ethical and practical considerations for conducting the field research.

1.4.1 Methodology

The research adopts an interpretivist methodology commonly used in constructivist studies in order to draw conclusions around government and organisational understandings of R2P.⁴¹ This approach seeks to understand social action, rather than merely observe it (objectivist approach), in order to explain and understand state behaviour.⁴² The researcher takes a subjective or ‘insider’ approach⁴³ to the research with the purpose of seeking to understand, through a process

203, 174 (2018); see, for example, Ted Hopf, ‘The Promise of Constructivism in International Relations Theory’, *International Security* 23/1: 171-200 (1998).

³⁸ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

³⁹ Hofferberth and Weber, ‘Lost in Translation’, p. 84.

⁴⁰ *Ibid*, p. 81.

⁴¹ Mark Neufeld, ‘Interpretation and the “Science” of International Relations’, *Review of International Studies* 19/1: 39-61 (1993).

⁴² Peter Wilson, ‘The English School Meets the Chicago School: The Case for a Grounded Theory of International Institutions’, *International Studies Review* 14/4: 567–590 (2012).

⁴³ The ‘participant standpoint’ as discussed by Neufeld, ‘Interpretation and the “Science” of International Relations’, p. 41.

of interpretation, the values and interests of states (and relevant organisations), which includes the points of views of social actors representing those institutions and how those views and values inform political behaviour.⁴⁴ Importantly, the UK government and civil society organisations are comprised of individuals in charge of practicing R2P and so ‘fruitful’ analysis will involve looking at the interpretations, reasons and justifications used by these social actors in their understandings of R2P.⁴⁵ This involves paying ‘close attention to the language of the actors and the way they explore and justify their actions [which] helps the researcher to enter the normative world of the participant and discern the standards of value that guide their conduct’⁴⁶. This means that those social actors discharged with implementing R2P in the domestic or organisational context are strong sources of evidence for drawing plausible conclusions concerning the norm’s impact on policymaking and implementation.⁴⁷ From a constructivist perspective, the R2P norm is constitutive, which means it is socially constructed by states and those acting on behalf of states. Thus, the inter-subjective meanings⁴⁸ - the collective meanings, values and purposes assigned to R2P - informs the subsequent political actions and decision-making. Therefore, in order to understand state behaviour, research must consider the views of the social actors involved in discharging a particular international norm.

1.4.1.1 Method

This research is a qualitative case study of the UK and Syrian refugees, which aims to understand how R2P has been localised in the UK and how it then relates to the UK’s policies

⁴⁴ Christian Reus-Smit, ‘Imagining Society: Constructivism and the English School’, *British Journal of Politics and International Relations* 4/3: 487–509, 495 (2002).

⁴⁵ Hofferberth and Weber, ‘Lost in Translation’, p. 90; see also, Donatella Della Porta and Michael Keating, ‘How Many Approaches in the Social Sciences? An Epistemological Introduction’ in Donatella Della Porta and Michael Keating (eds.), *Approaches and Methodologies in the Social Sciences* (Cambridge: Cambridge University Press, 2008), p.19-39; see, Christian Reus-Smit, ‘Constructivism’ in Scott Burchill, Andrew Linklater, Richard Devetak, Jack Donnelly, Matthew Paterson, Professor Christian Reus-Smit and Professor Jacqui True (eds.) *Theories of International Relations* 3rd Ed. (Basingstoke: Palgrave Macmillan, 2005), p.188-212, 199; Reus-Smit, ‘Imagining Society’, p. 495.

⁴⁶ Wilson, ‘The English School Meets the Chicago School’, p. 584.

⁴⁷ This research will adopt a standard of measurement used in the Human Rights and Health field. There are three levels of evidence: Adequacy (the lowest correlative strength), plausibility (confident correlation) and probability (highest statistical correlation). Daniel Tarantola, Maya Unnithan, Linsey McGoey, Shyama Kuruvilla, Jennifer Franz-Vasdeki, Paul Hunt, ‘Chapter 4: Emerging Themes: The Features of an Enabling Environment and the Scarcity of Research and Evaluation’ in Flavia Bustreo and Paul Hunt (eds.) *Women’s and Children’s Health: Evidence of Impact of Human Rights*, World Health Organization,

http://apps.who.int/iris/bitstream/handle/10665/84203/9789241505420_eng.pdf;jsessionid=8E5A477F886501F5BBA89E187A023972?sequence=1, accessed 18 July 2015; see also, Maya Unnithan, ‘What Constitutes Evidence in Human Rights-Based Approached to Health? Learning from Lived Experiences of Maternal and Sexual Reproductive Health’, *Health and Human Rights Journal* 17/2 (2015), <https://www.hhrjournal.org/2015/11/what-constitutes-evidence-in-human-rights-based-approaches-to-health-learning-from-lived-experiences-of-maternal-and-sexual-reproductive-health/>, accessed 18 July 2015.

⁴⁸ Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, p. 891.

on refugee resettlement during the period of 2014 through 2016. The chapter focuses on the period 2014 through 2016 as this time period provides meaningful data because this was a critical phase in the conflict whereby the ineffectiveness of the international community's responses in Syria and the region before 2014 contributed to the European refugee crisis in 2015. The period of 2014 through 2016 also evidences a significant change in the UK's policy, particularly in terms of the resettlement of Syrian refugees who were fleeing mass atrocities. The relationship between R2P, as the endorsed framework for responding to mass atrocities, and the UK's various responses, specifically resettlement, form the central question in this research. As such, this time period represents a crucial time of change that lends itself to answering the research questions.

Discourse analysis and interviews are two relevant tools that constructivists use in order to capture insight into how and why social facts exist, and behaviour occurs⁴⁹, which resonates with the interpretivist methodological approach used in this research. 'There is no single constructivist method or research design. Constructivism opens up a set of issues, and scholars choose the research tools and methods best suited to their particular questions'⁵⁰. As such, this study involved analysis of two primary sources over two phases.

First, a broad discourse analysis was employed to examine official documents, reports, speeches and debates surrounding R2P implementation and the protection of Syrian refugees across the Foreign and Commonwealth Office (FCO), the Home Office, the Department for International Development (DFID), UNHCR and international humanitarian and UK civil society organisations. International relations scholars have traditionally focused on 'discourse as the structure of "meaning-in-use"'⁵¹. In terms of empirical research, this means studying 'social practices' as 'discursive interventions' such as looking at official documents, policy documents, political debates and media contributions because these 'discursive interventions contribute towards establishing a particular structure of meanings-in-use which works as a cognitive roadmap that facilitates the interpretation of norms.'⁵² Therefore, the discourse analysis reveals, as a method of data collection and analysis, what has been said, written and debated by UK decisionmakers in the R2P and Syrian refugee context, which provides an important framework for developing the relevant questions for phase two of the fieldwork. The official documents

⁴⁹ See, *Ibid*, p. 395.

⁵⁰ See, Finnemore and Sikkink, 'Taking Stock', p.396.

⁵¹ Antje Wiener, 'Contested Compliance: Interventions on the Normative Structure of World Politics', *European Journal of International Relations* 10/2: 189-234, 201 (2004).

⁵² *Ibid*.

are not ‘firm evidence of what they report’, but an informative reality of the organisation researched⁵³ and help to uncover ‘inter-subjective’ or shared understandings of R2P’s meanings, including its link to refugees, which established a preliminary understanding of how R2P has been localised and contested in the UK that could then be further investigated in the interview phase.⁵⁴

Importantly, ‘states are not the only significant actors in world politics’⁵⁵ because they are influenced by civil society.⁵⁶ Therefore, a broad discourse analysis of the official statements and policy briefs of international organisations and civil society (including UK civil society) was undertaken to reveal how these organisations interpret and use R2P in their advocacy to states. How organisations that are working in the forced displacement and/or mass atrocity response context have localised R2P also gives deeper insight into R2P’s ongoing contestation by states as advocates pursue strategies and frame issues in ways that resonate with decisionmakers for a greater chance of reaching their desired policy outcomes.

The second empirical stage involved conducting confidential, semi-structured interviews of UK government elites, international refugee organisations and international/UK civil society to query the underlying rationale of the respective official discourse in order to formulate a plausible correlation between the UK’s understanding and commitment to R2P and its policies aimed at protecting Syrian refugees. Importantly, the semi-structured aspect of the interviews aimed to get at the beliefs of social actors in their roles beyond what is available in texts and documents because research on the diffusion of norms needs to consider the social context and the role of agency.⁵⁷ Due to the inter-subjective and constitutive quality of norms, successful diffusion of norms is affected by norm adopters’ ‘experiences, norms, values and intentions’⁵⁸. In other words, it is not enough to answer the question of whether a link between R2P and resettlement is made in the discourse because there could be any number of reasons underlying those decisions that do not necessarily reflect a commitment, or lack thereof, to R2P. The

⁵³ Paul Anthony Atkinson and Amanda Jane Coffey, ‘Analysing Documentary Realities’, in David Silverman (ed.), *Qualitative Research: Issues of Theory, Method and Practice* 3rd ed. (London: Sage, 2011), p.79.

⁵⁴ Wiener, ‘Contested Compliance’.

⁵⁵ Robert Keohane and Joseph Nye, ‘Transnational Relations and World Politics: A Conclusion’ *International Organisation* 25/3: pp.721-748 (1971).

⁵⁶ Margaret E. Keck and Kathryn Sikkink, ‘Transnational Advocacy Networks in International and Regional Politics’, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998).

⁵⁷ Jeffrey T. Checkel, ‘Norms, Institutions, and National Identity in Contemporary Europe’, *International Studies Quarterly* 43/1: 83-114, 86 (1999).

⁵⁸ *Ibid.*

purpose of the interviews was to see the deeper context in terms of what rationale supported the discourse. For example, government policies that do not make a link between R2P and refugees might be exactly what civil society has advocated for, and thus, the government response may still exemplify a commitment to R2P that resonates with how civil society envisions protecting refugees.

As such, undertaking interviews with officials at specific migration and civil society organisations also aimed to explore how R2P is used to frame advocacy around the resettlement of Syrian refugees. Understanding how R2P does or does not influence the practical work of those working with refugees or advocating UK policy on mass atrocity response is crucial to wider understanding of the UK's responses to Syrian refugees and how the response correlates to the UK's commitment to R2P. For example, civil society's failure to link R2P and refugees might stem from the perception that explicitly mentioning R2P does not help the case for increased protection of Syrians fleeing mass atrocities. Former UN Special Advisor for R2P, Jennifer Welsh revealed that an interview with a UN official in 2010 confirmed that those Council members committed to the Protection of Civilians (POC) wished to avoid any association with R2P in order to prevent it serving as the 'lightning rod that would hamper progress' on the POC.⁵⁹ Thus, the segregation and politicisation of R2P from other protection agendas has an impact on its localisation and practice by states, international organisations and civil society, which are inter-linked.

Finally, constructivist research requires an historical component 'because any international political situation is located in time, and to understand it we must know...what the antecedent situations were out of which it grew, what the elements of continuity are that link it with what has gone on before and what the elements of change are that mark it out as different'⁶⁰. This means that even though this research is examining the period of 2014 through 2016, the data collection included sources from outside this time period in order to understand the larger context around the UK's localisation and contestation of R2P and how that may have served to influence the significant policy shift in resettlement of Syrians that took place in the UK between 2014 and 2016. In other words, analysing data from only 2014 through 2016 would have provided superficial understanding because 'no social realities are natural, they are all the

⁵⁹ Jennifer M. Welsh, 'Implementing the Responsibility to Protect: Where Expectations Meet Reality', *Ethics and International Affairs* 24/4: 415-430, 425-426 (2010).

⁶⁰ Andrew Linklater (ed.), *International Relations. Critical Concepts in Political Science* 1st Ed. (London: Routledge, 2000), p. 56.

result of political and social processes that are rooted in history'⁶¹. For this reason and because there is a limited amount of discourse (and little change in perspective) on R2P in the UK domestic context, the analysis took into account any relevant data from the development of R2P through to the end of 2016.

The predominant methodological concern for this research is determining what information constitutes evidence of R2P norm internalisation. The critical constructivists approach this epistemological conundrum not by asking whether norm internalisation has occurred, but how and why implementation varies across states and thus, they avoid making an arbitrary line between those states that do comply and those that do not based on such fixed identities as liberal versus illiberal states. This is because there is no single definition of R2P implementation even amongst like-minded states. Traditional scientific measurements of impact do not apply in this research context as norms are understood, implemented and contested in different ways by institutions and individuals making a traditional experimental approach impossible. Adopting a plausibility standard of evidence measurement entails 'assessing a range of sources of evidence that are non-random and context-determined'⁶² and then 'to support the credible conclusion that the intervention was delivered sufficiently and could reasonably be interpreted to have caused or contributed to the observed impact'⁶³. Constructivists accept that interpretation of social phenomena will always be subjective and therefore, what constitutes 'causality' will be what will be 'empirically plausible' compared to other evidence and explanations.⁶⁴ This involves asking and clarifying the motivations and interpretations of those charged with making decisions in compliance with or against the norm at issue.⁶⁵ Explicit and implicit invocations of R2P in the public discourse are important as part of the larger context, but the national context, structure and social practices along with what social actors say, do and how they explain their behaviour in relation to R2P serves as evidence of how R2P is localised and contested in the UK context. Critically, in this research, the silence around R2P in terms of some of the non-coercive responses to Syria and Syrian refugees provided a further basis for interpreting how the UK has localised the norm and which aspects are contested. The interview questions were intentionally designed to elicit participants'

⁶¹ Vincent Pouliot, "'Subjectivism": Toward a Constructivist Methodology', *International Studies Quarterly* 51/2: 359-384, 367 (2007).

⁶² Unnithan, 'What Constitutes Evidence in Human Rights-Based Approached to Health?'

⁶³ Helen Lambert, Elisa Gordon and Elizabeth Bogdan-Lovis, 'Introduction: Gift Horse or Trojan Horse? Social Science Perspectives on Evidence-based Healthcare', *Social Science and Medicine* 62/11: 2613-2620 (2006).

⁶⁴ See, Finnemore and Sikkink, 'Taking Stock', p. 395.

⁶⁵ Michael P. Scharf, 'International Law in Crisis: A Qualitative Empirical Contribution to the Compliance Debate', *Cardozo Law Review* 31/1: 45-97, 62 (2009).

knowledge and understanding of R2P by not mentioning the norm itself in order to see if discussions around mass atrocity response in Syria and resettlement of Syrian refugees prompted explicit or implicit mention of R2P. Where R2P was not mentioned by participants, the researcher introduced the norm and asked about interviewees' knowledge and understanding of the norm. Waiting to query participants' knowledge and understanding of R2P in relation to their policy decisions during the interviews was necessary because it plausibly strengthened any subsequent interpretations concerning the silence around R2P. In other words, the failure to mention R2P in relation to particular policies on Syria or Syrian refugees was sometimes unintentional which provided information on how R2P is not localised in the UK. On the contrary, the intentional failure to attach R2P to policy also provided information on how R2P is localised as a result of ongoing contestation.

1.4.2 Design, Impact and Ethics

The UK was selected as a case study for several reasons. The UK represents a powerful liberal state as a permanent member of the UN Security Council responsible for maintaining international peace and security. Tony Blair's impassioned speech in April 1999 to the US President for military humanitarian intervention in Kosovo influenced the subsequent NATO intervention and was a precursor to the 2005 endorsement of R2P at the UN.⁶⁶ The conditions set out by Blair are still relied upon as legal justifications for humanitarian intervention by the UK government.⁶⁷ The UK has continued to champion the protection of populations facing mass atrocities and remains committed to R2P. For example, former Prime Minister David Cameron relied on R2P principles in his speeches on Syria, and the websites of the Home Office and the FCO still maintain support for R2P.⁶⁸ Under R2P, military intervention is a last resort to other peaceful means of protecting populations from mass atrocities. While the UK has implemented humanitarian and peaceful means for protecting Syrians, including the Home Office's Syrian resettlement programme, the UK has demonstrated a narrower understanding of

⁶⁶ Tony Blair, 'The Blair Doctrine', 22 April 1999, <https://www.globalpolicy.org/component/content/article/154/26026.html>, accessed 6 March 2018.

⁶⁷ Prime Minister's Office, 'Syria action – UK Government Legal Position', 14 April 2018, <https://www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position>, accessed 14 April 2018.

⁶⁸ FCO, 'UK Fully Committed to Implementing the Responsibility to Protect', Statement by Ambassador Wilson, of the UK Mission to the UN, at the UN General Assembly Interactive Dialogue on Responsibility to Protect, 11 September 2013, <https://www.gov.uk/government/speeches/uk-fully-committed-to-implementing-the-responsibility-to-protect>, accessed 22 February 2016; FCO, 'Protecting people from genocide and war crimes, from ethnic cleansing and crimes against humanity, remains vital and sadly necessary', Statement by Ambassador Peter Wilson of the UK Mission to the UN at the General Assembly Informal interactive Dialogue on the Responsibility to Protect, 8 September 2015, <https://www.gov.uk/government/speeches/protecting-people-from-genocide-and-war-crimes-from-ethnic-cleansing-and-crimes-against-humanity-remains-vital-and-sadly-necessary>, accessed 22 February 2016.

what constitutes protecting Syrians from mass atrocities under R2P: (1) diplomatic efforts to pressure Assad to step down and foster political transition in Syria; and (2) military intervention if Parliamentary support exists regardless of agreement on the UN Security Council. Therefore, the UK government's choice to link only certain responses to the Syrian R2P context makes it an important choice for a case study on how R2P is localised and contested in a powerful liberal state. Additionally, the researcher deemed the UK the most amenable choice for study due to convenience and familiarity, including English as a first language.

Debates continue regarding reliability, replicability and validity, the necessary criteria for evaluating social research. There is significant agreement that these criteria are more prominent in case studies that rely more heavily on quantitative than qualitative methods for research.⁶⁹ However, case studies depending on mostly qualitative methods heighten the concern for *external validity* or *generalisability*, which refers to how a single case can be representative enough to apply in general to other cases.⁷⁰ In other words, how can using the UK as a case study in this research be demonstrative of other states within the international community? While the UK can serve as an 'exemplifying case' to similarly situated liberal states, it is not meant to represent a 'sample of one'⁷¹. The tension between UK support and practice of liberal political values epitomises the same issues found in the wider community of liberal states. The UK case will be illustrative of other states with similar values and concerns.⁷²

The research involved 15 semi-structured interviews with elites in Parliament, the FCO, DFID, the Home Office, UNHCR and civil society, including international humanitarian organisations and organisations working locally in the UK. After the researcher provided information on the project, interviewees gave informed consent prior to the interviews. In considering any potential harm to participants, the researcher took special care with the information received from government elites and civil society advocates in terms of respecting their political reputations and privacy, as well as with migration practitioners and specialists who may have shared general information about their clients who are not part of this study. For example, the organisational identities of several civil society organisations interviewed cannot be revealed due to their small size and the potential harm in terms of their access to UK government

⁶⁹ Bryman, *Social Research Methods* 4th Ed., p.69. See also, David Silverman, *Qualitative Research: Issues of Theory, Method and Practice* (Los Angeles: Sage, 2011); see, Colin Robson, *Real World Research* (West Sussex: John Wiley and Sons, Ltd, 2011).

⁷⁰ Bryman, *Social Research Methods* 4th Ed., p.69.

⁷¹ *Ibid*, p. 70; see also, Robert K. Yin, 'Analytic Generalization', in Albert J. Mills, G. Durepos, & E. Wiebe (eds.), *Encyclopedia of Case Study Research* (California: Sage, 2010), p.21-23.

⁷² Robert K. Yin, *Case Study Research: Design and Methods* (California: Sage, 1994); Yin, 'Analytic Generalization', p. 21-23.

officials in the event the substance of their interviews could be traced back to their organisations', or their personal, identities. All interviews are referred to by number, and any disclosures of identity, personal or organisational, are only in relation to publicly available discourse. As such, no conclusions should be drawn between those organisations/individuals discussed as a result of their public discourse and the identities of the participants interviewed for the research.

Importantly, this research took place during a time of great political upheaval in the UK including former Prime Minister David Cameron's resignation, followed by Prime Minister Theresa May's call for an election, the UK's referendum on Brexit and the UK's triggering of Brexit which resulted in the government's primary and ongoing focus on the negotiations. Given the dominance of these other issues, access to participants was very limited. As a result, the research additionally relied on statements and answers given at public and closed conferences under the Chatham House Rule. Under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.⁷³ Therefore, while the substance of the answers to the researcher's and other participants' questions have been used, anonymity and confidentiality of the speakers has been maintained by giving only limited information on the particular event where the information was received. In accordance with the University of York's ethical rules, statements and answers provided by high-level officials at public conferences have also remained confidential and anonymous under the Chatham House Rule.⁷⁴

Finally, the researcher will continue to keep all material from interview subjects and conference participants in the strictest confidence in appropriate secured facilities, and the storage of any personal information of interviewees complies with the UK Data Protection Act (1998) and any subsequent relevant legislation.

Researcher positionality will inevitably inform the narrow scope of the study because 'the social researcher is never conducting an investigation in a moral vacuum'⁷⁵. Therefore, reflexivity necessitates awareness of the impact of the researcher's own cultural, political and social perspectives. With a legal practice background in immigration, the researcher decided to focus on refugee resettlement within the context of R2P. Accordingly, the researcher's positionality

⁷³ Chatham House, 'Chatham House Rule', https://www.chathamhouse.org/chatham-house-rule?gclid=CjwKCAiAu_LgBRBdEiwAkovNsEUgGEHuJTeUhJeqrQilmddOoYmHrPX7QFb-iyqOvMitg0nMZQ65jhoC_DgQAvD_BwE, accessed 20 December 2018.

⁷⁴ Except where the public transcript has been published and is available.

⁷⁵ Bryman, *Social Research Methods* 4th Ed., p.149.

may appear more aligned with Syrian refugees and asylum seekers or those advocating on their behalf in contrast to the elite government officials in the Home Office or the FCO in charge of policies aimed at gatekeeping refugees and migrants. The importance of this disclosure is to acknowledge its potential influence on the research conduct and interpretations and conclusions. However, absolute objectivity is not a practical standard in the social research context.⁷⁶ Despite the possible tendency of the researcher to ‘identify with the underdog’⁷⁷, ultimately, the research is about *why* states (through government officials) behave as they do and not a critique of government policy or officials’ political beliefs. The research was about what *motivates* the existing responses (or lack thereof), which does not involve judgment of what the response should be. The research was conducted in good faith without prejudice in pursuit of an objective truth to the degree possible in a constructivist study.

1.5 The Argument

1) How is the UK using the resettlement of Syrian refugees as a method of discharging its responsibility to protect populations from mass atrocities in Syria?

The Home Office oversees the UK’s Syrian resettlement policy which is part of the broad humanitarian response to Syrians, but it was not motivated by R2P. There is no mention of R2P in the Home Office’s official discourse and none of the interviewees in the Home Office were aware of the norm. Therefore, R2P was not relied upon either explicitly or implicitly when enacting resettlement policies for Syrians in the Home Office. Importantly, the interviews occurred after the government expanded the resettlement programme for Syrians when the resettlement from Syria and the region became jointly overseen by the Home Office and DFID, which added an international dimension to the Home Office’s domestic policymaking. This point is crucial because DFID representatives did have knowledge of R2P and were also involved in executing mass atrocity responses to the Syria region. Even so, there was no apparent knowledge transfer of R2P to the Home Office in relation to the expanded resettlement policy in the Syria region. It is also important to take account of how the other governmental bodies connect R2P to resettlement because the Home Office’s resettlement programmes are ultimately reflections of the sitting government’s overall policy responses to Syria and members across the government do have knowledge and understanding of R2P. There is also some cross-agency recognition of how R2P is being implemented by other departments. For example, the interviews revealed that members of Parliament were aware of R2P and used it explicitly to

⁷⁶ *Ibid.*

⁷⁷ Howard S. Becker, ‘Whose Side Are We On?’, *Social Problems* 14: 239-247 (1967).

bolster advocacy around a UK military intervention in Syria. The interviews in the FCO revealed that Parliament's use and understanding of R2P made agents in the FCO wary of mentioning the norm explicitly to any policy due to their contestation of the norm. However, despite knowledge of R2P in some government departments, the official discourse and the interviews in the FCO and in Parliament revealed that these bodies did not connect the UK's resettlement of Syrians to R2P. The plausible conclusion is that in the UK, R2P is localised as excluding the resettlement of Syrian refugees.

However, this conclusion does not mean that R2P has not been localised by the UK. Critical constructivists recognise there is no one way to implement a norm, particularly prescriptive and ambiguous norms like R2P. R2P permits but does not require resettlement. Therefore, the UK's failure to link resettlement to R2P does not mean R2P has not been localised by the UK. Localisation is about interpretation of a norm's meaning through its use and non-use across the government bodies comprising the UK government. In this case, the research revealed how R2P *is not* localised as refugee resettlement in the UK. However, this does not answer how R2P *is* localised in the UK. Applying Wiener's 'meanings-in-use' theory revealed that the government bodies comprising the UK government were unified in how they understood the implementation of R2P to be (1) military intervention to end humanitarian suffering (Pillar III); and (2) diplomacy (Pillar III) to bring political transition to prevent future atrocities (Pillars I, II). At the same time, humanitarian aid to Syria and the region and refugee resettlement were envisioned as temporary responses to help alleviate the ongoing humanitarian suffering while either of the above two R2P implementations were pursued. The rationale for these meanings-in-use was that the UK interprets R2P as requiring ending mass atrocities which is best approached through these two options. Therefore, the humanitarian means implemented by DFID and the resettlement implemented by the Home Office are of limited value because they cannot end the mass atrocities but alleviate the suffering while a more effective solution for reaching the larger objectives is pursued. Thus, the humanitarian responses may accompany an R2P response but were not seen as R2P responses on their own.

Importantly, localisation of a norm is not only a reflection of how a norm is used in practice across the bodies comprising the government, but can help inform which aspects of the norm are contested. The former Special Advisor on R2P, Jennifer M. Welsh says determining contestation is best approached by asking 'how actors resist particular features or forward

alternative interpretations of a norm during the post-institutionalisation phase⁷⁸. First, how actors forward particular meanings of a norm reveals contestation. For example, Parliament is contesting R2P's perceived deference to international politics, which renders it ineffective for reaching the objectives of ending mass atrocities and ensuring political transition through the UN Security Council. For this reason, Parliament has forwarded an alternative interpretation that R2P only applies to cases where there is UN Security Council agreement. Where there is no consensus, the norm of humanitarian intervention, as developed by Blair and implemented in Kosovo, is seen as appropriate. This use and understanding of R2P was shared by the FCO, which resulted in intentional avoidance of R2P which leads to the second prong of Welsh's approach for understanding contestation.

Second, how actors resist particular features, particularly the intentional silence around a norm, can also reveal what aspects of the norm are contested. The FCO sees R2P as a military intervention norm, which has resulted in contestation against the norm. The research revealed that the FCO is contesting R2P in two ways: (1) the FCO contests R2P's conflation with military intervention because it sees diplomacy as the best way for reaching the objectives of peace and political transition; and (2) the FCO fears linking national responses to R2P will constrain discretionary policymaking on future cases of mass atrocities.

More broadly, the UK is contesting the 'humanitarian and other peaceful means' aspect of R2P which are explicit requirements of R2P.⁷⁹ The UK is resisting (Welsh) or contesting R2P's 'humanitarian and other peaceful means' aspects by enacting such methods but not calling them R2P because it remains fixed on its particular understanding of the norm. This reveals the UK's narrow understanding of the non-coercive aspects of R2P. Instead, R2P is localised as diplomatic or military intervention for the objectives of Assad stepping down and political transition. Other humanitarian or peaceful means that do help protect Syrians fleeing mass atrocities, the core remit of R2P, are sacrificed to the larger political objectives of regime change and political transition, which are not at R2P's normative core. Regime change and political transition may be the means for discharging R2P in terms of helping protect populations from mass atrocities in some cases, but when they are the objectives in a manifestly failing state, they are not helping to protect as required by R2P when they are impossible. This is demonstrated in the Syrian case as holding firmly to these political objectives has exacerbated

⁷⁸ Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster.

⁷⁹ Importantly, this is distinguishable from contesting resettlement as an R2P method as refugee protection is not an explicit requirement of R2P.

the paralysis on the UN Security Council.⁸⁰ In effect, the actions the UK has taken, along with the rest of the permanent members, to help protect the Syrian population, such as diplomacy, humanitarian aid and resettlement, have been undermined by political objectives which are prolonging the war and thus, increasing refugee flows and exacerbating the humanitarian suffering. Despite this fact, R2P has been localised in the UK, but in a narrow way that has thus far, been ineffective in terms of fulfilling the UK's understanding that R2P requires ending the mass atrocities.

2) How is R2P conceptually aligned with refugee resettlement and what is the practical value-added for linking the two?

Resettlement appears to link with R2P's responsibility of helping to protect populations from mass atrocities as agreed in the WSOD in 2005⁸¹ because it serves as a 'humanitarian' or 'other peaceful means' for discharging R2P's controversial Pillar III. While the Secretary-General's 2016 report directs states to invest in 'peaceful tools' like refugee protection for protecting populations affected by atrocity crimes,⁸² it is still up to states to adopt his aspirational interpretation of R2P responsibilities.

Beyond qualifying as a peaceful means under R2P, the responsibility to resettle refugees has limited conceptual alignment with R2P because resettlement removes refugees from a third country and not from the state that is manifestly failing to protect its population from mass atrocities. This means the refugees eligible for resettlement in Syria's neighbouring states may be facing egregious violations of their human rights, but they are no longer facing mass atrocities in a manifestly failing state which makes R2P's applicability to resettlement tenuous. Resettlement only directly links to R2P in terms of preventing *refoulement* of refugees back to Syria where they would face on-going mass atrocities, which is far from offering a conceptually solid link. While international law prohibits *refoulement*, there is no enforcement authority, and 'allowing' *refoulement* actively or passively by another state is unlikely to translate into complicity in perpetrating mass atrocities.

Additionally, R2P permits, but does not require, refugee resettlement to discharge its responsibilities as the norm's obligations are ambiguous and contain a lower threshold of obligation than what is argued in the R2P literature. R2P requires states to help protect

⁸⁰ Russia and China have also contributed to this paralysis.

⁸¹ '2005 World Summit Outcome', p. 30.

⁸² Ki-moon, *Mobilizing Collective Action*, p. 13-14. However, Newman argues that the Secretary-General's reports have been more superficial and less assertive about the link between forced migration and R2P. Newman, 'The Limits of Liberal Humanitarianism in Europe'.

populations from mass atrocities which means any policy aimed at helping to protect is enough to discharge the duty. Refusing to resettle a significant proportion of Syrian refugees shows a general disregard for the greater aspirations of R2P, but it does mean the UK has failed its R2P.

However, there are several practical reasons for linking the two norms. Proportionate resettlement may indeed demonstrate sovereign equality that strengthens the legitimacy of the Global North by sharing in the burdens of finding and executing a humanitarian response to an international problem, especially when the political interests of the Permanent Five (P5) prevent effective implementation of R2P in difficult cases like Syria. Additionally, finding alternative methods for complying with R2P by the permanent members of the UN Security Council helps limit undermining the international legitimacy of the Council from the perception that it has failed to act or respond to Syria effectively due to political paralysis. Moreover, having additional tools other than coercive military force available for discharging R2P Pillar III responsibilities might harmonise relations between states like the P5 (who have differing visions of sovereignty) and might even mollify the Global South by sharing in its disproportionate responsibilities. However, none of these reasons for linking resettlement to R2P overcomes the conceptual gaps that persist: R2P requires a response to mass atrocities *in a manifestly failing state* and any response beyond that is serving the aspirations of R2P but not the requirements. Furthermore, the failure to resettle a significant proportion of Syrian refugees ignores the solidarity principles under the Refugee Convention and potentially undermines international relations and confirms R2P as largely a military intervention norm, but these reasons still do not overcome the conceptual gaps in linking R2P and resettlement.

Even so, applying Jason Ralph's pragmatic constructivist lens helps limit the conceptual gaps as the predominant explanation for missing or avoiding the link between R2P and resettlement in UK practice. This approach can provide some insight into state commitment to R2P (in terms of helping populations facing mass atrocities) because if a state's preferred methods for discharging R2P are impossible, such as Assad stepping down and political transition in the case of the UK (because of the UN Security Council), then the objective of ending the humanitarian suffering needs to be approached in a way that makes it possible. In other words, if the means of reaching the objective of peace prevents realisation of the objective, then the means need to be changed. If the means are not changed, then it brings into question how committed a state is to the objective of ending the suffering. Thus, pushing accountability and political transition as an R2P meaning may be appropriate in the abstract, but in practice it

prevents implementing ‘R2P as humanitarian aid’ or R2P as ‘other peaceful means’⁸³. The value-added for linking R2P to resettlement is in finding an alternative means for reducing suffering which gets closer to the objective of ending the suffering than no action at all. Crucially, the objectives in Syria have reached a point of conflict with each other because the two objectives for reaching peace (Assad stepping down and political transition) are impossible which means the humanitarian suffering continues. According to Ralph, the continued pursuit of political transition has therefore sacrificed finding a solution to the Syrian crisis. As a result, any immediate humanitarian objectives are subordinate to Assad’s departure and political transition in Syria. This provides insight into how the UK’s long-term goals of democracy building and conflict prevention limit the UK’s humanitarianism in Syria when its preferred methods are impossible.

Finally, the practical value-added for linking R2P and resettlement remains variable. For international refugee law advocates/practitioners, there is limited value-added. Practitioners welcome the link if it results in more refugee protection, but they were also worried that linking the two protection norms in practice could erode the lower threshold of persecution for refugees who may become defined under the higher threshold of mass atrocities over time. This could manifest in cases where persecution was not accompanied by conflict and large-scale humanitarian crises. Finally, there is limited value-added for states like the UK who are experiencing anti-migration sentiment in their constituencies during economic austerity and Brexit if linking the two frameworks means increasing existing resettlement numbers. Finally, civil society was generally united in supporting a link if it resulted in more refugee protection. However, interviewees from civil society and the UK government maintained that R2P is about responding *in* the manifestly failing state. Therefore, the value-added for finding an implicit link between the two frameworks varies across social agents and is limited by the conceptual gaps between R2P and resettlement.

3) How has R2P shaped or not shaped refugee resettlement programs for Syrians in the UK?

R2P has not explicitly shaped the refugee resettlement programmes for Syrians in the UK because R2P has been localised as a foreign policy response in the manifestly failing state.⁸⁴ In

⁸³ Jason Ralph, ‘What Should Be Done? Pragmatic Constructivist Ethics and the Responsibility to Protect’, *International Organization* 72/1: 173-203, 194 (2018).

⁸⁴ Jennifer M. Welsh, ‘Fortress Europe and the Responsibility to Protect: Framing the Issue’, *The Lampedusa Dilemma’: Global Flows and Closed Borders What should Europe Do?*, European University Institute, Florence, 17-18 November 2014, p. 3,

the Syrian case, the UK's fixed objectives of ending the mass atrocities and securing political transition in Syria have dominated the attention of the UK's agencies responsible for implementation of its foreign policy, namely the FCO and DFID and its governing body, Parliament, to some degree. Resettlement policy is overseen by the Home Office which handles domestic policy. As such, resettlement falls within the domestic arena while R2P responses are implemented by those working in UK foreign policy who execute responses in the region where the cause of action is occurring. Home Office policymakers were not aware of R2P's existence. The UK's flagship resettlement programme, the Syrian Vulnerable Persons Resettlement programme (SVPR) was enacted in 2014 in response to international and public pressure, including civil society advocacy leading up to the European refugee crisis. The programme was expanded in September 2015, and became the joint responsibility of the Home Office, DFID and the Department for Communities and Local Government, which established a joint team to manage the programme to be located in the Home Office. Despite the 2015 expansion of UK resettlement policy for Syrians into the foreign policy arena through partnership with DFID, the interviews for this research revealed that Home Office participants had no knowledge of R2P at all. Therefore, the plausible conclusion is that R2P does not explicitly shape the UK's Syrian resettlement policy.

This brings up the question of what did motivate the UK to suddenly change its resettlement policy in 2014 and then expand it in 2015 and then continue the policy even under a new Prime Minister who has been recognisably tough on immigration. Furthermore, the Home Office has been referred to as a 'hostile environment' to immigrants.⁸⁵ The 2014 programme and its expansion in 2015 was enacted in response to international and public pressure and civil society advocacy. The interviews revealed that the motivations behind the policies stemmed from a notion that the UK has a special responsibility as a permanent member of the UN Security Council and desires to be seen as a moral global leader, particularly following the Brexit vote in June 2016 and the decision of the US to become more isolationist during the Trump campaign leading up to his election in November 2016. Therefore, how civil society and the public advocate to UK officials is relevant and leaves room for developing further approaches to advocacy.

<https://www.eui.eu/Documents/RSCAS/PapersLampedusa/FORUM-Welshfinal.pdf>, accessed 14 August 2018.

⁸⁵ Liberty, *A Guide to the Hostile Environment: The Border Controls Dividing our Communities—and How We Can Bring them Down*, April 2018, <https://www.libertyhumanrights.org.uk/sites/default/files/HE%20web.pdf>, accessed 20 August 2018.

4) Is there any added value for the UK to use resettlement of Syrian refugees as a method of discharging its responsibility to protect?

The UK endorsed R2P but has been criticised for evading commitment to millions of displaced Syrian refugees despite having several national responses to Syria, including the Home Office's SVPR programme. Under R2P, states agreed to use 'diplomatic, humanitarian and other peaceful means' to help protect populations from mass atrocities when a state is manifestly failing. However, the interviews revealed some misconceptions around R2P, especially its conflation with military intervention, which has not only prevented consensus on the UN Security Council but has resulted in the decision not to link R2P to some existing national responses that are aimed at helping protect Syrians, particularly in the FCO and DFID. Using resettlement to discharge R2P would help to transcend the persistent contestation of R2P's military intervention aspect, however it is not without political controversy especially if it would require a large policy shift.

Importantly, one of the aims of this research was to understand how the different understandings and practices of R2P across the relevant agencies of a powerful, liberal state like the UK may be augmented into a more coherent policy on mass atrocity response that includes resettlement. As such, the research had to also take into account participants' fears that linking R2P to policies like resettlement may constrain policy decisions in other cases or be used against the government for hosting more refugees during austerity and the rising anti-migration climate. What is really being asked is whether the UK will be required to do more than it is if it links R2P to all its non-coercive policies on Syria.

These concerns are ameliorated by understanding what R2P actually requires. The language of R2P, as endorsed by states, permits a subjective (due to ambiguity) and minimal (*helping* to protect, not *protecting*) response to those facing mass atrocities. States are not politically or legally required to act beyond the text they endorsed. Interpreting R2P narrowly as a response that '*helps* to protect populations from mass atrocity' -- a different obligation from 'ending the mass atrocity' -- is defensible.⁸⁶ Former Special Advisor on R2P, Jennifer Welsh, argues that 'R2P is best conceived as a responsibility to consider a real or imminent crisis involving mass

⁸⁶ However, for a discussion on how the UK may be failing the aspirations of R2P, see Chloë M. Gilgan, 'Has the UK Fulfilled its Commitment to the Responsibility to Protect?: What the Norm Requires in Practice versus Aspiration', Written Evidence (RTP0011), Responsibility to Protect and Humanitarian Intervention Inquiry, Foreign Affairs Select Committee, 3 July 2018, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries/parliament-2017/inquiry8/publications/>, accessed 4 July 2018.

atrocities crimes⁸⁷ and engaging in consistent debate itself is enough.⁸⁸ This dissertation adopts Welsh's 'duty to consider' as the baseline from which to begin because R2P also requires that states actually '*use* appropriate diplomatic, humanitarian and other peaceful means'⁸⁹. This means the UK has a 'duty to consider' a case and then must respond through one of these peaceful methods, but the responses need only *help* protect populations from mass atrocities, which requires a lower threshold effort as compared to ending the mass atrocities.⁹⁰ Advocates can certainly advocate for a broader interpretation of state responsibilities under R2P from moral imperatives and perhaps even from political necessity, but a state cannot be said to be failing its responsibility to protect when mass atrocities persist despite implementation of responses that are *helping* to protect but fall short of ending the mass atrocities.⁹¹ Moreover, R2P requires a response that does little more than *help* protect, so it is powerless to constrain foreign policy or pre-determine the particular responses to cases of mass atrocities.

At present, the UK's commitment to R2P appears rhetorical rather than operational because in the absence of authorisation for military intervention (the method predominantly pursued by the UK to bring about Assad's departure and political transition), it looks as if the UK is not responding to Syria within the context of R2P beyond the use of force. The UK's failure to link all of its responses to Syria to R2P has fuelled perceptions that the UK is only rhetorically committed to R2P. However, in reality, the UK is currently implementing R2P through its various cross-government responses, including diplomacy at the international level, humanitarian assistance in the region through DFID and the resettlement of Syrian refugees by the Home Office. Critically for this research, the UK has not linked R2P to the Home Office's SVPR,⁹² which is certainly a policy that is *helping to protect Syrians* who have fled mass atrocities. Any response that can be said to help protect populations from mass atrocities is R2P in practice. Linking these programmes to R2P would help build the norm and would demonstrate how the UK is practicing R2P in other non-coercive ways. This would signal to those wary of R2P as a military intervention tool that the UK implements R2P in non-coercive ways and does not conflate the norm with military intervention. Doing so would constitute

⁸⁷ Jennifer M. Welsh, 'Norm Contestation and the Responsibility to Protect', *Global Responsibility to Protect* 5/4: 365-396 (2013).

⁸⁸ Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster.

⁸⁹ '2005 World Summit Outcome', p. 30. The duty to respond under Chapter VII is even less binding than the non-coercive measures as states agreed they 'are prepared to take collective action in a timely and decisive manner'.

⁹⁰ Gilgan, 'Written Evidence (RTP0011)'.

⁹¹ *Ibid.*

⁹² Based on field research including document analysis and interviews in Parliament, Home Office and the Foreign and Commonwealth Office.

tangible proof of the UK's commitment to R2P, especially following the Windrush scandal and Brexit, and would require very little in terms of policy shifts because the UK already has existing resettlement schemes for Syrian refugees that have been commended by civil society.⁹³ Importantly, making the links provides another platform for further advocacy by civil society while R2P's minimal requirement for helping to protect insulates states from claims that they are failing their R2P.

1.6 The Contribution

The research makes five original contributions. First, the research contributes to critical constructivist norm theory by revealing how contestation of R2P in powerful, liberal states like the UK informs R2P practice, precisely when military force is either impractical or impossible, and diplomatic and humanitarian tools are perceived to have been exhausted. The research adopts a critical constructivist norm model and applies it to a powerful liberal state, which offers further insight into the domestic internalisation of international norms. While both the conventional and critical constructivist literature aimed to consider the dynamics of social phenomena in ways its predecessors neglected to do so, its empirical application does not generally focus on powerful liberal states. This suggests that understandings around norm internalisation are only partial. Applying critical constructivist theories like norm localisation to powerful liberal states helps complete the picture. Moreover, the limited research engaging with the diffusion of norms in powerful liberal states permits the presumption that such states are homogeneously committed to important international norms. As a result, this research fills an analytical gap by investigating R2P's diffusion in the UK within the national context whereby policymakers, their political offices and domestic constituencies shape R2P's contestation, which impacts localisation of the norm. Second, as a result of applying the particular critical constructivist theories, the research revealed the limitations of using such a framework as neither theory results in deeper understanding in terms of the effects of the localisation or contestation on the value of R2P as a norm. Thus, it is difficult to see how the UK's localisation and contestation of R2P may conceal the norm's ultimate degeneration.

Third, the research contributes to the R2P literature by examining how the norm's underlying aspirations relied upon in R2P advocacy are in constant tension with states' conceptual understandings and practice of R2P, which also influences how international and local UK civil society organisations contest and localise R2P meanings in their use of the norm. Importantly,

⁹³ Interview 2.

the research advances the debate concerning R2P's contested norm status, which is more easily challenged when it is perceived to be failing on the ground due to politics as in Syria. The claim that the UK is only rhetorically committed to R2P because it is failing to end the mass atrocities in Syria and is refusing to resettle greater numbers of Syrian refugees is based on conceptual presumptions over what R2P requires. The academic literature considers the link between R2P and refugee protection, but it is too focused on asylum, and it relies on normative arguments that conflict with how the UK has localised R2P and how civil society is advocating for increased protection of Syrian refugees. As such, this PhD thesis illuminates the divide between R2P scholars and civil society in the UK context in terms of how each envisions the link between R2P and refugee resettlement. Understanding that resettlement is not a conceptual requirement of R2P, but a pragmatic peaceful option in some cases would create a space for more effective R2P advocacy to states rather than perpetuating a binary between what R2P commitment entails versus states' interests.

Part of understanding the gap between the R2P scholarship and how the UK is implementing R2P requires looking at how R2P and international refugee law interact. This is the fourth contribution of the PhD. Since the European refugee crisis, scholars have published widely on how refugees are related to R2P and how protecting them would help states discharge their R2P responsibilities. However, there is very limited research on how the two frameworks link conceptually, which may partially explain why some states are generally not using resettlement as a method of discharging R2P. Moreover, the claim that the UK is only rhetorically committed to R2P because it is failing to resettle greater numbers of Syrian refugees is based on conceptual presumptions over how the two frameworks interact and where an R2P response should occur. If the UK is failing to connect resettlement to R2P due to these underlying conceptual reasons (what R2P requires and how resettlement connects to the location of an R2P response), then R2P advocates and civil society advocates for increased protection can make better arguments for engaging states. Moreover, advocacy needs to address the fact that the value-added for finding an implicit link between the two frameworks varies across social agents, including those helping refugees in the field. By not acknowledging these current deficits, the advocacy can only 'fall on deaf ears'. Thus, the R2P scholarship and civil society need to find new approaches for influencing states to increase protection of those fleeing mass atrocities.

The fifth contribution of the research is that the findings may promote greater understanding of R2P implementation, which may lead to more robust advocacy by civil society and more

coherent government policy on mass atrocity response including the resettlement of refugees.⁹⁴ Understanding what a commitment to R2P actually requires has a potential policy impact in terms of how the different understandings and practices of R2P across the relevant agencies of the UK may be augmented into a more coherent policy on mass atrocity response as advocated by international and UK civil society. This research aimed to understand whether and how there might be value in linking the R2P norm with the refugee resettlement norm, which has practical implications despite the conceptual gaps. There is very little required in terms of a policy shift in the UK as the Home Office already oversees a Syrian resettlement programme, but it is not linked to R2P. Framing the Home Office's existing refugee resettlement programme as 'other peaceful means' under R2P would help ameliorate some of the misconceptions and fears around R2P, such as its conflation with military intervention and its constraint on developing relevant policies, and it is a way for the UK to operationalise its commitment to R2P precisely when military force is impossible, and diplomacy has been exhausted. Linking R2P to the UK's national responses to Syria advances the UK's commitment from rhetorical to practical and sets an example for other states, particularly in the context of Brexit and the US' receding role in international affairs. The value of this is that the UK continues to support R2P and has enacted several peaceful policy responses that naturally fit within the remit of R2P. As such, the discursive neglect of R2P is not a complete rejection of R2P but a reflection of the UK's narrow understanding of what an R2P response means. Over time, this final contribution may also inform practice of R2P at the international level if the UK's localisation of R2P expands to include more peaceful methods for implementing R2P, which will serve to lessen other states' fears that R2P is a cover for western hegemony.

1.7 The Layout

The thesis proceeds as follows. Chapter Two is a literature review of norms from the interdisciplinary perspective of international relations, and international law. The chapter presents a theoretical discussion of the key debates on norms through an historical journey that chronologically begins with realism and concludes with critical constructivism, and then explores what constitutes evidence of norm internalisation through the interdisciplinary lens of international relations and international law. Next, the chapter applies critical constructivist norm theory, particularly Wiener's 'meanings-in use' and Acharya's norm localisation theories, to the R2P norm debate. This part of the chapter begins with a brief history explaining the birth and adoption of the R2P norm from a conventional constructivist lens. The chapter draws on

⁹⁴ Gilgan, 'Written Evidence (RTP0011)'.

existing R2P scholarship in combination with the literature on norms to explore the debates concerning R2P's norm status. Even though R2P may have arguably undergone successful institutionalisation at the international level, the norm has been challenged as ineffective at protecting the Syrian population from mass atrocities, a perception stemming from ongoing contestation and norm localisation. Understanding how powerful liberal states have internalised the R2P norm may provide deeper insight into the implementation gaps facing R2P and the extent of state commitment to the norm.

Chapter Three includes a literature review of the link between R2P and resettlement. The chapter examines the conceptual, normative, practical and historical links between the R2P norm and the refugee resettlement norm in order to understand the value-added for linking the two protection frameworks. The key point of Chapter Three is to answer the sub-question concerning the conceptual links between R2P and resettlement in order to understand why states like the UK may not be making the link in practice despite the normative arguments made in the literature. Developing this link between R2P and resettlement provides the context for answering how the link works in practice, specifically why UNHCR and the UK do not envision a link between R2P and resettlement and thus, what conclusions may then be drawn in terms of the contestation and localisation of R2P. This is because the conceptual links presumed by the R2P scholarship and advocacy have not been shared in practice by UNHCR, civil society or by states. The discourse and subsequent interviews of UK government officials and civil society representatives confirmed that their conceptual understandings of the two norms differed from those relied upon in the R2P literature.

Chapter Four is a factual background chapter, which covers the conflict in Syria and the international community's responses for the period of 2014 through 2016, which saw the climax of the European refugee crisis and the worsening of the humanitarian crisis in Syria as the conflict intensified from a civil war into an international proxy war with no effective resolution in sight due to a paralysed UN Security Council and the Syrian regime's failure to protect the population from mass atrocities.

Chapters Five and Six are empirical chapters that present and analyse the research findings following the discourse analysis of official statements and subsequent interviews with elites in the UK government, humanitarian organisations and UK civil society. Chapter Five answers the main research question of how powerful liberal states that support R2P, like the UK, are using the resettlement of refugees to partly fulfil their responsibility to protect Syrians from mass atrocities. In the context of Syria, the resettlement of vulnerable Syrians from the region

to the UK was not triggered by commitment to R2P, but in response to global and local civil society and public pressure to respond to one of the greatest humanitarian crises since the Second World War, which influenced the UK's decision to expand its Syrian resettlement programme during the European refugee crisis of 2015-2016. Therefore, to fully understand state behaviour, attention also needs to focus on the role civil society played and therefore, how civil society has localised R2P, particularly in terms of its link to resettlement and the overall value of R2P more broadly as an advocacy tool. Thus, the key point of Chapter Six is to present and analyse the empirical findings which aim to understand how civil society has localised R2P and how the norm's meaning has been derived from its practice.

Chapter Seven is the conclusion of the dissertation. This chapter summarizes the main arguments and results of the findings and then discusses the limitations, implications and the need for more research in the future.

2 Understanding State Behaviour

2.1 Introduction

This research adopts an interdisciplinary approach that links the norm theory literature from international relations and international law, which provides a relevant framework for analysing how the R2P norm has been internalised in a powerful liberal state like the UK. The key point of Chapter 2 is to explore the norm literature in order to adopt a theory for determining how the UK understands its R2P in Syria and how that influenced Syrian resettlement policy, particularly during 2014-2016 when the UK's policy to Syrian refugees underwent significant change. The fact that R2P is prescriptive and therefore, subjective, makes it an indeterminate norm, which means any evaluation of its internalisation in a state is best understood by applying a critical constructivist lens, which involves exploring its 'meanings-in-use'¹ and how it is adapted to fit within the local context in order to gain insight into the norm's meaning(s) as understood in the UK. Therefore, this chapter provides an overview of norm theories and then applies the relevant constructivist framework to R2P, which lays a theoretical foundation for answering the main research question concerning how the UK is using the resettlement of Syrian refugees as a method of discharging its responsibility to protect, which will be answered empirically in Chapter Five.

The ensuing theories on state behaviour offer a helpful framework for understanding the model trajectory of norms from birth to diffusion and internalisation in states. Importantly, the critical constructivist norm theories go beyond conventional constructivist models in understanding how norms diffuse within states due to localisation and contestation including competition with existing local norms post-institutionalisation. Even so, such critical theories on state behaviour, similar to the conventional theories, are traditionally applied in a narrow context in order to understand the process whereby human rights norms diffuse mostly within *illiberal* states or are shaped by contestation by *less* powerful liberal states.² Regardless, such critical theories are also relevant to understanding how 'soft law' norms, like R2P, diffuse in the *powerful* liberal

¹ This involves looking beyond the formal text of the norm to defining its meaning as a result of its use. Antje Wiener, 'Contested Compliance: Interventions on the Normative Structure of World Politics', *European Journal of International Relations* 10/2: 189-234, 218 (2004); see also, Antje Wiener, 'Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations', *Review of International Studies* 35/1: 175-193 (2009).

² See, for example, Cristina G. Stefan, 'On Non-Western Norm Shapers: Brazil and the Responsibility While Protecting', *European Journal of International Security* 2/1: 88-110 (2017); Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds.), *The Persistent Power of Human Rights: From Commitment to Compliance* (New York: Cambridge University Press, 2013); Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999); Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (New York: Cambridge University Press, 2009).

state context, because how these states define and interpret compliance with R2P depends on their own local dynamics, and such contestation will have lasting effects on a norm's status because powerful liberal states that sit on the UN Security Council play an on-going role in sustaining and implementing existing norms within their international roles and capacities. Thus, the issues surrounding R2P's operational problems are not exclusively due to less powerful liberal and illiberal states' contestation, but also due to powerful liberal states' contestation in terms of how R2P's operation may lack resonance to their existing domestic contexts. Using norm theory as a framework provides a method for deriving R2P's meanings in the UK context because its 'meanings-in-use' as a composite of existing social norms and practices (localisation) will ultimately lead to understanding how a powerful liberal state, like the UK, who supports R2P, uses refugee resettlement as a method of protecting populations from mass atrocities in places like Syria.

Chapter 2 is divided into two main parts. The first part presents the key debates concerning political norms in two main sections. These sections involve a theoretical examination of the relevant international relations norms literature from realism to constructivism to critical constructivism. The final section examines the critical constructivist theories that will be applied to R2P in the last part of Chapter 2.

The second half of Chapter 2 applies critical constructivist norm theory to R2P in order to derive and contextualise the conceptual meaning(s) and contestation of R2P. This part of the chapter begins with R2P's cultivation as the norm for responding to mass atrocities within its broad historical context. The sections that follow examine what R2P is, what it requires from states and its meaning(s), all of which impact both its implementation and the measurement of its normative influence on state behaviour. Assessing the influence of norms on state behaviour requires taking a multi-disciplinary approach by engaging with the literature on international human rights law and the compliance debate in international law for analysing what constitutes evidence of norm internalisation, a crucial methodological necessity for researching how to measure R2P's impact on the UK's responses to Syria.

2.2 Political Norms

2.2.1 From Realism to Constructivism

Norms are ‘inter-subjective understandings’ of appropriate behaviour based on a given identity.³ Inter-subjective refers to the shared or collective values. A given identity refers to a self-defined group such as ‘liberal states’ which are discernible by their support for human rights. Norms can constrain behaviour or be constitutive by creating scenarios for action. Rational choice scholars see norms as constraints and social constructivists see norms as constitutive.⁴ ‘Compliance’ means sustained behaviour (and domestic practices) that conform to the international norm.⁵ Importantly, the definition of compliance can vary from ‘the procedural requirement to report, substantive compliance required by the treaty, or compliance expressing the spirit of the treaty’⁶.

The absence of ideational factors to explain conformity to norms in the field of international relations in the 1970s and 1980s gave way to a constructivist model, which acknowledged and rediscovered the important ways in which social norms influence and change state behaviour through a ‘logic of appropriateness’⁷. The predominance of state-centric models that narrowly explained state behaviour as the result of interest-based motivations for utility maximisation, known as the ‘logic of consequences’⁸ within the study of international relations, offered a very limited understanding of state behaviour. This is true because such theories failed to explain the evolving nature of what is deemed ‘appropriate’ among states.⁹ Early constructivists were interested in how social phenomena developed and the empirical methods for analysing such research.¹⁰ Martha Finnemore and Kathryn Sikkink responded to the ideational deficit by finding a theory for recognising and evaluating the influence of norms on state behaviour,

³ Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’, *International Organization* 52/4: 887-917, 891 (1998).

⁴ See, Jeffrey T. Checkel, ‘International Norms and Domestic Politics: Bridging the Rationlist-Constructivist Divide’, *European Journal of International Relations* 3/4: 473-495 (1997); See, Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, p. 891.

⁵ Known as ‘rule-consistent behavior in the spiral model’, see, Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*, p. 9-10.

⁶ Xinyuan Dai, ‘The “Compliance Gap” and the Efficacy of International Human Rights Institutions’ in Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*, p. 85-102, 87.

⁷ Logic of appropriateness means states act a certain way because it is appropriate or ‘good’ to do so. See for example, Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, p. 909.

⁸ Logic of consequences means states act a certain way in order to ‘get’ something. James G. March, *A Primer on Decision Making* (New York: Free Press, 1994).

⁹ See, James G. March and Johan P. Olsen, ‘The Institutional Dynamics of International Political Orders’, *International Organization* 52/4: 943-969 (1998); see also, Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’.

¹⁰ See, Ted Hopf, ‘The Promise of Constructivism in International Relations Theory’, *International Security* 23/1: 171-200 (1998).

which provides a foundation for the early constructivist literature. Their model on norm development still recognised a link between norms and rationality and rejected that these two theories had to be mutually exclusive.¹¹ Indeed, constructivism offers a collaborative approach to understanding state behaviour and is limited to being a ‘theory of process, not substantive outcome’¹².

Because norms are shared and therefore vary in levels of agreement, Finnemore and Sikkink theorised that understanding such a dynamic process of agreement could be explained by a norm’s ‘life cycle’ through three stages: (1) norm emergence; (2) ‘norm cascade’¹³; and (3) institutionalisation.¹⁴ A norm emerges as a result of entrepreneurs who work to publicise an important idea to be adopted in practise by states such as the right to be free from torture. Once these ‘norm entrepreneurs’ are successful at promoting the new or repackaged norm, a ‘critical mass’ of states accepts the norm.¹⁵ Finnemore and Sikkink theorised that a state would adopt a new norm after persuasion by a norm leader due to ‘peer pressure’ for ‘legitimation, conformity, and esteem’ borrowed from empirical studies of the individual in other disciplines, such as sociology and psychology.¹⁶ For example, a state might conform to a norm in order to maintain its international and domestic reputation of remaining legitimate, which ensures continuing regime power. Additionally, conforming to the group brings about a sense of belonging and the opinions of other states may bolster a sense of identity.¹⁷ Once a ‘critical mass’ is reached, the ‘tipping point’ leads to a ‘cascade’ or diffusion of the norm amongst the remaining states.¹⁸ Because ‘norm cascade’ does not require unanimity, socialisation through agents or ‘norm leaders’ helps to persuade those yet to endorse the norm.¹⁹ Diffusion leads to ‘institutionalization’, or formal acceptance of the norm by treaty, covenant or agreement at the

¹¹ See for example, Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, *International Organization* 52/4: 887-917, 909 (1998). The logic of appropriateness has a social constructivist leaning since it considers certain existing norms, but it does not account for how something becomes a norm in the first place.

¹² See, Hopf, ‘The Promise of Constructivism in International Relations Theory’, p. 196.

¹³ Cass R. Sunstein, *Free Markets and Social Justice* (New York: Oxford University Press, 1997).

¹⁴ Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, *International Organization* 52/4: 887-917, 895 (1998).

¹⁵ The norm emergence stage can be very long as in the case of women’s suffrage where norm entrepreneurs began at the Seneca Falls Conference in 1848, but the tipping point occurred 80 years later in 1930 when 20 states adopted women’s suffrage. Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, p. 895-896.

¹⁶ Finnemore and Sikkink, *International Norm Dynamics and Political Change*, p. 903.

¹⁷ *Ibid.*

¹⁸ Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, p. 895-896.

¹⁹ A critical mass is no less than a third of states and should include a critical state--a state reversing its prior practises by committing to the norm (such as Great Britain when it signed anti-land mine treaty having been a landmine producing state prior). Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, p. 902.

international level.²⁰ Such acceptance should then result in compliance or ‘rule consistent behaviour’²¹.

As such, conventional compliance literature attempts to answer, ‘why states comply with supranational norms’ and for the most part, under what circumstances do illiberal states fail to comply with such norms.²² While Finnemore and Sikkink’s work brought the study of the influences of social phenomena to the empirical realm and helped move away from interest-based politics and rational theories of international relations, their theory has some gaps that require new understandings. The norm life cycle model remains useful to a degree but has two serious limitations. First, the model assumes only a ‘uni-directional’ life cycle and second, it does not fully recognise the importance of norm contestation post-institutionalisation, which can further refine a norm or result in varying methods of implementation among states.²³

First, the Finnemore and Sikkink model has been criticised for being a uni-directional norm cycle because there is no attention placed on how domestic diffusion of an international norm may re-configure the norm following post-institutionalisation. In other words, a norm’s trajectory is fixed in terms of travelling from the international level to the domestic level; thus, the norm’s life cycle ends and does not loop back and get remodified at the international level. The problem with the model’s uni-directionality is that it narrowly occurs in the human rights context, whereby illiberal states adopt international norms into their domestic practices that were originally domestic norms in liberal states.²⁴ So, while the model accepts the interdependency between international and domestic norms, the cycle moves in one direction circumscribed by the nature of the state. The domestic norm originates in the *liberal* state, moves to the international level, and then cascades into the domestic arenas of *illiberal* states, often those states with poor or lagging human rights practices.²⁵

Because such a model is narrowly tailored to the context of liberal norms and their eventual internalisation in illiberal states, the norm life cycle model does not consider international

²⁰ Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, p. 898.

²¹ Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*, p. 9-10.

²² Wiener, ‘Contested Compliance’; see also Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, p. 895-896; See, Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*, p. 146.

²³ Cristina G. Badescu (Stefan) and Thomas G. Weiss, ‘Misrepresenting R2P and Advancing Norms: An Alternative Spiral?’ *International Studies Perspectives* 11/4: 354-374 (2010).

²⁴ For example, see Ryan Goodman and Derek Jinks, ‘How to Influence States: Socialization and International Human Rights Law’, *Duke Law Journal* 54: 621-703 (2004); see also, Risse, Ropp, and Sikkink (eds.), *The Power of Human Rights*.

²⁵ Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, 895-896.

norms that establish domestic norms in a *liberal* state context. The current norms discourse tends to assume that international norms supported by *liberal* states have automatically undergone internalisation at their domestic levels.²⁶ Such an oversight is probably because empirical studies are pretty consistent in demonstrating that democratic states have a history of ratifying human rights treaties because the content of such treaties generally reflects existing state preferences and practices.²⁷ Therefore, the presumption is that liberal states engineer the international norms they have already established in domestic practice. While this is mostly true in terms of human rights norms, where there is a new norm not evident in state practice, that is ambiguous or undergoing continual contestation, domestic internalisation in even a liberal state cannot be assumed.

Second, institutionalisation as the final stage of the Finnemore and Sikkink norm life cycle failed to fully consider that norm internalisation is not necessarily a linear journey. Alexander Betts and Phil Orchard aimed to fill the ‘analytical gap’ in the constructivist literature by conceptualising ‘implementation’ as a separate and parallel or subsequent process to institutionalisation, which occurs before the endorsed norm internalises within states’ domestic settings.²⁸ Their work challenged the notion that institutionalisation of a norm, a process that happens at the international level, was the end of a norm’s trajectory and that compliance was thus assured. Instead, implementation is a parallel process to institutionalisation, which focuses on the steps between introduction of a new international norm’s substance into the legal and policy mechanisms of a state and its organisations in order to ‘routinize compliance’²⁹. Importantly, new norms go through this implementation process at the domestic level before they are internalised within the state. Furthermore, Betts and Orchard suggest that any variance across states in terms of compliance to a norm is related to this domestic implementation process, which is also triggered by a state or organisational commitment to the emerging norm. While Betts and Orchard’s research is insightful in terms of looking at the process of implementation to internalisation, their case studies turn on the substantive content of treaty

²⁶ Betts and Orchard consider implementation as a form of internalisation. Alexander Betts and Phil Orchard, *Implementation and World Politics: How International Norms Change Practice* (Oxford: Oxford University Press, 2014).

²⁷ See, Simmons, *Mobilizing for Human Rights*. This is also supported by Oona Hathaway’s research whereby democratic states were more likely to sign up to the CAT in general but if they tended to use more torture then they were less likely to sign onto the CAT. See, Oona A. Hathaway, ‘The Promise and Limits of the International Law of Torture’, in *Torture: A Collection*, Sanford Levinson Ed. (New York: Oxford University Press 2004), <https://ssrn.com/abstract=1131413>.

²⁸ Different authors use implementation, diffusion and internalisation interchangeably. This dissertation uses the term ‘internalisation’ in the broad sense and adopts ‘localisation’ as a type of internalisation; See, Betts and Orchard, *Implementation and World Politics*.

²⁹ Betts and Orchard, *Implementation and World Politics*.

norms, principled norms and policy norms and their diffusion in illiberal states, so the particularities surrounding the *liberal* state context is mostly absent.

Despite these two limitations to the constructivist model, the latter criticism that there is no consideration of the post-institutionalisation phase is not entirely true. The Finnemore and Sikkink model actually recognises to some degree that once a norm has reached institutionalisation at the international level, internalisation within domestic settings becomes essential for state compliance to occur with the goal of enduring normative change.³⁰ To this end, the initial Finnemore and Sikkink life cycle model informed the Risse, Ropp and Sikkink commitment/compliance model, which offered new insights into understanding how and under what conditions norms diffuse differently among states. As such, their research does engage with norm internalisation post-institutionalisation up to a point by attempting to explain norm compliance variations across several states.³¹

Within conventional commitment-compliance theories, the dominant models for mapping varying degrees of state internalisation of a norm are the ‘spiral model,’ the ‘boomerang effect’, and processes such as ‘argumentation, pressure and persuasion, and diffusion’³². State commitment and compliance to a norm are intrinsically linked. ‘Commitment’ embodies acceptance of the international norm as valid and binding indicated by signing or ratifying international treaties. Similarly, endorsement of a norm represents commitment to that norm. ‘If commitment indicates genuine endorsement of international norms, compliance is more likely to follow’³³. Building on the Finnemore and Sikkink model, Risse, Ropp and Sikkink’s work considered ‘under what conditions and by which mechanisms will states make the move from commitment to compliance’ relating to human rights norms.³⁴ Their seminal work found

³⁰ Thomas Risse and Kathryn Sikkink, ‘The Socialization of International Human Rights Norms into Domestic Practices: Introduction’ in Risse, Ropp and Sikkink (eds.), *The Power of Human Rights*, p. 1-38, p. 4.

³¹ Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*.

³² For a discussion of the spiral model, see, Risse and Sikkink, ‘The Socialization of International Human Rights Norms into Domestic Practices’ in Risse, Ropp and Sikkink (eds.), *The Power of Human Rights*, p. 1-38; see also, Badescu (Stefan) and Weiss, ‘Misrepresenting R2P and Advancing Norms’, p. 358.

³³ Dai, ‘The “Compliance Gap” and the Efficacy of International Human Rights Institutions’ in Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*, p. 85-102, 87; For a discussion on the fit between global norms and dominant domestic-level norms; where salience is high, the degree of normative fit is the primary driver of compliance, see, Rosemary Foot and Andrew Walter, ‘Global Norms and Major State Behavior: The Cases of China and the United States’, *European Journal of International Relations* 19/2: 329-352 (2013).

³⁴ Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*, p. 5.

that many states exhibited a ‘spiral model’³⁵, which often incorporated a ‘boomerang effect’ and one or more processes of socialisation, in adopting international human rights norms within their domestic settings. ‘Socialization’ is the process whereby international norms are internalised and implemented domestically.³⁶ The spiral model begins with the ‘target state’ and charts its progress at internalising human rights norms through five steps: (1) repression; (2) denial; (3) tactical concessions; (4) prescriptive status; and (5) rule-consistent behaviour. The spiral model further elaborated on Keck and Sikkink’s ‘boomerang effect’ where domestic groups ally with transnational advocacy groups in order to pressure reluctant states into internalising international human rights norms domestically³⁷ during the spiral process.³⁸ As a state traverses the spiral model, it will encounter any of the three types of socialisation processes, which will ultimately lead to enduring norm internalisation: (1) instrumental adaptation and strategic bargaining including tactical concessions; (2) moral consciousness-raising, argumentation, dialogue, and persuasion; and (3) institutionalisation and habituation.³⁹ Once socialisation of human rights norms occurs, internalisation will follow leading to norms having a ‘taken-for granted quality’⁴⁰.

Admittedly, Risse et al’s commitment-compliance model offered a limited understanding for evaluating the impact of norms because it excluded important variables and presumed the linear transition from prescriptive status (commitment) to rule-consistent behaviour (compliance). The research did not fully consider the apparent gap between norm commitment and norm

³⁵ Spiral Model: Repression, Denial and Tactical Concessions whereby controlled liberalisation or regime change then results in Prescriptive Status and finally Rule-consistent behaviour. Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*, p.5.

³⁶ Risse and Sikkink, ‘The Socialization of International Human Rights Norms into Domestic Practices’ in Risse, Ropp and Sikkink (eds.), *The Power of Human Rights*, p. 1-38, p. 5.

³⁷ Margaret E. Keck and Kathryn Sikkink, ‘Transnational Advocacy Networks in International and Regional Politics’, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998). For an historical discussion of such ‘transnational relations’ where national interest groups join transnational organisations to affect domestic policies, see Joseph S. Nye and Robert O. Keohane, ‘Transnational Relations and World Politics: An Introduction’, *International Organization* 25/3: 329-349 (1971); See also, Joseph S. Nye and Robert O. Keohane. ‘Transnational Relations and World Politics: A Conclusion’, *International Organization* 25/3: 721-748 (1971); Thomas Risse-Kappen, ‘Bringing Transnational Relations Back In: Introduction’ and ‘Structures of Governance and Transnational Relations: What Have We Learned?’ in Thomas Risse-Kappen (ed.), *Bringing Transnational Relations Back In: Non-State Actors, Domestic Structures and International Institutions* (Cambridge: Cambridge University Press, 1995), p. 3-34, 280-313. For a discussion on the role of the local civil society and NGO community as agents of norm diffusion, see Amitav Acharya, ‘Local and Transnational Civil Society as Agents of Norm Diffusion’, Paper presented to the Global Governance Workshop, 1-3 June 2012, Department of International Development, Queen Elizabeth House, University of Oxford, UK, <http://www.amitavacharya.com/?q=content/oxford-lectures>, accessed 14 August 2018.

³⁸ Thus, how civil society interprets the meanings of a norm is also important in terms of how organisations advocate particular implementations of a norm. This is examined in Chapter 6.

³⁹ Risse and Sikkink, ‘The Socialization of International Human Rights Norms into Domestic Practices’ in Risse, Ropp and Sikkink (eds.), *The Power of Human Rights*, p. 1-38, p. 7-8.

⁴⁰ Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, p. 895.

compliance within some illiberal states, and liberal states were completely absent from the research. Following their seminal work, the researchers published new research in 2013 aimed at explaining these gaps in the literature. As a result, their most recent work takes a deeper look at domestic implementation and compliance by considering more variables including the impact of ‘limited statehood,’ of non-state actors and of powerful states like the US and China.

The authors initially speculated that their ‘spiral model’ would not fit all models of norm adoption, commitment and compliance as a gap between ‘output’ and ‘outcome’ indeed endured.⁴¹ As international norms filtered through the domestic system, variations in compliance and new interpretations of the norm occurred.⁴² Just as states reacted differently to the same international norm, domestic internalisation of norms differed.⁴³ Such variables included the type of regime and/or the relationship between competing norms.⁴⁴ However, Risse et al found the ‘spiral model’ and the ‘boomerang effect’ continued to be explanatory and generalisable across their comparative case studies. Their research aimed to define the conditions and mechanisms that would move states, non-state actors and transnational corporations from commitment to compliance with human rights norms. They identified four different mechanisms of social action likely to induce compliance of human rights norms: (1) coercion;⁴⁵ (2) incentives, including sanctions and rewards; (3) persuasion and discourse; and (4) capacity-building. The research also expanded the scope conditions that induce compliance to human rights: regime type, ‘degrees of statehood’, ‘centralization of rule implementation’ and ‘material and social vulnerability’⁴⁶. Building on the spiral model, the authors widened their understanding of compliance to include an array of actors (not just states) and the difference between those agents that are unwilling and those that are unable to comply and how they interact to bring about enduring human rights change.

⁴¹ Indeed, the authors found the spiral model does continue to fit most domestic norm diffusion models but that other important variables must also be considered. See, Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*.

⁴² Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, p. 893.

⁴³ Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*; see also, Checkel, ‘International Norms and Domestic Politics’; Jeffrey T. Checkel, ‘The Constructive Turn in International Relations Theory’, *World Politics* 50/2: 324-348 (1998).

⁴⁴ The authors noted the apparent ‘compliance gap’ as states committed to human rights norms on the international level but continued to have contradictory domestic policies. Further research concluded that the spiral model applied to some degree in most cases but that there were other factors, such as regime type, which would influence the internalisation process. For example, those countries undergoing democratisation following human rights adoption at the international level had a better record of compliance. See, Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*.

⁴⁵ Risse et al see R2P and the rise of criminal accountability under the ICC as a new type of enforcement of human rights norms under the subheading of ‘coercion’ in their latest model of compliance. For an in-depth discussion, see, Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*, p. 13-14.

⁴⁶ Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*, p. 20-22.

So, Risse et al's research does engage with the post-institutionalisation phase; however, it remains limited because it mostly examines the conditions under which human rights norms are internalised in the domestic practices of authoritarian regimes⁴⁷ and the resulting compliance variations across those illiberal states. Indeed, the processes of socialisation, such as where states make tactical concessions or give in to persuasion, do not tend to explain the process of socialisation leading to internalisation in powerful liberal states because the power dynamic is very different in such states. While the recent research expanded to include compliance studies in two powerful states, the US and China, only one of these is a powerful liberal state.

The US case is valuable to this research because it demonstrates a case where a strong liberal state violated a well-established and proscribed human-rights norm even after significant involvement and entrepreneurship in engineering support and enforcement mechanisms for the international norm.⁴⁸ Under President George W. Bush, US post 9-11 policies of interrogation of terror subjects violated the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), a treaty ratified and then implemented in domestic law in the US. In recognising that a powerful, democratic country could reverse and violate both international and domestic law in response to the more compelling norm of anti-terrorism, the Risse et al study supplements the minimal scholarship on domestic internalisation of norms within the powerful *liberal* state context. While the literature is narrowly limited to this case and considers a proscribed legal norm, the research draws attention to the impact of stronger competing domestic norms regardless of the existing norm's 'taken for granted quality'. As such, internalised norms may face contestation and modification when they come into contact with other norms of greater priority, which will depend on the contextual factors at that moment of intersection.⁴⁹

In sum, conventional constructivist compliance theories do not widely address the situation where a powerful liberal state does not comply with a norm or varies in its compliance from other members of its social community. The norm life cycle model assumes a normative tranquillity once the global norm undergoes institutionalisation at the international level

⁴⁷ Keck and Sikkink, 'Transnational Advocacy Networks in International and Regional Politics'. For a discussion of the spiral model, see Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*, p.5.

⁴⁸ Kathryn Sikkink, 'The United States and Torture: Does the Spiral Model Work?' in Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*, p.145.

⁴⁹ Jennifer M. Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster, 5 December 2013, part of the ESRC Series, *The Responsibility to Protect and Prosecute: The Political Sustainability of Liberal Norms in an Age of Shifting Power balances*, <http://iisr2p.leeds.ac.uk/current/responsibility-to-protect-and-prosecute/>, accessed 21 October 2015.

whereby contestation occurred before the norm's tipping point and cascade. However, it is necessary to pay greater attention to contestation post-institutionalisation, both domestically, within the state, and how that varies from state to state, and internationally through additional contestation, which may shift the norm's meaning and lead to different interpretations.⁵⁰ Thus, 'institutionalisation may not represent the moment of clarity and consensus that positivist scholars of norms suggest'⁵¹. Finally, the CAT case suggests that the traditional notion of norm internalisation gives only limited insight into how norms influence state behaviour, particularly in a powerful liberal state context, because the internalisation *process* is dynamic and subject to contextual variables that impact decision-making.

2.2.2 From Constructivism to Critical Constructivism

Some scholars argue that contestation post-institutionalisation equates to a lack of normative status.⁵² However, critical constructivists have pointed out that the initial constructivist literature on norm emergence and diffusion adopts a 'neopositivist methodology' that is 'conceptually lacking' and 'not all that different from the interest-based IR [international relations] theories preceding it'⁵³. This is because such theoretical models define norms as static fixtures resulting in institutionalisation and then 'rule-consistent behaviour' whereby states are unified in their understanding of compliance. Such a minimal conceptualisation of agency and the chosen empirical methodology did not 'account for both the ambiguity of norms and *processes* of normative transformation'⁵⁴, especially when the norms compete with established or preferred norms in constantly changing contexts. The idea is to 'reintegrate domestic context and agency into social constructivist analyses of diffusing global norms'⁵⁵. This reflexive approach means:

...compliance work will gain important insights from assessing the meaning of norms based on an empirical focus on social practices. If the practice changes so will the meaning of the norm. Social practices are central to the construction of meaning as a social outcome of the process.⁵⁶

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Max W. Matthews, 'Tracking the Emergence of a New International Norm: The Responsibility to Protect and the Crisis in Darfur', *Boston College International and Contemporary Law Review* 31: 137-152, 137 (2008); Carsten Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', *American Journal of International Law* 101/1: 99-120 (2007).

⁵³ Matthias Hofferberth and Christian Weber, 'Lost in Translation: A Critique of Constructivist Norm Research', *Journal of International Relations and Development* 18/1: 75-103, 81 (2015).

⁵⁴ *Ibid.*

⁵⁵ Jeffrey T. Checkel, 'Norms, Institutions, and National Identity in Contemporary Europe', *International Studies Quarterly* 43/1: 83-114, 87 (1999).

⁵⁶ Wiener, 'Contested Compliance', p. 192.

Thus, critical approaches focus on norm contestation, norm localisation processes and norm change all of which comprise the broad notion of ‘internalisation’⁵⁷. The following three sections discuss how norm contestation, practice, localisation and social agency interact dynamically to explain how norms shape state behaviour.

2.2.3 Contestation Gives Meaning to Norms

While conventional constructivist norm research sees contestation following institutionalisation as indicative of a weakening norm, critical constructivists acknowledge on-going contestation as normal and often necessary for norm clarification and norm strengthening.⁵⁸ Indeed, norms themselves are not fixed but dynamic processes subject to on-going transformation and reinterpretation often through contestation and developing contexts. Importantly, critics claim that conventional constructivist research fails to adequately explore the mechanisms for domestic diffusion of international norms and to theoretically explain the variation of norm acceptance, especially among like-minded states. Antje Wiener considers two approaches to the constructivist norms literature: (1) behaviourist where social norms are ‘constitutive and regulative of behaviour’ (Finnemore and Sikkink model); and (2) reflexive where social norms evolve through the process of social interaction within and because of different contexts.⁵⁹ The reflexive approach recognises the duality of norms as both a structure to comply with and an evolving construct based on social interaction and practice. Such an approach allows a situation where a community of states may accept the same international norm, but their interpretation of that norm may result in different practices.⁶⁰ This ‘societal perspective on norms’ understands variance in normative meanings via a ‘logic of contestedness’.⁶¹ Critical constructivists expand the possible variables for understanding why states comply with norms beyond the logic of appropriateness. Because the behaviourist approach assumes a shared identity amongst a community of states, for example ‘liberal states’, it does not provide enough insight into

⁵⁷ Antje Wiener, *A Theory of Contestation* (Netherlands: Springer Briefs in Political Science, 2014); Amitav Acharya, ‘How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism’, *International Organization* 58/2: 239-275 (2004); Amitav Acharya, ‘The R2P and Norm Diffusion: Towards a Framework of Norm Circulation’, *Global Responsibility to Protect* 5/4: 466-479 (2013); Wayne Sandholtz, ‘Dynamics of International Norm Change: Rules Against Wartime Plunder’, *European Journal of International Relations* 14/1: 101-131, 110 (2008).

⁵⁸ Nicole Deitelhoff and Lisbeth Zimmermann, ‘Things We Lost in the Fire: How Different Types of Contestation Affect the Validity of International Norms’, Working Papers No 18, Peace Research Institute, Frankfurt, December 2013, https://www.files.ethz.ch/isn/175046/PRIF_WP_18.pdf, accessed 5 April 2015.

⁵⁹ Antje Wiener, ‘Constructivism: The Limits of Bridging Gaps’, *Journal of International Relations and Development* 6/3: 252-275, 268 (2003).

⁶⁰ Wiener, ‘Contested Compliance’.

⁶¹ Antje Wiener, ‘The Dual Quality of Norms and Governance beyond the State: Sociological and Normative Approaches to ‘Interaction’, *Critical Review of International Social and Political Philosophy* 10/1: 47-69 (2007).

compliance variations among such a community of states that may have a shared value in the underlying norm, but with different ideas on implementation. It also fails to explain how well-established norms may be supplanted by opposing norms (even newer ones) that have greater domestic support during a particular context. Thus, norm contestation is expected and does not necessarily signify non-compliance or non-commitment.

However, the type of contestation can be crucial to evaluating whether a norm will be weakened or strengthened by negative pressure. Nicole Deitelhoff and Lisbeth Zimmerman argue that critical norm constructivists do not provide the limits of contestation, meaning the delineation where contestation transforms from constitutive to degenerative. Contestation of the norm's application can strengthen the norm while contestation of the validity of the norm will lead to a weakening of the norm.⁶² They argue that 'justificatory' contestation to the inter-subjectiveness (the shared normative values) of norms are attacks on its validity, which are more likely to result in norm weakening. Contestation of a norm's application or 'applicatory' contestation is almost more procedural and does not go to the heart of a norm.

Moreover, the characteristics of a norm will affect the type of contestation. Norms are inherently ambiguous and incomplete while striving to be sustainable over time and applicable in different contexts.⁶³ According to Deitelhoff and Zimmermann, norms of positive duties will undergo more 'applicatory contestation' in contrast to norms that proscribe conduct due to their inexhaustible possibilities.⁶⁴ Thus, in their analysis, contestation that defines the application of a norm does not undermine its normative status.⁶⁵ Furthermore, contestation may suggest how norms are understood and which aspects remain contested. Instead, the 'better question is how actors resist particular features or forward alternative interpretations of a norm during the post-

⁶² Deitelhoff and Zimmermann, 'Things We Lost in the Fire'.

⁶³ Sandholtz, 'Dynamics of International Norm Change'.

⁶⁴ Deitelhoff and Zimmermann, 'Things We Lost in the Fire', p.5.

⁶⁵ Diana Panke and Ulrich Petersohn, 'Why International Norms Disappear Sometimes', *European Journal of International Relations* 18/4: 719-742 (2012). Neither does misapplication necessarily lead to norm degeneration. 'Misapplication in rhetoric and reality can foster a norm's advancement' even after norm institutionalisation at the international level. The misapplication can lead to further understanding of the norm. For example, the misuse of R2P to the situations of Cyclone Nargis in Burma and to South Ossetia during the conflict between Russia and Georgia clarified the appropriate context for using R2P. For a discussion, see Badescu (Stefan) and Weiss, 'Misrepresenting R2P and Advancing Norms', p. 365, p. 369. Furthermore, invoking the R2P principles retrospectively to the invasions of Iraq and Afghanistan failed. In these scenarios, the misapplication of R2P did not result in non-compliance because R2P did not fit the existing context and thus there was no need to comply. Such a distinction is paramount in order to avoid conflating misapplication of the norm with non-compliance of the norm. Misapplication in this sense equates to an attempt to apply the R2P framework to a context in which it was never meant to address, such as in the event of natural disasters. Such misapplication has not weakened R2P but strengthened when it does apply.

institutionalisation phase'⁶⁶. In this scenario, the aspirations underpinning the norm are not contested, but the method of operationalising or implementing those aspirations may be in conflict across and within states. Here, contestation plays a valuable role in helping to define ambiguous or indeterminate norms because how they are used in a state reflects the state's interpretation and preferred method for implementing the norm.⁶⁷ The norm's 'meanings-in-use' vary amongst states (even those with shared normative values) and amongst the social agents tasked with operationalising norms at the domestic level.⁶⁸ As such, how a norm is contested and used in practice offers insight into its meaning. This research looks at how the UK may be contesting R2P in terms of how the UK implements R2P through those social agents within the relevant government agencies who may be resisting particular features (such as refugee resettlement as a non-coercive method under R2P) either intentionally or unintentionally.⁶⁹

Because norms are often ambiguous and undergo continuous local contestation resulting in variations of interpretation and practice across and within states, looking at how norms are shaped as a result of norm internalisation processes and due to social agency offers two crucial angles for deeper understanding of state behaviour.

2.2.3.1 Norm Localisation Process

In the norm literature, 'internalisation' is a broad and general term that describes post-institutionalisation of international norms that travel within the domestic arena of states. Scholars fine-tune the concept of internalisation by adopting different descriptions of the process such as 'implementation', 'diffusion' and 'localisation'. This dissertation uses 'localisation' as a type of 'internalisation'. Understanding norm localisation helps explain how R2P has been implemented by the UK, which also entails consideration of how R2P is not implemented, regardless of whether it is intentional or unintentional. Norm localisation looks at how a norm is used and not used and the reasons why in order to arrive at a plausible conclusion around the norm's meanings as understood by the state. Such an investigation avoids the trap of a compliance versus non-compliance binary. The term 'compliance' itself suggests a homogeneous understanding and practice of a norm without the competition or contradiction of existing or stronger domestic norms and structures. Homogeneity is especially unlikely when a

⁶⁶ Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster.

⁶⁷ Wiener, 'Enacting Meaning-in-Use'.

⁶⁸ *Ibid.*

⁶⁹ Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster.

norm is prescriptive and ambiguous because its implementation will be subjective according to the state. How states actively or passively avoid particular implementations of a norm contributes to understanding how the norm is localised. In some cases, important information on how a norm is localised can be revealed by how a norm is not utilised when its usual or preferred methods of implementation are impossible.

Furthermore, norms operate in tension and through dichotomous relationships to other norms. For example, free speech is in tension with protection from defamation, and non-intervention must be balanced with the protection of human rights.⁷⁰ Therefore, it is more accurate to describe norms as 'localising' rather than as having been internalised in the traditional sense. Localisation means the context of a norm's endorsement and its practice by a state will shed light on how the norm is interpreted and which aspects are contested by the state. 'Localisation' theory therefore explains variations in interpretation and practice, particularly when there is a mismatch between existing domestic norms and global norms with the absence of a sanctioning authority (as is the case in international law).

Acharya sees localisation of global norms as a solution to problems of normative contestation because 'localisation describes a complex process and outcome by which norm-takers build congruence between transnational norms and local beliefs and practices'⁷¹. 'Congruence building' between the international norm and local norms and identities allows a method for understanding why some norms find greater acceptance in particular states over others.⁷² The domestic political, organisational and social variables will influence the reception of a new international norm. This means that norm diffusion does not happen in a vacuum but will depend on the state. Localisation depends on the following four factors. First, the strength of existing local cultural traits and traditions will influence whether a 'foreign' norm is adopted 'wholesale' or whether it will undergo localisation.⁷³ If existing local norms and institutions are seen as beneficial or even neutral, but inadequate, localisation, and not displacement of the foreign norm is more likely.⁷⁴ Second, localisation is likely to occur when the 'norm-taker' sees the new norm as potentially enhancing their legitimacy and authority without 'fundamentally

⁷⁰ Sandholtz, 'Dynamics of International Norm Change'.

⁷¹ Acharya, 'How Ideas Spread', p. 241.

⁷² Acharya, 'How Ideas Spread'.

⁷³ Amitav Acharya, 'Religion and Human Rights Pragmatism: Promoting Rights across Cultures', paper presented at conference at Columbia University, New York, 24 September 2011, and at the Columbia University Human Rights Futures Conference, 15 November 2013.

⁷⁴ *Ibid.*

altering their existing social identity'⁷⁵. Third, the conditions for localisation turn on the credibility, legitimacy and prestige of local agents whereby they are seen as 'upholders of local values and identity'⁷⁶. Fourth, 'the external norm must lend itself to some pruning, or adjustments that make it compatible with local beliefs and practices, without compromising its core attributes'⁷⁷.

However, Acharya's research on norm localisation focuses on how *less* developed states localise and actively construct '*foreign* ideas by local actors' in order to attain congruence with local beliefs and practises,⁷⁸ which is then followed by the 'subsidiarity' process 'whereby local actors create rules with a view to preserve their autonomy from dominance, neglect, violation, or abuse by more powerful central actors'⁷⁹. Acharya's 'localization' and 'subsidiarity' form a reciprocal process in which the norm circulates in both directions between creation and diffusion.⁸⁰ Contestation of the norm, regardless of its source, creates a feedback loop, which may modify the norm at the international level. Acharya argues that such modification can lead to strengthening of the norm.⁸¹ However, it is not clear under what conditions or circumstances such modification could instead lead to norm weakening. Acharya adopts a 'Third World country perspective'⁸² that he finds generally absent in the norms literature as a way to move away from a biased conceptual understanding that the existing international order is a Western

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ On localisation, see, Acharya, 'How Ideas Spread'; Acharya, *Whose Ideas Matter? Agency and Power in Asian Regionalism* (Ithaca: Cornell University Press, 2009).

⁷⁹ Amitav Acharya, 'Norm Subsidiarity and Regional Orders: Sovereignty, Regionalism and Rule Making in the Third World', *International Studies Quarterly* 55/1: 95-123 (2011).

⁸⁰ For a discussion of localisation in the ASEAN context, see, Acharya, 'The R2P and Norm Diffusion', p. 467.

⁸¹ See also, Jochen Prantl and Ryoko Nakano, 'Global Norm Diffusion in East Asia: How China and Japan Implement the Responsibility to Protect', *International Relations* 25/2: 204-223 (2011).

⁸² There is a tremendous amount of literature aimed at understanding state behaviour in the non-western context. TWAIL rose after World War II as an anti-colonialism movement which takes different degrees of the perspective that international law itself is a 'predatory system that legitimizes, reproduces and sustains the plunder and subordination of the Third World by the West' while seeking internal transformation of Third World conditions. Makau Mutua and Antony Anghie, 'What is TWAIL?', *Proceedings of the Annual Meeting (American Society of International Law)* 94: 31-40 (2000), <http://www.jstor.org/stable/25659346>. See also, Karin Mickelson, 'Taking Stock of TWAIL Histories', *International Community Law Review* 10: 355-362 (2008); Antony Anghie, 'Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law', *Harvard International Law Journal* 40/1: 1-71 (1999); Bhupinder S. Chimni, 'Third World Approaches to International Law: A Manifesto', *International Community Law Review* 8: 3-27 (2006); Luis Eslava and Sundhya Pahuja, 'Between Resistance and Reform: TWAIL and the Universality of International Law', *Trade, Law and Development* 3/1: 103-130, 105 (2011). For discussions on non-Western views of sovereignty and distrust of R2P, see, Edward Newman, 'R2P: Implications for World Order', *Global Responsibility to Protect* 5/3: 235-259, 252 (2013); Jason Ralph and Adrian Gallagher, 'Legitimacy Faultlines in International Society: The Responsibility to Protect and Prosecute After Libya', *Review of International Studies* 41/3: 553-573 (2015).

initiative.⁸³ Interestingly, that same fundamental bias limits exploration and understanding around powerful western states' contestation of norms. While Acharya uses the example of norm circulation in the context of less powerful states feeling more powerful actors have abused a norm at the implementation level, such a theory is still useful to some degree when looking at norms localising in the context of powerful liberal states. Thus, norm internalisation is really a process of localisation, which necessitates 'a dynamic congruence-building process' between international norms and 'pre-existing regional and normative social orders'⁸⁴. Understanding how an international norm undergoes localisation in a powerful liberal state involves accepting contestation as a starting point for understanding the norm's meaning through practice ascribed by the state. Localisation then considers other domestic criteria such as existing or more powerful norms, national structures and institutions, and the national identity and international role of the state. However, an important component of Acharya's approach is through the lens of less powerful states that are modifying norms in order to preserve their autonomy and because they perceive more powerful states to have abused particular norms during implementation. There is no equivalent power dynamic lens in the context of powerful liberal states as these states were colonial masters, not servants, and they often control the ultimate implementation of norms at the international level, especially through the UN Security Council.

2.2.3.2 Social Agency

Critical norm theories help explain the variations across and within states that have shared inter-subjective understandings of norms by respecting the role of 'agency'⁸⁵ while also accounting for states' identities and existing or stronger norms. The focus is on local actors. For example, Acharya views norm diffusion as a 'bottom-up process' whereby 'weak local actors can challenge and influence global normative processes'⁸⁶. Thus, using Acharya's 'norm subsidiarity' to explore the process of how local actors in powerful liberal states 'develop new rules and offer new understandings of global rules' will contribute to the existing deficit.

Localisation prioritises the role of domestic actors or 'norm-takers' over outside actors in terms of 'framing and grafting' and other adaptive processes like discourse and selection for domestic

⁸³ See, Acharya, 'Norm Subsidiarity and Regional Orders'.

⁸⁴ Acharya, 'How Ideas Spread', p. 250; see also, Paul D. Williams, "'The Responsibility to Protect'", Norm Localisation, and African International Society', *Global Responsibility to Protect* 1/3: 392-416 (2009).

⁸⁵ Checkel, 'Norms, Institutions, and National Identity in Contemporary Europe', p. 84.

⁸⁶ See, Acharya, 'Norm Subsidiarity and Regional Orders'.

norm acceptance.⁸⁷ As such, domestic actors impact a norm's localisation by the way they shape the international norm to fit within the prevalent domestic identity and existing framework of norms within a state. On the micro level, contestation also plays a valuable role in further defining a norm as its 'meanings-in-use' also vary among socialised actors, such as politicians and civil servants, amongst others, who are subject to different contexts which will lead to different interpretations.⁸⁸ Critically, practice and implementation will also vary within, and not just between, states. This dimension of norm implementation involves a presumption of diversity and contestation in terms of the 'cultural validation' of a norm because it depends on individual experience, expectation and background knowledge as opposed to other dimensions of norm implementation that occur at the international level.⁸⁹ Sorting out such 'normative baggage' brings legitimacy to norms because it offers transparency and acknowledges that states have to operate from some degree of self-interest which will vary across like-minded states but also across the agencies within a state as well.⁹⁰ In other words, states have their own histories, identities and norms, and the particular elites at the helm will define and reshape the unique state interests, which may be in tension with the international norms endorsed; however, the presence of this tension does not mean such norms cannot co-exist as exemplified by the example of balancing the freedom of speech with the prohibition on defamation. Additionally, using Acharya's localisation theory and Wiener's reflexive approach accepts that the interpretations and ways of practicing a norm constantly evolve in order to match the dynamic nature of the contexts where the particular norm applies, and the changing roles and evolving knowledge and awareness of the social agents tasked with discharging international norms.⁹¹

In sum, compliance to a norm varies and relates to actors' understandings of the norm. Acharya and Wiener look at the process of norm adaptation as a result of the domestic environment, which can reshape a contested norm or actually shape an ambiguous norm respectively which means internalisation does not exist as an end in itself but is instead a process. These scholars see the dynamic nature of norms and argue that the tendency to define compliance or internalisation narrowly ignores the complex relationship between state commitment to and

⁸⁷ For a discussion on bringing norm framing and grafting to a local level, see, Acharya, 'How Ideas Spread', p. 244.

⁸⁸ Wiener, 'Contested Compliance', p. 218; see also, Wiener, 'Enacting Meaning-in-Use'.

⁸⁹ For a discussion of the three Dimensions of Norm Implementation, including the first two, 'formal validity' and 'social recognition', see, Antje Wiener and Uwe Puetter, 'The Quality of Norms is What Actors Make of It', *Journal of International Law and International Relations* 5/1: 1-16 (2009).

⁹⁰ Wiener, 'Contested Compliance'.

⁹¹ Especially as circumstances and contexts change as exemplified in the US CAT case where there was existing contestation and competition following increased terrorism which allowed a change to the CAT's status as a norm in the US despite its previous widespread support and codification in US law.

implementation of a norm and their underlying interpretations which are inextricably linked to the state's values, history, identity and its social actors. More focus on norm implementation variations among powerful *liberal* states will contribute to the norms literature because the notion that 'new norms are seldom adopted wholesale but are localized and translated to fit the context and need of the norm-takers'⁹² also applies in the powerful liberal state context.⁹³ Importantly, where the norm is indeterminate or ambiguous, looking at its 'meanings-in-use' will offer initial insight to its interpretations and existing contestation in terms of specific aspects of the norm and the interplay between the norm and other pre-existing or dominant norms that will directly and indirectly work for or against it within a local context.⁹⁴ Thus, analysing and understanding a norm's 'internalisation' requires analysis of how that norm is localised in a particular state through consideration of the domestic context including the role of social agents. Importantly, Deitelhoff and Zimmerman are the only critical constructivists that provide limitations to the effects of contestation on a norm.

2.3 Applying Constructivist Theory to R2P

Before understanding how R2P and resettlement are linked in theory and practice (Chapters 3 and 5 respectively), it is necessary to first examine what R2P is, what it requires and what it means for states through a critical constructivist framework, particularly Wiener's 'meanings-in-use' and contestation theories and Acharya's norm localisation theory. Critical constructivism provides a useful theoretical foundation for subsequent analysis and understanding of R2P's impact on the UK's various responses to the mass atrocities in Syria, especially in the context of resettling Syrian refugees. Critical constructivists agree that contestation can be beneficial for understanding which particular aspects of a norm have not been accepted. Additionally, an indeterminate or ambiguous norm's meaning(s) may manifest through contestation as variations in state interpretations or different 'meanings-in-use'. As a result of either form of contestation (either non-acceptance of particular aspects or lack of clarity), states may forward alternative visions or understandings in order to resist particular

⁹² Acharya, 'The R2P and Norm Diffusion', p. 467.

⁹³ *Ibid*, p. 472-474.

⁹⁴ For example, state issues of security in a Post-9/11 world. The 2009 Sri Lanka events where states diverged on the government's use of force against the Tamil Tigers; where security/anti-terrorism norms conflict with R2P, contestation will remain. See Stephen Hopgood, 'The Last Rites of Humanitarian Intervention: Darfur, Sri Lanka and R2P', *Global Responsibility to Protect* 6/3: 181-201 (2014); Also, consider the US backlash against the anti-torture norm discussed earlier. For observations on how both strategic interests and local norms help shape national responses to R2P, see, Melinda Negron-Gonzales and Michael Contarino, 'Local Norms Matter: Understanding National Responses to the Responsibility to Protect', *Global Governance: A Review of Multilateralism and International Organizations* 20/2: 255-276 (2014).

features of a norm or to give meaning to the norm in light of its ambiguity.⁹⁵ This localisation of a norm gives deeper insight around a norm's impact on state behaviour than the traditional notion of norm internalisation because it considers the entire context around norm commitment and implementation, which explains variation across even like-minded liberal states. Thus, this dissertation first applies the conventional constructivist norm life cycle model to R2P, and then adopts a critical constructivist approach to understanding how existing contestation and local contexts bring insight to the different meanings and uses of R2P.

2.3.1 The Historical Context of R2P: A Conventional Model

While R2P is not a legal norm, its 'norm life cycle'⁹⁶ occurred during a larger paradigm shift, often referred to as the 'humanisation of law'⁹⁷. The post-Cold War period involved 'a profound normative shift in the international legal order from a state-centric system towards a normative system' reflecting the interests and values of human beings.⁹⁸ This period provided a fertile environment for uptake of R2P because the norm is rooted in the concept that all human beings share a common humanity, which prioritises human security over state sovereignty.⁹⁹ One of the clearest and most relevant examples of this paradigm shift can be seen by the debate over legality versus legitimacy concerning the use of force when populations suffer mass atrocities, which R2P is predicated upon.¹⁰⁰

Article 2(4) of the UN Charter prohibits the use of force against the territorial integrity of another state except through Chapter VII resolutions addressing a threat to international peace

⁹⁵ Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster.

⁹⁶ Finnemore and Sikkink, 'International Norm Dynamics and Political Change'.

⁹⁷ The term was employed more than 60 years ago by Maurice Bourquin, 'L'humanisation du droit des gens', *Etudes en l'honneur de Georges Scelle* Volume 1/21 (1950). For a good overview, see Kamminga, Menno T., 'Final Report on the Impact of International Human Rights Law on General International Law', 1 June 2008, Report of the 73d Conference of the International Law Association, p. 663-685, SSRN: <http://ssrn.com/abstract=1150664>, accessed 19 November 2015; see also, Bruno Simma, 'International Human Rights and General International Law: A Comparative Analysis', Academy of European Law (ed.), *The Protection of Human Rights in Europe* (The Hague/Boston/London: Kluwer Law International/Martinus Nijhoff Publishers / Florence, Academy of European Law, European University Institute, 1995, Collected Courses of the Academy of European Law, 1993), IV/2, p.153-236; Menno T. Kamminga and Martin Scheinin (eds.), *The Impact of Human Rights Law on General International Law* (New York: Oxford University Press, 2009).

⁹⁸ Ruti Teitel, *Humanity's Law* (New York: Oxford University Press, 2011), p. 4, 11, 73, 106; Simmons, *Mobilizing for Human Rights*; Thomas G. Weiss, *Humanitarian Intervention: War and Conflict in the Modern World* (Cambridge: Polity Press, 2007); Justin Morris, 'Libya and Syria: R2P and the Spectre of the Swinging Pendulum', *International Affairs* 89/5: 1265-1283, 1268 (2013); For another view discussing humanity law as subordinate to state sovereignty, see Lars Waldorf, 'Inhumanity's law: Crimes against humanity, RtoP and South Sudan', *International Politics* 53/1: 49-66 (2016).

⁹⁹ For a discussion of this movement away from 'sovereignty as a license to kill', see Gareth Evans, 'Ending Mass Atrocity Crimes: A Hopeless Dream?', 10 May 2013, <http://gefans.org/speeches/speech513.html>, accessed 7 June 2018.

¹⁰⁰ For a discussion of degeneration of the non-intervention norm as a shift from state security to human security, see, Panke and Petersohn, 'Why International Norms Disappear Sometimes', p. 731.

and security or through self-defence under Article 51. However, following the mass atrocities in Rwanda and Srebrenica, global debate intensified over whether there was a right of humanitarian intervention, specifically coercive, military action against states in order to protect their populations.¹⁰¹ This notion provided justification for NATO's 'illegal, but legitimate' intervention in Kosovo.¹⁰² At the same time, recognition of the inherent dangers of unauthorised humanitarian interventions influenced a growing debate acknowledging the tension between sovereignty and human suffering. Following the United Nations General Assembly in 1999 and in 2000, Secretary-General Kofi Annan pleaded with the international community to develop an approach to balancing issues of sovereignty with preventing gross and systematic violations of human rights that affect every 'precept of our common humanity'¹⁰³. Through collaboration with the Canadian government and major foundations, the International Commission on Intervention and State Sovereignty (ICISS) was established to consider the relationship between state sovereignty and responsibility. International 'norm entrepreneurs'¹⁰⁴, such as Francis Deng,¹⁰⁵ began developing the notion of 'responsible sovereignty'¹⁰⁶. The

¹⁰¹ UN, 'Secretary-General Presents His Annual Report to General Assembly', Press Release SG/SM/7136 GA/9596, 20 September 1999, <http://www.un.org/News/Press/docs/1999/19990920.sgsm7136.html>, accessed 16 May 2016. For a discussion of the various cases where the UN Security Council authorised the use of force, see, Sassan Gholiagha, 'To Prevent Future Kosovos and Future Rwandas: A Critical Constructivist View of the Responsibility to Protect', *International Journal of Human Rights* 19/8: 1074-1097, 1075 (2015). See, Tony Blair, 'The Blair Doctrine', 22 April 1999, <https://www.globalpolicy.org/component/content/article/154/26026.html>, accessed 6 March 2018. See also, Tim Allen and David Styan, 'A Right to Interfere? Bernard Kouchner and the New Humanitarianism', *Journal of International Development* 12/6: 825-842 (2000).

¹⁰² Independent International Commission on Kosovo, *The Kosovo Report*, 'Executive Summary', sections on 'The NATO Air Campaign' and 'The Future of Humanitarian Intervention', 2000, <http://reliefweb.int/sites/reliefweb.int/files/resources/F62789D9FCC56FB3C1256C1700303E3B-thekosovoreport.htm>, accessed 21 June 2017.

¹⁰³ Kofi Annan, 'Secretary-General Presents his Annual Report to General Assembly', SG/SM/7136 GA/9596, 20 September 1999.

¹⁰⁴ In the norm's 'life cycle', 'norm entrepreneurs' who have strong opinions about appropriate or desirable behaviour in their community persuade a 'critical mass' of states to accept an emerging norm. See this dissertation, Chapter 2, p. 44; Finnemore and Sikkink, 'International Norm Dynamics and Political Change', p. 909. For a discussion of the diverse normative roots of R2P, see, Acharya, 'The R2P and Norm Diffusion', p. 474.

¹⁰⁵ The normative foundation of R2P came from Francis Deng, a Sudanese diplomat who worked with Roberta Cohen on establishing a set of guiding principles for internally displaced persons (IDPs) who were without national or international protection during intrastate conflicts. See, Roberta Cohen and Francis M Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington, DC: Brookings Institution Press, 1998); For a discussion of Deng's concept of 'sovereignty as responsibility' as a way to return agency to African states, see Jennifer M. Welsh, 'Implementing the Responsibility to Protect: Where Expectations Meet Reality', *Ethics and International Affairs* 24/4: 415-430 (2010) and Francis M. Deng and I. William Zartman, *A Strategic Vision for Africa: The Kampala Movement* (Washington, DC: Brookings Institution Press, 2002).

¹⁰⁶ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: IDRC, 2001), p. viii. For a discussion of the duality of responsibility rising from an external and internal responsibility—one of non-intervention into other states and one entailing protection within the state, see, Edward Newman, 'Humanitarian Intervention, Legality and Legitimacy', *The International Journal of Human Rights* 6/4: 102-120, 106 (2002).

Commission's Report, entitled *The Responsibility to Protect*, defined 'sovereignty' as 'a state's responsibility to protect its own populations from avoidable catastrophe, such as mass murder, rape and starvation, but if that state were unwilling or unable to do so, then that responsibility must be borne by the broader community of states'.¹⁰⁷ The ICISS report embraced three specific responsibilities: (1) The responsibility to prevent by addressing the causes of internal conflict and crises putting populations at risk; (2) The responsibility to react by responding to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention; and (3) The responsibility to rebuild.¹⁰⁸

In 2005, UN General Assembly Member States endorsed paragraphs 138 and 139 of the World Summit Outcome Document (WSOD) having reached agreement on the responsibility to protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing (and their incitement).¹⁰⁹ The 2009 Secretary General's Report describes a three-pillar approach to paragraphs 138 and 139: Pillar I affirms a state's responsibility to protect its own population from these crimes; Pillar II concerns international assistance and capacity-building to states in order to help them with their Pillar I responsibilities; and, Pillar III encourages the timely and decisive response from the international community where a state is manifestly failing its Pillar I duties.¹¹⁰

The WSOD is perceived to have watered down the international community's responsibility to protect in order to gain wide consensus.¹¹¹ First, the WSOD narrowed the context for when R2P would apply (from 'avoidable catastrophe, such as mass murder, rape and starvation' to mass atrocities only) and reframed the international community's 'responsibility to intervene' as a 'responsibility to protect' populations. Second, the international responsibilities under R2P's Pillars II and III were not intended to create any new legal duties that would bind states into acting.¹¹² Third, less powerful states contested the ambiguous and subjective threshold for

¹⁰⁷ ICISS, *The Responsibility to Protect*, p.17.

¹⁰⁸ *Ibid.*, p. xi.

¹⁰⁹ '2005 World Summit Outcome', UNGA Res. 60/1, 16 September 2005, (p.30).

¹¹⁰ Ban Ki-moon, Report of the Secretary-General, *Implementing the Responsibility to Protect*, A/63/677, 12 January 2009.

¹¹¹ 'R2P Lite'. See, Thomas Weiss, 'R2P after 9/11 and the World Summit', *Wisconsin International Law Journal* 24/3: 741-760, 750 (2007); see also, Christopher Hobson, 'Responding to Failure: The Responsibility to Protect After Libya', *Millennium Journal of International Studies* 44/3: 433-454, 436 (2016). Morris argues such reinforcement of restricting the use of force, consistent with the UN Charter, helped foster the resulting consensus on R2P following the mood of distrust following the US invasion of Iraq. See, Morris, 'Libya and Syria', p. 1270.

¹¹² Jennifer M. Welsh, 'Norm Contestation and the Responsibility to Protect', *Global Responsibility to Protect* 5/4: 365-396, 371, 376 (2013).

intervention of a state that is 'unable or unwilling' because it could invite an overly quick military response from powerful states. Thus, the trigger for an international response under the WSOD was raised to one where a state is 'manifestly failing' to protect its population from mass atrocities.¹¹³

Furthermore, any coercive force must be multi-lateral and authorised by the UN Security Council 'to facilitate cooperative responses to such threats'¹¹⁴. The idea was to prevent any state in the system (particularly one of the powerful members of the UN Security Council) from defining for itself what constitutes a threat to international peace and security.¹¹⁵ Aidan Hehir argues that member states endorsed R2P and as a result, they 'reconfirmed the discretionary powers of the Security Council'¹¹⁶ and that R2P has not altered the laws governing the use of force.¹¹⁷ While true, endorsement of R2P also solidified the inconsistent practice of designating mass atrocities as threats to international peace and security under Chapter VII.¹¹⁸ Indeed, Hehir argues that pre-R2P, Chapter VII cases under Article 42 were deemed exceptional in order to avoid creating precedent that would demand the same response in future and that this 'angered many states and opened the Security Council to accusations of hypocrisy'¹¹⁹. Therefore, R2P can be seen to promote a multi-lateral, well-reasoned response to cases that may not have benefitted from the judgment that their particular case of mass atrocities would

¹¹³ However, determining what constitutes a 'manifestly failing' (save for the state that is perpetrating the mass atrocities) remains subjective. See, Adrian Gallagher, 'Syria and the Indicators of a "Manifest Failing"', *The International Journal of Human Rights* 18/1: 1-19 (2014).

¹¹⁴ Welsh, 'Implementing the Responsibility to Protect', p. 423; Jennifer M. Welsh, 'Authorizing Humanitarian Intervention' in Richard Price and Mark Zacher (eds.), *The United Nations and Global Security* (New York: Palgrave Macmillan, 2004), p.177-92; Jennifer M. Welsh, 'Turning Words into Deeds? The Implementation of the "Responsibility to Protect"' *Global Responsibility to Protect* 2/1: 149-154 (2010).

¹¹⁵ Welsh, 'Implementing the Responsibility to Protect', p. 423; Welsh, 'Authorizing Humanitarian Intervention' in Price and Zacher (eds.), *The United Nations and Global Security*, p. 177-92; Welsh, 'Turning Words into Deeds?'

¹¹⁶ Aidan Hehir, 'The Illusion of Progress: Libya and the Future of R2P' in Thomas G. Weiss, Ramesh Thakur, Mary Ellen O'Connell, Aidan Hehir, Alex J. Bellamy, David Chandler, Rodger Shanahan, Rachel Gerber, Abiodun Williams and Gareth Evans (eds.), *The Responsibility to Protect: Challenges and Opportunities in Light of the Libyan Intervention*, e-International Relations, 11 September 2011, pp.18-19, <https://www.e-ir.info/publication/the-r2p-challenges-and-opportunities-in-light-of-the-libyan-intervention/>, accessed 4 July 2018; Aidan Hehir and Robert Murray (eds.), *Libya: The Responsibility to Protect and the Future of Humanitarian Intervention* (London: Palgrave Macmillan, 2013), p.8. Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention* (London: Palgrave Macmillan, 2012); Aidan Hehir, 'The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect', *International Security* 38/1: 137-159, 152 (2013).

¹¹⁷ Aidan Hehir. 'Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring', *Cooperation and Conflict* 51/2: 166-183, 167 (2016).

¹¹⁸ The cases where the use of force for humanitarian purposes occurred prior to R2P endorsement (legally, under the UN Security Council's Chapter VII maintenance of international peace and security) were not intended to set a precedent but were exceptions to the rule. See, Hehir, 'The Permanence of Inconsistency', p. 144.

¹¹⁹ *Ibid.*

constitute a threat to international peace and security requiring an international response. Indeed, Ramesh Thakur argues that '[a]bsent R2P, the intervention is more likely to be ad hoc, unilateral, self-interested and deeply divisive'¹²⁰. In this way, R2P supposedly levelled the playing field.

Finally, the WSOD put no restriction on the P5's veto powers. For example, in cases where the P5 failed to reach consensus, responsibility would not default to the General Assembly or regional organisations¹²¹ and the P5 refused to have a policy of restraining their veto in cases of mass atrocities.¹²² This code of conduct was first advanced by the ICISS R2P but was not recognised in the WSOD R2P. Regardless, the restraint of the veto was never envisioned as a code of conduct in cases where a state's vital national interests could be claimed to exist.¹²³

While the WSOD version of R2P is less assertive than the ICISS concerning the international community's protection obligations, the international adoption of the WSOD in 2005 and unanimous reaffirmation by the General Assembly in 2009, underscores the international community's readiness to accept some responsibility for the protection of populations from the very worst crimes.¹²⁴ Even though R2P may have emerged within the context of law's 'humanisation', the debate persists over whether this rise of a 'human security' agenda actually influences state behaviour, particularly in terms of R2P's prescriptive responsibility to respond to mass atrocities in a manifestly failing state.¹²⁵ R2P may have levelled the playing field to some degree in terms of focusing attention and considering cases where mass atrocities are occurring, but its value continues to be judged by its ultimate deference to politics on the UN Security Council due to states' interests in terms of *responding* to a specific case. Before analysing this issue, it is necessary to discuss what exactly R2P is.

¹²⁰ Ramesh Thakur, 'R2P, Libya and International Politics as the Struggle for Competing Normative Architectures', in Weiss et al (eds.), *The Responsibility to Protect: Challenges and Opportunities*, p. 12-14, 12; see, also Thomas G. Weiss, 'Whither R2P?' in Weiss et al (eds.), *The Responsibility to Protect: Challenges and Opportunities*, p. 7-11, 7.

¹²¹ ICISS, *The Responsibility to Protect*, p. 53-55; Welsh, 'Turning Words into Deeds?'; Welsh, 'Norm Contestation and the Responsibility to Protect', p. 370; Morris, 'Libya and Syria', p. 1270.

¹²² Welsh, 'Norm Contestation and the Responsibility to Protect', p. 370. However, some argue that the UK supports restraining the veto in cases of mass atrocities. See, Andrew Mitchell MP and former Shadow Secretary for International Development, 'UN Peacekeeping and the Failure to Protect: A Contribution to the Debate on UN Reform', Published Speech at Royal United Services Institute (RUSI), 18 June 2007 (Conservative International Development Publications), p. 11; DFID, Matthew Rycroft CBE, Permanent Secretary, Department for International Development and UK Permanent Representative at the UN 2014-2018, *How to Prevent Mass Atrocities*, Chatham House, London, 20 February 2018, public transcript available with researcher's questions asked and answered on record, <https://chathamhouse.soutron.net/Portal/Default/en-GB/RecordView/Index/172381>.

¹²³ Hehir, 'Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring', p. 174.

¹²⁴ Alex J. Bellamy, *The Responsibility to Protect: A Defense* (Oxford: Oxford University Press, 2015).

¹²⁵ Hehir and Murray (eds.), *Libya*, p.9.

2.3.2 R2P: An Indeterminate Norm

The general consensus is that R2P is not a legal norm, but a form of soft law with linkages to established legal norms.¹²⁶ The three pillars comprising R2P embody several norms, each imposing different standards of behaviour on different actors, and each facing varying degrees of contestation.¹²⁷ The key debate in this thesis concerns R2P's Pillar III, which affirms the international community's responsibility to 'use appropriate diplomatic, humanitarian and other peaceful means', through the UN in accordance with Chapters VI and VIII of the Charter and with military intervention as a last resort under Chapter VII when a state is manifestly failing to protect its populations from mass atrocities.¹²⁸

While scholars agree that the contentious R2P norm debate has lessened in significance to the more pressing issues of implementation,¹²⁹ R2P's practical limitations cannot be divorced from its theoretical limitations because its implementation is dependent on its meanings which vary

¹²⁶ R2P is not a legal norm, but a 'political catchword' with some grounding in international law and the embodiment of 'different normative propositions that vary considerably in their status and degree of legal support'. Stahn, 'Responsibility to Protect', p. 102. The hard law quality of R2P is embodied by Pillar I, which recognises states' responsibilities to protect their own populations from mass atrocities, articulated as early as the sixteenth century. For further reading on R2P's historical roots and the meanings of responsibility, see, Luke Glanville, 'On the Meaning of "Responsibility" in the "Responsibility to Protect"', *Griffith Law Review* 20/2: 482-504 (2014); Luke Glanville, 'The Antecedents of "Sovereignty as Responsibility"', *European Journal of International Relations* 17/2: 233-255 (2011).

¹²⁷ Bellamy, *The Responsibility to Protect: A Defense*, p.62. Pillar I is generally accepted as a norm with legal qualities having grown out of international humanitarian and international human rights law. First, the mass atrocities that trigger an R2P situation all involve the violation of specific human rights and humanitarian norms that are well established in international covenants and legal frameworks. See, Melissa Labonte, *Human Rights and Humanitarian Norms, Strategic Framing and Intervention: Lessons for the Responsibility to Protect* (Oxon: Routledge, 2013), p.173. The notion that government should serve and protect human beings within its borders is not new. Due to its roots in the past, 'sovereignty as responsibility' is like 'old wine in new bottles as state responsibility towards its population can be traced back to the times of Hugo Grotius or even Thucydides'. Stahn, 'Responsibility to Protect', p. 111; see also, Welsh, 'Implementing the Responsibility to Protect'; Hehir, *The Responsibility to Protect*, p.10. Pillar II is non-binding on states and is based on state consent. States 'should' help other states build capacity against the core crimes. This obligation permits ample state discretion. Furthermore, the presence of a peacekeeping force under Pillar II is by the consent of the state concerned. Some scholars argue that Pillar II is a well-embedded norm now due to states' inability to reach agreement on Pillar III. See, for example, Andrew Garwood-Gowers, 'R2P Ten Years After the World Summit: Explaining Ongoing Contestation over Pillar III', *Global Responsibility to Protect* 7/3-4: 300-324 (2015).

¹²⁸ The notion that the international community of states has internalised their Pillar III response to protect populations from mass atrocities is highly contested. The word chosen to describe R2P reflects the speaker's belief on the status of the norm. Descriptions of R2P vary from norm, concept, and principle to aspiration or rhetoric. '[T]hose who see R2P as having a diminished status' use the term 'concept'. Jeremy Sarkin, 'Why the Responsibility to Protect (R2P) as a Doctrine or (Emerging) Norm to Prevent Genocide and Other Massive Human Rights Violations is on the Decline: The Role of Principles, Pragmatism and the Shifting Patterns of International Relations', *Politorbis* 47/2: 51-64, 57 (2009); Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity Press, 2009), p.4.

¹²⁹ UN Assistant Secretary-General and Special Adviser on the Responsibility to Protect, Dr. Ivan Šimonović, Annual Lecture of the European Centre for the Responsibility to Protect (ECR2P), University of Leeds, 30 November 2017; Jennifer M. Welsh, 'The Responsibility to Protect Principle is not the Problem: Interview with Jennifer Welsh', 11 December 2013, <https://theglobalobservatory.org/2013/12/the-responsibility-to-protect-principle-is-not-the-problem-interview-with-jennifer-walsh/>, accessed 4 July 2018.

across states. The problems of implementation are mostly due to the norm's ambiguous and prescriptive nature and due to ongoing contestation over the use of military force. The next section applies critical constructivist norm theory to the R2P norm in order to examine R2P's meaning(s) through contestation, practice and localisation, which helps explain states' various interpretations of R2P and provides a lens for understanding R2P's normative impact on state behaviour.

2.4 Applying Critical Constructivist Norm Theory to R2P: Post Institutionalisation

In the conventional Finnemore and Sikkink model, R2P arguably 'cascaded' and underwent institutionalisation following a 'tipping point' where more than a 'critical mass' of states 'accepted' the WSOD R2P in 2005. However, the model's narrow focus on acceptance omits deeper understanding of R2P's post-institutionalisation phase.¹³⁰ Early constructivism's model cannot adequately explain R2P's normative trajectory for two reasons: First, R2P possesses an ambiguous and prescriptive nature, and second, contestation persists, both of which prevent a homogenous meaning and practice. This research agrees with Hofferberth and Weber's notion that '[t]here is no such thing as complete norm internalisation'¹³¹ of R2P. Therefore, determining R2P's meaning(s) requires a reflexive approach, one that recognises the norm as an evolving construct based on social interaction, the context of the norm-taking state and contestation and state practice because the international community of states may accept the norm of a responsibility to help protect foreign populations from mass atrocities, but they have varying interpretations of what that means, which results in different practices.¹³² Contestation and local context inform how states use the norm, which then provides information as to its meaning(s). Importantly, this approach gives both theoretical and practical insight into the political limitations (such as lack of consensus) preventing particular implementations of R2P in a particular crisis, which will also be influenced by the unique context of the particular case.¹³³

In particular, the section that follows provides deeper insight into R2P's attributed meaning(s) by accounting for how states have shaped R2P through their contestation and localisation. First, contestation shapes what R2P is not, in terms of how states do not implement it (narrow). This perspective is about the potential ways R2P may be discharged but are not accepted by states,

¹³⁰ Finnemore and Sikkink, 'International Norm Dynamics and Political Change'; See also, Risse, Ropp and Sikkink, *The Persistent Power of Human Rights*, p. 9-10.

¹³¹ Hofferberth and Weber, 'Lost in Translation'.

¹³² Wiener, 'Contested Compliance'; Wiener, 'Constructivism', p. 268.

¹³³ Acharya, 'The R2P and Norm Diffusion', p. 467. See, Sandholtz, 'Dynamics of International Norm Change'.

which do not violate the core of R2P because the norm is ambiguous and does not explicitly require these particular methods. Second, the existing local context shapes what the norm is because its ambiguity leaves enough room for subjectivity (broad). This is about what aspects of R2P are chosen or preferred by states, which can be numerous and still fit within the purview of the norm, again due to its lack of clarity and prescriptive nature. Then, R2P's meanings can be derived from the state's use or practice of the norm which results from either or both of these approaches to norm shaping. Both approaches are iterative and overlapping at times especially because the local context will also shape the nature of the contestation. For example, the contestation over R2P's third pillar helps determine how particular aspects of R2P have been localised in order to reach congruence with local norms and customs, which results in a particular way of practicing the norm that also helps explain any implementation issues.¹³⁴ Thus, R2P's meanings arise from its ambiguous responsibilities, ongoing contestation, practice and the existing local context of the norm taker.

The following sections use a critical constructivist framework: (1) to examine R2P's prime facie requirements from states, which are ambiguous and therefore subject to state interpretations; (2) to measure evidence of R2P's impact on state behaviour; and (3) to examine how R2P's meanings are shaped by contestation, localisation, and practice.

2.4.1 What Does R2P Require?

Conceptual presumptions exist over what an R2P response entails.¹³⁵ Discharging the WSOD R2P requires the lowest common denominator in terms of the international community's response to mass atrocities in exchange for wide consensus.¹³⁶ The explicit obligation in paragraph 139 is to 'help protect populations from mass atrocity' which is highly subjective and ambiguous. Scholars' arguments often rely on a much broader interpretation of R2P obligations than what is found in the text.¹³⁷ For example, Bellamy argues that member states are required

¹³⁴ Acharya's localisation and Wiener's 'meanings-in-use' theories help explain how R2P has been internalised through contestation due to its various interpretations by states. This research sees 'localisation' as a form of general internalisation. Thus, it refers to a specific way that states may internalise norms. They are not interchangeable terms.

¹³⁵ These presumptions will be analysed empirically in Chapters 5 and 6.

¹³⁶ Bellamy, *The Responsibility to Protect: A Defense*.

¹³⁷ The conceptual presumption about R2P's responsibilities persists beyond the context of refugee protection as the failure to end mass atrocities in individual cases is often used as the measure of R2P's normative value also. For example, see, Alex J. Bellamy, 'The Responsibility to Protect and the "Migrant Crisis"', Protection Gateway, <https://protectiongateway.com/2016/04/02/the-responsibility-to-protect-and-the-migrant-crisis/>, accessed 27 April 2016. Chloë M. Gilgan, 'Exploring the Link Between R2P and Refugee Protection: Arriving at Resettlement', *Global Responsibility to Protect* 9/4: 366-394, 384 (2017).

to do whatever it takes to save populations from mass atrocity.¹³⁸ However, R2P does not explicitly require saving populations from mass atrocities. These assertions generally rely on insider discussions and understandings of R2P (drafters and entrepreneurs) and on the Secretary-General's interpretations of R2P.¹³⁹

Instead, the presumption that R2P requires ending mass atrocities or saving populations from mass atrocities manifests from the spirit underlying the R2P norm, and not from its text. There is no universal understanding of what an R2P response requires, which helps explain the gap between the practice of the norm and how the drafters and scholars of R2P envision R2P protection responsibilities. The language of R2P, as endorsed by states, permits a subjective (due to ambiguity) and lower threshold of responsibility (*helping* to protect, not protecting) for responding to populations facing mass atrocities. States are not politically or legally required to act beyond the text they endorsed. R2P advocates and norm entrepreneurs can certainly advocate for a broader interpretation of state responsibilities under R2P from moral imperatives and perhaps even from political necessity¹⁴⁰, but interpreting R2P narrowly as a response that 'helps to protect populations from mass atrocity', a different obligation from 'ending the mass atrocity', is defensible.¹⁴¹

Thus, practicing R2P means delivering ways that resemble *helping* to protect populations from mass atrocities while a situation persists regardless of the outcome.¹⁴² As such, R2P is unlikely to 'fail' because the Pillar III prescription to *help* protect populations is minimal (as compared to ending mass atrocities) and subjective and can therefore be implemented in a correspondingly

¹³⁸ Bellamy, 'The Responsibility to Protect and the "Migrant Crisis"'.
¹³⁹ Gilgan, 'Exploring the Link Between R2P and Refugee Protection', p. 384.

¹⁴⁰ For example, James Souter argues for a holistic approach to protection due to the external causes of displacement—military interventions, support for oppressive regimes, or the result of economic policies—which requires asylum as reparation. James Souter, 'Bringing Human Rights Home: Refugees, Reparation, and the Responsibility to Protect', in Lennox, Corinne (ed.), *Contemporary Challenges in Securing Human Rights* (London, Institute of Commonwealth Studies, 2015), p.33, <http://www.sas.ac.uk/hrc/publications/open-access-publications/contemporary-challenges-securing-human-rights>, accessed 26 April 2016; James Souter, 'Towards a Theory of Asylum as Reparation for Past Injustice', *Political Studies* 62/2: 326–342 (2014); Jason Ralph and James Souter, 'A Special Responsibility to Protect: The UK, Australia and the Rise of Islamic State', *International Affairs* 91/4: 709–723 (2015). However, this special responsibility to protect only applies in contexts where a potential causative link exists between intervention and displacement. In those cases where there is no link between intervention and displacement, the argument that R2P responsibilities apply outside the manifestly failing state are more tenuous.

¹⁴¹ Gilgan, 'Exploring the Link Between R2P and Refugee Protection', p. 385; Chloë M. Gilgan, 'Has the UK Fulfilled its Commitment to the Responsibility to Protect?: What the Norm Requires in Practice versus Aspiration', Written Evidence (RTP0011), Responsibility to Protect and Humanitarian Intervention Inquiry, Foreign Affairs Select Committee, 3 July 2018, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries/parliament-2017/inquiry8/publications/>, accessed 4 July 2018.

¹⁴² Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster.

minimal way. Despite this conceptual reality, arguments persist over R2P's normative value as a significant influence on state behaviour especially when states' interests dominate. The following section examines the methods for measuring R2P's normative impact on state behaviour.

2.4.2 Evidence of Normative Impact on State Behaviour

A challenging question endures: How to measure the impact of norms on state behaviour given the dynamic nature of norms, changing contexts and the social agents discharging those norms. One of the main sources of contention against conventional constructivists is not their focus on the role of ideational factors in norm theories, but the empirical methodology used to prove their impact. Thus, this section considers existing methods for evaluating normative impact on state behaviour through engagement with critical constructivism while drawing on the compliance debate in international law and international human rights law.

It is methodologically very difficult to identify when a government has genuinely accepted a norm.¹⁴³ In explaining the development of a new norm of military intervention for humanitarian purposes, Christian Reus-Smit suggested to Nicholas J. Wheeler that two tests be applied: First, whether the government publicly endorses the norm in its domestic and international statements; and second, whether there is 'any evidence to support the materialist explanation that the state is only adhering to it because of the exercise of power against it?'¹⁴⁴. Such a statement only begins to identify a norm's impact on state practices because a state's public endorsement of a norm does not empirically prove the norm's impact, which illustrates the empirical weakness in conventional constructivism. Moreover, the second part of the test relies on the situation where the state is in a weaker position, which excludes powerful liberal states from the examination. Andrew Moravcsik argues that neither coercion (realism) nor persuasion (conventional constructivism) can explain state behaviour. His research found that the states presumed to be most supportive of a binding international authority that oversees accountability to the implementation of international human rights were not established democracies that tend to respect and implement human rights like the UK and the US.¹⁴⁵ While

¹⁴³ Nicholas J. Wheeler, 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society', in Jennifer M. Welsh (ed.), *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), p. 29-51, 40.

¹⁴⁴ *Ibid.* Christian Reus-Smit's suggestion to Nicholas J Wheeler.

¹⁴⁵ The 'most sincere' ratifiers of treaties concerning international human rights are newly established democracies because they are fearful of future domestic spoilers. Andrew Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe', *International Organisation* 54/2: 217-252 (2000).

these states would probably pass Reus-Smit's test above, Moravcsik's research found that long-established democracies would likely support 'rhetorical or optional commitments'—and even these only where needed to bolster the 'democratic peace'¹⁴⁶. This suggests that because ambiguous and prescriptive norms do not enjoy a single method of compliance, they are likely to be endorsed by states like the UK as they will naturally accommodate the status quo of existing practices. Beth Simmons' research confirms this notion that the more a norm reflects the 'ideal point' of a government, the more likely it will commit because the required policy adjustments will be minimal.¹⁴⁷ For this reason, liberal states will generally endorse human rights norms because they are reflective of such governments' preferences and practices and the reasonable cost of compliance is generally low.¹⁴⁸ The assumption then, is that the more effective the norm is at changing state behaviour, the more reluctant states will be at joining in the first place. Oona Hathaway's research on state compliance with the CAT illustrates this point in revealing that there is a trade-off between widespread consensus and effectiveness of the regime.¹⁴⁹ The purpose of discussing these examples from international law and international human rights law is to help recognise that a powerful liberal state's commitment to R2P needs to be empirically rigorous because there are too many assumptions that liberal states that endorse liberal norms are automatically implementing them through domestic and public endorsement. In order to avoid giving credit where it may not be due, there are some effective ways for proving R2P's normative influence on state behaviour, which are discussed below.

2.4.2.1 Evidence of R2P's Localisation as a 'Duty to Consider'

Scholars have different ways of measuring R2P's normative influence on state behaviour despite R2P's lack of explicit requirements, which makes discharging the norm subjective and thus, helps insulate it from becoming a failed norm. Aidan Hehir argues that explicit invocation of R2P is evidence that the norm exists and is therefore, the measure of R2P's impact.¹⁵⁰ However, using *discourse* around an applicable conflict as indication of internalisation puts too

¹⁴⁶ *Ibid*, p. 248.

¹⁴⁷ Simmons, *Mobilizing for Human Rights*, p. 65.

¹⁴⁸ *Ibid*, p. 64.

¹⁴⁹ Hathaway, 'The Promise and Limits of the International Law of Torture'. However, her research also found that where domestic institutions had mechanisms for domestic actors to pressure states to abide by the norm, then state compliance was likely to occur.

¹⁵⁰ Hehir, 'The Permanence of Inconsistency', p. 147, 148. Recently, Hehir clarified his position on explicit use of R2P by arguing that 'assessing the efficacy of R2P requires more than charting the frequency of its use in official discourse—that the rhetorical invocations must also be related to actual state practice by interrogating the manner in which the term R2P is used, which was missing from his former article. Hehir. 'Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring', p. 173.

much emphasis on spoken words, which limits accurate understanding of internalisation.¹⁵¹ First, implementation of R2P is seen too narrowly through its verbal commitment as discussed above. Discourse on its own only proves a rhetorical internalisation, which is a superficial measurement as it does not account for other important factors comprising internalisation, such as which actions are being deliberated upon and what actions are being executed in pursuit of the responsibilities either consensually or unilaterally. Additionally, states may use R2P discourse around a crisis, and still avoid any corresponding actions or may attach it to certain policies. On the contrary, states may fail to mention R2P but expend great effort in discharging their protection responsibilities towards populations facing mass atrocities which may evidence the norm developing a ‘taken-for-granted quality’¹⁵² whereby some of the principles of the norm are so widely accepted, that there is no need to keep referring to it explicitly.¹⁵³ Thus, the presence of discourse may be important, but without interrogating the meanings and rationales underlying the corresponding or correlative actions following such discourse, the measurement of normative impact is incomplete.¹⁵⁴

Second, ‘[a] norm need not be explicit to be influential’ as in those cases where non-conforming behaviour invites widespread criticism.¹⁵⁵ For example, even after the controversial intervention in Libya, the General Assembly’s condemnation of the UN Security Council for failing to reach effective consensus on Syria provides evidence that the willingness to accept international responsibility for helping protect populations from mass atrocities is internalised to some degree.¹⁵⁶ Importantly, norms that are violated can still impact behaviour evidenced by how states explain their violation along with other states’ responses.¹⁵⁷

¹⁵¹ In this context, discourse means its ‘prescriptive status’ which means that ‘actors regularly refer to the norm to describe and comment on their own behaviour and that of others’. Sikkink, ‘The United States and Torture’, in Risse, Ropp and Sikkink (eds.), *The Persistent Power of Human Rights*, p.148.

¹⁵² Finnemore and Sikkink, ‘International Norm Dynamics and Political Change’, p. 892. For example, R2P failures (due to political indifference or lack of consensus), followed by international condemnation, like the General Assembly’s decision to ‘censure the Security Council over its failure to protect civilians in Syria’ demonstrates widespread acceptance of appropriate behaviour, further solidifying commitment to the R2P norm. Bellamy, *The Responsibility to Protect: A Defense*, p. 63, p. 72-73.

¹⁵³ However, this would need to undergo rigorous empirical research as well in order to confirm that the behaviour was motivated by the particular commitment to the norm.

¹⁵⁴ Hehir, ‘The Permanence of Inconsistency’.

¹⁵⁵ Badescu (Stefan) and Weiss, ‘Misrepresenting R2P and Advancing Norms’, p. 370.

¹⁵⁶ States have internalised the values of less tolerance for mass atrocities and the notion that such acts are worthy of international concern. ‘R2P is starting to reshape international affairs...facilitating more fundamental changes to the values and identities, and thus to the interests of states and societies themselves.’ Bellamy, *The Responsibility to Protect: A Defense*, p. 72-73.

¹⁵⁷ Luke Glanville, ‘Does R2P Matter? Interpreting the Impact of a Norm’, *Cooperation and Conflict* 51/2: 184-199, 189 (2016).

This scenario resonates with the US CAT case where violation of the anti-torture norm did not negate the existence or the influence of international law. Breaking a law in the absence of a sanctioning authority does not mean the law does not exist.¹⁵⁸ Michael Scharf points out that the Bush Administration's discourse and subsequent actions involving legal justifications for committing torture on suspected terrorists following September 11, 2001, revealed that the international law against torture was indeed internalised by the US government as the existence of the law shaped the discourse and the subsequent action of formulating legal arguments for avoiding its legal obligations.¹⁵⁹ Importantly, asking 'how' rather than 'whether' international law affected the behaviour of ten former US State Department Legal Advisors in designing US foreign policy during times of crisis, gave rise to empirical data supporting the conclusion that regardless of on-going contestation over the binding quality of international law, it nonetheless compelled state behaviour.¹⁶⁰ Scharf drew evidential conclusions on the binding nature of international law by questioning the interviewees' perceptions and the rationale underlying their subsequent foreign policy actions. Interviewees knew and understood which international laws were in play, and the lack of explicit discourse did not nullify the implicit influence of law on the subsequent behaviour. Additionally, Hathaway's research on the CAT argues that regardless of its violation, there is an almost universal view that torture is unacceptable, and therefore non-compliance does not negate the existence of the anti-torture norm.¹⁶¹ This is a crucial point as a norm may exist and compel state behaviour even when the norm is not explicitly attached to relevant policies or even when the norm is violated because it may still implicitly influence and shape state behaviour.

Third, reliance on explicit discourse as evidence of norm internalisation overlooks the possibility that silence can also express important information on how a norm is internalised.

¹⁵⁸ See, Michael P. Scharf, 'International Law in Crisis: A Qualitative Empirical Contribution to the Compliance Debate', *Cardozo Law Review* 31/1: 45-97, 60 (2009). For further discussion of the compliance debate in international law, see, Oona A. Hathaway and Ariel N. Lavinbuk, *Rationalism and Revisionism in International Law*, Harvard Law Review 119/5: 1404-1443, 1404 (2006); Jack Goldsmith, *The Terror Presidency: Law and Judgment Inside the Bush Administration* (New York: W.W. Norton and Company, 2009), p.13; Eric A. Posner and Jack L. Goldsmith, *The Limits of International Law* (New York: Oxford University Press, 2005).

¹⁵⁹ Michael Scharf points out that Goldsmith, as one of the Administration's top lawyers, revealed that the Bush Administration had 'paid attention to law not necessarily because it wanted to, but rather because it had no choice'. Scharf, 'International Law in Crisis', p. 58. A second example that demonstrates normative impact despite non-compliance occurred when the US Supreme Court (and then followed by the lower courts) interpreted international law as a limit to Executive Power in the case of *Hamdan v. Rumsfeld*, 548 US 557 (2006) (5-3 majority holding military tribunals established by Executive Order to prosecute accused al Qaeda terrorists unlawful because they 'violate both the [Uniform Code of Military Justice] and the four Geneva Conventions of 1949').

¹⁶⁰ Scharf, 'International Law in Crisis'; see also, Michael P. Scharf, 'International Law and the Torture Memos', *Case Western Reserve Journal of International Law* 42: 321-358 (2009-2010).

¹⁶¹ Hathaway, 'The Promise and Limits of the International Law of Torture'.

Lack of explicit R2P language is not necessarily a rejection of the responsibilities required by R2P, nor is it convincing evidence of non-internalisation. Investigating what is not said can provide evidence of how a norm has been localised and can illuminate existing contestation, which looks more deeply at *how* a norm is internalised rather than answering the more superficial question of whether it is internalised. For example, Justin Morris argues that even in the liberal states where R2P has cascaded, internalisation is lacking as demonstrated by the minimal mention of R2P in the UK Defence Committee's final report on the Libya operation.¹⁶² However, this assertion misses that there are reasons for the UK's silence which might better explain how R2P is localised in the UK. Many scholars argue that states no longer debate whether they have a responsibility to protect populations from mass atrocities, but on how best to implement that responsibility.¹⁶³ A more accurate approach for evaluating R2P's normative influence, especially where the norm is explicitly absent but relevant, is to inquire into the specific motivations for particular conduct in order to reach a reasonable interpretation and conclusion.

Furthermore, silence may also illuminate the particular aspects of R2P that remain contested. Morris argues that R2P did not play a major role in the UN Security Council's deliberations and subsequent NATO intervention in Libya because only three UN Security Council members and a non-member (US, France, Colombia and Germany) referred explicitly to Pillar I of R2P, and only three members (France, Lebanon and Rwanda) referred to Pillar III's responsibilities. He argues that R2P remains contested and has not undergone the degree of norm cascade suggested by the literature because a 'majority of UN Security Council member states chose not to draw on such language in justifying their approaches to the crisis in Libya'¹⁶⁴. However, this is due to persistent contestation over the non-consensual use of force.¹⁶⁵ More recently, Morris has proposed removing the non-consensual, coercive, military force aspect from R2P's remit in order to preserve its preventive, capacity-building and assistive elements as he now accepts that R2P's inter-subjective meaning reflects a shared understanding of sovereignty as responsibility

¹⁶² See, Morris, 'Libya and Syria', p. 1274.

¹⁶³ Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster.

¹⁶⁴ Morris, 'Libya and Syria', p. 1274.

¹⁶⁵ Alex J. Bellamy, 'Realizing the Responsibility to Protect', *International Studies Perspectives* 10/2: 111-128, 125 (2009).

which will be strengthened without the political controversies around military humanitarian intervention.¹⁶⁶

Jennifer Welsh has also pointed out that UN Security Council Resolution 1973, which is considered the high point for R2P implementation, only cited the Libyan government's Pillar I responsibilities while refraining from mentioning any Pillar III obligations because of this existing contestation over this more controversial pillar.¹⁶⁷ There was concern following Libya that it might become a 'model for future actions of NATO in implementing the responsibility to protect', which may explain the limited explicit reference to R2P in Syria, particularly by states such as Colombia, a 'vociferous advocate of R2P' in Libya, that became silent on R2P in Syria.¹⁶⁸ Moreover, during the 2009 UN General Assembly debate over R2P's future, member states' concerns centred around issues of implementation, particularly the 'lack of clarity about the triggers for armed intervention'¹⁶⁹. Importantly, the demand for clarity on the appropriate timing for the use of force did not reject the use of force per se but can be understood as a request for assurances to assuage fears of misuse.¹⁷⁰ Therefore, the existence of contestation over military intervention does not signify R2P's lack of normative influence on states because the norm is not only about military force.¹⁷¹ Instead, the lack of Pillar III discourse suggests

¹⁶⁶ Moreover, the UN Security Council would still have Article 42 to authorise military humanitarian intervention under maintenance of international peace and security. Justin Morris, 'The Responsibility to Protect and the Use of Force: Remaking the Procrustean Bed?' *Cooperation and Conflict* 51/2: 200-215, 212 (2016).

¹⁶⁷ Jennifer M. Welsh, 'Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP', *Ethics and International Affairs* 25/3: 255-262 (2011).

¹⁶⁸ Morris, 'Libya and Syria', p. 1276.

¹⁶⁹ Alex J. Bellamy, 'The Responsibility to Protect—Five Years On', *Ethics and International Affairs* 24/2: 143-169, 148 (2010).

¹⁷⁰ Many of these states suffered under recent colonialism that can be linked to later humanitarian crisis such as the influence of Belgium on categorising Hutus and Tutsis as separate and paving a path of discrimination culminating in the Rwandan genocide. For a discussion, see Mahmood Mamdani, 'Responsibility to Protect or Right to Punish?' *Journal of Intervention and Statebuilding* 4/1: 53-67 (2010); also for a discussion of the British legacy in the modern Darfur crisis and an argument on the hypocrisy of states normatively accepting the violence and casualties of counter-insurgency and inter-state wars but not genocide, see, Mahmood Mamdani, 'The New Humanitarian Order', *The Nation*, 10 Sept 2008, <http://www.thenation.com/article/new-humanitarian-order/?print=1>, 20 October 2015.

¹⁷¹ The lack of military intervention in Syria provides ammunition for the argument that R2P is a 'slogan'. See, Aidan Hehir, 'The Responsibility to Protect: "Sound and Fury Signifying Nothing?"', *International Relations* 24/2: 218-239, 234 (2010); see also, Hehir, 'The Illusion of Progress', in Weiss et al (eds.), *The Responsibility to Protect: Challenges and Opportunities*, p.18-19; see also, Hehir, *The Responsibility to Protect*; Gareth Evans, 'The Responsibility to Protect: An Idea Whose Time Has Come...and Gone?', *International Relations* 22/3: 283-298 (2008); see also, Gareth Evans, 'From Humanitarian Intervention to the Responsibility to Protect', *Wisconsin International Law Journal* 24/3: 703-722 (2006).

states are circumspect in mentioning Pillar III due to disagreement over when and how to use military force.¹⁷²

Even so, many scholars see R2P as a failure because its deference to politics renders its practice inconsistent and ineffective at addressing humanitarian crises. But this criticism conflates what R2P requires with military intervention.¹⁷³ For example, Weiss argues that R2P did not prevent the ‘international dithering in Darfur, northern Uganda, and the DRC indicat[ing][sic] the dramatic disconnect between political reality and pious rhetoric’¹⁷⁴. Weiss also argues that the WSOD R2P is a watered down version of the ICISS which makes its transition from ‘rhetoric to reality’ an operational problem due to lack of political will concerning humanitarian intervention.¹⁷⁵ Furthermore, Hopgood argues that the ‘case-by-case’ language of ‘R2P lite’ ‘eradicated hope of a permanent Security Council responsibility to protect when states [manifestly] failed’¹⁷⁶. On the contrary, a ‘case-by-case’ basis means each case may entail a different response under the umbrella of R2P and thus, armed intervention is recognised as not always the appropriate response.

Additionally, Stephen Hopgood argues that R2P was developed as an enforcement mechanism to protect civilians when international crimes constituting mass atrocities occur and that R2P provides a rule book with steps to follow as a response to the military interventions in the 1990s/2000s.¹⁷⁷ According to Hopgood, the national interests of the P5 will determine whether an armed intervention for civilian protection purposes will ever occur and the War on Terror and the invasion of Iraq have contributed to eroding support or trust of humanitarian intervention.¹⁷⁸ The analyses of Hopgood et al neglect R2P’s other tools for protecting populations from mass atrocities. Too much of R2P’s normative value is equated with the use of coercive force while those states that have a mistrust of western-led military action are presumed to be non-supporters of R2P because they are judged to prioritise sovereignty over rights.¹⁷⁹ These examples demonstrate the ‘erroneous tendency to measure its [R2P’s] impact in terms of whether or not military intervention occur[ed] in particular cases’ that reduces R2P to a

¹⁷² The controversies over R2P reflect broader, existing ‘fault lines in international order’ which are highlighted by debates over the use of coercive military force. Newman, ‘R2P: Implications’, p. 239, p. 255.

¹⁷³ See, Hehir, *The Responsibility to Protect*.

¹⁷⁴ Weiss, *Humanitarian Intervention*.

¹⁷⁵ *Ibid.*

¹⁷⁶ Hopgood, ‘The Last Rites for Humanitarian Intervention’.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ For example, see Morris, ‘Libya and Syria’, p. 1279.

norm of military humanitarian intervention, which is a narrow and highly contested aspect of R2P but does not signal the failure of R2P as a norm.¹⁸⁰

Bellamy argues that R2P is a policy approach whereby implementation means responding to a particular crisis by putting it on the agenda¹⁸¹ which resonates with Welsh's view that R2P is like a legal duty to consider.¹⁸² Bellamy argues that evidence of R2P internalisation comes from the consensus over the necessity to respond, regardless of whether it results in disagreement over how to respond and even where any response (or lack thereof) ultimately fails to stop the atrocities.¹⁸³ Welsh argues that the kind of action that follows (whether military or not) depends on an array of other contextual factors and responses may vary from case to case.¹⁸⁴ Thus, this research adopts Bellamy's notion of R2P because the norm requires more than engaging in a debate or a 'duty to consider'¹⁸⁵ as described by Welsh. Engaging in consistent debate is not enough in the absence of any response, but those responses need only *help protect populations from mass atrocities*, which does not mean ending mass atrocities.¹⁸⁶ Thus, any lack of consensus over R2P's implementation does not signal failure because the norm cannot 'determine particular behaviours or guarantee international consensus'¹⁸⁷. As Glanville argues, R2P is 'an obligation of conduct, not of result'¹⁸⁸. The inter-subjective quality of a norm means that actions and routine behaviours implied by the norm may become consistent but the norm itself is fluid and cannot be fully internalised as it will mean different

¹⁸⁰ Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster.

¹⁸¹ Bellamy, 'The Responsibility to Protect—Five Years On', p. 144. See, Alex J. Bellamy, 'The Responsibility to Protect: Added Value or Hot Air?', *Cooperation and Conflict* 48/3: 333-357 (2013).

¹⁸² Welsh, 'Norm Contestation and the Responsibility to Protect'.

¹⁸³ This illustrates how R2P should level the playing field in terms of obligating states to consider every case of mass atrocity in theory as discussed earlier in the chapter. See, Bellamy, *The Responsibility to Protect: A Defense*; Bellamy, 'The Responsibility to Protect: Added Value or Hot Air?', p. 335.

¹⁸⁴ Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster.

¹⁸⁵ Welsh, 'Norm Contestation and the Responsibility to Protect'. Note that Welsh suggests Bellamy's policy agenda view of R2P is a minimalist view. The assumption is that her view falls somewhere between Evan's rallying call and Bellamy's policy agenda. However, Welsh's notion stops short of requiring a response as it accepts 'consistent debate in itself as enough'. This research sees Bellamy's notion as closer to Glanville's notion that discussion and debate and some response is needed to comply with R2P responsibilities.

¹⁸⁶ However, there is some contradiction with Bellamy's arguments as he simultaneously argues that proof of R2P internalisation is both the general idea that states' agree that some response to mass atrocities is necessary while arguing that R2P demands a more specific responsibility that includes state facilitation of asylum as a way to protect populations from mass atrocities. See, Bellamy, 'The Responsibility to Protect and the "Migrant Crisis"'.
¹⁸⁷ Bellamy, 'The Responsibility to Protect: Added Value or Hot Air?'. For an overview of those voices judging R2P as a failure, see, Alex J. Bellamy, 'From Tripoli to Damascus? Lesson Learning and the Implementation of the Responsibility to Protect', *International Politics* 51/1: 23-44, 23-25 (2014).

¹⁸⁸ Glanville, 'Does R2P Matter?', p. 191.

things in different cases.¹⁸⁹ Instead, it is contested and given meaning through practice, which reveals how the norm has been localised in different contexts. Moreover, ‘helping to protect’ is ambiguous and open to interpretation, so examining the contestation, the state practice and the localisation of R2P will give deeper insight to R2P’s meanings.

In sum, the compliance debate in both international law and within the international human rights regime offer important insights into evaluating whether and how a norm impacts state behaviour. This is because the norms literature in international relations is limited in providing what counts as evidence of norm internalisation as the conventional constructivists see rule consistent behaviour in line with a particular norm or public endorsement as complete evidence of internalisation, but this does not prove that states have responded because of their commitment to the norm. In response to this deficit, critical constructivists generally agree that norm internalisation oversimplifies how norms impact state behaviour since norms are dynamic with an evolving meaning reflecting state practices, local and applicable contexts, and the characteristics of the norm itself, which explains variations in implementation. Not unlike the critical constructivists, legal theorists look at the ‘how’ of internalisation, which involves considering the justifications relied on for non-compliance but also entails looking at the subsequent actions taken as a result of those justifications. Therefore, while public endorsement of a norm is helpful to a degree, ‘[norm] internalization [is] [sic] variable and hard to measure; and consequently, it is rarely possible to be certain how strong a justification for action citation of a particular norm will provide’¹⁹⁰. This is not to suggest that explicit and implicit invocations of a particular norm are unimportant, but that understanding the type of contestation and the process of local adoption of the norm give a more complete picture of the impact of the norm on state behaviour. Moravcsik is critical of both realist and constructivist understandings of states’ motivations for enacting and complying with norms. Ideas impact state behaviour but too often, constructivists rely on ‘public professions of idealism’ and document the actions of moral entrepreneurs.¹⁹¹ Instead, methodology should involve ‘cross-national comparison and primary-source documentation of decision-making’ as the critical tests for establishing a theory on state behaviour particularly in relation to human rights.¹⁹² His theory accepts the self-interested nature of states in their rational pursuit of varying national interests, but also accounts for the

¹⁸⁹ Hofferberth and Weber, ‘Lost in Translation’; Finnemore and Sikkink, ‘International Norm Dynamics’, p. 904.

¹⁹⁰ Morris, ‘Libya and Syria’, p. 1267.

¹⁹¹ Moravcsik, ‘The Origins of Human Rights Regimes’, p. 248.

¹⁹² *Ibid.*

variation of domestic social pressures and representative institutions.¹⁹³ This approach reflects a critical constructivist approach and is more rigorous methodologically. Having established what constitutes evidence of norm internalisation from a critical constructivist perspective, the following section applies a critical constructivist lens to derive the meanings of R2P.

2.4.3 Defining R2P through Contestation

Hofferberth and Weber argue that '[r]esearch that is truly concerned with normative change should not define the presumed content of a norm in advance but start from the point that its meaning and practical implications are a matter of contention among observed agents'¹⁹⁴. Applying critical constructivist theory means accepting contestation as the starting point for understanding the meaning of R2P because contestation helps indicate which particular aspects of R2P have not been accepted and which aspects are congruent with the local context, both providing information as to the norm's meaning(s). A clear example is where rising powers have presented alternative conceptions of R2P, such as 'Brazil's Responsibility While Protecting' (RWP) and China's 'Responsible Protection' (RP), to accommodate their increasing distrust of R2P.¹⁹⁵ Such conceptual alternatives to R2P reflect the localisation of the locally incongruent aspects of R2P.¹⁹⁶ In particular, RWP was an opportunity for a non-western, rising power and a 'critical norm-taker'¹⁹⁷ to expand the notion of what it means to implement R2P's third pillar via contestation of the military intervention aspect of the norm.¹⁹⁸ Ideally, the modified norm would then create a feedback loop, potentially changing the norm at the international level, which ultimately could strengthen the norm.¹⁹⁹ This 'norm circulation' is to be expected when less powerful states feel more powerful actors have abused a norm at the implementation level, such as in the case of Libya.²⁰⁰ Brazil's RWP and China's RP are

¹⁹³ *Ibid.*

¹⁹⁴ Hofferberth and Weber, 'Lost in Translation', p. 90.

¹⁹⁵ Stefan, 'On Non-Western Norm Shapers'. See also, Andrew Garwood-Gowers, 'China and the "Responsibility to Protect": The Implications of the Libyan Intervention', *Asian Journal of International Law* 2/2: 375-393 (2012). For discussion of state reactions to the P3 execution of UNSC Res. 1973, 17 March 2011, in Libya, see, Ralph and Gallagher, 'Legitimacy Faultlines in International Society'.

¹⁹⁶ Acharya, 'How Ideas Spread'.

¹⁹⁷ Through norm localisation, Brazil became a critical 'norm maker'. For a discussion of the difference between 'norm makers' and 'norm takers', see Checkel, 'Norms, Institutions, and National Identity in Contemporary Europe'. See also, Stefan, 'On Non-Western Norm Shapers'.

¹⁹⁸ Stefan, 'On Non-Western Norm Shapers'; Morris, 'The Responsibility to Protect and the Use of Force', p. 208; Acharya, 'How Ideas Spread'; see also, Prantl and Nakano, 'Global Norm Diffusion in East Asia'.

¹⁹⁹ Processes of 'translation' whereby norms may travel up, down or sideways. For example, if states had accepted Brazil's RWP, R2P could have been altered at the international level (across and within states domestically) not just within the domestic arena of Brazil. See, Susanne Zwingel, 'How Do Norms Travel? Theorizing International Women's Rights in Transnational Perspective', *International Studies Quarterly* 56/1: 115-129 (2012).

²⁰⁰ Acharya, 'Norm Subsidiarity and Regional Orders', p. 97; Acharya, 'How Ideas Spread'.

conceptual contributions to R2P that do not minimise the need to balance sovereignty and mass atrocity prevention and response, but that add additional checks to the use of force, given post-colonial states' perceptions of western misuse in less powerful states.²⁰¹

Importantly, so much of R2P implementation rests on the actions of the P5, which results in strong criticism of R2P due to its ultimate deference to the politics of the UN Security Council,²⁰² especially as the Council has failed to reach any sustainable consensus on Syria.²⁰³ However, the P5's actions must also be understood within the context of their contestation, not obstruction of R2P.²⁰⁴ The powerful P3 (UK, US and France) have also localised R2P's meanings by resisting particular features or forwarding alternative interpretations of the norm.²⁰⁵ For example, the UK may be contesting some of the non-coercive aspects of R2P by refusing to alter its military and political objectives in Syria, which are repeatedly linked to R2P, even though such goals are impossible.²⁰⁶ For the UK, refugee resettlement as an R2P method may be an 'incongruent aspect of R2P' similar to the use of force aspect contested by the BRICS (Brazil, Russia, India, China and South Africa). The difference is that the use of force is written into the text of R2P, but the use of refugee resettlement as a non-coercive method of R2P is not, and the link is not generally made in practice.²⁰⁷ Therefore, applying theories of contestation to the case of the UK and R2P is more nuanced because it involves

²⁰¹ Exclusion of the BRICS on R2P implementation has arguably made *effective* delivery of R2P's agenda impossible in Syria, which has strengthened the argument that R2P's normative power is null. Ralph and Gallagher, 'Legitimacy Faultlines in International Society'. See also, Newman, 'R2P: Implications'.

²⁰² Hehir, 'The Illusion of Progress', in Weiss et al (eds.), *The Responsibility to Protect: Challenges and Opportunities*, p.18-19; Hehir, *The Responsibility to Protect*, p. 120; see also, Gabriele Lombardo, 'The Responsibility to Protect and the Lack of Intervention in Syria between the Protection of Human Rights and Geopolitical Strategies', *International Journal of Human Rights* 19/8: 1190-1198 (2015). However, this article equates R2P's military intervention aspect as implementation of R2P, which forgets the norm's other tools for protecting populations from mass atrocity. Additionally, the lack of military intervention in Syria as compared to Libya is more complicated than Russian national interest. See, Joseph Besigye Bazirake and Paul Bukuluki, 'A Critical Reflection on the Conceptual and Practical Limitations of the Responsibility to Protect', *International Journal of Human Rights* 19/8: 1017-28, 1023, (2015).

²⁰³ Hehir, 'Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring'.

²⁰⁴ For example, Russia has supported the Syrian regime's narrative that it is fighting domestic terrorism while Ruan Zongze from the China Institute of International Studies in discussing China's problem with R2P suggested that the global community think of 'other humanitarian means such as refugees' for helping populations in conflict. *China and the Responsibility to Protect*, conference held at POLIS, University of Leeds, 4 December 2014; see also, Garwood-Gowers, 'China and the "Responsibility to Protect"'

²⁰⁵ Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster.

²⁰⁶ Jason Ralph, 'What Should Be Done? Pragmatic Constructivist Ethics and the Responsibility to Protect', *International Organization* 72/1: 173-203 (2018).

²⁰⁷ Gilgan, 'Exploring the Link Between R2P and Refugee Protection'; see also, Edward Newman, 'The Limits of Liberal Humanitarianism in Europe: The "Responsibility to Protect" and Forced Migration', *European Review of International Studies* 4/2-3: 59-77 (2018).

drawing a conceptual link between R2P and refugees first, which means refugee protection is not necessarily a ‘particular aspect of R2P’²⁰⁸. Furthermore, because critical constructivists recognise there is no single way to implement a norm, particularly when its potential methods are non-exhaustive, the failure to use one method does not nullify evidence of the norm’s overall influence on state behaviour. Instead, the UK’s contestation of R2P’s ambiguous and non-exhaustive list of responses may not be apparent or may differ across the social agents comprising the UK government in this research. This means that the value of applying a contestation lens may be to inform how the UK has localised R2P through its meanings-in-use and which aspects are contested more broadly.

The literature mostly focuses on the contestation of R2P by Russia and China but does not explore contestation thoroughly in the context of the P3. The lack of consensus to the Syrian conflict is a case of ‘applicatory contestation’ over if and when to use military humanitarian intervention and whether Assad’s departure and political transition are necessary to help protect the Syrian population from mass atrocities.²⁰⁹ While Wiener’s meanings-in-use and contestation theories are used for this research, Deitelhoff and Zimmermann help refine Wiener’s arguments in terms of the limits on contestation, particularly where contestation transforms from constitutive to degenerative.²¹⁰ Because contestation can affirm and influence the normative structure of R2P, the type of contestation is crucial to evaluating whether it will be weakened or strengthened by such negative pressure. Contestation of the norm’s application can strengthen the norm while contestation of the validity of the norm will lead to weakening as discussed earlier in this chapter. States agree on the principle that the international community has a responsibility to help protect populations from mass atrocities when a state is manifestly failing, and no state has argued against the overall idea that force may sometimes be necessary.²¹¹ Logically, R2P’s contestation involves disagreement over *when* other means have been exhausted and when force is warranted given the context of the particular case. This applicatory contestation of R2P is inevitable due to its positive duties and its ambiguous nature because norms of positive duties will undergo more ‘applicatory contestation’ in contrast to

²⁰⁸ Welsh, ‘The Responsibility to Protect and the Crises in Libya and Syria’, conference at the University of Westminster. R2P permits refugee protection but does not require it, which is explored in Chapter 3.

²⁰⁹ Deitelhoff and Zimmermann, ‘Things We Lost in the Fire’, p. 5.

²¹⁰ *Ibid.*

²¹¹ Ralph and Gallagher, ‘Legitimacy Faultlines in International Society’.

norms that proscribe conduct.²¹² This is because such norms are less clear about when and how they apply and will therefore be invoked through a trial and error approach.²¹³

Even so, ambiguous norms, which allow room for varying interpretations and methods of implementation, can become degenerative if they have been misused in an applicable context.²¹⁴ Two examples explain how applicatory contestation can operate to either strengthen or cause degeneration of a norm. Contesting the application of a norm because it is outside the agreed upon literal scope of the norm (Cyclone Nargis case) can strengthen the norm and does not contest the core attributes of the norm. In this case, the contestation is over which cases warrant any application at all and is not about the actual remit of the norm. The contestation helps clarify the norm's application to relevant cases in the future which is constitutive. On the contrary, application of a norm to a situation warranting attention, but resulting in implementing the norm beyond the scope of its agreed upon application (Libya where humanitarian intervention became regime change) can be degenerative to a norm as norm-takers reject applying the norm in future cases and norm-makers may even allow it to slip into discursive neglect so as not to further alienate the norm-takers.

At this point, it is necessary to examine how the Libya intervention of 2011 provided concrete fulfilment of states' existing contestation of R2P, which has impacted the localisation of R2P as well as the ability to reach sustainable consensus in Syria and potentially in future cases. R2P's past implementation in Libya gives additional context towards understanding its various meanings and interpretations in the context of Syria. R2P's normative acceptance culminated in Resolution 1973 in relation to Libya in 2011.²¹⁵ However, R2P's moment of consensus on Pillar III military intervention in Libya can be seen as both a success in applying R2P to the Libya context and failure in the subsequent implementation of R2P.²¹⁶ As the Benghazi massacre in Libya became imminent, the UN Security Council quickly and efficiently

²¹² Deitelhoff and Zimmermann, 'Things We Lost in the Fire', p. 5.

²¹³ *Ibid*, p. 5, p. 8.

²¹⁴ Ironically, Panke and Petersohn view the humanitarian intervention aspect of R2P as something of a radical success at curbing and degenerating the scope of a '50-year old norm against forcible intervention'. For a discussion of how imprecise norms can slip into rhetoric via incremental norm disappearance, see Panke and Petersohn, 'Why International Norms Disappear Sometimes'.

²¹⁵ Bellamy, *The Responsibility to Protect: A Defense*.

²¹⁶ Morris, 'Libya and Syria'. Morris discusses Libya as R2P's 'coming of age for UN Secretary-General Ban Ki-moon, a 'gamechanger' for Ramesh Thakur, and Bellamy's 'identity changer'. Morris suggests ways for mitigating the 'toxic effects' of the Libya intervention on the R2P norm. See also, Secretary-General Ban Ki-moon, "'Responsibility to Protect' Came of Age in 2011', Address to the Stanley Foundation Conference, SG/SM/14068, 18 Jan 2012, <http://www.un.org/press/en/2012/sgsm14068.doc.htm>, accessed on 20 October 2015.

authorised the use of non-consensual force against Libya.²¹⁷ States were united in their concern to protect Libyan civilians from mass atrocities and even Russia and China, states opposed to non-consensual military intervention, abstained from voting so as not to obstruct the R2P mission in Libya.²¹⁸ Libya proved that R2P had not degenerated as a norm following UN Security Council discursive neglect.²¹⁹ However, the subsequent regime change in Libya confirmed many states' fears that R2P would be misused to serve the interests of western states historically predisposed to the use of military might.²²⁰ As a result, some states 'were unwilling to even foreshadow non-military measures...because of their concern [that] military coercion would be the inevitable next step'²²¹. R2P's mission creep in Libya, the failure to exhaust all the political avenues put forward by regional organisations like the African Union (AU) such as potential ceasefire offers, the attacks on non-military targets, the violation of explicit arms embargoes, and the ensuing violence and refugee crisis resulting from the intervention give weight to the argument that the use of force in Libya, while a successful moment of R2P unity, has at the very least, prevented effective protection of the Syrian population from mass atrocities and has reinforced on-going contestation against the use of force and regime change for humanitarian responses.²²² Indeed, the intervention in Libya has had a significant impact on

²¹⁷ UNSC Res. 1973, 17 March 2011; see also, David Bosco, 'Was there going to be a Benghazi Massacre?', *Foreign Policy, The Magazine*, <http://foreignpolicy.com/2011/04/07/was-there-going-to-be-a-benghazi-massacre/>, accessed 26 October 2015.

²¹⁸ For deeper consideration of the normative and political reasons for the Libya intervention, see Hehir, 'Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring' and Glanville, 'Does R2P Matter?'.

²¹⁹ Bellamy, 'The Responsibility to Protect—Five Years On', p. 146.

²²⁰ Hehir, 'Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring', p. 172; Gareth Evans, 'R2P and RWP after Libya and Syria', *Keynote Address to Stanley Foundation*, 23 August 2012, <http://www.gevans.org/speeches/speech485.html>, accessed 10 January 2017; Garwood-Gowers, 'R2P Ten Years After the World Summit'. For a discussion of the UK's strong tradition of favouring the 'humanitarian intervention' aspect of R2P inapposite to the BRICS, which tend to favour non-intervention and non-coercive measures as a result of their post-colonial pasts and strict adherence to the rules of sovereignty, see Sarah Brockmeier, Gerrit Kurtz & Julian Junk, 'Emerging Norm and Rhetorical Tool: Europe and a Responsibility to Protect', *Conflict, Security & Development* 14/4: 429-460 (2014). The way the ICC and UNSC operate as double standards for liberal states compounds this potential reality. See, Ralph and Gallagher, 'Legitimacy Faultlines in International Society'.

²²¹ Jason Ralph, 'The UK and the Responsibility to Protect', *R2P Ideas in Brief, Asia Pacific Centre for the Responsibility to Protect* 6/3: 1-9, 9 (2016) (quoting Amitav Acharya); Gareth Evans, 'Responding to Mass Atrocity Crimes: The Responsibility to Protect after Libya', Lecture at Chatham House, London, 6 October 2011, <https://www.chathamhouse.org/publications/papers/view/178795#>, accessed 12 July 2018. Morris recently proposed that the non-consensual coercive force aspect of R2P should be removed as military humanitarian intervention would still be legal under Article 42 but would remove the possibility of mission creep under R2P, thus solidifying more support for R2P's Pillar III responsive measures. See, Morris, 'The Responsibility to Protect and the Use of Force', p. 206. See also, Hehir, 'Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring', p. 209-210.

²²² Stefan, 'On Non-Western Norm Shapers', p. 90. Morris, 'The Responsibility to Protect and the Use of Force', p. 206; Hehir, 'Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring', p. 171-172.

the overall international response, the UK's domestic responses and civil society's calls for state responses to Syrians fleeing mass atrocities as discussed in Chapters 4, 5 and 6 respectively.

Thus, the events in Libya before the 2011 intervention, warranted an R2P response so there was no misapplication of R2P in the context, which has arguably strengthened R2P as a norm in terms of use and discourse post-Libya.²²³ However, the implementation of R2P, specifically the reality that military humanitarian intervention became regime change in Libya, exceeded the mandate of R2P as agreed by states. While this too, may be considered 'applicatory contestation', such actions have given rise to deeper contestation of the norm. Thus, the misapplication of R2P to Libya, not in terms of its context, but in terms of how the norm was implemented, has undermined its validity to some degree, which is confirmed empirically in Chapters 5 and 6. Even so, Bellamy's argument that the UN General Assembly's censure of the UN Security Council for failing to reach consensus on a response to Syria resembles a sanction on the Council's non-compliance with R2P provides some evidence that R2P has not yet degenerated as a norm from its misapplication in Libya.²²⁴

In contrast, Andrew Garwood-Gowers sees the on-going contestation of the use of force, particularly by the BRICS, as an attack on 'the normative core of R2P's third pillar', stemming from states inflexibility over sovereignty and non-interference, which he argues goes to the validity of the norm itself (justificatory contestation).²²⁵ Justin Morris states:

...R2P has fallen short. It is highly questionable whether R2P can, in the most testing of cases such as Syria, provide a means by which normative agreement over sovereignty as responsibility can be translated into the necessary consensus over military action.²²⁶

Additionally, Aidan Hehir sees the de-emphasis on humanitarian intervention within the R2P framework as a disingenuous method of reaching consensus that renders R2P little more than rhetoric because implementation of R2P is explicitly conditional on the support of the P5.²²⁷ However, like Morris and Garwood-Gowers, Hehir relies too much on R2P's military intervention tool as he equates the UN Security Council's 'paralysis' as doing nothing in humanitarian crises²²⁸. As Welsh noted, there is a tendency to see consensus over military

²²³ Bellamy, *The Responsibility to Protect: A Defense*.

²²⁴ *Ibid.*

²²⁵ Garwood-Gowers, 'R2P Ten Years After the World Summit', p. 321.

²²⁶ Morris, 'Libya and Syria', p. 1283.

²²⁷ Hehir, *The Responsibility to Protect*, p. 243, p. 255; see also, Hehir, 'The Permanence of Inconsistency', p. 152.

²²⁸ Hehir, *The Responsibility to Protect*, p. 243, p. 255.

intervention or political transition as the successful implementation of R2P.²²⁹ Such arguments bely a presumption that R2P's normative core relies on the use of force to protect populations and neglects the fact that Pillar III has other methods for protection that are to be exhausted before resorting to military force.

Thus, contestation provides insight into the meaning(s) attributed to R2P by powerful liberal states as well as less powerful or illiberal states. Importantly, the current impasse on the UN Security Council offers an opportunity for examining how R2P has been localised amongst the P5. The P5's disagreements over implementing R2P in Syria result from contestation and localisation, and not necessarily political obstruction over the responsibility to help protect populations from mass atrocities.²³⁰

2.4.4 Localising and Determining R2P's Meanings-in-Use in Powerful Liberal States

Bellamy's argument that R2P is an identity changer as states have internalised the notion that mass atrocities are wrong and that the international community has some protection role to play (evidenced by the UN General Assembly's condemnation of the P5's lack of consensus on Syria) resonates with Hofferberth and Weber's argument that the inter-subjective quality of a norm means that actions and routine behaviours implied by the norm may become internalised.²³¹ The disagreement between states is not over whether there should be concern for mass atrocities, but how states understand or prefer implementation of that concern, which will have localised according to powerful liberal states' domestic structures, past histories, identities, and elite power structures.²³² Thus, it is unavoidable that implementation of R2P will then confront, intersect or become subordinate to the existing and competing local norms that may be in tension with the particular mode(s) of implementation being deliberated upon in some cases.²³³

²²⁹ Welsh, 'Norm Contestation and the Responsibility to Protect'.

²³⁰ Ralph and Gallagher discuss the consequences of excluding important views from norm implementation such as occurred when the P3 referred and ICC then issued premature arrest warrants in Libya and Sudan during the AU's on-going negotiations for a peaceful political solution; as a result of procedural exclusion the AU has not condemned African states for not turning Bashir over to the ICC in compliance with their obligations. Ralph and Gallagher, 'Legitimacy Faultlines in International Society'. See also, for example, UN Permanent Mission of India to the UN, 'Statement by India at the 2013 Informal Interactive Dialogue on the Responsibility to Protect', 11 September 2013, http://www.globalr2p.org/media/files/india_en.pdf, accessed 13 October 2015.

²³¹ Hofferberth and Weber, 'Lost in Translation'.

²³² Acharya, 'How Ideas Spread', p. 241. 'Localization describes a complex process and outcome by which norm-takers build congruence between transnational norms and local beliefs and practices'.

²³³ Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster. Importantly, the 'compliance pull' of other embedded norms that come into tension

Bellamy's internalised notion can be localised because the action on the ground that follows is fluid (Hofferberth and Weber) as states may have varied ideas on how to implement their concern depending on the state's local context, along with existing contestation and the particular context of the case at issue. Furthermore, R2P's positive obligations, which are ambiguous and prescriptive for helping protect populations from mass atrocities when a state is manifestly failing mean there is a non-exhaustive list of options for practical implementation. As such, the vagueness of R2P's Pillar III allows room for the national interests of states to determine which responsive measures to implement.

As a result, discussions around R2P often centre on national interests.²³⁴ The academic research tends to focus on how Russia and China have either obstructed consensus on military intervention or how they have focused on preventing mission creep as a reaction to Libya.²³⁵ Some, like Bellamy, argue that there is little evidence that the Libya intervention of 2011 negatively impacted the decision-making on Syria in relation to the BRICS. Moreover, academics often allege that liberal states like the UK have failed their responsibility to protect by not responding unilaterally through military humanitarian intervention or by failing to provide adequate refugee protection to Syrians fleeing mass atrocities.²³⁶ However, there is limited academic discussion on how powerful liberal states might be contesting and localising R2P after Libya. The literature mainly focuses on how the Libya intervention impacts the decision-making of states wary of western interventions. However, there is reason to believe that powerful liberal states may be reacting to Libya and contesting aspects of R2P partly as a result.²³⁷ There is scant discussion of Libya's impact on France, the US or UK because the presumption is that because they were the penholders of the resolutions advancing political transition and humanitarian responses to the mass atrocities in Syria, their relative silence over the impact of Libya equates to support and acceptance of military force under R2P. This may be true. However, silence without interrogation of the reasons for the silence do not fully evidence R2P internalisation, but instead bolster a presumption that powerful liberal states are not contesting aspects of R2P. For example, Nossal has noted that members of the Canadian

with various R2P responses will also influence how responses to R2P cases will vary from each other. See, Acharya. 'The R2P and Norm Diffusion', p. 467.

²³⁴ Hehir, 'The Permanence of Inconsistency'; Hehir, 'Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring'.

²³⁵ Bellamy, 'From Tripoli to Damascus?', p. 26; Hehir, 'Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring'; Hehir, 'The Permanence of Inconsistency'; Glanville, 'Does R2P Matter?'; Gilgan, 'Exploring the Link Between R2P and Refugee Protection'.

²³⁶ Bellamy, 'The Responsibility to Protect and the "Migrant Crisis"'.

²³⁷ Most research centres around Russia and China and their contestation of R2P stemming from the Libya intervention. For example, see Bellamy, 'From Tripoli to Damascus?'.

government avoided using the phrase R2P in foreign policy discourse mostly due to party politics and not because of a lack of commitment to R2P's principles.²³⁸ Liberal states are contesting and localising R2P in how they avoid and how they choose to implement R2P (in the narrow and the broad sense). Even so, there are few articles that directly engage with liberal states' contestation and localisation of R2P, which are discussed below.

Ralph's research on R2P uses a critical constructivist angle, particularly Wiener's theory that normative meaning is derived from use and practice to conclude that the UK tends to see R2P as a foreign policy issue requiring a regional response.²³⁹ Jason Ralph and Jess Gifkins argue that the UK, US and France have made their responses to mass atrocities dependent on Assad's departure and political transition as a solution to the Syrian crisis²⁴⁰, which resulted in the UN Security Council's inability to reach sustained consensus even on humanitarian access resolutions on Syria. Ralph et al analysed 2,152 sources supplemented by elite interviews to conclude that the UK foreign policy approach to Syria between 2011-2013, was comprised of a dual discourse: (1) 'a liberal insistence that the UK should support the "Arab Spring"' (and political transition away from Assad); and (2) 'a conservative insistence that military intervention was imprudent because "Syria was not Libya"'²⁴¹. Ralph argues that the 'calls for Assad to go resonated with liberals, but by ruling out intervention the government mollified conservative concerns' but was thus 'limited to the pursuit of half-measures'²⁴². As such, the UK's 'meanings-in-use' derived through practice of R2P illustrate a tension between the liberal urge to build democracy and the realist need to pursue national interests that are supported by the domestic constituency.

Next, Brockmeier et al's research on Europe and R2P uses a critical constructivist angle to explain the varied interpretations among powerful liberal states in discharging R2P's Pillar III coercive intervention aspect. They argue that the way powerful liberal states implement R2P results from the state's identity, which is specifically based on its historical use of force.²⁴³

²³⁸ Gallagher, 'Syria and the Indicators of a 'Manifest Failing'', p. 4; see also, Kim Richard Nossal, 'Chapter 6: The Use – and Misuse – of R2P: The Case of Canada', in Hehir and Murray (eds.), *Libya*, p.110-129, p. 123.

²³⁹ Jason Ralph and Jess Gifkins, 'The Purpose of United Nations Security Council Practice: Contesting Competence Claims in the Normative Context Created by the Responsibility to Protect', *European Journal of International Relations* 23/3: 630-653 (2017); Jason Ralph, Jack Holland, and Kalina Zhekova, 'Before the vote: UK foreign policy discourse on Syria 2011–13', *Review of International Studies* 43/5: 875-897 (2017).

²⁴⁰ *Ibid.*

²⁴¹ Ralph, Holland, and Zhekova, 'Before the vote'.

²⁴² *Ibid.*, p. 896.

²⁴³ Brockmeier, Kurtz and Junk, 'Emerging Norm and Rhetorical Tool'; see also, Negron-Gonzales and Contarino, 'Local Norms Matter'. For further information, see Germany abstained on UNSC Res. 1973,

Their research analyses the positions of France, Germany and the UK and concludes that ‘Germany stresses military restraint and civilian crisis prevention’, while ‘France and the UK continue to view R2P through their pre-existing traditions of a *droit d'ingérence* and the ‘doctrine of humanitarian intervention’, respectively²⁴⁴. Such differences were a result of ‘diverging strategic cultures based on different historical lessons on the use of force’²⁴⁵. For example, Germany’s shame at instigating two world wars and committing the Holocaust underpin Germany’s restraint on the use of force even for humanitarian purposes.²⁴⁶ In contrast, the study argues that the UK is predisposed towards using military means for protection due to past British imperialism, which instils the UK with a sense of international responsibility combined with self-interestedness (one of Tony Blair’s ‘five tests’ for humanitarian intervention at his Chicago speech just before the Kosovo intervention) and a ‘moral fervour’ now tempered by the lessons learned from the Iraq invasion.²⁴⁷ Importantly, the article concludes that both France’s and the UK’s lack of willingness to engage in any debates on criteria for the use of force (both pushed hard against Brazil’s RWP proposal) or accountability mechanisms or discussions for alternatives to military interventions in concrete crises prevents a common European foreign policy.²⁴⁸

Finally, borrowing from international law and politics, the US CAT case is highly relevant for demonstrating that powerful liberal states contest the norms they develop and endorse when newer preferred norms come into conflict.²⁴⁹ The CAT case is an example of the dichotomous relationship between endorsed norms and local dynamics as explained by Acharya. International norm internalisation will be quicker where there is ‘cultural match’ or it resonates with domestic norms.²⁵⁰ This means that norms require ‘cultural match’ in the domestic arena of powerful liberal states also.

The existing research on how R2P is interpreted and practiced by the UK is helpful but limited. It is helpful in providing an initial hypothesis that military intervention and regime change are

17 March 2011 (Libya), see, ‘Statement by Guido Westerwelle in the German Bundestag on Resolution 1973’, 18 March 2011, <http://www.voltairenet.org/article169181.html>, accessed 4 July 2018; see, Hugh Carnegie, ‘French Troops Deploy in Bid to Halt CAR Bloodletting’, *Financial Times*, 8 Dec 2013, <http://www.ft.com/cms/s/0/7cecc91e-6000-11e3-b360-00144feabdc0.html#axzz3p7yAFKLE>, accessed 20 October 2015. See also, Stefan, ‘On Non-Western Norm Shapers’.

²⁴⁴ Brockmeier et al, ‘Emerging Norm and Rhetorical Tool’, p. 432-434.

²⁴⁵ *Ibid*, p. 429.

²⁴⁶ *Ibid*, p. 434.

²⁴⁷ These diverging positions have served to constrain Brussels’ efforts to co-ordinate a common EU position on R2P. *Ibid*, p. 432.

²⁴⁸ *Ibid*, p. 451.

²⁴⁹ For a complete discussion of the US CAT case, see earlier in this chapter.

²⁵⁰ Checkel, ‘Norms, Institutions, and National Identity in Contemporary Europe’, p. 86.

potentially the UK's preferred methods for responding to mass atrocities under R2P; however, this needs to be further empirically investigated which demands interrogating the official discourse in order to seek the underlying rationales. This research builds upon the work of Ralph, Gifkins and Brockmeier et al to more deeply understand how R2P has been contested and localised within the UK, particularly when its preferred methods of military force and regime change are not viable options, which form an important foundation for exploring alternative responses in the next section of this chapter. The existing research is also limited because Ralph and Gifkins have focused mostly on the discourse and practice of the UN Security Council between 2011-2012, and Brockmeier et al have mostly focused on high-level diplomats at the UN international level which covers the period up to 2013. To date, there has been no focused study on UK domestic elites that are designing and implementing existing and new government policies on R2P and Syria. Furthermore, it is unlikely that the UK, which is comprised of numerous social agents with varying interpretations and objectives, will all equally favour military intervention and regime change. Therefore, this dissertation builds upon the existing research to ascertain how R2P has been localised and acquired meanings through use and contestation within the UK, particularly after the 2011 Libya intervention and during the period of 2014 through 2016 in Syria.

2.5 Conclusion

This chapter presented the key debates in the literature on norms from an interdisciplinary lens, which encompasses international relations, politics and international law. The chapter is an historical journey that begins with realism and ends with critical constructivism, told as a chronological story through related arcs: First, from realism to constructivism; and second, from constructivism to critical constructivism. Historically, norm localisation has been applied mostly in an illiberal context with the underlying assumption that international norms engineered by liberal states avoid contestation and thus avoid the need for localisation. The existing scholarship presumes, through omission, that the 'foreign' norms of liberal states inflicted upon less powerful states are automatically internalised by those states understood to be the engineers of such norms. So, while critical constructivists do not see norms as uni-directional in terms of contestation and norm modification, they remain one-directional in terms of moving from powerful liberal states to less powerful states. The conventional constructivists opened the door to considering the diffusion of norms in a powerful liberal state by looking at the US backlash against the CAT, but there has been little additional examination of norm contestation and localisation in the powerful liberal state context from a critical constructivist

perspective.²⁵¹ The idea that norms must be recognised as dynamic and reflexive to the social and political environment and histories of those attempting to comply with them applies in a liberal state context as well. Therefore, liberal states may also contest and modify norms for domestic resonance and in order to avoid displacing more dominant societal norms. Such modifications may actually strengthen norms as they find a normative peace in the hierarchy of existing norms within the domestic arena. Therefore, this research fills a gap in the literature by adopting a critical constructivist approach because it is best at explaining how an ambiguous and contested norm is localised in a powerful liberal state like the UK following international endorsement and continued rhetorical commitment.

In particular, Wiener's theories on 'meanings-in use,'²⁵² contestation and cultural validation²⁵³ are highly relevant for understanding variations in states' ascribed understandings and meanings of ambiguous norms. Looking at the social practices surrounding R2P in the UK will provide its normative meaning and content. Second, applying Acharya's localisation theory for understanding why those social practices have developed in the UK's domestic setting is useful because the interpretations, reasons and justifications used by governments and organisations in their understanding of R2P underpin state behaviour, which may reject (wholly or partially) or modify the norm due to its inherently dynamic and flexible structure. Critically, how a powerful P5 member has localised R2P's meanings by *resisting* particular features or *forwarding alternative interpretations* of the norm will reveal how R2P is localised.²⁵⁴ In other words, norms continually change through contestation over interpretation and application, subject to a state's identity, organisational structure and because of the multiple social agents that comprise the state and the changing context on the ground. Therefore, contestation post-institutionalisation does not necessarily signify norm degeneration but can provide important understanding of a norm's value and its impact despite the shifting context.²⁵⁵ Examining R2P's contestation and localisation along with the discourse and underlying rationale of those social agents endorsing and discharging the norm also provide evidence of how the norm is interpreted and implemented and thus, its impact on state behaviour.

²⁵¹ However, for a discussion of liberal state contestation to the R2P norm, see, Stefan, 'On Non-Western Norm Shapers'.

²⁵² Wiener, 'Enacting Meaning-in-Use'.

²⁵³ Antje Wiener, *The Invisible Constitution of Politics: Contested Norms and International Encounters* (New York: Cambridge University Press, 2008).

²⁵⁴ Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', conference at the University of Westminster.

²⁵⁵ 'Focusing on norm success is functionalist optimism inherent in a liberal version of constructivism rather than a sound conceptual analysis'. Hofferberth and Weber, 'Lost in Translation', p. 90. For example, 'actors and social structures are mutually constitutive'. Sandholtz, 'Dynamics of International Norm Change', p. 102.

However, applying a critical constructivist lens to R2P also illuminates some potential limitations to the approach, particularly the point at which a localised norm becomes a degenerated norm. Deitelhoff and Zimmerman's limitations to contestation do not directly engage with the scenario where a state employs responses that fit under R2P but were not influenced by the norm. Therefore, a recognisable standard of when localisation of a norm obscures norm degeneration due to neglect, ignorance and/or disinterest is unclear. Deitelhoff et al introduced the limits of contestation by recognising where state behaviour rejects the core attributes of a norm, such justificatory contestation can lead to norm degeneration. However, critical constructivism accepts that the interpretation of a norm's core attributes may vary across states which makes it difficult to ascertain the difference between norm localisation and norm degeneration. Moreover, identifying and measuring the impact of explicit and implicit rejections of a norm's core attributes is not clear. Thus, some universal acceptance of a norm's core attributes is required which contradicts critical constructivism to some degree. Bellamy's argument that the core attributes of R2P reflect international consensus that mass atrocities are worthy of concern and necessitate responding has universal appeal as it is broad enough to incorporate multiple understandings of R2P's core attributes. However, justifying this broad standard is methodologically difficult. Therefore, Deitelhoff and Zimmerman's analysis may not go far enough because the UK's demonstrative concern over Syria may reflect R2P's core attributes, but the norm may not be the significant influencer on the ensuing policies. Thus, it is also important to consider the core *objective* of R2P, which is to help protect populations from mass atrocities and whether and how other competing objectives in Syria interlink. If R2P has not influenced the UK's concern over Syria and its responses that help protect Syrians, then critical constructivism may have limitations in terms of evaluating R2P's norm status. This is a substantive issue which will need to be addressed throughout the thesis.

Part of the enquiry into how R2P is localised in the UK necessitates drawing from other disciplines in order to consider what constitutes evidence of internalisation. Like the critical constructivist approach, the compliance debates in international law and international human rights law provide additional considerations for determining what constitutes evidence of normative impact. In particular, non-compliance with a norm does not preclude a norm from shaping policy responses (as demonstrated by the CAT case) and a state's identity as a liberal state in combination with public declarations of support for a norm do not empirically prove that the state's actions were implemented because of the norm. Thus, it is necessary to analyse the official discourse and interrogate its underlying rationale along with the subsequent actions

of policymakers in order to derive R2P's meanings in the context of the UK's response to Syrian refugees in order to answer the research questions.

Finally, part of the enquiry into how the UK envisions the relationship between R2P and refugee resettlement (the main research question) also requires looking at how the responsibility to resettle refugees is conceptually linked to R2P, which is explored in the next chapter. This chapter applied the critical constructivist framework, particularly Wiener's 'meaning-in-use'/theory of contestation and Acharya's norm localisation theory, to the R2P norm in order to provide a theoretical foundation for subsequent analysis and understanding of R2P's impact on the UK's various responses to the mass atrocities in Syria, particularly in the context of resettling Syrian refugees. Giving theoretical meaning to R2P in the norm context in this chapter and then through its conceptual relationship to resettlement in Chapter 3 paves the way for the empirical work, which aims to answer how the UK uses resettlement to discharge its R2P and how R2P has shaped refugee resettlement policies towards Syrians.

3 Resettlement as ‘Humanitarian’ and ‘Other Peaceful Means’ under R2P

3.1 Introduction

This dissertation’s main research question involves answering how the UK is using the resettlement of Syrian refugees as a method of discharging its responsibility to protect populations from mass atrocities in Syria. Answering this question empirically requires a conceptual basis for linking R2P and resettlement, which also answers the first sub-question concerning the relationship between R2P and resettlement. Therefore, this chapter examines how R2P and international refugee law interact more broadly, particularly through UNHCR and how the norm is aligned with resettlement through engagement with the scholarship that links R2P and refugee protection. Conceptual presumptions concerning the relationship between R2P and refugee protection pervade the scholarship and therefore, there is little explanation beyond states’ interests for why there is a substantial gap between the theory of R2P and its practice.¹ Moreover, there is little attention paid to why UNHCR, as the predominant refugee protection agency, has not been more assertive in linking R2P and refugee protection either. Therefore, this chapter reveals these underlying conceptual presumptions in order to provide an additional context for why states like the UK may not link R2P and resettlement in practice, which forms the conceptual basis to be further investigated through the interviews.

In particular, the chapter proposes that the resettlement norm is a promising method for discharging R2P’s literal and aspirational objectives through humanitarian and peaceful means. Even though R2P does not require refugee protection, the failure to use it as an alternative method in cases like Syria may reveal further information about how the norm is localised in the UK.²

3.2 Linking R2P and Refugees in Theory and Practice

As discussed in the last chapter, the literature is limited in focusing on how powerful liberal states are contesting and localising R2P in terms of how they define and use the norm, particularly when they are prevented from discharging the norm through methods that resonate with domestic locales. The impasse over the use of force in Syria and the fact that R2P requires

¹ There are some who see them as separate frameworks. For a discussion, see, Chloë M. Gilgan, ‘Exploring the Link Between R2P and Refugee Protection: Arriving at Resettlement’, *Global Responsibility to Protect* 9/4: 366-394 (2017).

² Jason Ralph, ‘What Should Be Done? Pragmatic Constructivist Ethics and the Responsibility to Protect’, *International Organization* 72/1: 173-203 (2018).

states ‘to *use* appropriate diplomatic, humanitarian and other peaceful means’³ to help protect populations from mass atrocities warrants consideration of alternative responses in Syria.⁴ The Secretary-General’s 2016 report reminds states that the inability to reach consensus over a preferred method for discharging R2P does not preclude the responsibility of helping to protect populations from mass atrocities:

A “timely response” is a responsibility that falls on each individual member of the international community. Faced with imminent or on-going atrocity crimes, we must never ask “whether” to respond or expect others to shoulder the burden for us; instead, we must ask “how” we can assist in a collective response. While only the Security Council has the authority to mandate coercive means, deadlock in that body should never be used as an excuse for general inaction... we must bolster our investment in the broad range of peaceful tools available to protect populations affected by atrocity crimes such as the protection of refugees and internally displaced persons.⁵

There are other multi-lateral R2P tools not requiring UN Security Council agreement for protecting populations from mass atrocities. ‘Humanitarian’ and ‘other peaceful means’ are catch-all phrases for discharging state responsibilities under R2P, particularly useful in cases where there is no consensus among the P5.⁶ Until recently, R2P and the international refugee protection regime have been seen as separate protection frameworks for two obvious reasons. First, R2P is about protection from mass atrocities and international refugee law is largely about protection from persecution. Second, as established earlier in this thesis, R2P is recent ‘soft law’ with hard law components. In contrast, international refugee law, hard law dating back to the early 20th century, gives refugees a legal right to seek asylum on the territories of state parties to the 1951 *Convention Relating to the Status of Refugees*⁷ (Refugee Convention).⁸ Despite these differences, both protection frameworks overlap in cases where mass atrocities cause forced displacement resulting in mass flows of refugees.

³ ‘2005 World Summit Outcome’, p. 30.

⁴ This dissertation focuses on resettlement towards this end, but this does not suggest an exhaustive list of responses.

⁵ Ban Ki-moon, *Mobilizing Collective Action: The Next Decade of the Responsibility to Protect*, A/70/999-S/2016/620, 22 July 2016, (p. 13-14).

⁶ Gilgan, ‘Exploring the Link Between R2P and Refugee Protection’.

⁷ *Convention Relating to the Status of Refugees*, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951, art. 33.

⁸ While the protection of refugees dates back several centuries, administration for international protection of refugees came from the League of Nations. Gilbert Jaeger, ‘On the History of the International Protection of Refugees’, *ICRC*, 83/843: 727-737 (2001). Asylum seekers who arrive on a state parties’ territory will have to prove they meet the definition of a refugee.

This dissertation is narrowly focused on resettlement within the context of R2P.⁹ This is because very little has been written about R2P and resettlement despite the UK's existing programmes, which provide protection to significantly more Syrians than the UK's asylum policy. Scholars have focused on asylum, the legal backbone of the international refugee protection regime. In contrast, resettlement is a norm within the international refugee protection regime and only occurs after a determination that an individual or group meets the definition of a refugee. The Refugee Convention defines refugees as those who are unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, social group or political opinion because they lack the protection of their own country.¹⁰ Therefore, the literature linking R2P and refugees, mainly through asylum, provides the broad framework for examining the relationship between R2P and resettlement.

The next section puts forward a practical case for using resettlement to discharge R2P in certain cases. Then, a critical analysis of the conceptual link between R2P and resettlement is undertaken through its broader lens of refugee protection, including how UNHCR discharges its refugee protection responsibilities.

3.2.1 Linking R2P and Refugees in Theory: The Case for Resettlement

This section considers the utility of resettlement as an R2P response. Resettlement involves the selection and transfer of refugees from a state in which they have sought protection to a third state which has agreed to facilitate their arrival and admit them as refugees.¹¹ Since the Syrian refugee crisis, which reached a pinnacle in 2015, academics increasingly looked to using refugee protection mechanisms, particularly asylum, as a way of helping protect Syrians from mass atrocities under R2P.¹² The existing literature linking R2P and refugee protection focuses primarily on asylum as a conceptual method for discharging R2P.¹³ Since the Refugee

⁹ The norm of resettlement resides in the refugee protection regime, which encompasses refugee asylum laws and policies and international customary laws. Programmes that offer temporary protection are not technically resettlement because there is no path to permanent settlement. This dissertation focuses on the Syrian resettlement programme available in the UK which offers humanitarian protection for five years. After the five years, refugees can either return to Syria or apply for permanent settlement.

¹⁰ *Convention Relating to the Status of Refugees; Protocol Relating to the Status of Refugees*, UNGA, United Nations, Treaty Series, vol. 606, p.267, 31 January 1967.

¹¹ UNHCR Resettlement Handbook, p.3, <http://www.unhcr.org/46f7c0ee2.pdf>, accessed 20 June 2017. The author realises there are certain exclusions to refugee status under international refugee law and thus, where an individual was excluded from refugee status, he would not be entitled to resettlement and thus would arguably not benefit from protection from mass atrocity in terms of resettlement. This discussion is beyond the scope of this dissertation. For more information on the procedures, documents, requirements and eligibility for resettlement, see UNHCR, 'Resettlement Flow Chart', <http://www.unhcr.org/uk/protection/resettlement/3bd58ce9a/resettlement-procedures-case-identification-determination-process.html>, accessed 20 June 2017.

¹² For a discussion, see, Gilgan, 'Exploring the Link Between R2P and Refugee Protection'.

¹³ *Ibid.*

Convention guarantees a right to seek asylum, the legal nature of asylum would appear to provide a more potent bootstrap for hardening the soft-law characteristics of R2P's Pillar III responsibilities. However, the conceptual connection between R2P and asylum does not necessarily result in greater practical protection for refugees because signatories need only consider an asylum claim once a claimant reaches its territory. The Refugee Convention does not explicitly prevent contracting states from containing refugees in a region or externalising their protection even though it may arguably circumvent the aspirations underpinning the international refugee protection regime. Asylum has largely been *prevented* by states as denying asylum once a refugee is on a state's territory is more difficult than preventing it all together. As such, asylum has largely failed to provide adequate protection to the refugees fleeing mass atrocities.¹⁴

Instead, the discretionary nature of resettlement may be more amenable to states and provides a platform for civil society advocacy around increasing refugee protection.¹⁵ Resettlement occurs on a far smaller scale than asylum, which may be more politically palatable to states with economic concerns and domestic constituencies resistant to immigration.¹⁶ Resettlement allows state control over immigration in terms of numbers and pre-screening in the anti-terrorism climate while reconceptualising states as good actors.¹⁷ Discharging R2P via resettlement in cases like Syria could be made attractive to states like the UK who want to maintain control over immigration because states have wide discretion in selecting which refugees they will offer resettlement to and some already operate resettlement programs.¹⁸ For example, the UK's Syrian Vulnerable Persons Resettlement Scheme (SVPR) offers resettlement to vulnerable Syrians such as women and children and those with serious medical conditions.¹⁹ Past history and the UK's current discourse around refugee protection demonstrate that the UK prefers resettlement over asylum, particularly as there is an aversion to asylum seekers who tend to be young males on their own.²⁰ For example, during the NATO intervention in Kosovo, the

¹⁴ Evidence of this is discussed in Chapter 4 on the European response to Syrian refugees.

¹⁵ Gilgan, 'Exploring the Link Between R2P and Refugee Protection', p. 391.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ In January 2014, the UK Government enacted the Syrian Vulnerable Persons Resettlement programme overseen by the Home Office. The programme was expanded in 2015 and intends to resettle 20,000 Syrian refugees from refugee camps in Jordan, Lebanon, Iraq, Egypt and Turkey over the period from September 2015 to May 2020. In 2017, the scheme was opened up to all nationalities affected by the Syrian conflict and renamed the Vulnerable Persons Resettlement Scheme (VPRS). The Vulnerable Children's Resettlement Scheme (VCRS) was launched in 2016, with a view to resettling up to 3,000 individuals. VCRS is open to all children deemed to be 'at risk' and their families, within the Middle East and North Africa (MENA) region.

²⁰ This is explored and substantiated in Chapter 5.

Kosovar refugees who entered the UK as part of the humanitarian evacuation programme (similar to resettlement) were received more favourably than those who entered as asylum seekers due to the advocacy around their personal stories, which were often depicted in the newspapers and resulted in successful charity appeals for money and donations.²¹

Moreover, as resettlement programs can foster empathy and support from the general public, more advocacy and pressure on governments to increase resettlement opportunities are further developed.²² State behaviour is not only influenced by interests, but by ideas, those of civil society and the public in a representative government as discussed in Chapter 2.²³ Linking R2P and resettlement gives civil society a platform for advocacy, which may influence state behaviour over time.²⁴ Indeed, the SVPR in the UK was largely a response to public outcry from the pictures of Aylan Kurdi, a casualty of the Syrian conflict and a symbol of states' failures to provide adequate protection.²⁵

Furthermore, there is a strong conceptual case to be made for linking the norms of R2P and resettlement. The political norms underpinning R2P's third pillar²⁶ are conceptually closer to resettlement, a norm within the international refugee protection regime.²⁷ Resettlement resembles Pillar III of R2P because both are without legal obligation. However, resettlement is a more settled norm²⁸ and could potentially lend strength to what has been argued is the weaker norm of the third pillar of R2P.²⁹ Moreover, resettlement is a refugee protection tool that shares

²¹ Alice Bloch, 'Kosovan Refugees in the UK: The Rolls Royce or Rickshaw Reception?', *FMR*, 5 August 1999, <http://www.fmreview.org/sites/fmr/files/textOnlyContent/FMR/05/08.htm>, accessed 27 April 2016. After fleeing ethnic violence in the former Yugoslavia, Kosovar evacuees were airlifted out of camps in Macedonia and resettled in the UK. See, Gilgan, 'Exploring the Link Between R2P and Refugee Protection', p. 392. However, the Kosovar programme offered only temporary protection which is not technically resettlement. In any case, the programme is the most analogous to the UK's current resettlement response to Syrians.

²² Gilgan, 'Exploring the Link Between R2P and Refugee Protection', p. 392.

²³ Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change', *International Organization* 52/4: 887–917 (1998).

²⁴ Gilgan, 'Exploring the Link Between R2P and Refugee Protection', p. 392.

²⁵ For example, following a campaign led by the Refugee Council and considerable public pressure (after newspaper pictures of Aylan Kurdi surfaced) the UK increased its resettlement places to 20,000. For a discussion, see *Ibid.*

²⁶ Pillar III encourages the timely and decisive response from the international community where a state is manifestly failing its protection duties. Ban Ki-moon, *Implementing the Responsibility to Protect: Report of the Secretary-General, A/63/677*, 12 January 2009, (p. 28-29). R2P is made up of a collection of norms, some legal (Pillar I) and several political (Pillar III). Alex J. Bellamy, *The Responsibility to Protect: A Defense* (Oxford: Oxford University Press, 2015).

²⁷ The refugee protection regime considered here includes refugee law, asylum, resettlement, and international customary law including the principle of *non-refoulement*.

²⁸ Resettlement has been an important mechanism for international protection since the early 20th century. See, UNHCR Resettlement Handbook, p. 55.

²⁹ Aidan Hehir, 'Assessing the Influence of the Responsibility to Protect on the UN Security Council during the Arab Spring', *Cooperation and Conflict* 51/2: 166-183 (2016).

the same goals of protection as those underpinning R2P as it removes refugees from the risk of mass atrocities by minimising the chance that overburdened host states will close their borders or return refugees back to the manifestly failing state where they face ongoing mass atrocities. As populations flee mass atrocities, ‘international efforts to facilitate a population’s safe flight from harm and protect that population once it has become displaced’³⁰ deliver more equitable allocation of R2P obligations in line with the norm’s practical goal of helping protect populations from mass atrocities in four ways.

First, facilitating a population’s safe flight from mass atrocities is incumbent on the international community particularly when it has exacerbated the crisis because states have a special moral obligation to offer resettlement as reparation for contributing to the conditions forcing mass flows of refugees.³¹ Second, practical ‘efforts to facilitate the safe flight of people from areas affected by atrocity crimes and to protect them once displaced are among the most significant and direct ways in which lives can be saved when threatened by atrocity crimes’³². For example, historic responses that refused and returned asylum seekers to the state from which they fled mass atrocities resulted in significant loss of life as demonstrated by the response to the Jews fleeing the Holocaust in Germany.³³ Today, European states’ containment policies of Syrian refugees in the region have resulted in the *refoulement* of Syrian refugees back to Syria where they struggle to survive the ongoing mass atrocities. Third, politically, providing resettlement obviates the need for smugglers and traffickers, saves lives, and allows states a controlled response in managing a humanitarian crisis, which diminishes the effects of regional destabilisation.

³⁰ Alex J. Bellamy, *The First Response: Peaceful Means in the Third Pillar of the Responsibility to Protect*, Policy Analysis for The Stanley Foundation, December 2015, p. 44-45
<http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/6053-the-stanley-foundation-the-first-response-peaceful-means-in-the-third-pillar-of-the-responsibility-to-protect>, accessed 27 April 2016.

³¹ James Souter, ‘Why the UK has a Special Responsibility to Protect its Share of Refugees’, *The Conversation*, 15 May 2015, <https://theconversation.com/why-the-uk-has-a-special-responsibility-to-protect-its-share-of-refugees-41773>, accessed 24 November 2016.

³² Alex J. Bellamy, ‘The Responsibility to Protect and the “Migrant Crisis”’, *Protection Gateway*, <https://protectiongateway.com/2016/04/02/the-responsibility-to-protect-and-the-migrant-crisis/>, accessed 9 September 2017.

³³ 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: 533–566, 562 (2008); see also, Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002), p. 36.

Fourth, displacement is linked to mass atrocities.³⁴ Mass atrocities are a push factor (along with air strikes) as refugees will inevitably flee the manifestly failing state's borders once these crimes are widespread. There are two concrete reasons for cost-sharing the resettlement of those refugees: (1) As states proximate to the refugee flows become too overwhelmed, they are more likely to *refoule* refugees to Syria where mass atrocities persist, which is not only illegal under international law,³⁵ but violates the core objective of R2P which is to help protect populations from mass atrocities;³⁶ and (2) Resettlement encourages host states to keep their borders open and makes room for additional refugees who are fleeing mass atrocities to find refuge.³⁷ Thus, resettlement is a functional response for protecting populations fleeing mass atrocities especially in cases where the UN Security Council has failed to reach agreement and states exacerbate the crisis through their conduct in the region.³⁸

In sum, resettlement is a concrete expression of international solidarity and a responsibility sharing mechanism³⁹ that encourages states that host the majority of the world's refugees to keep their borders open to those fleeing mass atrocities, which saves lives and demonstrates sovereign equality by sharing responsibility in the response to a humanitarian crisis more evenly.⁴⁰ Thus, there are practical and conceptual reasons for discharging R2P through resettlement in some cases. However, failing to discharge R2P through resettlement does not mean a state is failing its R2P. This notion will be further explored in the next section which undertakes a critical analysis of the current literature on R2P and the broader refugee protection framework, which can be disaggregated into five key themes: (1) R2P serves as a gap filler for the international refugee regime's protection deficits; (2) Refugee protection lacks controversy; (3) Hosting R2P populations as refugees is an enlightened self-interest that gives effect to important state interests; and (4) Refugee protection is a pragmatic response in some R2P cases.

³⁴ Alise Coen, 'Capable and Culpable? The United States, RtoP, and Refugee Responsibility-Sharing', *Ethics and International Affairs* 31/1: 71-92 (2017).

³⁵ Cathryn Costello and Michelle Foster, Chapter 10, 'Non-refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test', in Maarten den Heijer, Harmen van der Wilt (eds.), *Netherlands Yearbook of International Law Jus Cogens: Quo Vadis?* (Asser Press, 2015).

³⁶ Further research needs to be done on whether those states engaging in agreements that result in *refoulement* give rise to direct or indirect responsibility for mass atrocity crimes.

³⁷ Credit for this idea belongs to Professor Nina Caspersen at the University of York.

³⁸ Indeed, states have a special moral obligation to offer resettlement as reparation for contributing to the conditions forcing mass flows of refugees. Souter, 'Why the UK has a Special Responsibility to Protect its Share of Refugees'.

³⁹ E. Tendayi Achiume, 'Syria, Cost-sharing, and the Responsibility to Protect Refugees', *Minnesota Law Review*, 100/2: 687-762, 707 (2015).

⁴⁰ 'Without a visible and tangible demonstration of international solidarity and responsibility sharing, the protection environment for refugees can be expected to deteriorate rapidly'. Achiume, 'Syria, Cost-sharing, and the Responsibility to Protect Refugees', p. 707 (note 95).

3.2.1.1 R2P as a Gap Filler

States have been slow to link R2P and refugee protection. As many states have enacted measures to prevent asylum seekers from reaching their territories, they have successfully diminished realisation of their legal responsibilities to refugees in practice.⁴¹ Furthermore, the Refugee Convention is silent over how to allocate state responsibilities in protecting refugees⁴² and there is no legal obligation to cost-share the protection with other states. As such, refugees remain in ‘orbit’ searching for a state willing to extend asylum or resettlement, especially in cases where mass flows of refugees end up in states that are not parties to the Refugee Convention.⁴³ For example, the refugee hosting states neighbouring Syria are not signatories to the Refugee Convention. Therefore, the refugees that arrive on these non-state parties’ territories may be protected from mass atrocities in Syria, but not necessarily from persecution as required under international refugee law.⁴⁴ Therefore, refugee protection’s fit as a conceptual response under R2P has not been translated into practical protection on the ground by those institutions and actors discharging refugee protection or mass atrocity responses. Similarly, states’ commitments to the Refugee Convention have not resulted in extending adequate protection from persecution to refugees due to containment and externalisation policies. Thus, if states have a lukewarm commitment to the Refugee Convention, as demonstrated by policies containing refugees in a region where overwhelmed states are not even party to the Convention, then it is also unlikely that states would find R2P a reason to increase a commitment to

⁴¹ For example, the EU-Turkey deal. Médecins Sans Frontières (MSF), ‘One Year on from the EU-Turkey Deal: Challenging the EU’s Alternative Facts’, March 2017, <http://www.statewatch.org/news/2017/mar/eu-refugee-crisis-turkey-deal-msf-report.pdf>, accessed 21 June 2017. See also, Randall Hansen, ‘Constrained by its Roots: How the Origins of the Global Asylum System Limit Contemporary Protection’, Migration Policy Institute, January 2017, <https://www.migrationpolicy.org/research/constrained-its-roots-how-origins-global-asylum-system-limit-contemporary-protection>, accessed 21 June 2017.

⁴² The Preamble draws attention to the problem of allocation but offers no framework. *Convention Relating to the Status of Refugees*; see, also Convention Plus initiative aimed to provide a framework for allocating responsibilities through the UNHCR, *Framework for Durable Solutions for Refugees and Persons of Concern*, 16 September 2003, EC/53/SC/INF.3, <http://www.unhcr.org/refworld/docid/4ae9ac93d.html>, accessed 26 April 2016; and UNHCR, *Multilateral Framework of Understandings on Resettlement*, 16 September 2004, FORUM/2004/6, <http://www.unhcr.org/refworld/docid/41597d0a4.html>, accessed 26 April 2016, as discussed in UNHCR Resettlement Handbook, p.16.

⁴³ Agnes Hurwitz, *The Collective Responsibility of States to Protect Refugees* (New York: Oxford, 2009), p. 20.

⁴⁴ Therefore, the legal protection of refugees (from persecution and mass atrocities) only really occurs when refugees are able to reach a state party’s territory. However, this dissertation is limited to investigating how protection from mass atrocities is served by resettlement. Although the research is interdisciplinary, it relies on a political science lens to explore the theoretical links between R2P and resettlement and therefore, does not consider a legal perspective, which would consider the link’s value to international refugee law. Therefore, the research only briefly considers in Chapter 6 how some practitioners fear that international protection from persecution may erode over time if R2P and refugee protection are linked. This will be further explored in a forthcoming article by the author.

refugees. Therefore, using R2P as a gap filler for the protection deficits in the international refugee regime is flawed.

The protection deficits that exist within the international refugee protection regime are not new. During the adoption of the Refugee Convention, states did not accept the UN Secretary-General's proposal on responsibility sharing in order to prevent overburdening in initial host states. Instead, provisions outlining cooperation around refugee sharing are aspirational and non-binding.⁴⁵ As a result, scholars and advocates have relied on other justifications for increasing the responsibilities of states in order to ameliorate the protection gaps, including: (1) Finding a causal relationship between forced displacement from mass atrocities and refugees, which gives rise to an ongoing R2P responsibility; (2) Relying on the developments in practice by UNHCR, the organisation responsible for determining refugee status at the international level; and (3) Relying on regional expansions in the definition of refugees. Each is discussed in turn below.

First, the 2016 Secretary-General's Report recognises the increased use of forced displacement as a method of war and reminds states to remember that the cornerstone of R2P—'responsible sovereignty'—originated as a palliative response to forced displacement, which means that a commitment to R2P also triggers states' existing commitments to the Guiding Principles on Internal Displacement and the 1951 Refugee Convention when considering an R2P case, especially one where collective action has been consistently inadequate to address on-going mass atrocities.⁴⁶ Scholars and practitioners have also recognised that forced displacement of populations is a result and a symptom of on-going mass atrocities.⁴⁷ Many scholars and activists see refugees as the natural beneficiaries of the international community's responsibility to protect because R2P can facilitate both a normative and practical sharing of international responsibilities through refugee 'cost and responsibility sharing'⁴⁸. The argument is that protecting populations from mass atrocities requires a holistic response rather than the tendency to focus narrowly on individual legal and normative frameworks for protection.⁴⁹ The current

⁴⁵ Guy S. Goodwin-Gill, 'The Movements of People between States in the 21st Century: An Agenda for Urgent Institutional Change', *International Journal of Refugee Law* 28/4: 679-694, 688 (2016).

⁴⁶ Ban Ki-moon, *Mobilizing Collective Action*, p. 3-4. However, for a discussion of how the link is treated ambivalently in all the Secretary-General's reports on R2P, see, Edward Newman, 'The Limits of Liberal Humanitarianism in Europe: The "Responsibility to Protect" and Forced Migration', *European Review of International Studies* 4/2-3: 59-77 (2018).

⁴⁷ Coen, 'Capable and Culpable?'

⁴⁸ Achiume, 'Syria, Cost-sharing, and the Responsibility to Protect Refugees', p. 707.

⁴⁹ *Ibid*, p. 711; Volker Türk and Madeline Garlick, 'From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees', *International*

‘failure’ in Syria is really the failure to consider and use other methods besides coercive force; there must be more consideration regarding ‘the political, economic and humanitarian tools available for collective action in order to overcome the barrier of political will’⁵⁰. Member states need to be strategic in relying on existing commitments and institutions available for responding to mass atrocity holistically.⁵¹

Second and third, the nexus between forced displacement due to mass atrocities and IDPs and refugees has led to an evolving definition of refugees that has been solidified in practice by UNHCR and codified in some regional agreements. Atrocity crimes are considered one of the most significant causes of the global crisis of forced displacement,⁵² which has evolved the definition of a refugee to include ‘war refugees’ and led to development of the Guiding Principles on IDP protection. The idea of sovereignty as responsibility, which underpins R2P, was initially fostered as recognition that states have a responsibility to protect forcibly displaced people within their territories.⁵³ The protection of IDPs (in a manifestly failing state) and refugees (due to a manifestly failing state) overlaps when the forced displacement resulted from mass atrocities, which then falls within the purview of an R2P response. As Gallagher argues, the presence of IDPs and refugees is an indicator that a state is manifestly failing to fulfil its internal and external responsibilities because its failure to protect IDPs causes further refugee flows.⁵⁴ In other words, forced displacement from mass atrocities links both IDPs and refugees to an R2P response. The only difference is that refugees cross an international border, which Achiume argues is an artificial on-off switch in terms of who is deserving of protection from mass atrocities.⁵⁵

Journal of Refugee Law 28/4: 656-678 (2016). Volker Türk is the Assistant High Commissioner to UNHCR.

⁵⁰ Jennifer M. Welsh, ‘The Responsibility to Protect and the Crises in Libya and Syria’, conference at the University of Westminster, 5 December 2013, part of the ESRC Series, *The Responsibility to Protect and Prosecute: The Political Sustainability of Liberal Norms in an Age of Shifting Power balances*, <http://iisr2p.leeds.ac.uk/current/responsibility-to-protect-and-prosecute/>, accessed 21 October 2015.

⁵¹ Ban Ki-moon, *Mobilizing Collective Action*, p. 9-10.

⁵² *Ibid*, p. 3-4.

⁵³ Based on Roberta Cohen and Francis M. Deng’s work that led to the Guiding Principles on Internal Displacement. Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington DC: The Brookings Institution Press, 1998). See, UN High Commissioner for Refugees (UNHCR), *Guiding Principles on Internal Displacement*, 22 July 1998, ADM 1.1, PRL 12.1, PR00/98/109, <http://www.refworld.org/docid/3c3da07f7.html>, accessed 16 July 2018.

⁵⁴ For further discussion of this internal/external responsibility contextualised by the Commission of Inquiry into Syria, see, Adrian Gallagher, ‘Syria and the Indicators of a ‘Manifest Failing’, *International Journal of Human Rights* 18/1: 1-19, 9 (2014).

⁵⁵ Achiume, ‘Syria, Cost-sharing, and the Responsibility to Protect Refugees’, p. 717.

UNHCR is responsible for protecting IDPs and war refugees, two groups who are often the victims of mass atrocity crimes, but not technically defined as Convention refugees.⁵⁶ Convention refugees are fleeing persecution and not mass atrocities. However, persecution is linked to mass atrocities because such crimes usually involve harm on at least one of the Convention grounds. Every case where a population faces mass atrocities will meet the refugee threshold of a well-founded fear of persecution for a Convention reason.⁵⁷ Additionally, the persecution does not have to be individualised as refugee status can be recognised through group-determination procedures on a *prima facie* basis.⁵⁸ Group determination of *prima facie* refugee status is used when large populations have been displaced for reasons generally known (such as mass atrocities)⁵⁹ which require an urgent response and where the number of arrivals would overwhelm capacities to determine refugee status individually.⁶⁰ UNHCR accepts those fleeing violence as a result of internal conflict as refugees within their practice manuals,⁶¹ and their work involving asylum applications for such populations has been seen as ‘R2P in practice’⁶². According to Barbour and Gorlick, the following cases are examples of R2P in practice where UNHCR protected populations fleeing mass atrocities by recognising their refugee status: Kurdish refugees fleeing ethnic cleansing in Iraq under Saddam Hussein; Rwandese refugees fleeing in the 1990s; Cambodian refugees fleeing crimes against humanity; Myanmar refugees fleeing ethnic cleansing; Albanians (Kosovars) fleeing ethnic cleansing in Kosovo during the 1990s; Liberian refugees fleeing under the threat of war crimes and crimes against humanity; and Ugandan refugees fleeing under the threat of war crimes and crimes

⁵⁶ However, the protection of IDPs is recognised under the Guiding Principles.

⁵⁷ This does not mean that every person or population with a well-founded fear of persecution was facing mass atrocities. Thus, not all refugees are R2P populations.

⁵⁸ UNHCR Resettlement Handbook, p.13. *Prima facie* means ‘in absence of evidence to the contrary’.

⁵⁹ For example, large numbers of refugees often precede or indicate perpetration of mass atrocity crimes. Ban Ki-moon, *Implementing the Responsibility to Protect*, p. 16-17, p. 28-29; see also, Alex J. Bellamy, ‘Mainstreaming the Responsibility to Protect in the United Nations System: Dilemmas, Challenges and Opportunities’, *Global Responsibility to Protect 5/2*: 154-191 (2013). Mainstreaming suggests integrating seemingly disparate themes that share common goals. See, also, Barbour and Gorlick, ‘Embracing the ‘Responsibility to Protect’, p. 536; see, also, Susan Harris Rimmer, ‘Refugees, Internally Displaced Persons and the “Responsibility to Protect”’, *New Issues in Refugee Research*, UNHCR Research Paper No.185, March 2010, <http://www.unhcr.org/uk/research/working/4b97b0909/refugees-internally-displaced-persons-responsibility-protect-dr-susan-harris.html>, accessed 5 April 2015.

⁶⁰ UNHCR Resettlement Handbook, p.77. Circumstances must indicate that individuals would meet the definition of a refugee.

⁶¹ Mandate refugees: ‘UNHCR recognises as refugees persons who are outside their country of nationality or habitual residence and unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order’. UNHCR Resettlement Handbook, p. 81, p. 88. See also, Susan Martin, ‘Forced Migration, the Refugee Regime and the Responsibility to Protect’, *Global Responsibility to Protect 2/1*: 38-59, 50 (2010). Martin points out that both UNHCR and ‘most countries of asylum’ have not made any determination whether those fleeing conflicts also have a well-founded fear of persecution, but ‘instead treated those escaping conflict as *prima facie* refugees’.

⁶² Ban Ki-moon, *Implementing the Responsibility to Protect*, p. 16-17.

against humanity by non-state actors.⁶³ However, UNHCR's broadened definition of refugees does not necessarily mean the organisation links refugee protection to R2P in practice, which will be discussed later in this chapter.

Finally, international and regional law⁶⁴ recognises the inherent link between those fleeing mass atrocities and refugee protection because the mass flow of refugees out of states is often an indicator that mass atrocities are occurring⁶⁵ and that states are manifestly failing to protect their populations.⁶⁶ While some of these soft law agreements are not binding, they demonstrate the evolution of understanding in terms of how mass atrocities and refugee protection overlap.⁶⁷ Thus, the literature accepts that R2P populations⁶⁸ that are forced to cross an international border as a result of mass atrocities meet the definition of a refugee largely as a result of UNHCR's expanding remit and the choice of some states to enter regional agreements that extend protection beyond what is legally required by the Refugee Convention.

The foundational premise that mass atrocities have forced mass displacement in and out of Syria, resulting in the Syrian refugee crisis, demonstrates at least a nexus (if not causation)

⁶³ Barbour and Gorlick, 'Embracing the 'Responsibility to Protect'', p. 563, (note 138).

⁶⁴ Those fleeing even indiscriminate violence in most Latin American countries and African countries are considered prime facie refugees. See, Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* ('OAU Convention'), 10 September 1969, 1001 U.N.T.S. 45. Similarly, a revised text of the *1966 Bangkok Principles on the Status and Treatment of Refugees* was adopted by the Asian-African Legal Consultative Organization (formerly Committee) in 2001 and incorporates a refugee definition similar to that in the OAU Convention; see, Cartagena Declaration on Refugees, *Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984. International law includes as refugees those fleeing attacks on racial, political, religious, ethnic or other groups in the context of internal war, which includes ethnic cleansing and inter-clan conflict in unstable or failing states. *Salibian v. Canada* (1990) FCJ 454 (Canada, Federal Court of Appeal); *Knezevic v. Ashcroft*, 367 F.3d 1206; 2004 US App. LEXIS 10162 (US Court of Appeals for the 9th Circuit); *S. v. Federal Ministry of Interior*, Austrian Administrative Court, 26 Jan 1994, 93/01/0034; *Hagi-Mohammed v. Minister for Immigration and Multicultural Affairs* (2001) FCA 1156.

⁶⁵ Thomas G. Weiss, *Humanitarian Intervention: War and Conflict in the Modern World* (Cambridge: Polity Press 2007), Ch. 4, 'New Thinking: The Responsibility to Protect', p.89.

⁶⁶ The displacement of people is one of five indicators that a state is manifestly failing to protect its population from mass atrocities. However, not all indicators need to be present and the death toll and government intentions are weightier indicators of a manifest failing. Gallagher, 'Syria and the Indicators of a 'Manifest Failing'', p. 9-10, p. 13.

⁶⁷ These include the UNGA, *Declaration on Territorial Asylum*, A/RES/2312(XXII), 14 December 1967, other General Assembly and UN Economic and Social Council (ECOSOC) Resolutions, <http://www.un.org/en/ecosoc/docs/docs.shtml>, and the Conclusions on International Protection adopted by the ExCom, see UNHCR, ExCom, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees 1975-2004 (Conclusion No. 1 – 101)*, <http://www.unhcr.org/uk/publications/legal/41b041534/compilation-conclusions-adopted-executive-committee-international-protection.html>, accessed 4 July 2018.

⁶⁸ This article defines 'R2P populations' as those fleeing mass atrocities where a state is manifestly failing to protect them. The R2P populations who remain inside Syria or those who are internally displaced in Syria because they have not crossed an international border do not meet the definition of refugees.

between R2P crimes and refugees.⁶⁹ However, there are two fundamental problems with this argument. First, UNHCR's practice is not binding on states and the regional agreements that expand the definition of refugees are only binding on their signatories. Second, once populations become refugees, they are no longer 'R2P populations'⁷⁰. Critically, this brings up conceptual presumptions about where an R2P response is meant to occur.⁷¹ There is a presumption amongst academics that R2P is not to be limited to an in-situ response, but includes refugee protection, particularly through asylum, which suggests an R2P interpretation with broader meanings and obligations than helping to protect populations from mass atrocities.⁷² For example, Bellamy⁷³ argues that '[t]he Responsibility to Protect (R2P) entails a responsibility to provide safe flight and asylum to those fleeing atrocity crimes'⁷⁴, partly due to the 2012 UN Secretary-General's Report which stressed that R2P is 'universal and enduring' and the international community has a responsibility to protect populations from mass atrocity 'everywhere and all the time'⁷⁵. However, the enduring nature of R2P responsibilities does not explicitly refer to refugee protection⁷⁶ and it does not nullify the geographical limits on an R2P response.

Bellamy's assertion presumes that R2P remains the appropriate protection mechanism after populations fleeing mass atrocities cross an international border into a state that is not perpetrating mass atrocities.⁷⁷ This makes sense where there is a risk of *refoulement* and thus, re-exposure to mass atrocities. However, once these populations cross an international border, the threat of mass atrocities from the manifestly failing state lessens significantly thereby diminishing the international community's protection responsibilities under R2P.⁷⁸ Indeed, some scholars have pointed out that R2P responses are understood as foreign policy responses

⁶⁹ UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/S-17/2/Add.1, 23 November 2011.

⁷⁰ R2P populations are populations fleeing mass atrocities *in* the manifestly failing state.

⁷¹ The reasoning behind this conceptual choice will be explored empirically in Chapters 5 and 6.

⁷² Some argue 'R2P's scope of application operates *ratione personae*, not *ratione loci*'. Chiara Redaelli, 'The Responsibility to Protect Refugees Stemming from Foreign Interventions in their Country of Origin, The Responsibility to Protect and the Refugee Crisis: How Should Europe Respond?' Workshop at the University of Leeds, POLIS, 18 January 2016. This was found to be a common presumption in discussions with R2P academics.

⁷³ Bellamy's argument here contradicts his other argument that states have internalised a broad concern that mass atrocities are wrong and worthy of concern, but that the responses will vary.

⁷⁴ Bellamy, 'The Responsibility to Protect and the "Migrant Crisis"'.
⁷⁵ *Ibid*; Ban Ki-moon, *Responsibility to Protect: Timely and Decisive Response*, A/66/874-S/2012/578, 25 July 2012, (p. 4).

⁷⁶ Newman argues that none of the Secretary-General's reports substantively link R2P to states' duties towards forcibly displaced refugees. Newman, 'The Limits of Liberal Humanitarianism in Europe'. However, the 2016 report does mention refugee protection as a timely response. Ban Ki-moon, *Mobilizing Collective Action*, p. 13-14.

⁷⁷ Bellamy, 'The Responsibility to Protect and the "Migrant Crisis"'.
⁷⁸ Thank you to Dr. Lars Waldorf for helping to analyse and discuss this at length.

involving an in-situ response,⁷⁹ which would exclude refugee protection through asylum or resettlement, policies that tend to be overseen by domestic agencies like the UK's Home Office. Furthermore, states' invocations of R2P in the context of Syria have been limited to helping the territorial population *within* Syria⁸⁰, which demonstrates the chasm between scholars' theories and social agents' practice.

Instead, once a population successfully crosses the border and is outside the manifestly failing state, other protection frameworks are triggered, such as refugee protection under the Refugee Convention. The Secretary-General's 2009 Report reminds states that a step towards practical implementation of R2P would occur when states *become* parties to relevant instruments such as the Refugee Convention.⁸¹ The idea that practical implementation of R2P would be helped by signing on to the Refugee Convention implies there is a protection gap in R2P once these populations leave the manifestly failing state, which demonstrates how the two frameworks operate independently but complementarily.⁸² In other words, once R2P populations cross the border out of the manifestly failing state, the Refugee Convention replaces R2P as the protection mechanism except in the case of *refoulement* (or new cases of mass atrocities in the host state).⁸³ Thus, there is a defensible argument that those populations crossing the border out of a manifestly failing state no longer have a risk of mass atrocities thereby extinguishing the international community's responsibilities in terms of R2P.⁸⁴

Achiume's argument attempts to overcome R2P's *ratione loci* problem by conceptually harnessing the collective duty of states to protect those fleeing mass atrocity crimes.⁸⁵ The responsibility to protect is equal amongst states and therefore, the proximity of a state is not the

⁷⁹ Jennifer M. Welsh, 'Fortress Europe and the Responsibility to Protect: Framing the Issue', *The 'Lampedusa Dilemma': Global Flows and Closed Borders What should Europe Do?*, European University Institute, Florence, 17-18 November 2014, <https://www.eui.eu/Documents/RSCAS/PapersLampedusa/FORUM-Welshfinal.pdf>, accessed 4 July 2018, p.3.

⁸⁰ Achiume, 'Syria, Cost-sharing, and the Responsibility to Protect Refugees', p. 708.

⁸¹ See, Ban Ki-moon, *Responsibility to Protect: Timely and Decisive Response*, p. 4, 5; Rimmer, 'Refugees, Internally Displaced Persons and the "Responsibility to Protect"', p.6.

⁸² Gilgan, 'Exploring the Link Between R2P and Refugee Protection', p. 383.

⁸³ *Ibid.*

⁸⁴ This is not to argue that they are legally or politically deficient in upholding their obligations under other laws and treaties, such as the 1951 Refugee Convention. However, refugees who cannot easily access state parties' territories will be unable to claim asylum and there is no explicit *legal* obligation to facilitate arrivals or responsibility-share refugees under the Refugee Convention. Gilgan, 'Exploring the Link Between R2P and Refugee Protection', p. 384 (note 78).

⁸⁵ For a discussion from the international refugee law perspective, Durieux surveys potential 'homes' for framing a 'collective duty to rescue refugees' including international regime of rescue at sea, international disaster response law, IHL and R2P. See, Jean-Francois Durieux, 'The Duty to Rescue Refugees', *International Journal of Refugee Law* 28/4: 637-655 (2016).

intended factor in terms of allocating responsibilities under R2P.⁸⁶ Achiume sees R2P's obligations as concurrent responsibilities owed to host states and not refugees, which means there is a 'continuous protection space' that does not end just because a person fleeing mass atrocities crosses an international border.⁸⁷ Achiume's argument, which focuses on the duty bearers, resonates intuitively, but needs further analysis as R2P's requirements are ambiguous and minimal enough that states can still reasonably argue that they are implementing their protection duties in other ways. Indeed, the appeal of constructivism is its acceptance of state variations in a norm's meanings and implementation which makes it impossible to define what equal responsibilities across states looks like. This is an example of how R2P's conceptually ambiguous duties insulate the inevitable disparities in terms of the actual practice of those responsibilities across states. Furthermore, Achiume's argument disregards the two necessary elements triggering an R2P response by the international community: The existence of mass atrocities occurring *in* a manifestly failing state. Also, the international border cannot be dismissed even if it acts like an artificial on-off switch.

3.2.1.2 Refugee Protection is a Less Contentious R2P Response

Scholars argue that hosting refugees through 'the grant of asylum [sic] [is] a good starting point to enacting R2P as [it is] devoid of the controversy surrounding military intervention'⁸⁸. This is partially true. As military interventions have become impossible in those particularly difficult cases where domestic and Security Council politics do not align, the use of humanitarian and peaceful means for protection by powerful states before resorting to military options not only protects but increases powerful states' and R2P's credibility. Helping to share in the cost of the current refugee crisis among wealthier states that are not proximate to mass displacement does not require UN Security Council consensus and demonstrates commitment to R2P while

⁸⁶ Indeed, there is ambiguity in terms of who bears the responsibility, which allows some states to shirk their obligations. James Pattison, *Humanitarian Intervention and The Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2010), p. 9. See, Tony Paterson, 'Angela Merkel: 'It's our damned duty to help refugees'', *The Independent*, <http://www.independent.co.uk/news/world/europe/angela-merkel-its-our-damned-duty-to-help-refugees-a6686631.html>, accessed 15 December 2016. This does not necessarily mean that EU states see a link between refugee protection and the specific R2P framework that has emerged since 2005.

⁸⁷ Durieux, 'The Duty to Rescue Refugees', p. 651.

⁸⁸ Barbour and Gorlick, 'Embracing the "Responsibility to Protect"', p. 536. In terms of the controversies around military intervention: 'the use of force to prevent refugee flows is a high-risk strategy'. Angus Francis, 'The Responsibility to Protect and the International Refugee Regime' in Vesselin Popovski and Charles Sampford (eds.), *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction* (New York: United Nations University Press, 2012), p. 222. For example, the NATO intervention in Kosovo triggered Serbia's forced displacement of Albanians and ethnic cleansing continued even with a foreign military presence. Jack Snyder, 'Realism, Refugees, and Strategies of Humanitarianism', in Alexander Betts and Gil Loescher (eds.), *Refugees in International Relations* (Oxford: Oxford University Press, 2011), p. 29-52. See also, Michael Barutciski, 'A Critical View on UNHCR's Mandate Dilemmas', *International Journal of Refugee Law* 14/2-3: 365-381 (2002). However, this does not mean there is no political controversy in hosting refugees.

alleviating the concerns of less powerful states that see R2P as a pretext for military domination and imperialism, a heightened concern following the Libya intervention in 2011.⁸⁹ There is an interest in focusing on R2P's non-coercive measures, such as hosting refugees because middle powers like Brazil, India and South Africa along with post-colonial states are not opposed to R2P but to when coercive military intervention should be used (as discussed earlier in Chapter 2). Thus, using refugee protection as a first response in discharging Pillar III of R2P is a method that states can execute on their own regardless of non-consensus on the UN Security Council, which will also protect populations and placate those states wary of military interventions. However, the underlying premise of this argument is that states care about making themselves and R2P credible, which at the very least means their support of R2P has to be greater than rhetorical. Additionally, refugee protection is no less politically controversial, particularly during this period in history where powerful liberal states have been perceived as turning towards isolationism⁹⁰ and swayed by their populist nationalist movements to minimise immigration particularly from the Middle East due to the rise of an anti-terrorism norm similar to the US CAT case where the US violated the anti-torture norm in favour of what it defended as counter-terrorism policies.⁹¹

3.2.1.3 *Hosting R2P Populations as Refugees is an Enlightened Self-Interest*

Scholars have also proposed practical ways states can provide effective protection of Syrian refugees fleeing mass atrocities that merge with states' interests. The political incentives for states to share in the cost of refugee protection under R2P include regional stability, migration management and international security.⁹² In particular, regional stability in the Middle East is geopolitically important to the international community warranting consideration of less coercive measures to address the Syrian crisis.⁹³ As the current crisis continues with ongoing mass atrocities and coalition air strikes, more refugees will be on the move and more unauthorised and uncontrolled migration will follow. The incentive for states to cost-share refugees in terms of managing migration is in maintaining the control and monitoring unauthorised immigration by enacting a comprehensive plan which ultimately works to address

⁸⁹ Achiume, 'Syria, Cost-sharing, and the Responsibility to Protect Refugees', p. 749.

⁹⁰ See, for example, Olivia Beavers, 'Trudeau takes Shots at US, UK for "Turning Inward"' *The Hill*, 4 July 2017, <http://thehill.com/homenews/administration/340614-trudeau-takes-shots-at-us-and-uk-for-turning-inward>, accessed 4 July 2018.

⁹¹ The increase in terror attacks in Europe has given rise to a compelling anti-terrorism norm similar to the US CAT case.

⁹² Achiume, 'Syria, Cost-sharing, and the Responsibility to Protect Refugees', p. 755.

⁹³ Achiume argues that the Syrian chemical weapons agreement brokered by the US and Russia exemplifies this. *Ibid.*, p. 756.

the problem through reasonable distribution of refugees.⁹⁴ Cost-sharing in hosting refugees permits an effective mechanism for controlling the numbers that go to each state. Furthermore, as numbers of refugees are more equally shared across states, a mass exodus from overwhelmed states in the region can be prevented, which occurred during the European refugee crisis in 2015 when refugee populations began leaving overburdened neighbouring states en masse. Moreover, as the needs of the refugee population fall short in these overburdened states (or they face persecution in states that are not party to the Refugee Convention), more will embark on dangerous journeys to reach Europe. As Goodwin-Gill argues, ‘if there is no security against displacement by conflict, and if conditions in countries of first refuge fall short of providing assistance, livelihood, education, and at least some opportunity, then refugees will continue both to flee and keep moving’⁹⁵. Having a plan based on cooperation and sharing not only means more control over irregular migration, it means a decreased demand for smugglers and traffickers as fewer refugees will undertake unsafe journeys.⁹⁶ In terms of international security, political and economic collapse in the Middle East threatens international security as refugees become vulnerable to recruitment into terrorist organisations or crime rings in order to survive.⁹⁷

Admittedly, some crises will have less geopolitical pull and thus the incentives of regional stability, migration management and international security will vary depending on context.⁹⁸ Regardless, the cost-sharing of refugees is an enlightened policy that helps populations fleeing mass atrocities while also serving the overall interests of global peace and stability within the international community. Despite the political incentives for linking R2P and refugee protection, the question persists as to whether states translate their R2P into a responsibility to provide refugee protection as R2P’s ambiguous nature permits states to enact other preferred methods for managing peace and security in the region.

3.2.2 Linking R2P and Refugee Protection in Practice

Refugee protection is a conceptual means for discharging R2P, but the link does not really occur in practice. General acceptance exists in academic circles that the original conception of R2P and its subsequent endorsement by states in 2005 includes asylum as an R2P protection measure. Conceptually, a responsibility to provide refugee protection to populations fleeing

⁹⁴ *Ibid*, p. 689-690.

⁹⁵ Guy S. Goodwin-Gill, ‘The Movements of People between States in the 21st Century’, p. 685.

⁹⁶ Furthermore, creating safe routes to asylum would obviate the need for trafficking and smuggling of refugees. See, Bellamy, ‘The Responsibility to Protect and the “Migrant Crisis”’.

⁹⁷ Achiume, ‘Syria, Cost-sharing, and the Responsibility to Protect Refugees’, p. 759.

⁹⁸ *Ibid*, p. 756.

mass atrocities exists because member states formally agreed to exhaust ‘humanitarian’ and ‘other peaceful means’ under Pillar III, which are intended to be the international community’s first responses under Pillar III.⁹⁹ As Barbour and Gorlick state, ‘the R2P umbrella is not all inclusive’¹⁰⁰. Following adoption of the WSOD in 2005, the Special Advisor on the Prevention of Genocide and the Secretariat’s Executive Committee on Peace and Security established a working group tasked with identifying a ‘repertoire of measures’ demonstrative of the various UN departmental mandates that would fall within the ambit of diplomatic, humanitarian and other peaceful means under Pillar III of R2P.¹⁰¹ Among the measures considered by the working group were ‘steps to facilitate asylum and *non-refoulement*’ under the category of other peaceful means.¹⁰² Additionally, the drafters and entrepreneurs of R2P also intended the WSOD’s Pillar III ‘other peaceful means’ to act as an umbrella concept which would include protection measures such as asylum in order to avoid constraining states to an exhaustive list of responses due to the varying contexts of each crisis.¹⁰³ Such a broad reading allows for the most effective way of protecting populations from mass atrocities.

However, apart from scholars and R2P entrepreneurs, there has been little effort to link R2P with the refugee protection regime at the institutional level.¹⁰⁴ For example, despite discussions between the ICISS and UNHCR, the Refugee Convention is not mentioned in the Commission’s 2001 report.¹⁰⁵ Instead, the ICISS report conceptualises refugees as threats to international peace and security.¹⁰⁶ The opportunity to explicitly connect refugee protection to R2P was again missed at the time of the World Summit Outcome in 2005, as paragraphs 138 and 139 do not mention refugee protection.¹⁰⁷ It was four years after the WSOD that the 2009 Secretary-General’s Report on *Implementing the Responsibility to Protect* explicitly recognised

⁹⁹ See, Bellamy, *The First Response*.

¹⁰⁰ Barbour and Gorlick ‘Embracing the ‘Responsibility to Protect’, p. 554.

¹⁰¹ Bellamy, ‘Mainstreaming the Responsibility to Protect in the United Nations System’, p. 157.

¹⁰² *Ibid*, p.158.

¹⁰³ This view is consistently taken by those working in the R2P policy world as per email correspondence and conferences under the Chatham House Rule; see also, Bellamy, ‘The Responsibility to Protect and the “Migrant Crisis”’. Barbour and Gorlick, ‘Embracing the “Responsibility to Protect”, p. 536.

¹⁰⁴ Gilgan, ‘Exploring the Link Between R2P and Refugee Protection’.

¹⁰⁵ ICISS, *The Responsibility to Protect*, p. 354; see also, Francis, ‘The Responsibility to Protect and the International Refugee Regime’ in Popovski and Sampford (eds.), *Norms of Protection*, p. 215-233, p. 224.

¹⁰⁶ Francis, ‘The Responsibility to Protect and the International Refugee Regime’ in Popovski and Sampford (eds.), *Norms of Protection*, p. 215-233, p. 224; see also, Alice Edwards, ‘Human Security and the Rights of Refugees: Transcending Territorial and Disciplinary Boundaries’, *Michigan Journal of International Law* 30: 763-807, 775 (2008-2009); Bhupinder S. Chimni, ‘Globalization, Humanitarianism and the Erosion of Refugee Protection’, *Journal of Refugee Studies* 13/3: 243-263, 252 (2000); Rimmer, ‘Refugees, Internally Displaced Persons and the “Responsibility to Protect”’.

¹⁰⁷ Francis, ‘The Responsibility to Protect and the International Refugee Regime’ in Popovski and Sampford (eds.), *Norms of Protection*, p. 215-233, p. 224.

that the aspirational goal of eliminating mass atrocity crimes would be more attainable if the protection of refugees and the internally displaced were ‘mainstreamed’ among the priorities of UN agencies because the grant of asylum protects populations from the relevant crimes defined under R2P.¹⁰⁸ Bellamy’s research on mainstreaming R2P within the UN structure revealed that the entities within the UN had different understandings of the meaning of R2P and even though they considered their work related to R2P protection responsibilities, there was concern over the norm’s added value due to its political nature in complicating already sensitive relationships with states.¹⁰⁹ As a result, the goal to mainstream the protection of refugees and IDPs has remained a goal within the UN, but it is for the entities themselves to decide how best to mainstream R2P goals into their work without supplanting the objectives and purposes of their own offices, related to their own experience and knowledge of the particular contexts they work in.¹¹⁰

This means a critical component for analysing refugee protection as a conceptual response to R2P involves looking at how UNHCR advocates for increased protection of Syrian refugees because it is the UN organisation with a specific mandate to protect refugees and forcibly displaced communities, and it works with states to assist in resettlement to a third country while advocating for states to increase their resettlement places. Thus, how UNHCR uses R2P as leverage in advocacy is also relevant. The analysis in the following sections is based on a discourse analysis of official documents and interviews with UNHCR officials in charge of implementing resettlement programmes for Syrians in the UK.

3.2.2.1 UNHCR: Applicatory Contestation and the Tale of Two Separate Frameworks

As discussed in Chapter 2, contestation of a norm’s application is more procedural and does not go to the heart of a norm.¹¹¹ This contestation is not degenerative as it helps clarify the norm’s application to relevant cases in the future which is constitutive. UNHCR is contesting R2P’s application to its practice of refugee protection including resettlement. There is support for

¹⁰⁸ Ban Ki-moon, *Implementing the Responsibility to Protect*, p. 28-29. See also, Bellamy, ‘Mainstreaming the Responsibility to Protect in the United Nations System’; Barbour and Gorlick, ‘Embracing the ‘Responsibility to Protect’, p. 536.

¹⁰⁹ Bellamy, ‘Mainstreaming the Responsibility to Protect in the United Nations System’. For a discussion on those Council members committed to the Protection of Civilians wishing to avoid any association with R2P to prevent contamination on progress, see, Jennifer M. Welsh, ‘Norm Contestation and the Responsibility to Protect’, *Global Responsibility to Protect 5/4*: 365-396, 367 (2013). Welsh has since stated that this has improved among UN agencies at the conference, ‘Putting the Responsibility to Protect at the Centre of Europe’, Plenary, 13-14 October 2016, University of Leeds.

¹¹⁰ Bellamy, ‘Mainstreaming the Responsibility to Protect in the United Nations System’.

¹¹¹ ‘Applicatory contestation’. Nicole Deitelhoff and Lisbeth Zimmermann, ‘Things We Lost in the Fire: How Different Types of Contestation Affect the Validity of International Norms’, Working Papers No 18, Peace Research Institute, Frankfurt, December 2013.

R2P, but it is seen as a separate framework. However, there is potential for this neutral applicatory contestation to develop into degenerative contestation because the interviews revealed that part of the reason for localising R2P separately is due to states' political sensitivities around R2P. This section discusses how UNHCR approaches its advocacy to states for increasing the protection of Syrian refugees through resettlement. This involves a discussion of the preferred sources of responsibility that are relied upon to leverage state behaviour.

The organisation possessing the relevant protection mandate for Syrian refugees, UNHCR, has not explicitly mentioned R2P within the context of its calls on the international community to help in a cooperative response to the refugee crisis, particularly the European crisis in 2015-2016.¹¹² Specifically, UNHCR called upon states to provide resettlement (and other forms of admission, such as family reunification and humanitarian admission) to 30,000 Syrians in 2014 and an additional 100,000 in 2015 and 2016.¹¹³ The numbers called for are predicted to increase as the conflict continues and is further escalated through proxy warfare.¹¹⁴ Since 2001, UNHCR has argued that 'improved refugee protection can only be achieved through considerably enhanced multilateral cooperation and through shared commitment to implement new, practical arrangements to address current protection gaps'¹¹⁵ and that 'new approaches, tools, and standards were needed to underpin the present protection regime [sic] to enhance both the legal and physical protection of refugees'¹¹⁶. However, despite UNHCR's consistent advocacy for both increased resettlement and linking of large scale displacement with mass atrocities, R2P has not been referred to as a potential new approach or as a tool for bringing about this enhanced protection of refugees across the discourse or from the subsequent interviews with officials.¹¹⁷ For example, the UNHCR, along with 200 national and

¹¹² See for example, UNHCR, 'UNHCR Joins Call in Turkey for Solidarity with Countries Hosting Syrian Refugees', 17 January 2014, <http://www.unhcr.org/52d956909.html>, accessed 11 January 2014; UNHCR, 'Syrians, Risking Everything to Flee War, Find Chilly Reception in Europe', 27 December 2013, <http://www.unhcr.org/52bd53bb9.html>, accessed 11 January 2014.

¹¹³ UNHCR, Dan McNorton (ed.) and Leo R. Dobbs, 'UNHCR Urges Countries to Offer Admission to 100,000 Syrians from Next Year', 21 February 2014, <http://www.unhcr.org/uk/news/latest/2014/2/53072f4f6/unhcr-urges-countries-offer-admission-100000-syrians-next-year.html>, accessed 18 April 2018.

¹¹⁴ Interview 4.

¹¹⁵ UNGA, *Agenda for Protection Addendum*, A/AC.96/965/Add.1, Executive Committee of the High Commissioners Programme, 26 June 2002 <<http://www.unhcr.org/3d3e61b84.html>>, accessed 4 July 2018.

¹¹⁶ Türk and Garlick, 'From Burdens and Responsibilities to Opportunities', p. 672.

¹¹⁷ Interview 4. This was also confirmed by the statements/answers given to the researcher by a high-level official at an academic conference under the Chatham House Rule, 4 July 2018. For discourse examples, see Türk and Garlick, 'From Burdens and Responsibilities to Opportunities'; UNHCR, Statement by Volker Türk, Assistant High Commissioner for Protection, 67th Session of the Executive

international institutions and organisations, developed the Syria Regional Refugee and Resilience Plan (3RP), which seeks to assist and protect displaced Syrians through various measures including resettlement, but R2P does not underpin or provide leverage for states to do more for Syrians fleeing mass atrocities.¹¹⁸

In practice, rather than frame UNHCR's repeated pleas to the international community in terms of R2P, the organisation continues to plead with states to take their fair share of refugees in the name of solidarity and through charitable donations.¹¹⁹ A senior resettlement caseworker responsible for advocating and implementing UNHCR's global policy within the UK confirmed that the calls to states to implement refugee protection comes from states' obligations under 'solidarity' and 'responsibility sharing', which are triggered by large scale displacement of populations.¹²⁰ The concepts of solidarity and responsibility sharing come from what UNHCR sees as an implicit agreement made by states when they signed onto the 1951 Refugee Convention and the *Protocol Relating to the Status of Refugees* (1967 Protocol).¹²¹ The High Commissioner calls on states to provide protection of refugees because solidarity 'is essential to the effective functioning of the international protection regime'¹²²:

Solidarity is a fundamental value behind any form of international cooperation and is a crucial part of the contract between and among nations, large and small, and irrespective of the resources at their disposal. It advances a sense of equality and equity and overcomes the coincidence of geography, including in the context of displacement. This Committee [ExCom¹²³] has often pronounced itself on

Committee, 5 October 2016, in *International Journal of Refugee Law* 28/4: 736-750 (2016); UNGA, *New York Declaration for Refugees and Migrants*, A/RES/71/1, 3 October 2016; Ban Ki-Moon, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, A/70/59, 21 April 2016; UNHCR, Dan McNorton (ed.) and Leo R. Dobbs, 'UNHCR Urges Countries to Offer Admission to 100,000 Syrians from Next Year'.

¹¹⁸ UNHCR, Syria Regional Refugee and Resilience Plan 2017-2018 (and preceding years): In Response to the Syria Crisis, <http://www.unhcr.org/uk/partners/donors/589497237/2017-2018-regional-refugee-resilience-plan-response-syria-crisis-12-december.html>, accessed 19 April 2018.

¹¹⁹ For example, see UN, 'UN Agency Urges Europe to Develop Coherent Response to Refugee Crisis', News Centre, 15 September 2015,

<http://www.un.org/apps/news/story.asp?NewsID=51874#.VyIikGM4nnU>, accessed 28 April 2016; see also, Achiume, 'Syria, Cost-sharing, and the Responsibility to Protect Refugees', p. 708.

¹²⁰ Interview 4. See also, *Convention Relating to the Status of Refugees*; 'New York Declaration for Refugees and Migrants' *International Journal of Refugee Law* 28/4: 704-732, 706, 722 (2016); UNHCR, 'UNHCR Joins Call in Turkey for Solidarity with Countries Hosting Syrian Refugees'; UNHCR, 'Syrians, Risking Everything to Flee War, Find Chilly Reception in Europe'.

¹²¹ Interview 4. *Convention Relating to the Status of Refugees*; *Protocol Relating to the Status of Refugees*; Ban Ki-moon, Draft Report of the Secretary-General, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, A/70, 9 May 2016, p. 26; Ban Ki-Moon, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, A/70/59, 21 April 2016.

¹²² UNHCR, Statement by Volker Türk, p. 739.

¹²³ UNHCR's governing Executive Committee (ExCom) meets in Geneva annually to review and approve the agency's programmes and budget, advise on international protection and discuss a range of other issues with UNHCR and intergovernmental and non-governmental partners.

solidarity, and as early as in 1978 reaffirmed solidarity as a primary condition for the effective implementation of international protection in general.¹²⁴

As many signatories have fallen short of this implicit promise, the High Commissioner is aiming to formulate an additional Protocol to the 1951 Convention which would articulate member states' agreed upon 'commitments to responsibility-sharing, cooperation, and solidarity' because it is envisioned as 'the ideal way to address this need'¹²⁵. Rather than use R2P's framework to leverage a commitment to refugees fleeing mass atrocities, UNHCR is developing an additional protocol aimed at renewing states' implicit promises, which the organisation sees as the best way to get states to increase practical protection of refugees.

It is worth providing some context to this upcoming 2018 Global Compact since UNHCR sees this political commitment as having stronger potential for holding states to their responsibilities in terms of helping refugees fleeing mass atrocities. In May 2016, following the height of the European Refugee crisis, the UN Secretary-General put out a draft report calling for new global commitments in anticipation of a High-Level Plenary on Addressing Large Movements of Refugees and Migrants which would be held in September 2016 in New York. The report called on member states to develop a framework for interstate cooperation and requested that the High Commissioner put together a comprehensive refugee response plan, which is based on international law and best practices and that includes broader humanitarian operations in situations involving large movements of refugees.¹²⁶ While the report states 'that responsibility sharing stands at the core of the international protection regime' as reflected in the 1951 Convention, reaffirmed in General Assembly resolutions, regional refugee instruments, international human rights law and international humanitarian law, there is no mention of member states' R2P despite the focus on large movements of refugees fleeing mass atrocities.¹²⁷

Following the Secretary-General's 2016 report on Movements of Refugees and the United Nations General Assembly summit in September 2016, the subsequent outcome document referred to as the NY Declaration, was adopted by world leaders. The NY Declaration is a

¹²⁴ UNHCR, Statement by Volker Türk, p. 739.

¹²⁵ Türk and Garlick, 'From Burdens and Responsibilities to Opportunities', p. 678.

¹²⁶ Ban Ki-moon, Draft Report of the Secretary-General, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, A/70, 9 May 2016, p. 23, p. 18 (para. 71).

¹²⁷ Ban Ki-moon, Draft Report of the Secretary-General, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, A/70, 9 May 2016, p. 26. The overarching aim is for member states to share responsibility for refugees and migrants by facilitating safe journeys, safeguarding their dignity and rights and preventing a disproportionate burden on the countries proximate to a crisis through access to territory for asylum seekers, a long-term commitment to consistent and sufficient financial aid to receiving states and importantly, resettlement of 10% of the total refugee population which will remove the need for dangerous journeys and trafficking.

political commitment to the Secretary-General's request for states to address refugee situations more comprehensively and equitably by reaffirming existing legal and global responsibilities for refugee sharing through a 'Comprehensive Refugee Response Framework' for formal adoption at the Global Compact on Refugees in 2018¹²⁸ following consultation with states and preliminary implementation of some of the commitments from the summit (with a view to inclusion in the annual report to the General Assembly's 73rd session).¹²⁹

Importantly, like the draft report of the UN Secretary-General on the Movement of Refugees, the NY Declaration fails to mention a responsibility to protect refugees even though the central theme concerns international protection and large-scale displacement of populations as a result of mass atrocities.¹³⁰ R2P is unlikely to receive any focus in the upcoming Comprehensive Refugee Response Framework in the 2018 Compact because the concept of solidarity¹³¹ 'attracted the most attention at the UN summit' and will therefore be 'one of the core tenets of the Global Compact on Refugees'¹³².

Therefore, UNHCR's advocacy for states to increase resettlement relies on notions of solidarity and demonstration of states' commitments to 'genuine responsibility sharing'¹³³ through new political commitments to existing norms through the NY Declaration and the upcoming Global Compact 2018. One interviewee explained UNHCR's approach:

UNHCR prefers to use its own mandates, ExCom and papers' and the upcoming global compact coming out of the NY Declaration would be a preferable doctrine over R2P to use for helping refugees in practice because international cooperation, solidarity, and responsibility-sharing hold more sway in terms of convincing states to resettle more refugees as they are existing principles stemming from commitments to existing international law obligations, established refugee

¹²⁸ The Global Compact on Refugees in 2018 will build on the experience gained through the implementation of the Comprehensive Refugee Response Framework (as part of the NY Declaration outcome document) with the aim of refining and drawing on consultations with states and other relevant actors. The Compact will restate states' commitments to the international refugee protection regime embedded 'not least in the standards contained in the 1951 Convention and 1967 Protocol, regional refugee law instruments, and international human rights and humanitarian law'. Türk and Garlick, 'From Burdens and Responsibilities to Opportunities', p. 674; see also, UNHCR, Statement by Volker Türk.

¹²⁹ UNHCR, Statement by Volker Türk, p. 738.

¹³⁰ UNGA, *New York Declaration for Refugees and Migrants*, A/RES/71/1, 3 October 2016; UNHCR, Statement by Volker Türk.

¹³¹ In contrast, solidarity under R2P can be described as a broad concern that mass atrocities are wrong and warrant attention, but the responsibility to respond is ambiguous in terms of who bears the responsibility, which allows some states to shirk their obligations while others may bear the burden. Pattison, *Humanitarian Intervention and The Responsibility to Protect*.

¹³² UNHCR, Statement by Volker Türk, p. 739.

¹³³ *Ibid*, p. 750.

protection principles and state and organisational practice that repeatedly appear across many different international legal instruments and treaties.¹³⁴

Thus, R2P does not underpin UNHCR's drive for 'ensuring more effective responsibility-sharing in response to significant refugee movements'¹³⁵, which are often a result of mass atrocities. UNHCR's localisation of R2P as a separate framework from refugee protection and therefore the norm's absence from advocacy to states for increased protection can be evaluated as an example of applicatory contestation because UNHCR's contestation is about R2P's irrelevance to their context. For example, during a conference, the researcher asked a very senior official why UNHCR had not used R2P as leverage in its advocacy around increasing protection of refugees fleeing mass atrocities. The response was that it sounded 'like a good idea and someone should research it'¹³⁶. However, researchers at UNHCR have published papers considering the link. In fact, the earliest consideration of the connection between asylum and R2P is found in Barbour and Gorlick's often-referenced article for UNHCR.¹³⁷ Perhaps the reasons the senior official had not considered the link is because R2P was considered genuinely not applicable following research commissioned by the organisation.

However, there is another more political reason for keeping R2P separate, which was confirmed to some degree by the interviews with UNHCR elites working in the UK policy context. R2P was judged to be ineffective leverage for convincing states to accept more responsibility for refugees.¹³⁸ In fact, 'R2P does not come up in the day-to-day work' around convincing states of their responsibilities towards refugees, in terms of asylum or resettlement.¹³⁹ Advocacy around responsibility-sharing of refugees does not include R2P as leverage particularly when advocating to UK contacts because 'we have found that throwing that moral commitment at states is not effective due to the political climate... [R2P] is just not our narrative.'¹⁴⁰

For UNHCR, R2P is not the narrative because it does not add value and may risk the practical goal of increasing protection of refugees. If it is the political fall-out around R2P that is keeping the frameworks separate, which is followed by discursive neglect, then there is potential for the contestation around R2P to become degenerative. This is because the catalyst for that applicatory contestation is how states have localised R2P with political sensitivity

¹³⁴ Interview 4; see also, Türk and Garlick, 'From Burdens and Responsibilities to Opportunities'.

¹³⁵ *Ibid*, p. 656.

¹³⁶ Based on answers given to the researcher and other participants by a high-level official at an academic conference under the Chatham House Rule, 4 July 2018.

¹³⁷ Barbour and Gorlick, 'Embracing the "Responsibility to Protect"'.

¹³⁸ Interview 4.

¹³⁹ Interview 4.

¹⁴⁰ Interview 4. This sentiment was confirmed by Interviews 12 and 13.

which affects UNHCR's advocacy and donor relationship with states especially as they are reliant on states for realising the organisation's protection goals. There is a possibility that this applicatory contestation could lead to R2P norm degeneration because of the underlying reasons for the refusal to apply the norm and through discursive neglect over time that may become the norm in other contexts as well. However, if the underlying reasons for failing to link R2P and resettlement are based on the existing conceptual limitations explored in this chapter, then UNHCR's contestation of R2P is nothing more than applicatory or procedural, which does not affect the inter-subjectiveness of the norm. Instead, the applicatory contestation helps clarify the norm's application to relevant contexts which is constitutive and may strengthen the norm. Determining which kind of contestation is at operation will depend on the context being considered. Importantly, whether there is discursive neglect and the reasons for it are both important factors to consider.

3.2.3 R2P and Refugees: Value Added?

Thus far, the added value for linking R2P and resettlement is that providing resettlement is a peaceful means that fits within R2P, which is relied upon in the R2P literature. However, the conceptual presumptions finding a link stem from R2P's underlying aspirations and do not account for the failure to link the two norms in practice. Critically, R2P and international refugee law do not link conceptually to those practicing R2P (states) and those discharging refugee protection (UNHCR). However, Jason Ralph's 'pragmatic constructivist ethic'¹⁴¹ approach provides the best conceptual reason for discharging R2P through refugee resettlement. This entails examining 'the effects of [a norm's] various 'meanings-in-use' and assess[ing] the usefulness of those meanings'¹⁴². Applying Jason Ralph's pragmatic constructivist lens to the UK case provides additional insight into how the different meanings of R2P as derived from UK practice interplay and form a hierarchy of importance due to the pursuit of fixed political objectives in Syria that will ultimately result in sacrificing the UK's humanitarian objectives to its political goals, one of the broad implications of this research.

3.2.3.1 *Applying Pragmatic Constructivism to the Link between R2P and Resettlement*

Pragmatic constructivism goes beyond acceptance of the ideational structures of norms by using critical inquiry to establish the norm's ability 'to effect practical consequences that ameliorate lived social problems'¹⁴³, which means the norm is only as good as its ability to bridge its

¹⁴¹ Jason Ralph, 'What Should Be Done? Pragmatic Constructivist Ethics and the Responsibility to Protect', *International Organization* 72/1: 173-203 (2018).

¹⁴² *Ibid*, p. 174.

¹⁴³ *Ibid*, p. 175.

theoretical foundation to its practice. Ralph borrows adapts this pragmatic framework from the ethics discipline in order to critically examine the particular meanings given to R2P by powerful states and advocacy groups during the initial phases of the Syrian conflict between 2011 and 2012. These agents insisted on political transition, which ‘may have articulated an ideal form of protection’, but ‘were less than effective in protecting vulnerable populations in this particular situation’ and were ‘practically useless in sustaining support for humanitarian goals in the context of political pluralism’¹⁴⁴. Ralph argues that critical reflection on the usefulness of particular meanings of R2P could have led to better understanding of what was politically possible and opened the debate for alternative approaches. Ralph charges:

...the critique here is aimed not at the norm’s core hypothesis but at the tenacity of those who insisted R2P’s prescription was fixed, as well as those who held an unyielding commitment to ends that were, in practice, unrealistic.¹⁴⁵

Importantly, the prescriptive nature of R2P (the international community’s responsibility to help protect populations from mass atrocities) remains unfixed, which is useful from a pragmatic constructivist perspective because R2P’s practical meanings can dynamically reflect what works best to ‘ameliorate the lived social problem’ the norm is trying to address in a particular context.¹⁴⁶ The problem is fixing limited meanings (such as political transition, regime change or military intervention), which then lead to charges of non-compliance when they are absent. In particular, Ralph summarizes this notion best:

To propose action that cannot command collective support of the Security Council is as problematic as agreeing to a proposal that cannot protect populations. In this sense, the pragmatic constructivist can support R2P as a hypothesis on how to act while remaining critical of certain practices that are done in its name....The P3’s proposed way forward was itself problematic for three reasons: it was fixed to a prescription—‘Assad must go’—that was after the political fallout from the Libya intervention, unlikely to gain Security Council support; the strength of the commitment to that outcome was underpinned by unwarranted assumptions about the inevitability of Assad’s fall; and the P3’s insistence on regime change came at the expense of realizable ends that were valuable if not ideal.¹⁴⁷

As a result of fixing political transition to the meaning of R2P in Syria, the realistic possibility of getting humanitarian aid to suffering populations in Syria was sacrificed. Moreover, the opportunity to use alternative approaches for preventing and responding to mass atrocities, like

¹⁴⁴ *Ibid*, p. 176.

¹⁴⁵ *Ibid*.

¹⁴⁶ *Ibid*, p. 188.

¹⁴⁷ *Ibid*, p. 191.

asylum, were missed.¹⁴⁸ In other words, pushing accountability and political transition and regime change as an R2P meaning may be appropriate in the abstract, but in practice it prevented implementing ‘R2P as humanitarian aid’ or R2P as ‘other peaceful means’¹⁴⁹ according to Ralph. Where mass atrocities are ongoing, and the UN Security Council cannot agree on intervention or regime change, then a pragmatic approach accepts alternative methods for reaching R2P’s goal of helping to protect populations given the inevitable context of political pluralism. However, the pragmatic constructivist analysis does not end there. Where a particular implementation of R2P is practically impossible, alternative means should then be critically analysed for fit within the specific context, which includes analysing a state’s capability and culpability along with any other relevant contingencies.¹⁵⁰ This is how ‘R2P as [resettlement]’ may offer a solution ‘where ‘R2P as intervention’ offers none’¹⁵¹. Importantly, Ralph’s approach differs from localisation as it separates the norm from the social agents discharging it. This approach relies on social agency in considering agents’ political judgments and focusing on the practical consequences and effectiveness of their approaches for implementing the norm’s principles. Similar to Deitelhoff et al and Sikkink, Ralph’s approach accepts that there has to be some core principle that anchors the norm in order to lead to norm assessment. For Ralph, that anchor is ‘the problem we are solving’.¹⁵² This approach is based upon the notion that ‘if you start with a problematic interpretation then there will naturally be a problematic response’ which requires agents to be accountable for how they interpret norms.¹⁵³ This is very different from Acharya and Wiener’s theories as their critical constructivist approaches see norms as fluid and thus there is no universal principle or objective anchoring the norm at issue.

In sum, despite the fact that there is a nexus between R2P and refugees, conceptual and practical gaps persist. Ralph’s pragmatic constructivist framework for using refugee protection as an R2P response aptly addresses two conceptual questions asked by this dissertation. First, it makes a conceptual link between R2P and alternative methods like resettlement in terms of when they should be used in order to discharge the core purpose of R2P, which is to help protect populations from mass atrocities, without the critical gaps that remain in the other approaches that link the two frameworks. This means it provides a convincing context for when

¹⁴⁸ *Ibid*, p. 196.

¹⁴⁹ *Ibid*, p. 194.

¹⁵⁰ *Ibid*, p. 196.

¹⁵¹ *Ibid*.

¹⁵² Jason Ralph, ‘Alternatives to Military Intervention under R2P’, IR2P Conference, BISA, ECR2P, University of Leeds, 21 September 2018.

¹⁵³ *Ibid*.

there is added value for using resettlement to discharge R2P. Second, in the event the pragmatic is not selected as the meaning of R2P in order to reach the humanitarian ends, the hierarchy of the state's objectives becomes apparent. For example, if the political ends of Assad stepping down and political transition are held onto despite there being no possibility of attaining them due to non-consensus on the UN Security Council and the UK Parliament, then the goal of protecting populations from mass atrocities in the immediate term is sacrificed to a longer-term goal of installing democracy in the region. This may lead to realisation of R2P's goal of protecting populations in the long term but it does the exact opposite in the short term.

3.3 Conclusion

Using resettlement to discharge R2P obviously helps transcend the persistent contestation of R2P's military intervention aspect, however it is not without political controversy. Additionally, resettlement resonates conceptually with R2P's responsibility of helping to protect populations from mass atrocities as agreed in the WSOD in 2005¹⁵⁴ because it serves as a 'humanitarian' or 'other peaceful means' for discharging R2P's controversial Pillar III. States committed to R2P and thus, helping to save lives, are now faced with considering 'other peaceful means' for doing so, especially in the context of Syria. This is because other means have been exhausted and the growing refugee crisis shows no waning as mass atrocities continue in Syria, now not just from the regime, but from multiple other sources involved in coalition air strikes against Daesh. While the Secretary-General's 2016 report directs states to invest in 'peaceful tools' like refugee protection for protecting populations affected by atrocity crimes,¹⁵⁵ it is still up to states to adopt his aspirational interpretation of R2P responsibilities because the responsibility to resettle refugees has limited alignment with R2P in theory. Additionally, the organisation responsible for refugee protection at the international level does not envision a link between their work and R2P in practice.

Resettlement only directly links to R2P in terms of preventing *refoulement* of refugees who will face on-going mass atrocities, which is far from offering a conceptually solid link. While international law prohibits *refoulement*, there is no enforcement authority, and allowing *refoulement* actively or passively is unlikely to translate into complicity in perpetrating mass atrocities. At most, it shows a general disregard for the aspirations of R2P, but states can buttress their arguments by exposing the conceptual gaps in linking R2P and refugees and by providing evidence of the other R2P measures they are implementing. Importantly, R2P

¹⁵⁴ '2005 World Summit Outcome', p.30.

¹⁵⁵ Ban Ki-moon, *Mobilizing Collective Action*, p. 13-14.

permits, but does not require, refugee resettlement to discharge its responsibilities as the norm's obligations are ambiguous and there are real conceptual and practical gaps in linking R2P and refugee protection more generally.

However, using a pragmatic constructivist lens limits any explanation or presumption that the critical conceptual gaps are the actual reasons why states miss or avoid using the link in practice. This approach provides some measure of state commitment to R2P's core tenet around humanitarian protection from mass atrocities because it reveals how the meanings and objectives derived from practice (Wiener) can come into tension with each other and then reveal the limits of the state's humanitarianism in relation to its political interests. The pragmatic constructivist lens uses a specific context (when a state's preferred methods for discharging R2P are impossible), which demonstrates the added value of linking R2P and resettlement (or another peaceful means). When a state does not pursue pragmatic means and ends while discharging R2P, the primary meaning of the norm to that state is illuminated, which will ultimately shed light on R2P's overall normative value. Even so, R2P's highly ambiguous nature permits methods such as resettlement, especially when it would be pragmatic, but R2P does not require it. Ultimately, linking the two norms is left to state discretion and civil society advocacy. The empirical research on how the UK has localised R2P through contestation and practice will build upon the critical and pragmatic constructivist theories discussed in this chapter and Chapter 2 to answer the main research question of how the UK is using the link in practice both in terms of how it is discharging R2P and how R2P may shape existing resettlement programs. The next chapter provides the background context to Syria as an R2P case including the broad international responses to Syrians fleeing mass atrocities.

4 The International Response to Syria and Syrian Refugees, 2014 - 2016

4.1 Introduction

This chapter provides the relevant factual overview of the conflict in Syria including the broad international response to what has become one of the greatest humanitarian crises since the Second World War.¹ In particular, the key research question concerning how the UK is using the resettlement of Syrian refugees as a method of discharging its responsibility to protect requires examination of the facts that define Syria as an R2P case and discussion of the overall international response to Syria and Syrian refugees to provide context for the analysis in Chapter 5 of the various national responses enacted by the UK.

The Syrian civil war evolved into a complex internal war involving jihadist militants and rebels claiming to fight for democratic reform and liberal values. The Sunni-dominated opposition received varied international support from Turkey, Saudi Arabia, Qatar, Jordan, the US, UK and France. Russia, Iran and Lebanon's Shia Islamist Hezbollah movement provided support to the Syrian regime. The armed rebellion has evolved significantly since its inception.² Islamists and jihadists, whose brutality caused international outrage, soon outnumbered secular moderates.³ Daesh exploited the chaos and took control of large areas of Syria and Iraq (from Aleppo to the eastern Iraqi province of Diyala), where it proclaimed the creation of a 'caliphate' in June 2014.⁴ Daesh's many foreign fighters were involved in proxy wars within Syria as they battled both rebels and rival jihadists from the al-Qaeda-affiliated Nusra Front, as well as Syrian government and Kurdish forces.⁵

As the civil war drew in regional powers such as Iran and powerful states like Russia, in opposition to powerful liberal states like the US and the UK, the Syrian civil war became a

¹ UN, 'Response to Ever-Shifting Needs in Volatile Syria requires Sustained Donor Support-UN Relief Chief', News Centre, 1 September 2015, <http://www.un.org/apps/news/story.asp?NewsID=51769#.VrhuHP19670>, accessed 23 October 2017.

² 'In the political arena, opposition groups are also deeply divided, with rival alliances battling for supremacy. The most prominent is the National Coalition for Syrian Revolutionary and Opposition Forces, backed by several Western and Gulf Arab states. However, the exile group has little influence on the ground in Syria and its primacy is rejected by many opponents of Mr Assad'. Lucy Rodgers, David Gritten, James Offer and Patrick Asare, 'Syria: The Story of the Conflict', *BBC News*, 11 March 2016, <https://www.bbc.co.uk/news/world-middle-east-26116868>, accessed 4 January 2017.

³ Carla E. Humud, Christopher M. Blanchard and Mary Beth D. Nikitin, *Armed Conflict in Syria: Overview and U.S. Response*, Congressional Research Service, 13 October 2017, <https://fas.org/sgp/crs/mideast/RL33487.pdf>, accessed 23 October 2017; Lucy Rodgers et al, 'Syria: The Story of the Conflict'.

⁴ Lucy Rodgers et al, 'Syria: The Story of the Conflict'.

⁵ Carla E. Humud et al, *Armed Conflict in Syria: Overview and U.S. Response*.

proxy war between regional and international powers, which made it difficult to effectively protect the Syrian population. As a result of the proxy war, national interests and the on-going contestation over the use of force for humanitarian protection, the UN Security Council also failed to effectively protect the Syrian population. Diplomacy and humanitarian means undertaken by the UN Security Council, the UN, and powerful states also proved to be ineffective at helping protect Syrians from mass atrocities. As the international community collectively failed to effectively help protect Syrians notwithstanding R2P's requirements, more than a quarter of Syria's pre-war population fled its borders by December 2014. Due to critical funding shortfalls of humanitarian aid and failing capacity in neighbouring states, Syrian refugees then migrated en masse towards Europe.

The first section of the chapter focuses on the factual background to the Syrian civil war and the resulting humanitarian and refugee crises from the start of the conflict in 2011 to the fall of Aleppo in 2016. Then, the R2P framework is applied to the Syria context to demonstrate how the Syrian government manifestly failed to protect its population, which triggered the international community's responsibilities. Subsequently, the international community's responses are examined, mainly through the actions of the UN Security Council, international powers and regional states, other UN organisations and particularly, the European Union (EU). The UK's national or 'local'⁶ responses to Syria and Syrian refugees, which is the focus of Chapter 5, need to be understood first within the broader international context as the UK is a permanent member of the UN Security Council (P5), an international power usually aligned with the US and France (P3) and a member of the EU⁷. This broader context informs the UK's national responses to Syrians, which will then be empirically analysed in Chapter 5 in order to understand to what extent the UK's resettlement policies have been motivated by its commitment and understanding of R2P.

4.2 Factual Background: Conflict in Syria from 2011 to the Fall of Aleppo in December 2016

The arrest and detention of 15 boys aged 10-15 who painted, 'the people want to topple the regime,' on a school wall in Daraa, sparked the Syrian revolution, which led to a brutal civil

⁶ The UK's 'national' responses are the same as its 'local' responses. The use of 'local' refers to Acharya's localisation theory whereby states adopt and modify international norms to make them fit with the local context.

⁷ At the time of the research, the UK decided to leave the EU under Brexit, which is ongoing. However, the UK remains a country of 'Europe'.

war.⁸ The torture of some of the boys while in detention prompted pro-democracy protests in Daraa in March 2011.⁹ Government security forces opened fire on protestors, which resulted in more pro-democracy demonstrations and nationwide calls for President Assad's resignation.¹⁰ The violent response of the government in attempting to crush dissent inspired further protests, and by July 2011 hundreds of thousands were protesting in the streets. Violence quickly escalated and Syria descended into civil war. By December 2016, around 250,000 people had been killed as a result of the conflict¹¹ and half the Syrian population was displaced as a result of the on-going armed conflict.¹²

Initially, the opposition armed itself for defence and then progressed to expelling government forces from their local areas.¹³ The civil war devolved into sectarian violence, with the country's Sunni majority forming the Syrian National Council (SNC) in October 2011, which opposed the President's Shia Alawite sect.¹⁴ While there have been several groups opposing the

⁸ Jess Gifkins, 'The UN Security Council Divided: Syria in Crisis', *Global Responsibility to Protect* 4/3: 377-393, 377-78 (2012); 'Four Years Since Teenage Graffiti Sparks Syrian Civil War'. *World Watch Monitor*, 15 March 2015, <https://www.worldwatchmonitor.org/2015/03/3765948/>, accessed 23 October 2017; Project on Middle East Political Science (POMEPS), 'The Political Science of Syria's War', Briefings 22, 18 December 2013, <http://www.pensamientocritico.org/promid0114.pdf>, accessed 23 October 2017; For a good overview, see Carla E. Humud et al, *Armed Conflict in Syria: Overview and U.S. Response*; Ajami Fouad, *The Syrian Rebellion*, Hoover Institution Press Publication, No. 624 (Stanford: Hoover Institution Press, 2012).

⁹ Rania Abouzeid, 'Syria's Revolt: How Graffiti Stirred an Uprising', *Time*, 22 March 2011, <http://content.time.com/time/world/article/0,8599,2060788,00.html>, accessed 23 October 2017; Shiv Malik, Ian Black and Nidaa Hassan, 'Teenage Victim Becomes a Symbol for Syria's Revolution', *The Guardian*, 31 May 2011, <https://www.theguardian.com/world/2011/may/31/syria-unrest-teenage-victim-hamza>, accessed 23 October 2017; See, Carla E. Humud et al, *Armed Conflict in Syria: Overview and U.S. Response*.

¹⁰ Since independence from France in 1946, Syria has experienced political instability driven by the conflicting interests of its diverse ethnic and religious population, which includes Kurds, Armenians, Assyrians, Christians, Druze, Alawite Shia and Arab Sunnis, with the Sunnis comprising a majority of the Muslim population. The government is part of the Alawite sect, which constitutes a minority in Syria. The al-Assad family has held political power since 1970. President Bashar al-Assad inherited power from his father in 2000. For more information, see Rashad al-Kattan, 'A Government of Corruption, Nepotism, and Impunity', *Syria Notes*, All-Party Parliamentary Group (APPG) Friends of Syria, 9 November 2015, p.4-5, <http://www.appgfriendsofsyria.org/p/syria-notes.html>, accessed 23 October 2017; see also, Max Fisher, 'The One Map that Shows Why Syria is so Complicated', *The Washington Post*, 27 August 2013, https://www.washingtonpost.com/news/worldviews/wp/2013/08/27/the-one-map-that-shows-why-syria-is-so-complicated/?utm_term=.ca1de2f60fea, accessed 23 October 2017.

¹¹ DFID, Syria Crisis Response Summary, 20 December 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/579340/DFID-Syria-Crisis-Response-Summary2016-12-20.pdf, accessed 23 October 2017. The most recent figures for January 2017 are 500,000 dead and 700,000 living under siege following the fall of Aleppo in December 2016. Security Council, Report, 'Syria', http://www.securitycouncilreport.org/monthly-forecast/2017-01/syria_39.php?print=true, accessed 27 October 2017.

¹² Bethan McKernan, 'Syrian Government "Ready to Negotiate on Everything", Assad Says', *The Independent*, 9 January 2017, <https://www.independent.co.uk/news/world/middle-east/syria-government-ready-to-negotiate-everything-bashar-al-assad-step-down-rebels-ceasefire-a7516726.html>, accessed 23 October 2017.

¹³ Some accounts argue the protests were never peaceful but involved arms from the start. For a good overview, see Carla E. Humud et al, *Armed Conflict in Syria: Overview and U.S. Response*.

¹⁴ POMEPS, 'The Political Science of Syria's War'.

Assad regime, the SNC has been the most significant as it represents the Syrian opposition at the international level. It supports regime change and calls for a transitional government before democratic elections.¹⁵ The Free Syrian Army (FSA) has been the opposition's predominant armed group and is comprised of defectors from the Syrian army and civilians opposing the regime.

The rise of the jihadist group Daesh¹⁶ drew in regional and world powers further complicating the conflict.¹⁷ As many moderate forces joined the extremists due to fear or financial incentives, Assad consistently argued that he was fighting terrorists who had infiltrated the FSA and who received political cover from Western countries along with their allies Saudi Arabia and Turkey.¹⁸ As a result, Assad refused to politically negotiate with the opposition because he argued they were not Syrians interested in a political solution. Instead, he argued they were foreign proxies who did not have a legitimate role in Syria's Parliament.¹⁹ He remained steadfast in his January 2012 promise 'to crush terrorism with an iron fist'²⁰. Assad argued that the political impasse would continue while the fight against terrorism in Syria persisted, but he accepted the international community's contribution to dialogue between Syrians.²¹ By the end of 2012, with over 60,000 dead, Assad rejected a proposed peace initiative by UN Special Envoy Lakhdar Brahimi because he argued that the rebels were 'enemies of God and puppets of the West'²². Assad has framed the conflict as a war on terrorists, which is a vision shared by Russia and some of the BRICS whereas western states have called this an attempt to de-

¹⁵ Gifkins, 'The UN Security Council Divided', p. 380.

¹⁶ Also referred to as 'ISIS', 'ISIL', or 'IS'. This thesis uses the term Daesh because it refers to the members comprising Islamic State in Iraq and Syria. Even though it is the same thing as ISIS (etc), it was the preferred term at the time of writing this thesis since the other names were seen as giving the terrorist group the legitimacy of a state.

¹⁷ Assad was blamed for contributing to the militarisation of the conflict and the spread of extremism when he released prisoners in 2011 that were known to be extremists who then joined Daesh or al-Nusra. Indeed, he was strategic in not attacking particular enclaves of militant extremists in order to allow them to continue fighting his more moderate opposition. Yasmine Nahlawi, 'Why Civilian Protection is a Must in Syria', *Syria Notes*, APPG Friends of Syria, 8 March 2016, p. 14-15, <http://www.appgfriendsofsyria.org/p/syria-notes.html>, accessed 23 October 2017.

¹⁸ Bashar al-Assad Interview: The Fight Against Terrorists in Syria, Interview with Agence France Presse, Global Research Centre for Research on Globalization, 21 January 2014, globalresearch.ca/globalresearch.org, accessed 5 January 2017; see also, Gifkins, 'The UN Security Council Divided'.

¹⁹ Bashar al-Assad Interview: The Fight Against Terrorists in Syria.

²⁰ 'Syrian President Bashar al-Assad: Facing Down Rebellion', BBC News, 21 October 2015, <https://www.bbc.co.uk/news/10338256>, accessed 22 October 2015.

²¹ However, he excluded the entire opposition from his definition of 'Syrians' since he saw them as one extremist group made up of different factions. Bashar al-Assad Interview: The Fight Against Terrorists in Syria; Gifkins, 'The UN Security Council Divided', p. 380.

²² 'Syrian President Bashar al-Assad: Facing Down Rebellion'; Gifkins, 'The UN Security Council Divided', p. 380.

legitimise political protestors.²³ This division in terms of framing what is happening in Syria is reflected in the international community's inability to find consensus on responding to Syria.²⁴

A critical turning point was reached in August 2013 when hundreds of people were killed after rockets filled with the nerve agent sarin were fired at several suburbs in Damascus. While Western powers blamed Syria's government, the Syrian government accused rebel forces. Former US President Obama stated that a red line had been crossed and the threat of US military intervention loomed. However, instead of following through on that threat, the US supported a Russian diplomatic initiative that brokered a deal with the Syrian government.²⁵ President Assad signed on to the Chemical Weapons Treaty and agreed to allow international inspectors to remove and destroy Syria's chemical weapons arsenal. While the operation was deemed complete in 2014, the Organisation for the Prohibition of Chemical Weapons (OPCW) continued to document the use of chemical weapons in the conflict.²⁶

In late 2015, the Syrian Army allowed rebels to evacuate the remaining area of Homs, returning Syria's third-largest city to government control after four years. Syrian government forces reclaimed Palmyra from Daesh in March 2016 with Russian air assistance. Finally, in December 2016, the humanitarian suffering in Syria reached a high point which refocused the international community's attention on finding consensus on an effective response to the mass atrocities. Aleppo's violent collapse at the end of 2016 also demonstrated that the fall of the Assad regime was far from inevitable. Government troops, backed by Russian air power and Iranian-sponsored militias, recaptured Aleppo, the country's largest city, depriving the rebels of their last major urban stronghold.²⁷ Civilians in Aleppo faced months of battering from high explosives and incendiary weapons by Syrian and Russian forces during which the opposition failed to break the siege and peace talks proved futile. In desperation, UN Special Envoy,

²³ Giffkins, 'The UN Security Council Divided', p. 380.

²⁴ *Ibid*, p. 381.

²⁵ Kyle Orton, 'The Orton Report: Analysis: "President Obama Defends his Syria Policy to the Last"', The Henry Jackson Society, 17 December 2016, <https://kyleorton1991.wordpress.com/2016/12/17/president-obama-defends-his-syria-policy-to-the-last/>, accessed 23 October 2017; see also, Muhammad Idrees Ahmad, 'Barack Obama's Presidency Will Be Defined by his Failure to Face Down Assad', *The Guardian*, 17 December 2016, <https://www.theguardian.com/world/2016/dec/17/obama-presidency-defined-failure-face-down-assad-syria>, accessed 23 October 2017.

²⁶ Investigators found chlorine was used 'systematically and repeatedly' in deadly attacks on rebel-held areas between April and July 2014. Importantly, Daesh has also been accused of using homemade chemical weapons, such as sulphur mustard. The OPCW said the blister agent was used in an attack on the northern town of Marea in August 2015 that killed a baby. The continued use of chemical weapons by the regime would culminate in the P3's airstrikes on a Syrian chemical weapons storage facility in 2018 without UN Security Council authorisation.

²⁷ Carla E. Humud et al, *Armed Conflict in Syria: Overview and U.S. Response*.

Staffan de Mistura made a compassionate offer to be a ‘solitary human shield’ to the Al Qaeda-denomination, Fateh al-Sham²⁸ if the jihadists would evacuate to stop the bombing²⁹. The militants refused the offer and the humanitarian catastrophe in eastern Aleppo worsened as the Syrian government targeted hospitals, cut off power and drained the water while preventing any humanitarian aid from reaching civilians. Aleppo fell to government control after five months of bombing which trapped 250,000 civilians in the rebel-held eastern Aleppo. Civilians’ deep mistrust of the authoritarian regime meant they were reluctant to participate in government evacuation initiatives as they did not believe they would be welcomed into government-held territories without retribution in the immediate or the long term.³⁰ The battle for Aleppo ended in mid-December 2016 as rebels agreed to withdraw their forces under a ceasefire brokered by Turkey and Russia.³¹ Rebels and civilians were given 24 hours to leave the city. Civilians left Aleppo surrounded by the dead still littering the streets amidst reports of mass executions and torture by the regime.³²

While the regime was busy fighting in eastern Aleppo during December 2016, Daesh retook Palmyra which prompted fears that more territory would be recaptured by the extremists. Thus, after the fall of Aleppo, the international community’s attention on the Syrian humanitarian crisis refocused again from the civil war to concern over Daesh militants making territorial gains in Syria and Iraq.

²⁸ Fateh al-Sham is formerly known as Jabhat al-Nusra (al-Nusra Front) until ending its formal affiliation to Al-Qaeda in July 2015. According to the UN, the group had around 900 fighters amongst a total of 8,000 rebels in Eastern Aleppo. See, Aron Lund, Op-Ed, ‘The Slow, Violent Fall of Eastern Aleppo’, Carnegie Endowment for International Peace, 7 October 2016, <https://tcf.org/content/commentary/slow-violent-fall-eastern-aleppo/>, accessed 23 October 2017.

²⁹ ‘If you did decide to leave in dignity, and with your weapons, to Idlib or anywhere you wanted to go, I personally am ready physically to accompany you’. See, Ban Ki-moon, ‘Note to Correspondents: Transcript of the press conference by UN Special Envoy for Syria, Mr. Staffan de Mistura and UN Senior Adviser, Mr. Jan Egeland’, United Nations Secretary-General, Statement, 6 October 2016, <https://www.un.org/sg/en/content/sg/note-correspondents/2016-10-06/note-correspondents-transcript-press-conference-un-special>, accessed 23 October 2017; Lund, ‘The Slow, Violent Fall of Eastern Aleppo’.

³⁰ Lund, ‘The Slow, Violent Fall of Eastern Aleppo’.

³¹ Laila Bassam, Angus McDowall and Stephanie Nebehay, ‘Battle of Aleppo Ends after Years of Bloodshed with Rebel Withdrawal’, *Reuters*, 13 December 2016, <http://www.reuters.com/article/us-mideast-crisis-syria-idUSKBN1420H5>, accessed 23 October 2017.

³² ‘Shelling Rains Down In Aleppo As Evacuation Stalls’, *Reuters* for *The Huffington Post*, 14 December 2016, https://www.huffingtonpost.com/entry/shelling-rains-down-aleppo_us_585166b4e4b092f08686759a, accessed 25 October 2017.

4.2.1 The Syrian Refugee Crisis, 2014 - 2016

Refugees fled Syria early in the conflict.³³ Between 2011 and 2014, Syrians fled to the neighbouring countries of Lebanon, Turkey and Jordan as the Syrian regime lay siege to several towns, including Daraa, where the revolution started. By the summer of 2013, the former High Commissioner of UNHCR, António Guterres, confirmed that 6,000 people were fleeing the conflict in Syria daily, which was the largest exodus since the Rwandan genocide.³⁴ The year 2014 was a critical turning point in the refugee crisis as close to 7.6 million Syrians were internally displaced and 3.7 million Syrians had fled the country.³⁵ Furthermore, Daesh declared a caliphate in Iraq and Syria, and 1.2 million more fled their homes in Iraq further destabilising the region.³⁶ As Daesh successfully took over the oil and gas fields in Syria and the US commenced air strikes against Daesh, even more Syrians fled their homes.³⁷ Then, the siege of the border city of Kobani and stories of civilian executions led UNHCR to put a contingency plan in place for the expected 400,000 Kurds that would flee over the border to Suruc in Turkey, which would double in population.³⁸ By 2016, almost 5 million mostly women and children, were concentrated in Lebanon, Turkey, Jordan, Egypt, North Africa, and Iraq, states or regions proximate to Syria.³⁹ Neighbouring countries struggled to cope with one of the largest refugee exoduses in recent history as they physically hosted refugees, invested in

³³ Franck Düvell, 'Turkey, the Syrian Refugee Crisis and the Changing Dynamics of Transit Migration', in *European Institute of the Mediterranean: Mediterranean Yearbook 2013* (IEMed: Barcelona, 2013), p.278-281, <http://www.iemed.org/observatori/arees-danalisi/arxiu-adjunts/anuari/iemed-2013/Duvell%20Turkey%20Syrian%20Refugees%20EN.pdf>, accessed 23 October 2017.

³⁴ UNHCR, António Guterres, 'UNHCR Chief Urges States to Maintain Open Access for Fleeing Syrians', Press Release, 16 July 2013, <http://www.unhcr.org/uk/news/latest/2013/7/51e55cf96/unhcr-chief-urges-states-maintain-open-access-fleeing-syrians.html>, accessed 25 October 2017.

³⁵ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Global Humanitarian Overview: 2015*, 2014, Geneva, <https://docs.unocha.org/sites/dms/Documents/GHO-FINAL-web.pdf>, accessed 25 October 2017; UNHCR, 'Syrian Regional Refugee Response Inter-agency Information Sharing Portal: Regional Overview Datasheet', 11 December 2014, Geneva, <https://data2.unhcr.org/en/situations/syria> (updated continuously), accessed 30 January 2015.

³⁶ Occurred in June 2014. Carla E. Humud et al, *Armed Conflict in Syria: Overview and U.S. Response*.

³⁷ Daesh's particular targeting of Kurds on the border of Syria and Turkey forced 138,000 Syrian Kurds to flee and enter Turkey in September 2014. Isabel Hunter, 'Islamic State in Syria: 60,000 Kurds Flee Terror in New Exodus', *The Independent*, 20 September 2014, <http://www.independent.co.uk/news/world/middle-east/isis-in-syria-60000-kurds-flee-terror-in-new-exodus-9746390.html>, accessed 25 October 2017.

³⁸ Stephanie Nebehay, 'UNHCR preparing for 400,000 exodus from Syrian town into Turkey', 23 September 2014, <http://www.reuters.com/article/us-syria-crisis-turkey-kurds-unhcr/unhcr-preparing-for-400000-exodus-from-syrian-town-into-turkey-idUSKCN0HI0U020140923>, accessed 25 October 2017.

³⁹ UNHCR, Syria Emergency, <http://www.unhcr.org/uk/syria-emergency.html>, accessed 21 June 2017; UNHCR, Syria Regional Refugee Response, 19 June 2017, <http://data.unhcr.org/syrianrefugees/regional.php>, accessed 21 June 2017.

social services and expended large financial resources to protect Syrians fleeing mass atrocities.⁴⁰

4.2.1.1 Regional Hosts

Early in the crisis, Turkey welcomed Syrian refugees by creating a temporary protection regime and by the end of 2014, it had built a total of 21 refugee camps throughout ten of its southern provinces.⁴¹ At this point, Turkey had invested \$4.5 billion in financial assistance to the almost 1.6 million Syrian refugees it was hosting.⁴² Midway through 2014, Jordan had spent more than \$1.2 billion on hosting almost 623,000 Syrian arrivals.⁴³ Za'atari camp became Jordan's fourth largest city.⁴⁴ Midway through 2014, Lebanon had spent more than \$1.6 billion on hosting more than one million Syrian refugees, which comprised 25% of the population despite the country's on-going political turmoil.⁴⁵ Iraq hosted over 228,000 Syrian refugees despite the two million Iraqis that were internally displaced in 2014 as a result of its own on-going armed conflict.⁴⁶ By November 2014, Egypt hosted 140,400 Syrian refugees.⁴⁷ By the end of 2016, Turkey hosted approximately 2.9 million Syrian refugees, which was more than any other state.⁴⁸

⁴⁰ Nicole Ostrand, 'The Syrian Refugee Crisis: A Comparison of Responses by Germany, Sweden, the United Kingdom, and the United States', *Journal on Migration and Human Security* 3/3: 255-279 (2015).

⁴¹ *Regional Refugee and Resilience Plan, 2015-2016, Turkey*, p.14, <http://www.3rpsyriacrisis.org/wp-content/uploads/2015/01/3RP-Report-Turkey-A4-low-res.pdf>, accessed 23 October 2017.

⁴² António Guterres, Statement at launch of the Regional Refugee and Resilience Plan (3RP) for Syrian Refugees, 18 December 2014, Berlin, <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=54b3c8f99&query=syria>, accessed 25 October 2017; Amnesty International, 'Turkey: Struggling to Survive: Refugees from Syria in Turkey', Report, 20 November 2014, <https://www.amnesty.org/en/documents/EUR44/017/2014/en/>, accessed 25 October 2017; UNHCR, 'Syrian Regional Refugee Response Inter-agency Information Sharing Portal', 11 December 2014.

⁴³ Ostrand, 'The Syrian Refugee Crisis', p. 262; United Nations Development Programme (UNDP), *A Resilience-Base Development Response to the Syria Crisis* (New York: UNDP, 2013), http://www.arabstates.undp.org/content/dam/rbas/doc/SyriaResponse/Syria_Resilience_Brochure_final_Eng_v3_Jan_14.pdf, accessed 23 October 2017; UNHCR, *Living in the Shadows: Jordan Home Visits Report 2014*, <http://www.unhcr.org/uk/protection/operations/54b685079/living-shadows-jordan-home-visits-report-2014.html>, accessed 23 October 2017.

⁴⁴ Oxfam International, 'Life in Za'atari Refugee Camp, Jordan's Fourth Biggest City', <https://www.oxfam.org/en/crisis-syria/life-zaatari-refugee-camp-jordans-fourth-biggest-city>, accessed 23 October 2017.

⁴⁵ Ostrand, 'The Syrian Refugee Crisis', p. 262.

⁴⁶ Ostrand, 'The Syrian Refugee Crisis', p. 256, p. 263.

⁴⁷ USAID (US Agency for International Development), 'Syria: Complex Emergency, Fact Sheet No. 2', 2014, Washington DC: USAID, https://usaid.gov/sites/default/files/documents/1866/syria_ce_fs02_11-24-2014.pdf, accessed 25 October 2017.

⁴⁸ By the end of 2016: Lebanon hosted approximately one million Syrian refugees, Iraq hosted approximately 233,000 (with an already internally displaced population of 3.1 million), Egypt hosted approximately 116,000 and Jordan hosted approximately 650,000 (10% of its population). UNHCR, Inter-Agency, *3RP, Regional Refugee & Resilience Plan 2016-2017: In Response to the Syria Crisis*, 2016 Annual Report, <http://www.3rpsyriacrisis.org/wp-content/uploads/2017/04/3RP-2016-Annual-Report.pdf>, accessed 25 October 2017; Amnesty International 'Syria's Refugee Crisis in Numbers', 3

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The dire conditions in host countries became readily apparent in 2014. Many refugees were living below the abject poverty line in neighbouring states as increased housing demand inflated prices and essential services like electricity, water and sanitation were unable to keep pace with the needs of the rapidly increasing population.⁴⁹ National health services were severely overstretched in the face of persistent disease resulting from the poor living conditions and limited access to water and sanitation.⁵⁰ The humanitarian situation worsened for refugees trapped in the region as polio outbreaks in Syria and Lebanon prompted the World Health Organisation (WHO) and UNICEF to establish a vaccination initiative. By April 2014, refugees were dying from malnutrition in Lebanon where one in five of the population was a refugee. As a result, some refugees in Lebanon and Jordan facing starvation voluntarily returned to Syria where they faced ongoing mass atrocities.⁵¹ Moreover, education services and infrastructure in Lebanon could not operate at the required capacity,⁵² so UNICEF launched the Children of Syria campaign to highlight the 2 million Syrian refugee children who were referred to as a 'lost generation'⁵³. A 2014 report by Amnesty International described how Syrians were struggling to survive in Turkey, a state so completely overwhelmed that it was failing to uphold the most basic of human rights.⁵⁴ The UN High Commissioner for Refugees, Filippo Grandi reported

February 2016, <https://www.amnesty.org/en/latest/news/2016/02/syrias-refugee-crisis-in-numbers/>, accessed 17 October 2017; see also, UNHCR, 'Poorer Countries Host Most of the Forcibly Displaced, Report Shows', *News*, 27 February 2017, <http://www.unhcr.org/news/latest/2017/2/58b001ab4/poorer-countries-host-forcibly-displaced-report.html>, accessed 20 October 2017.

⁴⁹ For a good overview of how proximate states are near collapse as a result of the numbers of Syrian refugees, see Ostrand, 'The Syrian Refugee Crisis'; see also, UNHCR, 'Greater Support in Countries of First Asylum Needed to Stem Refugee Outflows', 26 August 2015, <https://www.unhcr.org/uk/news/latest/2015/8/55ddd2c86/greater-support-countries-first-asylum-needed-stem-refugee-outflows.html>, accessed 20 October 2017.

⁵⁰ See, Ostrand, 'The Syrian Refugee Crisis'. See also, UNHCR, 'UN and Partners Launch Major Aid Plans for Syria and Region', *Press Release*, 18 December 2014, <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=54929c676&query=syria>, accessed 25 October 2017.

⁵¹ See, International Rescue Committee, 'Syrian Refugees Warn They Have No Choice but To Return to Syria After Aid Cuts to Food, Health', 3 December 2014, <http://www.rescue.org/press-releases/syrian-refugees-warn-they-have-no-choice-return-syria-after-aid-cuts-food-health-2262>, accessed 28 April 2016; MSF, 'One Year On From the EU-Turkey Deal: Challenging the EU's Alternative Facts', March 2017, <http://www.statewatch.org/news/2017/mar/eu-refugee-crisis-turkey-deal-msf-report.pdf>, accessed 21 June 2017.

⁵² Government of Lebanon and OCHA, *Lebanon Crisis Response Plan 2015-2016*, 15 December 2014, https://docs.unocha.org/sites/dms/CAP/2015-2016_Lebanon_CRP_EN.pdf, accessed 25 October 2017.

⁵³ UNICEF, *Syria's Children: A Lost Generation? Crisis report March 2011-March 2013*, https://www.unicef.org/files/Syria_2yr_Report.pdf, accessed 25 October 2017.

⁵⁴ Amnesty International, 'Turkey: Struggling to Survive', Report.

that the world faced a crisis of cooperation and solidarity as wealthier states remote from the crisis failed to provide proportionate refuge to those fleeing mass atrocities.⁵⁵

As proximate states filled to capacity and diplomacy and humanitarian aid failed to effectively protect Syrians inside Syria or relieve the effects on host countries, Turkey, Jordan, Lebanon and Egypt began imposing visa restrictions on Syrian refugees to curb entry as they faced breaking point.⁵⁶ While forced displacement increased due to the conflict in Syria intensifying, access to asylum by air and land was reduced by western European states.⁵⁷ Additionally, Germany's open-door policy in 2015 and the impending border closures in Serbia and Hungary further pushed migration across the sea. As a result, Syrians started to migrate across the Mediterranean towards Europe en masse.⁵⁸

Refugee arrivals via the Mediterranean increased dramatically beginning in 2014.⁵⁹ Statistics show that 84% of the arrivals in Europe came from the top 10 refugee producing countries, indicating that most were fleeing conflict and persecution.⁶⁰ About half of those who crossed in 2015 were Syrian.⁶¹ By the end of 2015, 4000 people had drowned in the Mediterranean seeking refuge in Europe. The International Organization for Migration (IOM) recorded that arrivals to Europe in 2015 were five times higher than in the previous year (219,000 in 2014) with more deaths, making 2015 the deadliest year for refugees travelling by sea.⁶² More than 100,000 refugees arrived in Europe in the first two months of 2016, a sharp increase from 2015. By October 2016, 10,000 had been rescued in the sea on the way to Italy, but it remained the

⁵⁵ UNHCR, 'Poorer Countries Host Most of the Forcibly Displaced, Report Shows'. Wealthy states, such as Japan, Kuwait, Qatar, Russia, Saudi Arabia and the United Arab Emirates along with China and India did not offer resettlement to Syrians. Ostrand, 'The Syrian Refugee Crisis'.

⁵⁶ With the political changes in Egypt in 2013, Syrian refugees faced visa requirements which has limited their protection. Ostrand, 'The Syrian Refugee Crisis'; see also, Kemal Kirisci, 'Why 100,000s of Syrian Refugees are Fleeing to Europe', Brookings, 3 September 2017, <https://www.brookings.edu>, accessed 20 October 2017.

⁵⁷ Edward Newman, 'The Limits of Liberal Humanitarianism in Europe: The "Responsibility to Protect" and Forced Migration', *European Review of International Studies* 4/2-3: 59-77 (2018).

⁵⁸ Francois Heisbourg, 'The Strategic Implications of the Syrian Refugee Crisis', *Survival: Global Politics and Strategy* 57/6: 7-20 (2015).

⁵⁹ UNHCR, Global Trends: Forced Displacement in 2015, <http://www.unhcr.org/uk/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html>, accessed 20 October 2017; UNHCR, Global Trends: Forced Displacement in 2016, <http://www.unhcr.org/uk/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html>, accessed 20 October 2017.

⁶⁰ European University Institute, Robert Schuman Centre for Advanced Studies and Migration Policy Centre, 'Syrian Refugees: A Snapshot of the Crisis in the Middle East and Europe', <http://syrianrefugees.eu/timeline/>, accessed 4 July 2018.

⁶¹ *Ibid.*

⁶² International Organization for Migration, 'IOM Counts 3,771 Migrant Fatalities in Mediterranean in 2015', <https://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015>, accessed 20 October 2017; UNHCR, Global Trends: Forced Displacement in 2015; UNHCR, Global Trends: Forced Displacement in 2016.

deadliest route for those escaping war and persecution. Those refugees that made it to European territories, applied for asylum. One million refugees applied for asylum in Europe in 2015 and another million applied again in 2016 after crossing the Mediterranean.⁶³

4.3 Syria as an R2P Case

Syria is an R2P case because the Syrian population suffered mass atrocities, specifically crimes against humanity and war crimes. The UN Human Rights Council (HRC) established the Independent International Commission of Inquiry on the Syrian Arab Republic in August 2011, in order to investigate alleged violations of international human rights law between March 2011 and April 2013 in Syria.⁶⁴ The Commission was also tasked with establishing the facts leading to such violations, details of the crimes perpetrated and identification (where possible) of those responsible in order to hold the perpetrators accountable for crimes against humanity in future judicial proceedings.⁶⁵ However, as the Syrian government prohibited investigative access inside Syria, the Commission had to conduct in-person interviews in neighbouring countries and use Skype and telephone calls for interviews in Syria. The Commission's investigation relied primarily on first-hand accounts to corroborate incidents via interviews with witnesses and victims along with the review of relevant photographs, video recordings, satellite imagery, forensic and medical sources, including governments, non-governmental organisations (NGOs), academic analyses and UN reports.⁶⁶ After producing several reports, the Commission concluded that the regime, the Shabiha (groups of armed militia loyal to Assad's government) and anti-government groups all committed crimes against humanity and war crimes, including

⁶³ 'Moving Europe Beyond Crisis', Migration Policy Institute, http://www.migrationpolicy.org/programs/moving-europe-beyond-crisis?gclid=EAIaIQobChMImd_FiLnR1AIVR7XtCh2gqg9JEAAYAiAAEgLAu_D_BwE, accessed 21 June 2017.

⁶⁴ UN Human Rights Council (HRC), *Situation of Human Rights in the Syrian Arab Republic*, Res. S-17/1, 22 August 2011. Syria withdrew its bid from the HRC in May 2011. The Commission presented its first two reports to the HRC, one in 2011 and a subsequent report in 2012, and its mandate was extended repeatedly.

⁶⁵ UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/S-17/2/Add., 23 November 2011. The Commission has produced over 20 reports, in addition to numerous periodic updates, exposing human rights violations committed throughout the country based on interviews with over 5,500 witnesses and victims. See, Independent International Commission of Inquiry on the Syrian Arab Republic, United Nations Human Rights, Office of the High Commissioner, <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>, accessed 23 October 2017.

⁶⁶ The standard for making a finding is that 'incidents be corroborated to a level where the commission had reasonable grounds to believe that the incidents occurred as described'. Independent International Commission of Inquiry on the Syrian Arab Republic, United Nations Human Rights, Office of the High Commissioner.

murder, torture, rape and enforced disappearances.⁶⁷ The parties were also accused of prolonging civilian suffering such as blocking access to food, water and health services through sieges as methods of war.⁶⁸ A UN inquiry concluded by default that Syria (and Russia) were the likely bombers of a UN and Syrian Arab Red Crescent humanitarian aid convoy on 19 September 2016.⁶⁹ Additionally, reports state that civilian targets, including hospitals and schools, were repeatedly bombed.⁷⁰

Furthermore, the Syrian government manifestly failed to protect its population, especially as it was the largest perpetrator of mass atrocities.⁷¹ The widespread and systematic nature of deaths in State-controlled detention facilities amounted to crimes against humanity and war crimes.⁷² For example, Amnesty International reported that 13,000, mostly civilians, who opposed the government were secretly hanged after repeated torture and systematic deprivation of food, water, medicine and medical care at Saydnaya prison near Damascus.⁷³ Through its perpetration of mass atrocities and its failure to conduct transparent investigations, the Government violated the right to life of those who died in its custody.⁷⁴

⁶⁷ UN HRC, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/S-17/2/Add., 23 November 2011, (p. 16, 20-21) (paras. 87, 109-111).

⁶⁸ *Ibid.*

⁶⁹ With very limited access to the site, investigators were able to conclude that the US was unlikely to have committed the possible war crimes and that rebel forces lacked the capability to do so. The findings remain internal. For a summary, see ‘Summary of UN Headquarters “Board of Inquiry” Report: UN-Syrian Arab Red Crescent Aid Convoy Attacked from the Air’, DPA Politically Speaking, 21 December 2016, <https://dpa-ps.atavist.com/summary-of-un-headquarters-board-of-inquiry-report>, accessed 13 January 2017. However, the panel admitted it had no evidence to conclude that the event was a deliberate attack on a humanitarian target. Somini Sengupta, ‘UN Inquiry Alludes to Russia and Syria as Bombers of Aid Convoy’, *New York Times*, 21 December 2016, <http://nyti.ms/2ihabOb>, accessed 13 January 2017.

⁷⁰ Human Rights Watch, *World Report 2017: Events of 2016*, p.572, https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf, accessed 25 October 2017.

⁷¹ UN HRC, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/S-17/2/Add.1, 23 November 2011; See also, Adrian Gallagher, ‘Syria and the Indicators of a ‘Manifest Failing’, *International Journal of Human Rights* 18/1: 1-19 (2014).

⁷² UN Human Rights Council, *Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic*, Report, A/HRC/31/CRP.1, 3 February 2016, www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx, accessed 10 June 2017; UN HRC, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/33/55, 11 August 2016, (p. 12). See, for definitions of mass atrocities, UNGA, Prevention and Punishment of the Crime of Genocide, A/RES/260, 9 December 1948; Rome Statute, UNGA, Rome Statute of the International Criminal Court (last amended 2010), ISBN No. 92-9227-227-6, 17 July 1998.

⁷³ Amnesty International, *Human Slaughterhouse: Mass Hangings and Extermination at Saydnaya Prison, Syria*, 2016 Report, https://www.amnestyusa.org/files/human_slaughterhouse.pdf, accessed 17 June 2017; Human Rights Watch, ‘Torture Archipelago: Arbitrary Arrests, Torture and Enforced Disappearances in Syria’s Underground Prisons Since March 2011’, July 2012, http://www.hrw.org/sites/default/files/reports/syria0712webwcover_0.pdf, accessed 26 February 2018.

⁷⁴ Less than a month after the fall of Aleppo, Amnesty International would report after a year-long investigation that the secret mass hangings of 13,000 dissidents who had been tortured, starved and denied medical care beforehand were condoned by the highest echelons of the Syrian government.

As a result of Syria manifestly failing to uphold its Pillar I responsibilities under R2P, the responsibility to protect Syrians shifted to the international community. Under Pillar III, the international community has a responsibility to help protect the Syrian population through diplomatic, humanitarian or other peaceful means or with military intervention as a last resort. Syria has been a difficult R2P case because despite the clear evidence of mass atrocities against the Syrian population and the state's manifest failure to protect its population (as the largest perpetrator of mass atrocities), the national interests and political alliances of the international and regional states involved impacted the effectiveness of the diplomatic and humanitarian means used to protect the Syrian population. Furthermore, on-going contestation over the use of force as a humanitarian response under Pillar III of R2P prevented the UN Security Council from discharging its R2P via military intervention or agreeing on a path to political transition. The polarising effects of the Libya intervention in 2011 served to reinforce some member states' existing fears of abuse by powerful states under the rhetoric of R2P.⁷⁵ After Libya, states such as Russia, China, Brazil, India and South Africa (BRICS) reaffirmed that regime change was an unacceptable intrusion on sovereignty.⁷⁶ This contestation of the use of force for regime change is demonstrated by the UN Security Council resolutions on Syria, which consistently referred to R2P's Pillars I and II, but avoided explicit mention of the international community's responsibility to protect the Syrian population under Pillar III.⁷⁷

As the UN Security Council failed to reach consensus on Syria, states like the UK tried and failed to rally the domestic support necessary to engage in military humanitarian intervention to overthrow the Syrian regime on its own or multi-laterally outside the UN Security Council,

Amnesty International, *Human Slaughterhouse: Mass Hangings and Extermination at Saydnaya Prison, Syria*, 2016 Report.

⁷⁵ See UN Permanent Mission of India to the UN, 'Statement by India at the 2013 Informal Interactive Dialogue on the Responsibility to Protect', 11 September 2013, http://www.globalr2p.org/media/files/india_en.pdf, accessed 13 October 2015. 'It was in the P3's interests as the collective hegemon to maintain the BRIC commitment to R2P and it could have worked harder to secure that.' For a thorough discussion of how the P3 pursued regime change in Libya without substantive discussion and debate with other UN Security Council members serving to undermine trust, see, Jason Ralph and Adrian Gallagher, 'Legitimacy Faultlines in International Society: The Responsibility to Protect and Prosecute After Libya', *Review of International Studies* 41/3: 553-573 (2015).

⁷⁶ Stuart Gottlieb, 'Syria and the Demise of the Responsibility to Protect', *The National Interest*, 5 November 2013, <http://nationalinterest.org/commentary/syria-the-demise-the-responsibility-protect-9360>, accessed 14 December 2014.

⁷⁷ Global Centre for the Responsibility to Protect, 'UN Security Council Resolutions and Presidential Statements Referencing R2P', 22 January 2018, <http://www.globalr2p.org/resources/335>, accessed 4 July 2018; see also, Aidan Hehir and James Pattison, 'Introduction: The Responsibility to Protect after the Arab Spring', *Cooperation and Conflict* 51/2: 141-147, 144 (2016). 'Russia and China have explicitly referred to the Libya intervention as the basis for blocking any resolutions that may lead to military intervention in Syria despite the evidence of widespread mass atrocities against the Syrian population.' Chloë M. Gilgan, 'Exploring the Link Between R2P and Refugee Protection: Arriving at Resettlement', *Global Responsibility to Protect* 9/4: 366-394, 370 (2017).

despite contravening R2P and the UN Charter.⁷⁸ Therefore, the next sections examine the international responses to Syria in order to provide context towards understanding how R2P is used and interpreted particularly in difficult cases where those discharging responsibilities cannot agree due to politics and interests.

4.4 The International Response

Regardless of the fact that the responsibilities under Pillar III are minimal, the international community has not had a unified or effective response to the Syrian crisis. First, the national interests and proximity of different states, including powerful liberal states and regional powers, have affected the international responses to Syria and Syrian refugees respectively. Second, the disagreement on the UN Security Council on how to protect the population of Syria also impacted the ability to find a unified and effective response to Syria. Both scenarios have actively harmed, through direct violence or forced displacement, rather than protected the Syrian population at times.

As such, this section reviews how the international community, through the UN's member states and its international bodies and organisations, responded to the Syrian war and the ancillary humanitarian and refugee crises. The section begins by examining the diplomatic, humanitarian and military responses by the UN Security Council because it plays a dominant role in discharging Pillar III responsibilities on the international level. Importantly, a significant portion of the military, diplomatic and humanitarian responses to Syria occurred outside the UN Security Council by states unilaterally, and thus, potentially outside the framework of R2P. However, R2P permits a non-exhaustive list of humanitarian and peaceful responses that may be enacted unilaterally as long as the goal is to help protect populations from mass atrocities and no violation of law occurs. At the same time, R2P may motivate these particular responses

⁷⁸ While this would be an illegal use of force under international law, the UK still believes a separate right of humanitarian intervention exists stemming from the Blair doctrine. Prime Minister's Office, 'Syria action – UK Government Legal Position', 14 April 2018, <https://www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position>, accessed 14 April 2018; Prime Minister's Office, 'Chemical Weapon Use by Syrian Regime: UK Government Legal Position', 29 August 2013, <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version>, accessed 14 April 2018. For further information, see House of Commons Library, 'Conditions for Using Force in Humanitarian Intervention', SN06716, 29 August 2013, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06716#fullreport>, accessed 14 April 2018; see also, Minister of State, Foreign and Commonwealth Office: 'Further Supplementary Written Evidence from Rt Hon Hugh Robertson MP: Humanitarian Intervention and the Responsibility to Protect, USA 19, 14 January 2014, <https://www.justsecurity.org/wp-content/uploads/2014/01/Letter-from-UK-Foreign-Commonwealth-Office-to-the-House-of-Commons-Foreign-Affairs-Committee-on-Humanitarian-Intervention-and-the-Responsibility-to-Protect.pdf>, accessed 14 April 2018.

even where states do not explicitly mention R2P as the framework.⁷⁹ Therefore, it is important to include the broader context of the international responses to Syria beyond the UN Security Council because doing so acknowledges the UK's international role as a western power allied with the US, a permanent member of the UN Security Council and as a member of Europe.

4.4.1 The UN Security Council Response to Syria

The international community, through the UN Security Council, failed to have an effective response to the Syrian crisis due to lack of sustainable consensus on policies for protecting the Syrian population. The obstacles to UN Security Council consensus on Syria are generally attributed to Russia and China for their vetoes on draft resolutions by the UK, US and France (P3). However, during the initial draft resolutions on Syria, some Council members, including the BRICS, were uncomfortable with language that signalled a permissible path to regime change, especially after the Libya intervention of 2011.⁸⁰ Dissenting states rejected the inclusion of sanctions and wanted a written guarantee that no military intervention would occur over fear that 'Libya's "Unified Protector" model could happen in Syria'⁸¹. Russia and China explicitly referred to the Libya intervention as the basis for blocking any resolutions that could potentially lead to military intervention in Syria despite the evidence of widespread mass atrocities against the Syrian population.⁸² In October 2011, Russia and China vetoed a draft resolution containing the Council's intent to consider further measures if the Syrian regime failed to implement the resolution's provisions. Then again, on 4 February 2012, China and Russia vetoed a Security Council draft resolution, which condemned the violence in Syria and supported the Arab League's January 2012 decision to facilitate a Syrian-led political transition, with all other Council members voting in favour. Former dissenters like India and South Africa explained their affirmative votes as the result of regional support from the League of Arab States.⁸³ Soon after, the General Assembly adopted a similar resolution, which also requested that the Secretary-General appoint a special envoy for Syria. As a result, Kofi Annan was appointed as the UN-Arab League Joint Special Envoy for Syria, and in March the Security

⁷⁹ Looking at other states' motivations for responses to Syria is outside the scope of this research.

⁸⁰ Gifkins, 'The UN Security Council Divided', p. 382; See, Security Council Report, 'Syria', <http://www.securitycouncilreport.org/chronology/syria.php?page=6>, accessed 4 July 2018.

⁸¹ Gifkins, 'The UN Security Council Divided', p. 384; UN Security Council Meeting, *The Situation in the Middle East*, S/PV.6627, 4 October 2011, (p.4).

⁸² See, Spencer Zifcak, 'The Responsibility to Protect After Libya and Syria', *Melborne Journal of International Law*, 13/1: 59-93 (2012); see also, E. Tendayi Achiume, 'Syria, Cost-sharing, and the Responsibility to Protect Refugees', *Minnesota Law Review*, 100/2: 687-762, 749 (2015); Russia's former president Dmitry Medvedev vetoed UN Security Council resolutions concerning Syria to avoid another Libya-type intervention. Stuart Gottlieb, 'Syria and the Demise of the Responsibility to Protect'; Gifkins, 'The UN Security Council Divided', p. 383.

⁸³ Gifkins, 'The UN Security Council Divided', p. 386.

Council agreed on a presidential statement that supported a six-point plan for mediation by the Special Envoy.

Importantly, Russia and China did not reject the UK/Morocco draft resolution of February 2012 calling for the deployment of 30 unarmed military observers to Syria with a UN supervision mechanism (UNSMIS).⁸⁴ The political impasse at the UN Security Council has been on resolutions enabling humanitarian access in Syria, which did not have Council consensus until 2014.⁸⁵ Ralph and Gifkins' research found that before 2014 the P3 were initially resistant to relinquishing their penholding⁸⁶ responsibility for resolutions on Syria because it diluted their control over the drafting process. However, consensus was finally reached for two reasons. According to research done by Ralph and Gifkins, this was due to a change in the P3's political policy on Syria and due to the change in penholder responsibility for drafting the resolutions.⁸⁷ First, the P3 policy on Syria changed in 2013 from a focus on military intervention to ceding negotiations over to Russia for its influence on Syria in allowing access to and removal of its chemical weapons.⁸⁸ Second, the new penholders were amongst the elected council members referred to as the E3, including Australia, Luxembourg, and later Jordan (which added legitimacy given its hosting of Syrian refugees) who were able to bridge the divide between the P3 and Russia and China through diplomacy and practical solutions.⁸⁹ Thus, they were able to secure Resolution 2139, a humanitarian access resolution that all members agreed to in February 2014.⁹⁰ The resolution demanded that all parties, in particular the Syrian authorities, allow humanitarian access across conflict lines, in besieged areas and across borders and expressed the intent to take further steps in case of non-compliance.

In response to the United Nations Office for the Coordination of Humanitarian Affairs' (OCHA) repeated reporting to the Council that Resolution 2139 had not been implemented on the ground, Australia, Luxembourg, and Jordan (E3) were able to pass Resolution 2165 in July

⁸⁴ The United Nations Supervision Mission in Syria (UNSMIS) via UNSC Res. 2043, 21 April 2012.

⁸⁵ Jason Ralph and Jess Gifkins, 'The Purpose of United Nations Security Council Practice: Contesting Competence Claims in the Normative Context Created by the Responsibility to Protect', *European Journal of International Relations* 23/3: 630-653, 646 (2017).

⁸⁶ 'Drafting is a powerful role because those who "hold the pen" are able to frame an issue according to their preferences and set the terms of debate'. Gifkins, 'The UN Security Council Divided', p. 391-392, quoting Courtney B. Smith, *Politics and Process at the United Nations: The Global Dance* (London: Lynne Rienner Publishers, 2006), p.192.

⁸⁷ Ralph and Gifkins, 'The Purpose of United Nations Security Council Practice', p. 646.

⁸⁸ Ralph and Gifkins, 'The Purpose of United Nations Security Council Practice'.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*, p. 646-647.

2014, which allowed humanitarian agencies to cross conflict lines without Syria's consent.⁹¹ Ralph and Gifkins surmise that Russia and China's restraint on the veto in this instance resulted from the 'E3's exclusive focus on humanitarianism' which was 'delinked [sic] from regime change'⁹². Importantly, the humanitarian access provisions of Resolution 2165 were renewed in subsequent resolutions.⁹³ Thus, the US, UK and France's political agenda in the early years of the Syrian conflict prevented a consensus on the UN Security Council. Their persistent linking of humanitarian aid with a need for political transition guaranteed that Russia and China would veto such important humanitarian access resolutions.⁹⁴ As a result, Russian and Chinese vetoes allowed the Syrian regime to continue perpetrating mass atrocities with impunity⁹⁵, while the P3 made it more difficult for humanitarian aid to reach the Syrian population.⁹⁶ Thus, while there was some genuine disagreement on how to manage the conflict in Syria, the political interests of the P5 and concerns over R2P's past implementation prevented any effective resolution to the crisis.⁹⁷

Despite the disharmony over the political future of Syria, the UN Security Council had unity on less controversial resolutions.⁹⁸ For example, following the sarin attack on civilians in Damascus and negotiations between the US, Russia and Syria, the Council unanimously adopted Resolution 2118 requiring the verification, removal and destruction of the chemical weapons arsenal in Syria.⁹⁹ The resolution also called for the convening of the Geneva II peace

⁹¹ *Ibid*, p. 648.

⁹² *Ibid*.

⁹³ The Council adopted UNSC Res. 2191, 17 December 2014, extending UNSC Res 2165, 14 July 2014 to 10 January 2016, followed by UNSC Res. 2258, 22 December 2015, which renewed the authorisation for cross-border aid delivery into Syria without state consent until January 2017 and followed by UNSC Res. 2332, 21 December 2016, renewing UN authorisation for cross-border aid delivery until 10 January 2018. Find all resolutions at <http://www.un.org/en/sc/documents/resolutions/>.

⁹⁴ Jason Ralph, Jack Holland, and Kalina Zhekova, 'Before the Vote: UK Foreign Policy Discourse on Syria 2011–13', *Review of International Studies* 43/5: 875-897 (2017).

⁹⁵ There is evidence that the opposition and other non-state actors have also committed mass atrocities, though on a smaller scale. UN HRC, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/S-17/2/Add.1, 23 November 2011.

⁹⁶ The P3 vision of a change in regime as a political solution in Syria reinvigorates arguments that R2P is a hegemonic tool and that R2P is 'a slogan that masks the big power agenda to recolonise Africa'. Mahmood Mamdani, *Saviors and Survivors: Darfur, Politics, and the War on Terror* (US: Doubleday Religion, 2009), p.300.

⁹⁷ P5 agreement on restraint in the use of the veto is unlikely given opposition by many of the P5 despite the fact that the Secretary-General's Report in 2016 again urges the P5 to agree to exercise restraint of their veto in situations involving mass atrocity crimes. See, Ban Ki-moon, Report 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.14). Based on the interviews with UK officials, the UK has recently been arguing for restraint of the veto in cases of mass atrocities.

⁹⁸ For example, UNSC Resolutions 2170 (2014), 2209 (2015), 2235 (2015), 2249 (2015), 2286 (2016), all available at <http://www.un.org/en/sc/documents/resolutions/>.

⁹⁹ UNSC Res. 2118, 27 September 2013. However, the Geneva II talks in early 2014 failed, with the former UN special envoy Lakhdar Brahimi blaming the Syrian government's refusal to discuss opposition

talks and endorsed the establishment of a transitional governing body in Syria with full executive powers based on the June 2012 Geneva Communiqué,¹⁰⁰ which envisaged a transitional governing body with full executive powers ‘formed on the basis of mutual consent’¹⁰¹. Subsequently, the Council unanimously adopted Resolution 2254, which sets out the sequence of events to end the war in Syria: UN-mediated political talks, a national ceasefire and a two-year timeline to achieve a political transition.¹⁰² Intense diplomatic negotiations between Russia and the US culminated in the agreement on a cessation of hostilities, endorsed by the Security Council in early 2016.¹⁰³

However, the siege of Aleppo in 2016 reveals how the Council’s decision-making was again constrained by politics. In October 2016, the UN Special Envoy Staffan de Mistura (since 2014) briefed Council members on his ‘Aleppo initiative’, which would require an immediate and total halt to the bombing of eastern Aleppo followed by the evacuation of al-Nusra fighters.¹⁰⁴ Russia vetoed a draft resolution tabled by France and Spain which demanded an end to military flights over Aleppo.¹⁰⁵ The vote was 11-2-2 with Venezuela also voting no and Angola and China abstaining.¹⁰⁶ This was Russia’s fifth veto on a Syria resolution, but it was the first time China refrained from casting a veto alongside Russia on a Syria draft resolution.¹⁰⁷ Following the veto, the Council voted on a competing Russian draft resolution. The draft was almost identical to the French-Spanish draft, except that it placed greater emphasis on the counter-terrorism aspects of the conflict, in particular separating al-Nusra Front from other armed opposition groups and did not include the demand to cease aerial bombardment. The vote was 4-9-2 with China, Egypt, Russia and Venezuela voting yes and Angola and Uruguay

demands such as a transitional government. Mr Brahimi’s successor, Staffan de Mistura, elected to focus more attention on establishing local ceasefires. His plan for a ‘freeze zone’ in Aleppo was rejected, but a three-year siege of the Homs suburb of al-Wair was successfully brought to an end in December 2015. See also, Action Group for Syria, *Final Communiqué*, 30 June 2012 <http://www.un.org/News/dh/infocus/Syria/FinalCommuniqueActionGroupforSyria.pdf>, accessed 13 January 2017.

¹⁰⁰ Action Group for Syria, *Final Communiqué*, 30 June 2012.

¹⁰¹ UNSC Res. 2118, 27 September 2013.

¹⁰² UNSC Res. 2254, 18 December 2015.

¹⁰³ UNSC Res. 2268, 26 February 2016.

¹⁰⁴ Security Council Report, ‘Syria’, November 2016. Al-Nusra Front is one of the jihadist groups attached to Al-Qaeda that rivals Daesh. For more information, see, Mohamed-Ali Adraoui, ‘The Case of Jabhat Al-Nusra in the Syrian Conflict 2011–2016: Towards a Strategy of Nationalization?’, *Mediterranean Politics* 2/1: 1-8 (2017).

¹⁰⁵ UN, 7785th Meeting, ‘Security Council Fails to Adopt Two Draft Resolutions on Syria, Despite Appeals for Action Preventing Impending Humanitarian Catastrophe in Aleppo’, SC/12545, 8 October 2016, <https://www.un.org/press/en/2016/sc12545.doc.htm>, accessed 4 July 2018.

¹⁰⁶ *Ibid.*

¹⁰⁷ Security Council Report, ‘Syria’, November 2016.

abstaining. Nine Council members, including the P3, voted no.¹⁰⁸ Because the Russian draft did not get the 9 positive votes to be adopted, the negative votes by the P3 were not considered a veto. The head of OCHA expressed his ‘incandescent rage’ at the unparalleled humanitarian catastrophe, saying that eastern Aleppo had become a ‘kill zone’¹⁰⁹.

During this time, the Organisation for the Prohibition of Chemical Weapons Joint Investigative Mechanism’s fourth report concluded that of the nine cases it investigated, the ‘Syrian regime used chlorine gas against its own population in three cases and that ISIL [Daesh] used mustard gas in one case’¹¹⁰. There was insufficient evidence to make a determination in the remaining five cases. As a result, the Council adopted Resolution 2314, extending the mandate of the Joint Investigative Mechanism’s to 18 November 2016, with a view to vote on a further renewal.¹¹¹

In November 2016, Stephen O’Brien, the head of OCHA, reported the use of siege and starvation tactics in eastern Aleppo during the sustained military activity against the opposition-held area.¹¹² In response, Egypt, New Zealand and Spain put out a draft resolution calling for an end to all attacks in Aleppo, although no vote was taken in November. Following additional briefings by Special Envoy de Mistura, OCHA head Stephen O’Brien, and a representative from UNICEF on the situation in Aleppo, France and the UK called for an emergency meeting in response to the Syrian government’s continued offensive to retake rebel-held eastern Aleppo.¹¹³ In December, a vote on the draft resolution put forward by Egypt, New Zealand and Spain, calling for a 7-day end to all attacks in Aleppo, was vetoed by Russia, China, and Venezuela with Angola abstaining (11-3-1).¹¹⁴ France and the UK called for an emergency meeting of the Council where the Secretary-General reported that after 48 hours of unprecedented levels of

¹⁰⁸ 9 votes against were: France, Japan, Malaysia, New Zealand, Senegal, Spain, Ukraine, United Kingdom, United States.

¹⁰⁹ Security Council Report, ‘Syria’, November 2016.

¹¹⁰ UNSC, *Fourth Report of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism*, S/2016/888, 21 October 2016.

¹¹¹ UNSC Res. 2314, 31 October 2016. The Council adopted UNSC Res. 2319, 17 November 2016 renewing the mandate of the UN-OPCW Joint Investigative Mechanism, the body established to determine responsibility for the use of chemical weapons in Syria, for a further year.

¹¹² UN OCHA, *Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator Stephen O'Brien Statement to the Security Council on Syria*, Report, 26 October 2016, <https://reliefweb.int/report/syrian-arab-republic/under-secretary-general-humanitarian-affairs-and-emergency-relief-52>, accessed 4 July 2018.

¹¹³ UN Security Council Meeting, *The Situation in the Middle East*, S/PV.7834, 13 December 2016; see also, Security Council Report, ‘Syria’, December 2016, p.11-12, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2016_12_forecast.pdf, accessed 4 July 2018.

¹¹⁴ UNSC, *Egypt, New Zealand and Spain: Draft Resolution*, S/2016/1026, 5 December 2016; see also, Security Council Report, ‘Syria’, December 2016.

bombardment, the UN had seen an almost complete collapse of the armed opposition's front lines in eastern Aleppo.¹¹⁵ He said that civilian deaths and injuries continued at a brutal pace.¹¹⁶ At that meeting, a majority of Council members called on Russia and Syria to allow impartial observers into Aleppo to monitor the situation of civilians. France called for a vote on a draft resolution that called for evacuations to be carried out in line with international humanitarian law, and for direct observation, independent monitoring of and reporting on the evacuations and the situation of civilians inside eastern Aleppo. However, during the consultations preceding the scheduled vote on 18 December, Russia raised objections regarding UN access to eastern Aleppo and made clear that it would veto the French draft.¹¹⁷ After negotiations between France, Russia and the US, a deal was reached and Resolution 2328, demanding UN access to monitor evacuations from Aleppo, was adopted unanimously the next day.¹¹⁸

Finally, on 30 December 2016, Council members met in consultations to discuss a draft resolution to endorse the ceasefire brokered by Russia and Turkey in Syria. Following negotiations between France, Russia and the US, the draft was adopted unanimously as the evacuation of Aleppo neared completion. Resolution 2336 took note of Russia and Turkey's agreement and acknowledged that the Astana talks were an important step ahead of UN-facilitated talks in Geneva on 8 February 2017.¹¹⁹

In sum, a 'sustained consensus' on the UN Security Council was impossible as a result of differing views on what was happening on the ground in Syria and the best way to respond, demonstrated by Russian and Chinese obstinacy to the US, UK and France's insistence on

¹¹⁵ Security Council Report, 'Syria', December 2016.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ UNSC Res. 2328, 19 December 2016; see also, UN Security Council Meeting, *Briefing from OCHA*, S/PV.7852, 23 December 2016; Ki-moon, Ban, *Implementation of Security Council Resolutions 2139 (2014), 2165 (2014), 2191 (2014) and 2258 (2015)*, S/2016/1057, 14 December 2016.

¹¹⁹ UNSC Res. 2336, 31 December 2016. During this time, (21 December 2016), the UN General Assembly voted (105 for, 15 against and 52 abstentions) for a resolution to empower the UN to investigate and collect evidence in Syria for potential prosecution in a national court, international tribunal or the International Criminal Court in future. The resolution, initially proposed by Liechtenstein, created an 'international, impartial and independent mechanism' for investigation and prosecution of those responsible for 'the most serious crimes under international law committed in the Syrian Arab Republic since March 2011'. Mark Kersten, 'United We Stand, Divided We Fall: The UN General Assembly's Chance to Bring Justice to Syria', *Justice in Conflict*, 30 December 2016, <https://justiceinconflict.org/2016/12/30/united-we-stand-divided-we-fall-the-un-general-assemblys-chance-to-bring-justice-to-syria/>, accessed 4 July 2018; see also, 'UN Creates Team to Prepare Cases on Syria War Crimes', *Reuters*, 21 December 2016, <https://www.reuters.com/article/us-mideast-crisis-syria-warcrimes/u-n-creates-team-to-prepare-cases-on-syria-war-crimes-idUSKBN14A2H7>, accessed 4 July 2018.

Assad resigning and political transition.¹²⁰ Despite this, the UN Security Council managed to reach some meaningful consensus on certain humanitarian and protection initiatives. That such initiatives faced additional difficulty in their practical implementation in Syria due to access is not entirely the fault of the UN Security Council. Instead, the failure of consensus on the Council was over a political policy and/or military intervention against the regime.¹²¹ While the UN Security Council welcomed the ceasefire agreement, disagreement on whether there should be a political transition away from Assad remained. This demand was central to the initiatives by the US, UK, France and the UN, and senior opposition leaders stated that without this condition, the ceasefire would be nullified.¹²² Even so, some regional powers and even some voices from within the UK and French governments began favouring a more attainable peace in Syria by ceasing insistence on the condition that Assad abdicate power, particularly after the brutal fall of Aleppo.¹²³

4.4.2 Military Response: Regional and International Players

Any Chapter VII military intervention within the R2P framework and through the UN Charter would have to be authorised by the UN Security Council, but there has been no consensus over military intervention in Syria as discussed in the last section. Instead, what initially began as an uprising against an authoritarian ruler in Syria evolved into a brutal proxy war, which drew in regional and world powers. Iran and Russia provided support to the Syrian regime with Iran spending billions of dollars a year to reinforce the government through the provision of military advisers, subsidised weapons, lines of credit and oil transfers.¹²⁴ As a steady ally of the Assad regime, Russia supported the government through its air campaign against Daesh and anti-regime ‘terrorists’ commencing in September 2015, which turned the war in Assad’s favour.¹²⁵ The Syrian government also had the support of Lebanon’s Shia Islamist Hezbollah movement,

¹²⁰ Gifkins, ‘The UN Security Council Divided’, p. 389-391; Ralph and Gifkins, ‘The Purpose of United Nations Security Council Practice’.

¹²¹ There is some crossover agreement on military attacks on Daesh, though some opposition leaders are not considered terrorists to the P3 while they are to Russia and the regime.

¹²² DW Interview, ‘Former Syrian Opposition Leader Weighs in on Fragile Ceasefire’, 30 December 2016, <http://www.dw.com/en/former-syrian-opposition-leader-weighs-in-on-fragile-ceasefire/a-36955444>, accessed 4 July 2018.

¹²³ France’s conservative candidate, Francois Fillon, who had been predicted to win the presidential election in 2017, said that ‘Western policy on Syria had failed and Europe had to talk to those responsible for war crimes to end the killing’ and he argued that Russia did not pose a security threat and relations should be mended, not least of all by lifting the sanctions on Russia. Robin Emmott, ‘EU Must Talk to War Criminals to End Syrian Crisis, says France’s Fillon’, *Reuters*, 15 December 2016, <https://www.reuters.com/article/us-france-election-fillon-merkel/eu-must-talk-to-war-criminals-to-end-syrian-crisis-says-frances-fillon-idUSKBN14417E>, accessed 4 July 2018. The US has also taken a backseat role with the election of President Trump.

¹²⁴ Lucy Rodgers et al, ‘Syria: The Story of the Conflict’.

¹²⁵ Carla E. Humud et al, *Armed Conflict in Syria: Overview and U.S. Response*.

whose fighters have provided important battlefield support since 2013.¹²⁶ The regime progressively regained territory in Syria with Russian air power and Iranian-sponsored militias culminating with the regime's recapture of Aleppo in 2016.¹²⁷

International concern over Daesh inspired air campaigns in Syria by the US and UK. While the coalition against Daesh was theoretically helping to protect the Syrian population from these non-state actors, it was without the consent of the government (as a Pillar II response) and the actions did not address the regime's manifest failure in protecting its population as an active perpetrator of mass atrocities (as a Pillar III military response). Furthermore, air strikes contributed to civilian suffering and increased refugee flows out of Syria. Thus, a unified and legal (through the UN Security Council) military intervention to help protect the Syrian population from mass atrocities was impossible. Instead, the military interventions in Syria were only unified in fighting Daesh but became a proxy war between interested parties which served to heighten tensions, particularly between Russia and the US.¹²⁸

4.4.3 Diplomacy: Regional and International Players

Following the 2013 chemical attacks on Syrian civilians, the US went from threatening military intervention in Syria to ceding control of diplomatic negotiations with the Syrian government to Russia, an ally of the regime. Russia's relationship with the regime resulted in Syria endorsing the Chemical Weapons treaty. Despite tensions between the US and Russia, both led efforts to get representatives of the Syrian government and the opposition to attend 'proximity talks' in Geneva in January 2016 to discuss a Security Council-endorsed road map for peace, including a ceasefire and a transitional period ending with elections. However, all the US and Russian-brokered ceasefire initiatives failed to hold. Furthermore, attempts to agree on a common political and military strategy in Syria between the Putin and the Obama administrations collapsed after the brutal takeover of Aleppo in December 2016 by Russian backed Syrian forces and Iranian-backed fighters.¹²⁹

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ Milad Jokar, 'War In Syria: Geopolitics Of The Conflict', *Huffington Post*, 8 September 2014, https://www.huffingtonpost.com/milad-jokar/war-in-syria-geopolitics-_b_2378683.html, accessed 23 October 2017; Milad Jokar, 'Syria: Is It Still About Assad's Fall?', *Huffington Post*, 8 September 2014, https://www.huffingtonpost.com/milad-jokar/syria-is-it-still-about-a_b_2240288.html, accessed 23 October 2017.

¹²⁹ Michael R. Gordon and Eric Schmitt, 'Airstrikes by Russia Buttress Turkey in Battle vs. ISIS', *New York Times*, 8 January 2017, <http://www.nytimes.com/2017/01/08/us/politics/russia-turkey-syria...es-isis.html?smprod=nytcare-iphones&smid=nytcare-iphone-share&r=0>, accessed 13 January 2017.

The siege of Aleppo (and its eventual fall) changed the goals and interests of the international and regional powers invested in the Syrian conflict. With the war turning in favour of Assad due to Russian and Iranian involvement, the US receded from leading initiatives aimed at solving the ongoing conflict and humanitarian crisis, especially as the newly elected US President Trump promised to retreat from the international stage in order to ‘put America first’¹³⁰. Additionally, a developing tactical rapprochement between Russia and Turkey further marginalised the role of the US in Syria’s future.¹³¹ As a result of the US’ diminishing role, Turkey and Russia coordinated and pushed for ceasefires across Syria where Daesh had no control.¹³² The remaining opposition forces in the northwest were entirely dependent on Turkey for resupplies of military weapons and ammunition and international humanitarian assistance, so Turkey used this as leverage to join Russia in pressing for the ceasefire agreement following the fall of Aleppo.¹³³ The ceasefire agreement was reached in Ankara with both Turkish and Russian representatives and rebel representatives present.¹³⁴ The groups that signed the agreement jointly held territory in northwest Syria, along the border with Turkey; east of the capital, Damascus; and in the south near Jordan’s border.¹³⁵ However, the regime demanded that the agreement leave out the Geneva I requirement that there be a governing body with full authority of the president according to the constitution.¹³⁶

¹³⁰ ‘Donald Trump: “America First, America First”’, *BBC News*, 20 January 2018, <https://www.bbc.co.uk/news/av/world-us-canada-38698654/donald-trump-america-first-america-first>, accessed 4 July 2018.

¹³¹ For more information on the shifting relationship between Russia and Turkey, see, Yezid Sayigh, ‘Ceasefire in Syria: Turkish Policy Sets Syria on New Path’, Carnegie Middle East Center, *BBC News*, 30 December 2016, <http://www.bbc.co.uk/news/world-middle-east-38473702>, accessed 23 October 2017; Patrick Wintour, ‘Why Russia-Brokered Syrian Ceasefire has Chance of Succeeding’, *The Guardian*, 29 December 2016, <https://www.theguardian.com/world/2016/dec/29/russia-calling-shots-middle-east-syria>, accessed 23 October 2017; Michael R. Gordon and Eric Schmitt, ‘Airstrikes by Russia Buttress Turkey in Battle vs. ISIS’; Martin Chulov, ‘UN Welcomes Syria Ceasefire Against Backdrop of Deadlock and Dissent’, *The Guardian*, 31 December 2016, <https://www.theguardian.com/world/2016/dec/31/syria-ceasefire-russia-united-nations-iran-turkey>, accessed 23 October 2017.

¹³² The two main negotiating parties were the Assad regime and Jabhat Fateh al-Sham. Jabhat Fateh al-Sham had attracted the regime’s fire as it strived to become the dominant opposition force in the northwest of Syria. Russia worked to isolate this group in an attempt to prevent its attractiveness to other rebel groups who rely on the group’s combat expertise, planning and command skills. See, Yezid Sayigh, ‘Ceasefire in Syria’.

¹³³ *Ibid.*

¹³⁴ The opposition group, al-Sham has been described as a ‘hard-line Islamist group with close operational ties’ to Al-Qaeda in Syria. Reports seem to concur that this group did not sign the agreement, but Russia has said all seven main groups did sign the agreement. Ben Hubbard and Neil MacFarQuhar, ‘New Cease-Fire Begins in Syria, but Violations are Reported within Hours’, *New York Times*, 29 December 2016, <https://www.nytimes.com/2016/12/29/world/middleeast/syria-cease-fire.html>, accessed 4 July 2018.

¹³⁵ Five of the seven groups invited were mainline rebel groups that had received covert military aid through a program run by the CIA and its counterparts in allied countries. Ben Hubbard and Neil MacFarQuhar, ‘New Cease-Fire Begins in Syria, but Violations are Reported within Hours’.

¹³⁶ Martin Chulov, ‘UN Welcomes Syria Ceasefire Against Backdrop of Deadlock and Dissent’.

Finally, Russia pushed hard for a UN resolution and on 31 December 2016, the UN Security Council unanimously endorsed Resolution 2336, which took note of Russia and Turkey's agreement and acknowledged the upcoming talks (January 2017), also sponsored by Russia and Turkey, between the Syrian government and its opposition in Astana, Kazakhstan as an important step ahead of UN-facilitated talks in Geneva on 8 February 2017.¹³⁷ Despite violations of the ceasefire, the overall violence in Syria decreased.¹³⁸ It was still undecided who would represent the different opposition groups at the Astana talks.¹³⁹ Assad refused to accept a negotiation with rebels that were linked to Daesh or Jabhat Fatah al-Sham.¹⁴⁰ Daesh, which controlled territories in eastern Syria and across the border in Iraq, and the Syrian Al Qaeda and its affiliates, which controlled territories in the northwest, were excluded from the talks in Ankara and were to be left out of any future peace talks or agreements.¹⁴¹ Additionally, the Kurds, seen as an ally of the US, were excluded from the UN Geneva peace process and would be absent from the Astana peace talks.¹⁴² The various roles and interests of international and regional states in the Syrian conflict, particularly the P5 members of the UN Security Council, made diplomacy and consensus difficult in finding a multi-beneficial way of helping protect the Syrian population. Such failures in protection led to increased refugee flows out of Syria and a perception that R2P had failed in Syria.

4.4.4 Humanitarian: In-Situ Financial Aid

As air strikes and diplomacy by embedded parties to the Syrian conflict helped contribute to a failure of protection of the Syrian population, massive flows of refugees out of Syria soon overwhelmed neighbouring states. While proximate states 'heroically fulfilled their

¹³⁷ Yezid Sayigh, 'Ceasefire in Syria'; Ben Hubbard, 'UN Encourage, but Stops Short of Endorsing, Syria Cease-Fire', *New York Times*, 31 December 2016, <https://www.nytimes.com/2016/12/31/world/middleeast/syria-united-nations-security-council-cease-fire.html>, accessed 20 October 2016.

¹³⁸ Ben Hubbard, 'UN Encourage, but Stops Short of Endorsing, Syria Cease-Fire'. However, the opposition froze the process over claims that the government had violated the ceasefire in continuing strikes across the country. Assad responded that the opposition repeatedly violated ceasefire agreements and he defended the army's push to recapture rebel-held Wadi Barda, near Damascus where the main supply to water had been shut off. Bethan McKernan, 'Syrian Government "Ready to Negotiate on Everything", Assad Says'.

¹³⁹ Bethan McKernan, 'Syrian Government "ready to negotiate on everything", Assad Says'.

¹⁴⁰ Jabhat Fatah al-Sham is formerly known as al-Nusra Front, which has been linked to al-Qaeda, though some report that this link was broken in July 2016. However, US officials continue to believe it is impossible to separate al-Nusra from mainstream rebels. These groups are still seen as 'terrorists' for the most part and are unlikely to be welcome in any peace process. Patrick Wintour, 'Why Russia-Brokered Syrian Ceasefire has Chance of Succeeding'.

¹⁴¹ Ben Hubbard and Neil MacFarQuhar, 'New Cease-Fire Begins in Syria, but Violations are Reported within Hours'.

¹⁴² Patrick Wintour, 'Why Russia-Brokered Syrian Ceasefire has Chance of Succeeding'.

responsibility to protect'¹⁴³ by hosting millions of Syrian refugees, European states focused on pledging financial aid to the region. Despite funding pledges from institutions and individual states, the UN struggled to meet the humanitarian needs of Syrians and host countries due to chronic underfunding. As a result, effective humanitarian protection of Syrians in Syria and Syrian refugees and their host communities also became impossible, which resulted in the continued exodus of refugees out of the region entirely.

By the end of 2014, the Regional Refugee and Resilience Plan (3RP), a collaboration between the UN and 240 partners, was established to address the humanitarian needs of Syrian refugees in regional host countries.¹⁴⁴ The UN's humanitarian aid program called the Syria Response Plan (SRP) addressed the needs of populations in Syria. The EU was at the forefront of the international community in terms of providing financial aid to Syrians and the region.¹⁴⁵ The US and the UK were the top single-state bi-lateral donors for humanitarian aid to the region.¹⁴⁶ Wealthy states, such as Kuwait, Saudi Arabia, Japan and Canada gave significant financial aid to the region.¹⁴⁷ However, the total amount of aid from all these states for the UN's humanitarian aid program only reached 61% of the \$3.74 billion needed for refugees and host communities in 2014.¹⁴⁸ This shortfall harmed many Syrians as the UN World Food Program stopped supplying food vouchers to the 1.7 million dependent Syrians as donors failed to meet

¹⁴³ Jennifer M. Welsh, 'The Responsibility to Protect and the Crises in Libya and Syria', Plenary Address, University of Westminster, 5 December 2013, ESRC Series, *The Responsibility to Protect and Prosecute: The Political Sustainability of Liberal Norms in an Age of Shifting Power balances*, <http://iisr2p.leeds.ac.uk/current/responsibility-to-protect-and-prosecute/>, accessed 21 October 2015; See, Jason Ralph and James Souter, 'R2P at 10: Looking Beyond Military Intervention', 21 May 2015, www.opencanada.org/features/r2p-at-10-looking-beyond-military-intervention/, accessed 26 April 2016. However, there is no concrete evidence that proximate states were acting because of R2P rather than due to their geography.

¹⁴⁴ Regional Refugee Resilience Plan, <http://www.3rpsyriacrisis.org/crisis/>, accessed 15 October 2017.

¹⁴⁵ As of January 2015, the European Commission and its member states collectively dedicated more than \$3.5 billion to humanitarian, development, economic and stabilization assistance to internally displaced Syrians and to Syrian refugees and their host countries in Turkey, Jordan, Lebanon, Iraq and Egypt. European Commission Humanitarian Aid and Civil Protection (ECHO), 2015, 'Syria Crisis: ECHO Factsheet', Brussels, https://ec.europa.eu/echo/files/aid/countries/factsheets/syria_en.pdf, accessed 20 October 2017.

¹⁴⁶ Sweden and Germany have also provided financial aid to the region. See, for specific amounts, Ostrand, 'The Syrian Refugee Crisis', p. 266.

¹⁴⁷ *Ibid.*

¹⁴⁸ UNHCR, 'Syrian Regional Refugee Response Inter-Agency Information Sharing Portal'. However, 'the UK is the only major country in the world that has kept its promise of spending 0.7% of its national income on aid'. Home Office, Syrian Vulnerable Person Resettlement (VPR) Programme, Guidance for local authorities and partners, 28 October 2015, https://www.rcpsych.ac.uk/pdf/Syrian_Resettlement_Fact_Sheet_gov_uk.pdf, accessed 4 July 2018.

their commitments towards the end of 2014.¹⁴⁹ Additionally, throughout 2014, UNHCR only received 63% of the budget it needed to help Syrian refugees.¹⁵⁰

UNHCR pleaded with the international community that more needed be done to alleviate the poor living conditions of refugees in the region. In March 2015 at the Third International Humanitarian Pledging Conference, international donors pledged \$3.8 billion to address the Syrian refugee crisis.¹⁵¹ The conference was backed by the UN and mobilised donor support to meet the needs set out in the SRP and 3RP for 2015-2016. The SRP needed \$2.9 billion to provide humanitarian assistance to 7.6 million IDPs and a total of 12.2 million people in need.¹⁵² The 3RP needed \$5.5 billion to provide assistance to 4.3 million Syrian refugees (5.9 million direct beneficiaries) and their host communities.¹⁵³ Similar to 2014, the UN's humanitarian programs remained underfunded as of the end of 2015. For example, the regional support component reached only 62% of its requirement, the refugee support component received 70% of its requirement, and the resilience component of the 3RP reached only 38% of its requirement.¹⁵⁴ Again, the financial aid received from donors could not effectively address the fact that refugees would keep fleeing due to the problems of ongoing mass atrocities and limited resources.

Throughout 2016, the warring parties compounded the dire circumstances of civilians by refusing humanitarian agencies access to civilians in need. Up to 4.5 million people in Syria lived in hard-to-reach areas, including nearly 400,000 people in 15 besieged locations who did not have access to life-saving aid.¹⁵⁵ During the siege of Aleppo in 2016, the total number of

¹⁴⁹ World Food Program, 'Funding Shortfall Forces WFP To Announce Cutbacks to Syrian Food Assistance Operation', 18 September 2014, <https://www.wfp.org/news/news-release/funding-shortfall-forces-wfp-announce-cutbacks-syrian-food-assistance-operation>, accessed 25 October 2017. It was two weeks before the WFP could resume its food assistance programme following a fundraising campaign. Ostrand, 'The Syrian Refugee Crisis', p.266.

¹⁵⁰ Ostrand, 'The Syrian Refugee Crisis', p.266; see also, UNHCR, 'Syria Regional Response Plan: 2014 UNHCR Income as of 13 January 2015', <https://reliefweb.int/sites/reliefweb.int/files/resources/2015-01-13-SYRIASituation2014ContributionstoUNHCR-RRP.pdf>, accessed 20 October, 2017.

¹⁵¹ UN, 'Donors Pledge \$3.8 Billion in Aid to People Affected by Syria Crisis at UN-backed Conference', *News Centre*, <http://www.un.org/apps/news/story.asp?NewsID=50462#.WfBv8BNSw0Q>, accessed 25 October 2017.

¹⁵² 'Overview: 2015 Syria Response Plan and 2015-2016 Regional Refugee and Resilience Plan', Berlin, 18 December 2014, <http://www.3rpsyriacrisis.org/crisis/>, accessed 26 October 2017.

¹⁵³ 'Overview: 2015 Syria Response Plan and 2015-2016 Regional Refugee and Resilience Plan'.

¹⁵⁴ '3RP Dashboard: Regional Quarterly Update: 3RP Achievements Dec 2015', <http://www.3rpsyriacrisis.org/wp-content/uploads/2016/02/3RP-Regional-Dashboards-December-20151.pdf>, accessed 26 October 2017.

¹⁵⁵ UN, 'Syria: UN and Partners get Relief Convoy into Besieged Town of Madaya', *News Centre*, 11 January 2016, <http://www.un.org/apps/news/story.asp?NewsID=52976#.WfC8MhNSw0Q>, accessed 25 October 2017.

Syrians displaced by the conflict reached almost 12 million.¹⁵⁶ There were 4.9 million registered Syrian refugees by the end of 2016.¹⁵⁷ The UN appealed for \$4.54 billion to provide humanitarian assistance, but only \$2.88 billion was funded (63%).¹⁵⁸ By the end of 2016, about 70% of the Syrian population was without access to adequate drinking water, one in three people were unable to meet their basic food needs, and more than 2 million children were out of school, and four out of five people were living in poverty.¹⁵⁹ Despite the financial support to the region, funding remained chronically short of what was required to provide effective assistance to Syrians inside Syria as well as to Syrian refugees and their host communities in the region.¹⁶⁰ These host countries in the region continue to contribute more than the Global North in both financial terms and in refugee protection terms despite having less healthy economies. Between 2011 and 2016, the international community's military interventions, diplomacy and expenditure on humanitarian means provided ineffective protection of Syrians and Syrian refugees.

4.4.5 Other Peaceful Means: The European Union¹⁶¹ Response to the Refugee Crisis

Due to the ongoing mass atrocities in Syria, the resulting humanitarian crisis, and the inability of host states to provide adequate assistance as a result of underfunding and lack of significant resettlement by wealthier states, Syrians began a mass exodus out of the region in 2014.¹⁶² With few exceptions, the EU mostly responded to the Syrian refugee crisis by 'externalising'

¹⁵⁶ UNHCR, 'Syria Emergency'.

¹⁵⁷ '3RP: Regional, Refugee and Resilience Plan, 2016-2017: In Response to the Syria Crisis', 2016 Annual Report, 31 December 2016, <http://www.3rpsyriacrisis.org/wp-content/uploads/2017/04/3RP-2016-Annual-Report.pdf>, accessed 26 October 2017.

¹⁵⁸ *Ibid.*

¹⁵⁹ Lucy Rodgers et al, 'Syria: The Story of the Conflict'.

¹⁶⁰ In January 2017, the 3RP appealed for \$4.63 billion to help host states and another \$3.4 billion for those inside Syria. However, the 3RP has been funded only at 49 per cent of the inter-agency appeal as of 11 October 2017. See, 3RP: Regional, Refugee and Resilience Plan, available at <http://www.3rpsyriacrisis.org/crisis/>.

¹⁶¹ This section focuses on the EU response, but there were European countries outside the EU that responded more favourably to Syrian refugees. For example, as of September 2016, Norway and Switzerland had agreed to resettle 9,000 and 2,000 Syrian refugees respectively. See, Home Office, Report by the National Audit Office, 'The Response to the Syrian Refugee Crisis – An International Comparison', September 2016, p.14, <https://www.nao.org.uk/wp-content/uploads/2016/09/The-response-to-the-Syrian-refugee-crisis-an-international-comparison.pdf>, accessed 16 January 2016.

¹⁶² Just prior to the European refugee crisis, while the conflict in Syria had carried on for two years, just sixteen countries (excluding the UK) pledged to resettle Syrian refugees. Germany and Sweden were the top receiving countries with 300,000 and 100,000 respectively. In September 2013, Germany agreed to resettle 5000 refugees, who would be permitted to stay for two years. This was the largest European programme for Syrian refugees. Subsequently, Sweden offered permanent residency to those refugees and families already in Sweden with temporary residency. See, European University Institute, Robert Schuman Centre for Advanced Studies and Migration Policy Centre, 'Syrian Refugees: A Snapshot of the Crisis in the Middle East and Europe'. For an overview of the programmes in Germany and Sweden, see, Ostrand, 'The Syrian Refugee Crisis', p.267.

protection and pursuing containment policies aimed at securing its borders despite the fact that it had a temporary protection mechanism designed precisely for addressing a mass influx of displaced people.¹⁶³ EU Directive 2001/55/EC provides the ‘minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof’¹⁶⁴. The Directive has been in force since 2001 as a response to concerns over responsibility sharing following the mass displacement during the war in Yugoslavia.¹⁶⁵ To date, it has never been activated as a temporary protection mechanism for any case involving a mass influx of displaced people.¹⁶⁶ Instead, policies of containment, the rise of nationalism and a distrust of the institution of the EU and its corresponding laws and directives proliferated across member states resulting in the EU attempting to implement programmes for responsibility sharing of Syrian refugees that were resisted by its own member states. The rise of a compelling anti-terror norm has resulted in a European backlash against the 64 year-old Refugee Convention, similar to the US CAT case. A report by NGOs from five Eastern EU Members States (Bulgaria, Czech Republic, Hungary, Poland and Slovenia) presents a picture of the European response:

Increased border control and the construction of physical and legal barriers restricting access to protection for people fleeing war and terror characterize this “scary new” reality. The political discourse shaping legislative and policy measures in the participating countries is centred around issues of security and terrorism, while little or no room is left for the obligation to grant the right to asylum and to protection.¹⁶⁷

¹⁶³ Aydan Greatrick, ‘Externalising the “Refugee Crisis”: A Consequence of Historical Denial?’, *Refugee Hosts*, www.refugeehosts.org/2016/11/27/externalising-the-refugee-crisis-a-consequence-of-historical-denial/, accessed February 9, 2018. There is a ‘paucity of research done on south-south humanitarianism’. Julia Pacitto and Elena Fiddian-Qasmiyeh, ‘Writing the “Other” into Humanitarian Discourse: Framing Theory and Practice in South-South Responses to Forced Displacement’, *New Issues in Refugee Research*, Research Paper No. 257, UNHCR, July 2013, <http://www.unhcr.org/51efd7c49.pdf>, accessed 23 October 2017; see also, Human Rights Watch, ‘EU: Deflecting Responsibility to Protect Refugees: Lack of Consensus on Mandatory Relocation; Shift Focus to Countries Outside EU’, 15 September 2015, <http://www.hrw.org/news/2015/09/15/eu-deflecting-responsibility-protect-refugees>, accessed 15 December 2015.

¹⁶⁴ EU Directive 2001/55/EC, July 20, 2001.

¹⁶⁵ Ostrand, ‘The Syrian Refugee Crisis’, p.271.

¹⁶⁶ *Ibid*; Dawn Chatty and Cynthia Orchard, ‘High Time for Europe to Offer Temporary Protection to Refugees from Syria’, *Open Democracy*, 2 October 2014, www.opendemocracy.net/can-europe-make-it/cynthia-orchard-dawn-chatty/high-time-for-europe-to-offer-temporary-protection-to, accessed 9 February 2018; Andrew Miller and Cynthia Orchard, ‘Forced Migration Policy Briefing 10: Protection in Europe for Refugees from Syria’, Oxford: Refugee Studies Centre, Oxford Department of International Development, September 2014, <https://www.rsc.ox.ac.uk/files/files-1/pb10-protection-europe-refugees-syria-2014.pdf>, accessed 4 July 2018.

¹⁶⁷ Foundation Pro Asyl, Georgi Voynov et al, *Pushed Back at the Door: Denial of Access to Asylum in Eastern EU Member States*, NGO Report, Hungarian Helsinki Committee, 2017, https://www.proasyl.de/wp-content/uploads/2015/12/pushed_back.pdf, accessed 9 February 2018.

As the numbers of refugees fleeing Syria sharply rose in 2014, countries outside the region pledged to resettle less than 2 percent of Syrian refugees.¹⁶⁸ The EU Home Affairs Minister, Cecilia Malmstrom called on Europe to resettle more refugees as Syria's neighbours had taken in over 3 million while Europe had only accepted 100,000.¹⁶⁹ In April 2015, the EU had a summit in Brussels following several refugee and migrant tragedies in the Mediterranean. However, a confidential draft statement from the summit stipulated that migrants reaching Italy would be deported as irregular migrants under Frontex, the European agency for border control.¹⁷⁰ Additionally, the European Council decided, pending EU leaders' agreement that 5000 resettlement places would be offered to refugees.

The EU continued working to establish a common response to the crisis and resettle larger numbers of refugees. In May 2015 the European Commission proposed a European Resettlement Scheme, which was adopted by the European Council in July 2015.¹⁷¹ Member States agreed to resettle more than 22,000 refugees in need of international protection from outside the EU to EU Member States by July 2017 in order to provide safe and legal pathways to enter the EU to prevent dependence on criminal networks of smugglers and traffickers.¹⁷² However, in July 2016, less than half the target for the European Resettlement Scheme had been reached with a total of 8,268 people resettled in 17 EU countries and four other European countries.¹⁷³

In July 2015, Hungary began constructing a fence along its border with Serbia to keep refugees out. As a result, refugee numbers crossing into Hungary spiked in anticipation of the completed fence. Sea arrivals also increased because in August of the same year, Germany became the first European country to suspend the 1990 Dublin Protocol¹⁷⁴ (which provides that asylum

¹⁶⁸ Dr. Neil Quilliam, 'UK Election Notes: Foreign Policy Opportunities-Resettling Syrian Refugees', Chatham House, 10 April 2015, <http://chathamhouse.org/expert/comment/17408>, accessed 4 July 2018.

¹⁶⁹ António Guterres, UN High Commissioner for Refugees, 'Europe Must Give Syrian Refugees a Home', *The Guardian*, 22 July 2014, <https://www.theguardian.com/commentisfree/2014/jul/22/europe-syrian-asylum-seekers-refugees-illegal-trafficking>, accessed 25 October 2017, accessed 25 October 2017.

¹⁷⁰ Alan Travis, 'EU summit to offer resettlement to only 5,000 refugees', *The Guardian*, 23 April 2015, <https://www.theguardian.com/world/2015/apr/22/most-migrants-crossing-mediterranean-will-be-sent-back-eu-leaders-to-agree>, accessed 25 October 2017.

¹⁷¹ Home Office, Report by the National Audit Office, 'The Response to the Syrian Refugee Crisis – An International Comparison', September 2016, p. 9.

¹⁷² *Ibid.* By July 2016, 8,268 people had been resettled in seventeen EU countries and four other European countries. See, European Commission, *Relocation and Resettlement – State of Play*, July 2016.

¹⁷³ Home Office, Report by the National Audit Office, 'The Response to the Syrian Refugee Crisis – An International Comparison', September 2016, p. 9.

¹⁷⁴ MEPs approved a Dublin overhaul in October 2017 whereby first countries of arrival would no longer automatically be responsible for asylum seekers. Instead, assignment of responsibility would be first through a 'genuine link' to a member state and if none, then they would be assigned via a fixed distribution quota amongst the states. The draft report was approved by 43 to 16 with no abstentions

seekers must apply in the first European country they enter) and opened its border to asylum seekers regardless of the first countries they entered.¹⁷⁵

The 10% of Syrian refugees that sought safety in Europe, sowed deeper political divisions as countries argued over sharing the ‘burden’¹⁷⁶. Germany pledged to accept 800,000 refugees in 2015 alone.¹⁷⁷ German Chancellor Merkel became frustrated that other EU countries, particularly the UK, were not sharing the burden.¹⁷⁸ Indeed, she maintained that there was a duty to do so.¹⁷⁹ It is unclear what kind of duty Merkel was talking about.¹⁸⁰ A month later, a three-year old fleeing Daesh in Kobani with his mother and brother came to depict the reality of those forced to flee conflict across the dangerous Mediterranean. Pictures of Aylan Kurdi, dead on the beach near a Turkish resort after his boat in the Mediterranean capsized while trying to reach Europe was a turning point in the refugee crisis and prompted different reactions across Europe.¹⁸¹ The UK expanded its small, specialised programme for Syrian refugees by agreeing to resettle 20,000 of Syria’s most vulnerable by 2020.

There were some attempts to resettle refugees amongst European states in order to ease the pressures felt by the entry states. Germany led a proposal for redistributing the refugees trapped in Greece and Italy across EU member states to ameliorate the pressure on these arrival

constituting the European Parliament’s negotiations, but the European Council has yet to approve its mandate. See, Beata Stur, ‘MEPs Approve Dublin Regulation Overhaul’, *New Europe*, www.neweurope.eu/article/meps-approve-dublin-regulation-overhaul/, accessed 9 February 2018.

¹⁷⁵ For a good discussion of the motivations under EU responses, see, Newman, ‘The Limits of Liberal Humanitarianism in Europe’. See also, Luke Harding, Philip Oltermann and Nicholas Watt, ‘Refugees Welcome? How UK and Germany Compare on Migration’, *The Guardian*, 2 September 2015, <https://www.theguardian.com/world/2015/sep/02/refugees-welcome-uk-germany-compare-migration>, accessed 25 October 2017.

¹⁷⁶ The rise of nationalism throughout the European Union has seen states rely on sovereignty arguments for rejecting EU laws on asylum or calls for distributing resettlement more evenly among member states. For example, the collapse of the Schengen Agreement, the Common European Asylum System and the Dublin Convention. As entry states, Greece and Italy have hosted the majority of arrivals and under Dublin, refugees would have a right to seek asylum on their territories as the first countries of arrival. For a good overview of the EU’s political conflict over collective action, see, Newman, ‘The Limits of Liberal Humanitarianism in Europe’. See also, Roland Benedikter and Ireneusz Pawel Karolewski, ‘Italy’s Migration Crisis is a Clear Threat to European Unity’, London School of Economics and Political Science Blog, EUROPP, 7 February 2017, <http://blogs.lse.ac.uk/europpblog/2017/02/07/italy-migration-crisis-clear-threat-eu-unity/>, accessed 25 October 2017.

¹⁷⁷ Luke Harding et al, ‘Refugees welcome? How UK and Germany compare on migration’.

¹⁷⁸ *Ibid.*

¹⁷⁹ See, Tony Paterson, ‘Angela Merkel: “It’s our Damned Duty to Help Refugees”’, *The Independent*, <http://www.independent.co.uk/news/world/europe/angela-merkel-its-our-damned-duty-to-help-refugees-a6686631.html>, accessed 15 December 2015. This does not necessarily mean that EU states see a link between refugee protection and the specific R2P framework that has emerged since 2005.

¹⁸⁰ Newman argues that the EU’s approach to refugee protection has concentrated on utilising EU laws to justify the approach to protection, rather than implicitly or explicitly relying on R2P as a motivating factor. See, Newman, ‘The Limits of Liberal Humanitarianism in Europe’.

¹⁸¹ Helena Smith, ‘Shocking Images of Drowned Syrian Boy Show Tragic Plight of Refugees’, *The Guardian*, 2 September 2015, <https://www.theguardian.com/world/2015/sep/02/shocking-image-of-drowned-syrian-boy-shows-tragic-plight-of-refugees>, accessed 4 July 2017.

countries. At the September 2015 emergency summit in Brussels, the European Commission presented the proposal for reallocation of 120,000 asylum seekers who ‘clearly require international protection’ from the burdened states across other European states with France, Germany and Spain to host around 60%.¹⁸² The EU Justice and Home Affairs Council agreed to relocate 160,000 Syrian asylum seekers currently in Italy and Greece through the Emergency Relocation Scheme, which was designed to help Italy and Greece deal with the pressures of the refugee crisis as entry states.¹⁸³ Under the programme, asylum seekers would have their applications processed in the country of relocation (not entry) and if successful, they would be granted refugee status and the right to reside in the relocation country. The relocations were expected to take place over two years, with the EU budget providing financial support to the Member States participating. In order to incentivise member states, the EU offered states 10,000 euros per resettled refugee.¹⁸⁴ The programme was generally seen as a failure because by mid-May 2016, only 15% of the initial target of 20,000 was met and by September 2015 only 3,056 people had been relocated.¹⁸⁵ The Emergency Relocation Scheme relocated 30 Syrian and Iraqi asylum seekers from Greece to Luxembourg by November 2015 and only 1,418 places were made available by 14 participating member states.¹⁸⁶ The EU was faced with resistant member states and thus, its attempt at developing solutions was thwarted from within. For example, Hungary called a referendum on whether the EU should have any power to prescribe allocation of asylum seekers without consent of its Parliament.¹⁸⁷ The rise of nationalism fostered a pan-European discourse appealing to national values, national identity, national borders and national interests:

Viktor Orban in Hungary, who built a wall against refugees and triggered a collapse on the Balkans’ borders, Miro Cerar in Slovenia who said that his country

¹⁸² European Commission, ‘European Commission - Fact Sheet: Refugee Crisis – Q&A on Emergency Relocation’, 22 September 2015, Brussels, http://europa.eu/rapid/press-release_MEMO-15-5698_en.htm, accessed 10 October 2017.

¹⁸³ Home Office, Report by the National Audit Office, ‘The Response to the Syrian Refugee Crisis – An International Comparison’, September 2016, p. 11.

¹⁸⁴ European Commission, “European Commission - Press release Enhancing Legal Channels: Commission Proposes to Create Common EU Resettlement Framework”, http://europa.eu/rapid/press-release_IP-16-2434_en.htm, accessed 4 July 2018.

¹⁸⁵ Home Office, Report by the National Audit Office, ‘The Response to the Syrian Refugee Crisis – An International Comparison’, September 2016, p. 11. European Commission, *Relocation and Resettlement – State of Play*, July 2016. As reported on Radio 4 news during a discussion of the UK government’s decision to back out of the agreement to resettle 3000 unaccompanied minors, 9 Feb 2017. See also, Angeliki Dimitriadi, ‘Burden Sharing, Where Art Thou?’, *European Council on Foreign Relations*, November 11, 2015, www.ecfr.eu/article/commentary_burden_sharing_where_art_thou5003, accessed 9 February 2018.

¹⁸⁶ European University Institute, Robert Schuman Centre for Advanced Studies and Migration Policy Centre, ‘Syrian Refugees: A Snapshot of the Crisis in the Middle East and Europe’.

¹⁸⁷ United States Department of State, 2016 Report on International Religious Freedom - Hungary, 15 August 2017, <http://www.refworld.org/docid/59b7d89d13.html>, accessed 25 October 2017.

will only accept Christian refugees and that Europe is going to drown, Norbert Hofer, the far-right leader in Austria that promised he will protect Austrian borders against the refugees. The all have a palpable enemy: the refugee.¹⁸⁸

In the meantime, Bulgaria secured its borders and Hungary completed its border wall and closed its border completely, threatening incarceration of those who crossed into the state and turning back those who claimed asylum at the border. Refugees returned to Syria in the thousands as a result of the harsh living conditions in Syria's neighbouring host states and with access to Europe blocked. As the main route to Europe through the Balkans was shut to refugees, an upsurge in trafficking occurred for taking refugees to Europe via the Spanish/Moroccan border where they would cross at Melilla.¹⁸⁹

As Sweden, Germany, Italy and Greece continued to provide the bulk of sanctuary to refugees over other European states, they too began to secure their borders. By January 2016, Sweden was overwhelmed at having the highest number of asylum applications in Europe relative to its population. As a result, Sweden, along with Denmark, began to require identification checks at their borders in order to discourage the flow of refugees. By August, polls suggested there was some pushback in Germany for Merkel's 'open door' policy amongst reports of violence and the terror attacks across Europe.¹⁹⁰ Such events accelerated framing of the Syrian refugee crisis as a security challenge, rather than a humanitarian issue.¹⁹¹

Containment was also a large part of the European Resettlement Scheme as the EU pursued a containment policy with Turkey.¹⁹² The EU/Turkey negotiations were fraught with tension and exposed a strained relationship between Turkey and the EU. A Greek newspaper leaked the minutes of the meeting, which show Turkey's frustration with the EU's minimal contribution to the Syrian refugee crisis.¹⁹³ According to the minutes, Turkey threatened to help Syrians get to Europe, and then asked EU officials: 'If there is no deal, how will you stop the refugees? Will

¹⁸⁸ Claudia Postelnicescu, 'Europe's New Identity: The Refugee Crisis and the Rise of Nationalism', *Europe's Journal of Psychology* 12/2: 203-209 (2016).

¹⁸⁹ Josefina Domínguez-Mujica, 'The Challenge of Migration and the European Fortress' in Klare Scarborough (ed.), *Border Crossings: Immigration in Contemporary Prints* (La Salle University Art Museum, 2016), p. 97-102.

¹⁹⁰ Luke Harding et al, 'Refugees welcome? How UK and Germany compare on migration'.

¹⁹¹ Newman, 'The Limits of Liberal Humanitarianism in Europe'. Additionally, the refugee crisis was often conflated with economic migrants, who were seen as less deserving of international protection. See, for example, Heaven Crawley and Dimitris Skleparis, 'Refugees, Migrants, Neither, Both: Categorical Fetishism and the Politics of Bounding in Europe's "Migration Crisis"', *Journal of Ethnic and Migration Studies* 44/1: 48-64 (2018).

¹⁹² See for example, MSF, 'One Year On From the EU-Turkey Deal: Challenging the EU's Alternative Facts'.

¹⁹³ The EU and the US resettled fewer than 9,000 Syrians between 2011 and September 2015. Kirisci, 'Why 100,000s of Syrian Refugees are Fleeing to Europe'.

you kill them?’¹⁹⁴ One EU official responded by saying, ‘We can make the EU less attractive for refugees but this is not our desired solution’¹⁹⁵.

In March 2016, the EU and Turkey reached a deal to face the issue of thousands of asylum seekers trapped in Greece with more coming as a result of the closed borders in the Balkans. The substance of the deal promised that Greece could reject refugees at its border and Turkey would take them back. From April 2016, for each Syrian sent back to Turkey from the Greek islands, another Syrian would be resettled from a refugee camp in Turkey. This agreement aimed ‘to replace irregular flows of refugees travelling in dangerous conditions across the Mediterranean Sea with an orderly and legal resettlement process’¹⁹⁶. Out of the 8,268 people who had been resettled as part of the European Resettlement Scheme towards the end of 2016, 796 were Syrian refugees resettled under the EU–Turkey agreement.¹⁹⁷ The majority of the Syrian refugees were resettled to Germany (294 refugees) and Sweden (254 refugees).¹⁹⁸ However, in June 2016, Amnesty International reported that Turkey was conducting mass returns of Syrian refugees, on average 100 people per day from mid-January through April 2016, which is illegal under Turkish, EU and international law.¹⁹⁹ The Amnesty International report exposed evidence that asylum seekers and refugees were denied effective protection in Turkey and that the Turkish system could not handle the increasing numbers of refugees resulting from the EU Turkey deal.²⁰⁰ The same month, Frontex reported that arrivals to Greece had dropped by 90% following the EU/Turkey deal.²⁰¹

A stark contrast existed between the EU’s response to the refugee crisis in terms of hosting Syrian refugees to those countries bordering Syria who were geographically disadvantaged and thus hosting the bulk of those fleeing mass atrocities. For example, Jordan, Lebanon and

¹⁹⁴ Benjamin Bilgen, ‘Leaked G20 Documents Reveal Blackmail, Bargaining, and Tension Between Turkey and the EU’, *Independent Turkey*, 12 February 2016, London: Centre for Policy and Research on Turkey (Research Turkey), original link: <http://researchturkey.org/?p=10765>, accessed 25 October 2017.

¹⁹⁵ *Ibid.* Human Rights Watch sees this as Europe’s ‘default position’. Human Rights Watch, *Europe’s Refugee Crisis. An Agenda for Action*, 16 November 2015, <https://www.hrw.org/report/2015/11/16/europes-refugee-crisis/agenda-action>, accessed 20 December 2016.

¹⁹⁶ Home Office, Report by the National Audit Office, ‘The Response to the Syrian Refugee Crisis – An International Comparison’, September 2016, p. 11.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ See, Amnesty International, Report, *Turkey: No Safe Refuge: Asylum-seekers and Refugees Denied Effective Protection in Turkey*, Index number: EUR 44/3825/2016, 3 June 2016, <https://www.amnesty.org/en/documents/eur44/3825/2016/en/>, accessed 20 October 2017.

²⁰⁰ *Ibid.*

²⁰¹ FRONTEX, ‘Number of migrants arriving in Greece dropped 90% in April’, 13 May 2016, <http://frontex.europa.eu/news/number-of-migrants-arriving-in-greece-dropped-90-in-april-6e7oBw>, accessed 25 October 2017.

Turkey were hosting more than four million Syrians collectively with an average gross national income (GNI) per capita of \$8,600, while the EU with an average GNI per capita of \$35,680 was unable to distribute 350,000 Syrian refugees amongst its member states in July 2015.²⁰² Instead, the EU focused on being a leading contributor of humanitarian aid to the region despite it falling short of the amount needed to provide humanitarian protection which resulted in some voluntary returns to mass atrocities in Syria.²⁰³ Additionally, European policies were aimed at containing refugees in the Middle East even if that resulted in *refoulement* as in the case of Greek forces who were systematically pushing back refugees around the Turkish border on both land and sea from early on in the Syrian conflict.²⁰⁴ As a result, Médecins Sans Frontières (MSF) will no longer accept funds from EU member states and institutions ‘in opposition to their damaging deterrence policies and continued attempts to push people and their suffering away from European shores’²⁰⁵. In sum, the EU’s policies on refugees along with the on-going conflict, and the nature of the international responses (such as air strikes on all sides) all collectively increased refugee flows into the region and beyond.

4.5 Conclusion

This chapter provided the overall context of the Syrian war and ensuing humanitarian crisis, including the mass refugee movement out of Syria and the region. Syria is an R2P case as mass

²⁰² Kirisci, ‘Why 100,000s of Syrian Refugees are Fleeing to Europe’. More than half of the world’s refugees lived in 10 countries with wealthy nations leaving poorer ones to bear the brunt of the migration crisis. See, Amnesty International, *Tackling the Global Refugee Crisis: From Shirking to Sharing Responsibility*, 2016, <https://www.amnesty.org/en/documents/pol40/4905/2016/en/>, accessed 25 October 2017.

²⁰³ Even so, the EU’s pledges have not always been fulfilled. European University Institute, Robert Schuman Centre for Advanced Studies and Migration Policy Centre, ‘Syrian Refugees: A Snapshot of the Crisis in the Middle East and Europe’.

²⁰⁴ A German NGO reported that Greek special forces were systematically repelling asylum seekers and refugees from Syria, Afghanistan, Somalia and Eritrea in ‘commando-like operations on its Turkish land border and out at sea’. Pro-Asyl, *Pushed back – Systematic Human Rights Violations against Refugees in the Aegean Sea and the Greek-Turkish Land Border*, <https://www.proasyl.de/en/material/pushed-back-systematic-human-rights-violations-against-refugees-in-the-aegean-sea-and-the-greek-turkish-land-border/>, accessed 9 February 2018; see also, Nikolaj Nielsen, ‘Greek Special Forces Push Back Syrian Refugees, NGO says’, *EU Observer*, 7 November 2013, <https://euobserver.com/justice/122021>, accessed 9 February 2018. However, in May 2016, an independent authority examining appeals claims in Greece ruled against sending a Syrian refugee back to Turkey, potentially creating a precedent for thousands of other similar cases. In this landmark case, the appeals committee upheld the appeal of an asylum seeker who had been one of the first Syrians listed for deportation under the terms of the EU-Turkey deal. A three-person appeals tribunal in Lesbos ruled that his basic human rights were not met in Turkey and there was too high a risk of *refoulement* to Syria and therefore overturned the applicant’s deportation order by a verdict of two to one. Apostolis Fotiadis, Helena Smith and Patrick Kingsley, ‘Syrian Refugee Wins Appeal Against Forced Return to Turkey’, *The Guardian*, 20 May 2016, <https://www.theguardian.com/world/2016/may/20/syrian-refugee-wins-appeal-against-forced-return-to-turkey>, accessed 23 October 2017.

²⁰⁵ MSF, ‘MSF to no Longer Take Funds from EU Member States and Institutions’, <http://www.msf.org.uk/article/msf-no-longer-take-funds-eu-member-states-and-institutions>, accessed 14 June 2018.

atrocities occurred and the government manifestly failed to protect its population, especially as it was the predominant perpetrator of the crimes. The international community responded to the conflict in Syria and to the millions forcibly displaced by the conflict. However, the responses were not framed in terms of Pillar III of R2P, mostly due to the on-going contestation of the use of force for humanitarian protection. As such, the military interventions in Syria were against Daesh as a common enemy to most sides of the conflict, but this prevented an effective or unified response to the manifest failure of the Syrian government in its protection duties. Furthermore, the military interventions against Daesh, borne of intentions to help protect the Syrian population, often compounded the already dire humanitarian situation for civilians and contributed to increasing Syrian refugee flows. Additionally, there was limited effectiveness through diplomacy as getting Assad to ratify the Chemical Weapons Treaty did not end the use of chemical weapons in Syria and no agreement was reached over Assad's political transition and his government was not sufficiently incentivised to stop perpetrating mass atrocities. Humanitarian aid to the region was significant in amounts pledged, but consistently fell short of what was required to meet the basic needs of Syrians in Syria and the Syrian refugees and their host communities. For these reasons, a mass exodus of Syrians from the region was inevitable. EU member states mostly responded by trying to contain refugees in the region near Syria due to fears around border security and the rise of nationalism. Some member states like Germany and Sweden were more willing to host relatively significant numbers of refugees, but not in comparison to the enormous financial and resettlement commitments of Syria's neighbouring states that have a much lower average GNI than that of Europe. This chapter provided the international context in terms of the UK's role as a permanent member of the UN Security Council, an international power and a member of the EU. The next chapter identifies the UK's national or localised responses to Syria and Syrian refugees and analyses the underlying motivations for those responses in order to answer the main research questions concerning the link between the UK's resettlement policy and R2P.

5 Localising R2P in the UK Government

5.1 Introduction

This chapter answers the main research question of how the UK is using the resettlement of Syrian refugees as a method of discharging its responsibility to protect populations from mass atrocities in Syria. The empirical phase of this research, which included a discourse analysis of official statements followed by interviews with elites, brings insight to how R2P has been localised by a powerful liberal state such as the UK in the broad sense while answering whether R2P influences the UK's Syrian resettlement policies in the narrow sense.

The UK has responded to Syria and Syrian refugees in a multi-levelled way, from both the international level as a powerful liberal state through its permanent membership on the UN Security Council (as discussed in Chapter 4) and from the local level. Understanding the responses made by the UK at the international level in Chapter 4 provided an important context for examining and ultimately understanding how the UK has responded to Syria and Syrian refugees on a national level. Understanding how R2P has been localised in the UK on the domestic level requires first identifying the UK's national responses to Syria and Syrian refugees and then analysing how the UK's commitment to R2P has influenced or motivated those responses, particularly in the context of resettlement.

Chapter 2 explained that localisation of a norm requires consideration of the context around the norm's endorsement and its subsequent practice by a state. How a norm is localised reflects the state's interpretation of the norm as derived through its practice, all of which provide information on which aspects of the norm are contested. Specifically, Acharya's localisation theory involves looking at how a norm is practised by the state in order to understand which aspects may be contested. Similarly, Wiener argues that looking at a norm's practice (beyond the formal text of the norm) will also disclose its meanings and its contested aspects, which are further revealed by how actors resist particular features or forward alternative approaches of the norm (Welsh). The research applied these critical constructivist perspectives by looking at how the UK uses R2P in discourse and practice for insight into what the norm means to the UK and which aspects of the norm remain contested. Because the UK government is not monolithic, the research involved examining what R2P means and how it is used by the social agents working within the remit of the relevant agencies, which was derived through analysis of R2P's official discursive practice and through its implementation in the context of Syria and Syrian refugees. Importantly, localisation is how a norm is used and made to fit within a state and thus, does not

have a single definition. This means the failure or the selective ‘use’ of a norm in speech or practice does not necessarily mean it is not localised (as discussed in Chapter 2). Instead, it may suggest that the norm is localised as something else, which is unproblematic from a critical constructivist perspective since norms are understood to mean different things to different people, which explains norm variation across even like-minded liberal states. A contestation lens was applied to understand how the UK’s public discourse and implementation of R2P has forwarded a particular meaning of R2P which has in effect meant a resistance to other meanings or potential aspects of R2P (Welsh). Specifically, finding R2P’s localisation in the UK relied upon the following indicators: (1) Any official language and practice around R2P in Syria for 2014-2016 (including the time period earlier in the Syrian conflict and other cases like Libya to provide relevant and necessary context); (2) Any official language and practice of mass atrocity response which is related to R2P in Syria; and (3) Any language and practice of responding to refugees fleeing mass atrocities in Syria. As such, Acharya’s localisation and Wiener’s meanings-in-use theories were applied to the relevant domestic agencies in order to form a broader picture of how R2P is localised in the UK.

The chapter begins with a section outlining the relevant government agencies used in this research, followed by a brief overview of the UK’s broad response to Syria and Syrian refugees on a national scale. The subsequent sections analyse what R2P means in practice across the relevant domestic agencies in order to draw conclusions about how R2P is localised in the UK and which aspects are contested.

5.2 The Relevant Government Agencies

Interpreting the UK’s localisation and contestation of R2P necessitates looking at R2P’s meanings as derived through its rhetorical discourse¹ and subsequent practice by the relevant UK government agencies for the period between 2014 through 2016² in relation to Syria.³

¹ In this context, discourse means its ‘prescriptive status’ which means that ‘actors regularly refer to the norm to describe and comment on their own behaviour and that of others’. Kathryn Sikkink, ‘The United States and Torture: Does the Spiral Model Work?’ in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds.), *The Persistent Power of Human Rights: From Commitment to Compliance* (New York: Cambridge University Press, 2013), p. 145-163, p.148.

² Importantly, data was also considered from outside this time period to provide contextual understanding for how the UK understands R2P and refugees, which inevitably informed the discourse and practice during the selected time period of 2014-2016.

³ Antje Wiener, ‘Contested Compliance: Interventions on the Normative Structure of World Politics’, *European Journal of International Relations* 10/2: 189-234, 218 (2004); see also Antje Wiener, ‘Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations’, *Review of International Studies* 35/1: 175-193 (2009). For more information on ‘agency’, see Jeffrey T. Checkel, ‘Norms, Institutions, and National Identity in Contemporary Europe’, *International Studies Quarterly* 43/1: 83-114, 84 (1999). See also, Edward Newman, ‘R2P: Implications for World Order’, *Global Responsibility*

Because R2P is understood as a foreign policy response by the UK⁴, understanding how the norm is localised and contested requires using a foreign policy lens. The point at which R2P becomes relevant in UK foreign policymaking is at the broadest level in terms of determining which variables influence the sitting government's overarching foreign policy goals.⁵ According to elites in the FCO, 'in practice, the existing goals [in general notwithstanding Syria] reflect a mixture of counter-terrorism, regional stability and humanitarian objectives'⁶. Importantly, upholding R2P is not an explicit foreign policy goal, but is implicitly included within the UK's broader humanitarian objectives.⁷

The implementation of the UK's foreign policy objectives must be disaggregated across the relevant agencies because the UK's various responses to Syria and Syrian refugees have occurred across several government agencies in pursuit of the overall objectives. This requires some understanding of how the UK government is organised in making its policy decisions. The UK government consists of the Prime Minister, her selected cabinet, and the ministerial departments operating under the Prime Minister like the Home Office⁸, the FCO⁹ and DFID¹⁰.

As such, this research analysed how R2P has been used (rhetorically and practically) by Parliament, the FCO, the Home Office and DFID through the various departmental responses to Syria and Syrian refugees between 2014 and 2016 (including the time period before 2014 serving as the broader context) in order to reach conclusions about how R2P is localised and

to *Protect* 5/3: 235-259, 256 (2013); Annie R. Bird, Chapter 1: 'The US Approach to Transitional Justice', *US Foreign Policy on Transitional Justice* (New York: Oxford University Press, 2015), p.13.

⁴ Jason Ralph and Jess Gifkins, 'The Purpose of United Nations Security Council Practice: Contesting Competence Claims in the Normative Context Created by the Responsibility to Protect', *European Journal of International Relations* 23/3: 630-653 (2017); Jason Ralph, Jack Holland, and Kalina Zhekova, 'Before the Vote: UK Foreign Policy Discourse on Syria 2011-13', *Review of International Studies* 43/5: 875-897 (2017).

⁵ The foreign policy goals are developed by the sitting government. The UK government has been a predominantly Conservative-led government since 2011. A Conservative and Lib Dem coalition governed from 2010-2015, followed by a Conservative majority government under Cameron from 2015-2016 and when he resigned, Theresa May took over as party leader from 2016. She called an election in 2017 and lost the Conservative majority and entered a coalition with the DUP. For an in-depth discussion regarding understanding foreign policy and additional sources, see Bird, Chapter 1: 'The US Approach to Transitional Justice'.

⁶ Interview 14.

⁷ The foreign policy goals of counter-terrorism and regional stability are not R2P responses in of themselves, and so are relevant in terms of how they may serve as the underlying rationales for implementation of the humanitarian objectives, which may supplant R2P as a motivating factor. Thus, this research narrowly focuses on the humanitarian aspect of the UK's foreign policy goals in terms of the role R2P plays as an underlying motivation for the UK's broader humanitarian objectives in the specific case of Syria.

⁸ The ministerial department responsible for immigration, security, law and order.

⁹ The ministerial department responsible for promoting and protecting British interests worldwide through national security, conflict, counterterrorism, trade, consular services.

¹⁰ The ministerial department responsible for administering overseas aid with the goals of promoting sustainable development and eliminating world poverty.

contested in the UK government more broadly. First, analysing R2P's meanings-in-use in Parliament entailed examining the discourse and implementation of mass atrocity responses to Syria by the Prime Minister, the House of Lords, and the House of Commons but only within the context of the existing parliamentary committees or coalitions advocating for a response to Syria and Syrian refugees.¹¹

Second, analysing R2P's localisation in the UK government entailed examining the discourse and implementation of the UK's responses to Syria and Syrian refugees in the FCO, Home Office and DFID. The FCO takes the political lead in helping to develop and shape the foreign policy goals of the sitting government through diplomacy and engagement in representing the UK on the international stage. Simultaneously, DFID oversees and implements the UK's humanitarian aid and development abroad and the Home Office implements the UK's resettlement policies according to the developed policy objectives of the sitting government.¹²

5.3 Overview: The UK Objectives and Responses to Syria and Syrian Refugees

The UK's foreign policy objectives in Syria are reflected by the relevant agencies' overall responses to Syria and Syrian refugees. The official discourse and interviews confirmed that the UK's foreign policy goals in Syria across the relevant agencies comprising the UK government include: (1) Assad stepping down; (2) A Syrian-led political transition; and (3) Ending the conflict and the humanitarian suffering.¹³

In pursuit of those foreign policy objectives, the UK has implemented a broad national response to Syria that includes humanitarian aid to Syria and the region, diplomacy that focuses on Assad stepping down and a Syrian-led political transition, and a refugee resettlement programme for vulnerable refugees. The UK's policy for supporting Syrians in need of protection was initially conducted mostly through DFID's provision of humanitarian aid to those in the region while actively seeking an end to the crisis diplomatically because it was seen as 'the best way to ensure that the UK's help has the greatest impact for the majority of refugees who remain in the

¹¹ The Prime Minister and her cabinet ministers sit in Parliament. Government is dependent on Parliament to make primary legislation. Parliament is made up of two houses. The lower house, the House of Commons is the more powerful house and consists of 650 elected members (MPs) that represent constituencies across the UK. The upper house is the House of Lords, which can vote to amend proposed laws, but the House of Commons can usually vote to overrule its amendments. The House of Lords currently consists of 803 sitting lords with 90 hereditary members.

¹² Interview 14.

¹³ Interview 14.

region and their host countries'¹⁴. Actively seeking an end to the crisis has involved the UK's diplomacy on the UN Security Council where it has maintained Assad must step down in order for a political transition to occur in Syria. As the UN Security Council has failed to reach consensus over these two objectives, the UK has pursued other means for reaching these objectives nationally through the FCO's diplomacy and through debates in Parliament for unauthorised military humanitarian intervention.¹⁵

The UK's response to Syrian refugees through the Home Office has mostly been about containment in the region through assistance to the primary host states or resettling a targeted group of refugees from the region. It was three years into the Syrian conflict (January 2014) that the UK enacted a national program to resettle vulnerable Syrians from the region with the aims of discouraging refugees from leaving the region and taking long journeys to find a country where they have a right to seek asylum while mollifying public outcry and international pressure. During the first three years of the conflict, the UK did not accept any Syrian refugees through its pre-existing refugee resettlement programmes but did make asylum concessions for Syrians already in the UK during the outbreak of the war. Thus, most of those granted asylum initially were already living in the UK and were unable to return home due to the war.¹⁶ A change in policy occurred in 2014, when the Home Office introduced a specific resettlement programme for Syrians called the Syrian Vulnerable Persons Resettlement programme (SVPR). Between the start of the Syrian War in 2011 to one year after implementing the SVPR, the UK had taken in more than 5,000 refugees and asylum seekers combined.¹⁷

¹⁴ Home Office, *Syrian Vulnerable Person Resettlement (VPR) Programme: Guidance for Local Authorities and Partners*, 28 October 2015, p.2.

¹⁵ Tony Blair, 'The Blair Doctrine', 22 April 1999, <https://www.globalpolicy.org/component/content/article/154/26026.html>, accessed 6 March 2018.

¹⁶ Luke Harding, Philip Oltermann and Nicholas Watt, "Refugees Welcome? How UK and Germany Compare on Migration," *The Guardian*, 2 September 2015, <https://www.theguardian.com/world/2015/sep/02/refugees-welcome-uk-germany-compare-migration>, accessed 6 March 2018.

¹⁷ The UK government resettles refugees through the Gateway Protection Programme, which resettles 750 refugees a year from targeted locations including Congo, Ethiopia, Iraq and Somalis from Kenya, Burundi and Syria, and the Mandate resettlement scheme, which resettles individuals recognised as refugees by the UNHCR who are judged to need resettlement and who have a close family member in the UK who is willing to accommodate them. During 2015, the Home Office reported that almost 5,000 Syrians, including family members, were given asylum under normal procedures since the start of the Syrian conflict. Harding et al, 'Refugees Welcome? How UK and Germany Compare on Migration'.

5.4 Localising R2P in the UK

While upholding R2P is not one of the UK's broad foreign policy objectives, the UK maintains that it is 'fully committed to implementing the Responsibility to Protect'¹⁸, but the official discourse on Syria, Syrian refugees and R2P reveals that R2P's first and second pillars are localised more explicitly than Pillar III. For example, the FCO released a speech by Deputy Permanent Representative Peter Wilson addressing the UN General Assembly Interactive Dialogue on Responsibility to Protect in 2013 in which Syria is discussed only within a Pillar I context.¹⁹ Nowhere in Ambassador Wilson's speech does he engage with implementing R2P in terms of a Pillar III response to Syria.²⁰ Furthermore, the UK focuses on Pillar II by 'supporting those states most at risk through developing their capacity to protect their populations [which] [sic] means helping states to build good governance, the rule of law, inclusive and equal societies, and effective judicial and security sectors which all contribute towards building a preventive environment where R2P crimes are less likely to occur'²¹. Across the discourse analysed, implementing R2P practically is generally seen as part of the UK's overall development agenda for the prevention of mass atrocities in the first place. As such, there is little discourse on the UK's commitment to implementing the UK's R2P as a Pillar III response except in terms of members of Parliament who plead for a military intervention to end the suffering of Syrians.

However, the silence around Pillar III does not mean the UK is not committed to implementing a Pillar III response to mass atrocities. Instead, the interviews revealed that Pillar III's evident absence in the official discourse was intentional, but for different reasons across the government agencies. Thus, the following three sections reveal how R2P has influenced the implementation of the UK's foreign policy responses to Syria and Syrian refugees (as set out above) through explicit invocation, purposeful avoidance or unintentional non-use across Parliament, the FCO, the Home Office, and DFID. As a result, the analyses reveal how R2P has been broadly localised and contested in the UK while answering the narrow research question concerning the link between R2P and resettlement of Syrian refugees.

¹⁸ See for example, FCO, 'UK Fully Committed to Implementing the Responsibility to Protect', Speech by Deputy Permanent Representative Peter Wilson, 11 September 2013, <https://www.gov.uk/government/speeches/uk-fully-committed-to-implementing-the-responsibility-to-protect>, accessed 6 March 2018.

¹⁹ See for example, *Ibid.*

²⁰ *Ibid.*

²¹ FCO, Letter to UNA-UK from the Multilateral Policy Directorate, 17 June 2014, <https://www.una.org.uk/sites/default/files/FCO%20reply%20Letter%20to%20Minister%20Simmonds%20on%20R2P%20Focal%20Point%2017%20June%202014.pdf>, accessed 6 March 2018.

5.4.1 Localising R2P in Parliament

This sub-section analyses the data collected from the official discourse and two semi-structured interviews²² with MPs working on implementing a UK response to Syria to arrive at some conclusions about how R2P is localised and contested in Parliament. The official discourse revealed that the UK remains committed to R2P. However, the interviews revealed that R2P is not a significant influence on policymaking because (1) it has failed to make a difference in Syria since the conflict and humanitarian suffering persist; and (2) it is conflated with military intervention that has UN Security Council approval, which means it has very little value when the Council cannot find consensus due to political paralysis.

The UK government has repeatedly reaffirmed that it was fully committed to implementing R2P across the world.²³ In July 2015, the House of Lords debated a motion for the House to ‘take[sic] note of the “Responsibility to Protect” and the application of this international norm by the United Kingdom and the United Nations’²⁴. The House of Lords reaffirmed the importance of R2P and how the UK’s commitment to the norm could be more prominent in UK policy.²⁵ The Earl of Courtown responded to the debate on behalf of the Government, assuring that the UK ‘remains committed to the Responsibility to Protect’²⁶. He further stated, ‘R2P, like all security policies, will be considered as part of the SDSR [Strategic Defence and Security Review]’ and that the Government would be ‘unrelenting in using the UK’s global role to tackle atrocity crimes,’ employing a ‘long-term, comprehensive approach using our diplomats, our overseas aid and our world-class Armed Forces to do so’²⁷. In response, the United Nations Association-UK (UNA-UK), Protection Approaches and The Global Centre for the Responsibility to Protect (GCR2P) made a joint statement welcoming the cross-party support

²² Again, due to limited access to officials for interviews, the research relies heavily on the discourse and on statements and answers to questions provided by officials at public and closed conferences under the Chatham House Rule.

²³ FCO, ‘UK Fully Committed to Implementing the Responsibility to Protect’, Speech by Deputy Permanent Representative Peter Wilson, 11 September 2013.

²⁴ House of Lords, ‘Responsibility to Protect’, Hansard, Vol.764, 16 July 2015, <https://hansard.parliament.uk/Lords/2015-07-16/debates/15071639000951/ResponsibilityToProtect>, accessed 6 March 2018; House of Lords, ‘The “Responsibility to Protect” and the Application of this International Norm by the UK and the UN’, Library Note, 16 July 2015, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2015-0020#fullreport>, accessed 6 March 2018. The Library note was distributed to members before the debate to provide background information on conceptual and practical aspects of R2P as well as the government’s position on the norm.

²⁵ House of Lords, ‘Responsibility to Protect’, Hansard, Vol.764, 16 July 2015.

²⁶ *Ibid*, Column 721.

²⁷ ‘Lords Show Cross-Party Support for the Responsibility to Protect’, UNA-UK, 17 July 2015, <https://www.una.org.uk/news/lords-show-cross-party-support-responsibility-protect>, accessed 6 March 2018.

for the norm and encouraged the UK government to be more explicit in its support for R2P.²⁸ Parliamentary support for R2P endures as over 60 MPs from all the parties have pledged commitment to the norm in a statement released by the Labour Campaign for International Development.²⁹

However, there has been a conscious choice to refer to R2P as the ‘Responsibility to Protect Civilians’ rather than populations, which was further confirmed by the interviews. Interviewees explained that conflating R2P with the Protection of Civilians (POC), a separate framework, would help dissipate R2P’s toxic relationship to military intervention, not because coercive force was not seen as a preferred method in Syria by many MPs, but because the POC agenda was seen as less controversial and more useful for pursuing the UK’s humanitarian objectives of ending the conflict and ending the suffering.³⁰

Even though the official discourse maintained the UK’s continued commitment to R2P, those interviewed did not bring R2P up when discussing Syria. Participants expressed that there was a clear UK responsibility to help Syrians fleeing mass atrocities, but that it was not derived from R2P.³¹ Instead, the UK’s responsibilities towards Syrians fleeing mass atrocities emanated from the UK’s permanent membership on the UN Security Council and because the UK is a ‘significant country’³². Furthermore, international humanitarian law was determined to trigger a legal necessity to respond because war crimes and crimes against humanity are ongoing by the regime in Syria.³³ There was also a strong moral case for responding, because it is ‘the right thing to do’³⁴.

²⁸ UNA-UK, Global Centre for the Responsibility to Protect and Protection Approaches, Joint Statement on UK House of Lords Debate on the Responsibility to Protect, 16 July 2015, <https://www.una.org.uk/sites/default/files/Joint%20statement%20on%20UK%20House%20of%20Lords%20debate%20on%20R2P.pdf>, accessed 6 March 2018.

²⁹ Labour Campaign for International Development, ‘Our Responsibility to Protect Civilians’, 26 January 2017, <https://laid.org.uk/2017/01/26/our-responsibility-to-protect-civilians/>, accessed 6 March 2018.

³⁰ Interview 6. Welsh has stated that the POC advocates are careful to distinguish from R2P as they want to avoid being tarred by R2P. Jennifer M. Welsh, ‘Implementing the Responsibility to Protect: Where Expectations Meet Reality’, *Ethics and International Affairs* 24/4: 415-430, 425-426 (2010); Jennifer M. Welsh, ‘The Responsibility to Protect and the Crises in Libya and Syria’, Plenary Address, University of Westminster, 5 December 2013, ESRC Series, *The Responsibility to Protect and Prosecute: The Political Sustainability of Liberal Norms in an Age of Shifting Power balances*, <http://iist2p.leeds.ac.uk/current/responsibility-to-protect-and-prosecute/>, accessed 21 October 2015. However, she stated in 2015 that this had lessened to some degree at the conference ‘Putting the Responsibility to Protect at the Centre of Europe’, Plenary, 13-14 October 2016, University of Leeds. Even so, for this research, R2P being conflated with POC was seen as a benefit.

³¹ Interviews 6, 10.

³² Interview 6; confirmed by Interview 10.

³³ Interviews 6, 10.

³⁴ Interview 6; repeated by Interview 10.

The interviews revealed that the main reason R2P is not a significant influence on policymaking is because it has failed to make a difference in Syria since the conflict and humanitarian suffering persist. This notion reveals a presumption that practising R2P means a ‘successful’ outcome such as an end to the violence and suffering of civilians³⁵ because ‘R2P is about stopping the slaughter’³⁶. A pledge to R2P with cross-party support released by the Labour Campaign for International Development, also speaks of a greater responsibility than *helping* to protect Syrians with a ‘responsibility to intervene’ and a responsibility for development:

This principle [R2P] acknowledges that...the international community has a clear obligation to intervene...Through our development work and following any direct interventions we will always stand ready to support communities and countries to rebuild with a long term development plan to secure safety, stability and prosperity for their people.³⁷

These statements and the interviews demonstrated a conception within Parliament that R2P requires more than helping to protect, which resonates with the common presumption in the literature that R2P is about ending mass atrocities in a specific case. As discussed in Chapter 2, this is an aspirational goal of R2P, but not a literal requirement as states are only responsible for *helping* to protect populations from mass atrocities.

Another reason R2P is not a significant influence on policymaking in Parliament is because R2P is conflated with military intervention. When interviewees were asked whether they knew what R2P was, the common response was that the norm is about ‘going into a country to help people like in Kosovo’ and ‘if we cannot negotiate, then we use it like in Libya’, but ‘except in Syria because of the P5’³⁸. In practice, Parliament saw the UK’s R2P as a responsibility to ‘intervene’: ‘R2P only works this way [militarily]’³⁹ and ‘military intervention is obligatory under R2P’⁴⁰. A further example of R2P’s conflation with intervention is demonstrated by the cross-party commitment to R2P, which describes a UK right of intervention with a lower threshold trigger for an international response than R2P’s text:

³⁵ Interviews 6, 10.

³⁶ Interview 6. All interviews across the board saw successful implementation of R2P as an end to the violence against civilians and when refugees could return home.

³⁷ Labour Campaign for International Development, ‘Our Responsibility to Protect Civilians’, 26 January 2017.

³⁸ Interview 10; repeated by Interview 6.

³⁹ *Ibid.*

⁴⁰ Interview 6. These arguments were consistently relied upon by Conservative and Labour MPs at several conferences attended by the researcher under the Chatham House Rule.

This principle [R2P] acknowledges that when a government either wilfully fails to protect the security of its citizens, or is unable to do so, the international community has a clear obligation to intervene.⁴¹

Furthermore, the House of Lords debate on R2P in 2015 reveals the understanding that successful implementation of R2P (in terms of the international response to mass atrocity) requires the use of force to prevent another tragedy like Srebrenica.⁴² While many of the statements in the debate criticise this relational problem, there is no engagement with how to respond to mass atrocities other than through the use of force or via prevention. In other words, throughout the debate, there is a consistent idea that decoupling military intervention from R2P means focusing exclusively on Pillars I and II. There is no indication of an understanding that non-military options also form part of the Pillar III timely and decisive response to mass atrocities and not just in terms of prevention under the first two pillars. For example, the Earl of Courtown, who speaks on behalf of the government makes the point that there needs to be more focus on Pillars I and II to debunk the misconception that R2P is synonymous with military intervention.⁴³ Further, Lord Hannay, in recognising the problem of equating R2P with military intervention, calls for strengthening ‘the non-coercive instruments for conflict *prevention*’ as one method of making R2P ‘more effective and less contentious’⁴⁴. His suggestions mostly refer to Pillar II and to encouraging the French initiative for a restraint on the veto, which further suggests that building consensus is about getting the international community to agree to the same humanitarian objectives of Assad’s departure and political transition rather than augmenting the objectives themselves in an effort to build consensus. Similarly, the interviews revealed that officials spend more time advocating restraining the veto in cases of mass atrocities rather than contemplating the pursuit of what Jason Ralph refers to as other more pragmatic means and ends of attaining peace in Syria.⁴⁵

⁴¹ Labour Campaign for International Development, ‘Our Responsibility to Protect Civilians, 26 January 2017.

⁴² House of Lords, Hansard, ‘Responsibility to Protect’ Vol. 764, 16 July 2015.

⁴³ *Ibid*, Column 721. Also, throughout the debate, there is a consistent conflation between the ICISS and WSO versions of R2P. For example, Lord Alderdice goes on to speak of a responsibility to rebuild which was not endorsed by members of the UN and Lord Collins speaks of a state that is ‘unable or unwilling’ as opposed to a ‘manifestly failing’ state.

⁴⁴ *Ibid*, Column 711.

⁴⁵ Interview 6. See also, Andrew Mitchell MP and former Shadow Secretary for International Development, ‘UN Peacekeeping and the Failure to Protect: A Contribution to the Debate on UN Reform’, Published Speech at RUSI, 18 June 2007 (Conservative International Development Publications), p.11; DFID, Matthew Rycroft CBE, Permanent Secretary, Department for International Development and UK Permanent Representative at the UN 2014-2018, *How to Prevent Mass Atrocities*, Chatham House, London, 20 February 2018, public transcript available with researcher’s questions asked and answered on record, <https://chathamhouse.soutron.net/Portal/Default/en-GB/RecordView/Index/172381>.

As such, R2P was generally deemed irrelevant to the policymaking on Syria due to the non-consensus on the UN Security Council.⁴⁶ This revealed the contested aspect of R2P, particularly what was perceived to be its subordination to politics as military intervention could only go through the UN Security Council. R2P was described as ‘a skeleton with no obligations’ disarmed by UN Security Council politics.⁴⁷ As such, R2P has had very little value to MPs in the case of Syria since the Council has not found consensus on the UK’s foreign policy objectives in Syria due to what is perceived as Russia and China’s geopolitical interests. The UK’s fixed foreign policy objectives that ‘Assad must go’ and political transition must take place in order to end the conflict in Syria meant military intervention outside the UN Security Council was determined by Parliamentarians to be the only solution. Thus, the discourse and the interviews in Parliament demonstrate a predominant understanding that the core meaning of R2P is for executing military humanitarian intervention with UN Security Council consensus, which limits the norm’s application to cases of consensus like Libya in 2011.⁴⁸ Where there is no consensus on military intervention, Parliament understood there to be a legal and legitimate path for intervention under the doctrine of humanitarian intervention as exercised in Kosovo.⁴⁹ As such, Parliament’s contestation of R2P’s deference to politics has resulted in norm modification in terms of making R2P only relevant to cases of mass atrocities where consensus over military intervention for political transition exists.

This notion that R2P is irrelevant unless there is consensus over military intervention is echoed in the ‘Syria Notes’ provided to Parliament by the All Party Parliamentary Group (APPG), Friends of Syria, the predominant knowledge sharing policymaking group on Syria within the Parliament. The ‘Syria Notes’ only refer to R2P by dismissing its relevance in the Syrian case as it only offers a path through the UN Security Council; instead, the ‘Notes’ focus on outlining

⁴⁶ Interviews 6, 10.

⁴⁷ Interview 6.

⁴⁸ Interview 6; see also, APPG Friends of Syria, ‘Syria: Humanitarian Intervention outside the Security Council’, Report by the Secretariat, 5 December 2016, <http://www.appgfriendsofsyria.org/p/reports.html>, accessed 6 March 2018.

⁴⁹ Prime Minister’s Office, ‘Syria Action – UK Government Legal Position’, Policy Paper, 14 April 2018, <https://www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position>, accessed 15 April 2018. Following the 2018 strikes on the chemical weapons storage in Syria, the UK requested written evidence on how R2P coexists with humanitarian intervention and whether the UK has met its R2P in Syria. This author submitted written evidence on the latter and advised on the former to a CSO asked to give oral evidence to the Foreign Affairs Select Committee. Chloë M. Gilgan, ‘Has the UK Fulfilled its Commitment to the Responsibility to Protect?: What the Norm Requires in Practice versus Aspiration’, Written Evidence (RTP0011), Responsibility to Protect and Humanitarian Intervention Inquiry, Foreign Affairs Select Committee, 3 July 2018, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries/parliament-2017/inquiry8/publications/>, accessed 4 July 2018.

the legal arguments for humanitarian intervention in Syria.⁵⁰ Moreover, the 2016 Jo Cox policy report, co-written by members of the APPG Friends of Syria, advises the UK to work outside the UN Security Council and use the ‘doctrine of humanitarian intervention’ to establish a No-Fly Zone over all of Syria.⁵¹ The references to R2P in the report are used as a reminder of the UK’s ‘responsibility to protect civilians’ which ‘reached its zenith in the UK in the late 1990s’, a statement that does not resonate with R2P as endorsed in 2005.⁵² The report urges Parliament to keep considering military intervention despite the UN Security Council (and despite lack of Parliamentary support in 2013) as Syria is a case more similar to Kosovo than Libya.⁵³ Thus, R2P is a separate framework from humanitarian intervention in terms of responding to ‘humanitarian suffering’ and is not an authoritative framework for implementing humanitarian intervention in the absence of UN Security Council agreement. Importantly, the phrase ‘humanitarian suffering’ is applicable and not the higher trigger of ‘mass atrocities’ as the UK’s humanitarian intervention doctrine requires a lower threshold trigger for military humanitarian intervention.⁵⁴ Clearly, this threshold for humanitarian intervention is lower than R2P’s requirement of a state that is manifestly failing to protect its population from mass atrocities. This updated version of Blair’s doctrine of humanitarian intervention includes a concern for the role of ‘others’ in the international community; however, the government position and the cross-party APPG Friends of Syria only require that the international community be convinced that there is extreme humanitarian distress requiring an urgent response.⁵⁵ Like the Blair Doctrine, there is no requirement that others in the international community are convinced of the case for using force, which fails the ‘test of collective legitimation’⁵⁶ and undermines a multi-lateral international response.

⁵⁰ APPG Friends of Syria, ‘Syria: Humanitarian Intervention outside the Security Council’, Report by the Secretariat, 5 December 2016.

⁵¹ *Ibid*; Jo Cox MP, ‘Civilians in Syria’, House of Commons Adjournment Debate, 12 October 2015, <http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm151012/debtext/151012-0004.htm#1510133000001>.

⁵² Jo Cox, ‘The Cost of Doing Nothing: The Price of Inaction in the Face of Mass Atrocities’, Policy Exchange, p. 12, <https://policyexchange.org.uk/publication/the-cost-of-doing-nothing-the-price-of-inaction-in-the-face-of-mass-atrocities/>, accessed 6 March 2018.

⁵³ *Ibid*.

⁵⁴ Prime Minister’s Office, ‘Syria Action – UK Government Legal Position’, Policy Paper, 14 April 2018.

⁵⁵ Jason Ralph, ‘After Chilcot: The “Doctrine of International Community” and the UK Decision to Invade Iraq’, *British Journal of Politics and International Relations* 13/3: 304-325, 307-308 (2011).

⁵⁶ Written evidence from Professor Jason Ralph, Professor of International Relations at the University of Leeds and Senior Research Associate at the Foreign Policy Centre (USA 05), 18 July 2013, <http://data.parliament.uk/writtenevidence/WrittenEvidence.svc/EvidenceHtml/1952>, accessed 6 March 2018. This is beyond the scope of this analysis since the legitimacy analysis is within the confines of those reasons proffered by the UK Government supporting its argument for legitimacy. Notably, the purpose of Ralph’s written evidence was submitted ‘to address the fourth question of the Committee’s

The position is that unauthorised intervention in Syria is both legal and legitimate due to an emerging custom of humanitarian intervention as a result of three cases that are cited by the government where humanitarian intervention was used: (1) Protecting the Kurds in Northern Iraq in 1991; (2) Maintaining No Fly Zones in Northern and Southern Iraq from 1991; and (3) Using force against the Federal Republic of Yugoslavia (FRY) in relation to Kosovo in 1999.⁵⁷ The APPG Friends of Syria argue that the case of Syria complies with legal humanitarian intervention which sets out the same conditions as those listed in the Blair doctrine: (i) the UK is sure of its case and (ii) the UK has exhausted all options, which makes the use of force legal if condition (iii) the proposed action is workable, is met.

The 2016 report by the APPG Friends of Syria argues that the prohibition on the use of force is ‘limited in scope and allows humanitarian action’ as long as ‘such action does not compromise the territorial integrity or political independence of the state in question and is consistent with the purposes of the UN’⁵⁸. This legal argument is based on the Syrian state having ‘violated multiple UN resolutions’ and that any intervention would ‘aim solely to halt these violations but not to impose a change in government nor to alter the territory of the state’⁵⁹. Such arguments are reminiscent of the justifications used by Blair that ‘NATO’s cause in Kosovo was just [because] [i]t was based “not on any territorial ambitions”’⁶⁰ and ‘the UN had not always been effective in the past and should not always be relied on to find the most appropriate response to future crises’⁶¹. Similarly, the APPG Friends of Syria argue that the UN Security Council has ‘failed to fulfil its function under the Charter’ because it has not enforced the demands of its own resolutions, particularly UN Security Council Resolution 2139 on humanitarian access and political transition in Syria. According to Blair, the lack of explicit authorisation from the UN Security Council did not make the Kosovo intervention unjust because it was Russia’s threat to veto that Blair considered unjust.⁶² According to Ralph, this view held international legitimacy

call of 18 July 2013’ on ‘how, in its relations with the US, the UK can build on the lessons of post-2001 interventions involving both states in third countries’. Such evidence found the UN process important for Government efforts to legitimise UK interventions.

⁵⁷ APPG Friends of Syria, ‘Syria: Humanitarian Intervention outside the Security Council’, Report by the Secretariat, 5 December 2016.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, p. 5. The report uses UK Defence Minister George Robertson’s speech in a parliamentary debate on the Kosovo intervention in 1999 to argue the legality of unilateral military intervention in Syria. The report relies on 2 additional cases where the UK relied on this doctrine including protecting the Kurds in Northern Iraq in 1991 and in maintaining No Fly Zones in Northern and Southern Iraq from 1991. However, discussion of these particular cases is beyond the scope of this research.

⁶⁰ Ralph, ‘After Chilcot’, p. 307.

⁶¹ *Ibid.*

⁶² The UK Foreign Secretary, Robin Cook, defended NATO’s actions on two grounds. First, he argued that the Russian opposition was unreasonable and second, he argued that a humanitarian exception

because the UN Security Council rejected the Russian resolution condemning and demanding cessation of NATO's actions by a vote of 12 to 3, which demonstrated that Russia held a minority view.⁶³ Because a majority of the UN Security Council agreed with the intervention, NATO had some 'legal comfort' and the multilateral quality supported an argument for legitimacy.⁶⁴ The conclusion is that if a permanent member's veto is a minority opinion, force can still be used in the name of the international community.⁶⁵

However, Resolution 2139 on Syria demanded that 'all parties (including Assad) work towards a genuine political *transition*', and the official discourse across the UK government including Parliament has repeatedly argued that 'Assad must go' in order for there to be a genuine political transition.⁶⁶ Thus, Assad's violations of humanitarian access resolutions like UN resolution 2139 include his refusal to step down and surrender to a political transition, which according to the report by the APPG Friends of Syria, is not 'imposing a change in government'⁶⁷. Furthermore, the UK push for military intervention in Syria has less multilateral support than in Kosovo because some states are wary of language in the resolutions that leave room for a robust response to non-compliance and foreseeable regime change.⁶⁸ As discussed in Chapters 2 and 4, UN Security Council politics have often sacrificed what Ralph calls a

justified bypassing the Security Council. Robin Cook, 'Guiding Humanitarian Intervention', Speech given by Foreign Secretary to the American Bar Association, 19 July 2000, <http://www.fco.gov.uk/news/speechtext>, accessed 5 March 2015. See also, Ralph, 'After Chilcot', p. 308.

⁶³ Ralph, 'After Chilcot', p. 308.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.* Furthermore, the Labour Campaign for International Development, which was launched in January 2017, argues that the 'next Labour Government must make the case for an ethical foreign policy and champion a progressive approach to humanitarian intervention' This statement, and the arguments used for justifying military humanitarian intervention in Syria above, are reminiscent of Tony Blair's entrepreneurship of an ethical British foreign policy and those used to bolster the legality and legitimacy of military intervention in Kosovo. Labour Campaign for International Development, 'Our Responsibility to Protect Civilians', 26 January 2017.

⁶⁶ UNSC Res. 2139, 22 February 2014; *Statement by the President of the Security Council*, S/PRST/2013/15, 2 October 2013; UNSC, *Security Council Presidential Statement on Syria Signals Intention to Authorize Mechanism to Monitor End of Violence, or "Consider Further Steps"*, S/PRST/2013/15, 2 October 2013, SC/10601, 6746th Meeting, 5 April 2012; UNSC, *In Presidential Statement, Security Council Gives Full Support to Efforts of Joint Special Envoy of United Nations, Arab League to End Violence in Syria*, SC/10583, 6736th Meeting, 21 March 2012; UNSC, *Security Council, in Statement, Condemns Syrian Authorities for "Widespread Violations of Human Rights, Use of Force against Civilians"*, SC/10352, 6598th Meeting, 3 August 2011; Action Group for Syria, *Final Communiqué*, 30 June 2012, <http://www.un.org/News/dh/infocus/Syria/FinalCommuniquéActionGroupforSyria.pdf>, accessed 13 January 2017.

⁶⁷ APPG Friends of Syria, 'Syria: Humanitarian Intervention outside the Security Council', Report by the Secretariat, 5 December 2016.

⁶⁸ See Chapter 4 discussion regarding the international response to Syria. For a discussion concerning the prediction that Russia and China would be more cautious about passing resolutions adopted under Chapter VII that could justify the use of force for non-compliance as was the case in Kosovo. See, Nicholas J. Wheeler, 'Unilateral Humanitarian Intervention and International Law', Paper presented at BISA Annual Conference, University of Bradford, 18-20 December 2000, p. 212-213, <https://core.ac.uk/download/pdf/62686029.pdf>, accessed 14 April 2018.

‘competent and effective response’ to those suffering mass atrocities in Syria because it has prevented a more ‘pragmatic approach to helping Syrians’⁶⁹. Russia and China’s consistent veto of early humanitarian access resolutions was not just the result of self-interest and obstinacy, but because the P3 ‘penholders’ failed to decouple humanitarian aid from the bigger political goal of regime change and democracy building, which made any sustained consensus on Syria impossible.⁷⁰

Regardless, between 2011 and 2016 Parliament continued to pursue a course of action that would bring effect to the UK’s objectives of Assad’s departure and political transition either through military means under R2P or through military humanitarian intervention outside the UN Security Council. Following two years of stalemate at the UN Security Council over intervention aimed to bring about these ends in Syria, neither diplomacy nor military intervention at the international level was possible. As a result, Parliament turned towards national policies that could bring about its desired goals in Syria outside the UN Security Council, despite R2P’s requirement that any military intervention be authorised by the Council. Where there is no UN Security Council consensus, the UK relied on the doctrine of humanitarian intervention. In August 2013, when Prime Minister David Cameron tabled a motion to authorise UK military action in Syria to deter the use of chemical weapons by Assad, the government issued a legal opinion on intervention in Syria, which argued that humanitarian intervention without UN Security Council authorisation was permitted under international law subject to the same three conditions as outlined in the Blair doctrine⁷¹ and the APPG Friends of Syria report:

- (i) There is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief;
- (ii) It must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved; and
- (iii) The proposed use of force must be necessary and proportionate to the aim of relief of

⁶⁹ Jason Ralph, ‘What Should Be Done? Pragmatic Constructivist Ethics and the Responsibility to Protect’, *International Organization* 72/1: 173-203, 174 (2018). See also, Ralph and Gifkins, ‘The Purpose of United Nations Security Council Practice’; Ralph et al, ‘Before the Vote’.

⁷⁰ Ralph and Gifkins, ‘The Purpose of United Nations Security Council Practice’; Ralph et al, ‘Before the Vote’.

⁷¹ Blair’s doctrine set out five conditions for the unauthorised but legitimate use of force: ‘(1) Are we sure of our case; (2) Have we exhausted all options; (3) Is the proposed action workable; (4) Are we committed to the region for the long term; and (5) Are national interests involved?’ Tony Blair, ‘The Blair Doctrine’, 22 April 1999. See also, Ralph, ‘After Chilcot’, p. 307-308.

humanitarian need and must be strictly limited in time and scope to this aim (i.e., the minimum necessary to achieve that end and for no other purpose).⁷²

The Government argued that all three criteria had been met, but the motion was defeated in the House of Commons by 285 to 272.⁷³ Polling data suggested that the British public did not support military intervention without UN Security Council authorisation even if the US were to proceed.⁷⁴ Ralph advised the government that ‘the lesson of Iraq and Libya is that the UN process should be central to the Government’s legitimisation strategy’⁷⁵.

The crisis in Syria continued to worsen without an effective international response and in 2015, 1.2 million Syrian refugees fled to the European mainland. MPs working on a UK response to Syria refocused their energies on protecting Syrians through air strikes against Daesh.⁷⁶ In 2015 Parliament voted with a majority of 174 (397 to 223) to join the air strikes against Daesh in Syria following Hilary Benn’s impassioned speech, which urged that it is ‘now time for us to do our bit in Syria’⁷⁷. During the debates in Parliament, Cameron argued that UN Security Council resolution 2249, passed unanimously, would permit the use of force against Daesh in Syria

⁷² See, House of Commons, ‘Syria and the Use of Chemical Weapons’, Hansard, 29 August 2013, <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130829/debtext/130829-0001.htm>, accessed 6 March 2018. See also, Prime Minister’s Office, ‘Chemical Weapon Use by Syrian Regime: UK Government Legal Position’, 29 August 2013, <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version>, accessed 6 March 2018. For further information, see House of Commons Library, ‘Conditions for Using Force in Humanitarian Intervention SN06716’, 29 August 2013,; see also, FCO, Further supplementary written evidence from Rt Hon Hugh Robertson MP, Minister of State: Humanitarian Intervention and the Responsibility to Protect, <https://www.justsecurity.org/wp-content/uploads/2014/01/Letter-from-UK-Foreign-Commonwealth-Office-to-the-House-of-Commons-Foreign-Affairs-Committee-on-Humanitarian-Intervention-and-the-Responsibility-to-Protect.pdf>, accessed 6 March 2018. This continues to be the government’s 2018 position. Prime Minister’s Office, ‘Syria Action – UK Government Legal Position’, Policy Paper, 14 April 2018.

⁷³ See, House of Commons, ‘Syria and the Use of Chemical Weapons’, Hansard, column 1551, 29 August 2013; ‘Syria Crisis: Cameron Loses Commons Vote on Syria Action’, *BBC News*, 30 August 2013, <https://www.bbc.co.uk/news/uk-politics-23892783>, accessed 20 October 2017.

⁷⁴ Written evidence from Professor Jason Ralph, Professor of International Relations at the University of Leeds and Senior Research Associate at the Foreign Policy Centre (USA 05), No. 3, 18 July 2013.

⁷⁵ *Ibid.* Ed Miliband, the Leader of the Opposition at the time, stated ‘People are deeply concerned about the chemical weapons attacks in Syria, but they want us to learn the lessons of Iraq [...] They don’t want a rush to war. They want things done in the right way, working with the international community’. ‘Syria Crisis: Cameron Loses Commons Vote on Syria Action’, *BBC News*, 30 August 2013.

⁷⁶ For example, see, Bassma Kodmani, ‘Containment of Syria Failed, Europe is Paying the Price’, APPG Friends of Syria, *Syria Notes*, 9 November 2015, p.2-3, <http://www.appgfriendedsofsyria.org/p/syria-notes.html>, accessed 6 March 2018. A survey of Syrian refugees in Germany between 24 September 2015 and 2 October 2015 by the Berlin Social Science Center found 70% of Syrians were fleeing from Assad and his allies and 52% said that Assad would need to leave power before they would return home. APPG Friends of Syria, ‘Listening to Refugees’, *Syria Notes*, 9 November 2015, p. 3, <http://www.appgfriendedsofsyria.org/p/syria-notes.html>, accessed 6 March 2018.

⁷⁷ Andrew Sparrow and Frances Perraudin, ‘Cameron Wins Syria Airstrikes Vote by Majority of 174 – As it Happened’, *The Guardian*, 3 December 2015, <https://www.theguardian.com/politics/blog/live/2015/dec/02/syria-airstrikes-mps-debate-vote-cameron-action-against-isis-live>, accessed 4 July 2018.

because the terrorist group presented an ‘unprecedented threat to international peace and security’⁷⁸. Furthermore, Cameron urged the UK ‘to take “all necessary measures” against [Daesh]’ and that ‘military action against [Daesh] is only one component of a broader strategy to bring peace and stability to Syria’⁷⁹. R2P was not the explicit impetus for Cameron’s policy to protect Syrians facing mass atrocities via airstrikes against Daesh in 2015. However, his statements do exemplify a mission creep from targeting the non-state actor group Daesh to the broader political and humanitarian goals of freeing Syria from Assad. Moreover, his statements were used explicitly by the UK Permanent Representative to the UN, Ambassador Matthew Rycroft, to reaffirm the UK’s commitment to R2P through air strikes against Daesh:

Part of Our Responsibility to Protect lies in ensuring that those who seek to harm civilians know that impunity is not an option. In July, Foreign Secretary Boris Johnson announced plans for a UK-led campaign to hold Da’esh to account...Holding these heinous individuals to account will send a strong signal to those who seek to harm civilians. It’s part of our commitment, not only to the doctrine of the Responsibility to Protect, but also, and more importantly, to the survivors and the victims and those who have lost loved ones to Da’esh’s brutality.⁸⁰

R2P is about the state’s responsibility to protect its population from mass atrocities and the international community’s responsibility to help, but it is not about holding non-state actors responsible for their crimes through unauthorised military intervention without state consent.⁸¹ If the speech had included how the regime had manifestly failed to protect its populations from mass atrocities perpetrated by Daesh or the regime consented to the coalition’s support, then the air strikes against Daesh would fit more comfortably within the remit of an R2P response under

⁷⁸ House of Commons, ‘Syria and the Use of Chemical Weapons, Hansard, 29 August 2013; UNSC Res. 2249, 20 November 2015.

⁷⁹ See, House of Commons, ‘Syria and the Use of Chemical Weapons, Hansard, 29 August 2013.

⁸⁰ FCO, ‘Part of Our Responsibility to Protect lies in Ensuring that those who Seek to Harm Civilians Know that Impunity is Not an Option’, Speech by Matthew Rycroft UK Mission to the UN, 7 September 2016, <https://www.gov.uk/government/speeches/part-of-our-responsibility-to-protect-lies-in-ensuring-that-those-who-seek-to-harm-civilians-know-that-impunity-is-not-an-option>, accessed 6 March 2018; see also, FCO, ‘Protecting People from Genocide and War Crimes, from Ethnic Cleansing and Crimes against Humanity, Remains Vital and Sadly Necessary’, Speech by Ambassador Peter Wilson of the UK Mission to the UN at the General Assembly informal interactive Dialogue on the Responsibility to Protect, 8 September 2015, <https://www.gov.uk/government/speeches/protecting-people-from-genocide-and-war-crimes-from-ethnic-cleansing-and-crimes-against-humanity-remains-vital-and-sadly-necessary>, accessed 6 March 2018. Ambassador Wilson argues that international focus is now on implementation of R2P. He reaffirms the UK’s commitment to R2P and closes with a call to action that the UN Security Council refrain from the veto in R2P situations. He states that he is proud that ‘the UK would never vote against a credible draft resolution to prevent or respond to genocide, crimes against humanity or war crimes’.

⁸¹ Daesh could be held accountable under universal criminal jurisdiction, an ICC referral from the UN Security Council or via the ICC since Syria is a signatory to the Rome Statute.

Pillars II and III. Without Assad's consent for strikes against Daesh, the intervention still requires UN Security Council authorisation.

There are a minority of parliamentary voices that do not agree with the general consensus that the goal of peace in Syria requires Assad's departure and political transition through military intervention, either as an R2P response or as a humanitarian intervention response. Jeremy Corbyn, the leader of the opposition argued that UN resolution 2249, which was used as the basis for coalition air strikes against Daesh in 2015, 'd[id] not give clear and unambiguous authorisation for UK bombing in Syria' as it had not been passed under Chapter VII of the UN Charter which was impossible due to the UN Security Council.⁸² Corbyn has urged reconsidering the UK's objectives of Assad's departure and political transition and the means for reaching them by considering 'only a negotiated political and diplomatic endeavour' with the 'overriding goal [sic] to end th[e] civil war in Syria'⁸³. However, the majority of policymakers in Parliament have remained steadfast in their commitment to the UK's objectives of Assad's departure and political transition, and continued to urge further consideration of military intervention as a means for reaching these ends even if it is unauthorised by the UN Security Council.⁸⁴ Acharya's fourth condition for norm localisation is at operation here: 'the external norm must lend itself to some pruning, or adjustments that make it compatible with local beliefs and practices, without compromising its core attributes'⁸⁵. Despite the current impossibility of reaching the objectives, the underlying intention is to help protect the Syrian population from mass atrocities which is a core attribute of R2P. Moreover, pruning R2P to apply where there is UN Security Council consensus for negotiating or militarily effecting regime change and political transition reveals insightful information as to how R2P is localised. As a P5 member with special responsibility for international peace and security, the UK (through Parliament) accepts its responsibility for responding to the atrocities in Syria, but R2P's deference to geopolitics has inspired Parliament and the sitting government to adjust R2P's relevance to cases where there is P5 consensus for military intervention as in Libya. Parliament is contesting R2P's ineffectiveness due to politics and instead relies on humanitarian intervention, which is seen as a legitimate norm for reaching R2P's perceived obligations of ending mass atrocities in Syria. Therefore, R2P operates in tension with the perceived norm of

⁸² See, House of Commons, 'Syria and the Use of Chemical Weapons, Hansard, 29 August 2013.

⁸³ See, *Ibid.*

⁸⁴ Cox, 'The Cost of Doing Nothing'.

⁸⁵ Amitav Acharya, 'Religion and Human Rights Pragmatism: Promoting Rights across Cultures', paper presented at conference at Columbia University, New York, 24 September 2011, and at the Columbia University Human Rights Futures Conference, 15 November 2013.

humanitarian intervention but its core attributes around helping to protect are not compromised. Instead, Parliament has contested the political barriers around the military aspect of R2P resulting in norm modification in terms of when R2P applies. This norm modification demonstrates how a state localises a norm to fit within its national context (Acharya) and exemplifies Deitelhoff and Zimmerman's concept of applicatory contestation because the contestation that results in norm pruning does not compromise the core purpose of R2P, which is to help protect populations from mass atrocities. According to Deitelhoff et al, this makes norm degeneration less likely.

5.4.1.1 Localising R2P in Parliament: R2P and Resettlement

There is limited parliamentary discourse that understands R2P as a responsibility to resettle refugees. During the 2015 House of Lords debates, only Lord Hylton discussed 'the responsibility and duty to protect individuals' under the Refugee Convention.⁸⁶ He linked the violent conflict in Syria with 'the unprecedented wave of refugees' and urged the UK to respond constructively.⁸⁷ However, while there is a natural link between the violence in Syria and the wave of refugees to warrant making the statement while debating the implementation of R2P, the statements concerning Syrian refugees are framed specifically under the 1951 Refugee Convention and not under R2P.

Like Lord Hylton, those interviewed in Parliament, including those advocating for the UK to resettle more Syrian refugees, did not invoke R2P as a source of responsibility.⁸⁸ When asked whether there was a connection between R2P and resettlement, participants were united in their understanding that 'R2P only works this way [militarily] – the only way it is connected to refugees is if we go in militarily and then cause displacement like in Yemen or in Kosovo'⁸⁹. R2P does not come up during policymaking or advocacy for the government to take more Syrian refugees because 'R2P does not apply outside of Syria'⁹⁰.

While there is a 'clear responsibility to help Syrians fleeing mass atrocities', the source of responsibility is not due to R2P, but instead because the 'UK is a UN Security Council member and a significant country'⁹¹. 'R2P is not a responsibility to resettle refugees' because 'R2P is

⁸⁶ House of Lords, Hansard, 'Responsibility to Protect' Vol. 764, Column 714, 16 July 2015.

⁸⁷ *Ibid.*

⁸⁸ Interview 10.

⁸⁹ Interview 10.

⁹⁰ *Ibid.*

⁹¹ Interview 6.

about stopping the slaughter’ and ‘intervention is obligatory’⁹². The UK’s responsibility to resettle refugees is an ethical and moral responsibility that comes from being human --‘we do not need to invoke any instrument for saving refugees’⁹³.

In sum, the discourse and interviews in Parliament suggest that R2P means a UK responsibility to protect *civilians*, not *populations*, when their ‘security’ is not protected by their government.⁹⁴ R2P provides a general framework for preventing and responding to mass atrocities when consensus exists on the UN Security Council, which translates to agreement on the objectives (in the case of Syria that would mean Assad’s departure and political transition) through the means of diplomacy or military intervention. For those cases without consensus, like Syria, military humanitarian intervention outside the UN Security Council and separate from R2P is seen as an obligation similar to the case of Kosovo. However, national consensus over using the means of military force in Syria to achieve the humanitarian ends has also been impossible given economic austerity and the public’s desire to extricate from further involvement in the region due to the legacies of Afghanistan, Iraq and Libya.⁹⁵ Even so parliamentary policymakers on Syria have continued to argue that the lack of further consideration of military intervention against the Syrian regime equates to passivity in the face of mass atrocities in Syria.⁹⁶ While parliamentary policymakers on Syria apply Blair’s humanitarian intervention doctrine, the FCO, Home Office and DFID continue to discharge diplomatic and humanitarian means for reaching the same humanitarian objectives. The next few sections discuss this juxtaposition in more detail.

5.4.2 Localising R2P in the FCO

The FCO interviews⁹⁷ revealed that the UK’s foreign policy goals reflect a mixture of counter-terrorism, regional stability and humanitarian objectives⁹⁸. The FCO shares the same goals of Assad’s resignation and political transition in Syria as Parliament, but favours diplomatic means over military intervention. Additionally, the interviews revealed that the FCO indirectly

⁹² *Ibid.*

⁹³ Interview 10.

⁹⁴ Labour Campaign for International Development, ‘Our Responsibility to Protect Civilians, January 26, 2017.

⁹⁵ Jason Ralph, Written Evidence to the Foreign Committee Inquiry on Government foreign policy towards the United States, 8 October 2013, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/government-foreign-policy-towards-the-united-states/written/1952.html>, accessed 20 October 2015.

⁹⁶ Cox, ‘The Cost of Doing Nothing’.

⁹⁷ Interviews 8, 11, 14, 15.

⁹⁸ Interview 14.

conflates R2P with military intervention. The difference is that the FCO's silence around explicit reference to R2P is because they perceive the norm to be a 'constraint on policy options'⁹⁹. Thus, for the FCO, discharging R2P via a particular method in one case will lead to demands that the same means be employed in another case, which may be 'used as a stick to beat government with'¹⁰⁰. While R2P is generally seen as irrelevant to Parliament due to the lack of UN Security Council consensus on military intervention, R2P is seen as harmful to developing and implementing the FCO's foreign policy goals in Syria. As such, this section first provides evidence that the FCO shares the same objectives in Syria as Parliament. However, the FCO envisions a different method for reaching the shared humanitarian ends. Then, the section examines what sources of responsibility are relied upon to give the FCO's objectives in Syria effect and thus, analyses how R2P may have shaped the means for reaching the stated objectives. The final section analyses the findings to reveal how the FCO envisions a link between R2P and resettlement.

5.4.2.1 FCO: The UK's R2P in Syria

The discourse demonstrated that the FCO has wanted 'a Syrian government that does not commit atrocities against its population and that will work with the UK to combat terrorism in the region'¹⁰¹. Sir Mark Lyall Grant, a permanent UK representative to the UN from 2009 to 2015 and National Security Advisor to the Prime Minister from 2015 to 2017, stated:

There should be no doubt that Al-Assad cannot be part of the solution to the crisis in Syria. There needs to be a Government in Damascus that enjoys legitimacy in the eyes of the Syrian people and credibility with the international community and that can take effective action against extremism. For as long as Al-Assad remains in power, there will be no peace in Syria. We strongly support the efforts of the United Nations Special Representative and urge all parties to work towards a Syrian-led political transition.¹⁰²

This position was echoed in the February 2015 press release by former Foreign Secretary Philip Hammond:

⁹⁹ Interview 8.

¹⁰⁰ Interview 8.

¹⁰¹ FCO, 'UK and The High Negotiations Committee of The Syrian Opposition', 6 September 2016, <https://www.gov.uk/government/news/uk-and-the-high-negotiations-committee-of-the-syrian-opposition>, accessed 4 July 2018; Department for International Development (DFID), Operational Plan 2011-2016, Syria, Updated December 2014.

¹⁰² UN Security Council Meeting, *The Situation in the Middle East, including the Palestinian Question*, S/PV.7281, 21 October 2014, (p.14/72); see also, UN Security Council Meeting, *The Situation in the Middle East, including the Palestinian Question*, S/PV.7222, 22 July 2014.

Assad's forces have systematically murdered, tortured, raped and imprisoned Syrians. There can be no doubt that he is the problem, not part of the solution. The UK's position has not changed, we have no dialogue with Assad; there must be a political transition to a future in which Assad has no part.¹⁰³

In the same month, Hammond set out a joint statement with the French Foreign Minister Laurent Fabius outlining their vision for a unity government in Syria, one which would include 'parts of the existing regime structures, the National Coalition, and others with a moderate and inclusive vision for Syria, respecting Syria's different communities'¹⁰⁴.

The FCO has supported a Syrian-led political transition from Assad and thus, provided a range of support to the moderate Syrian opposition. In December 2012, the US, UK, France, Turkey and Gulf states formally recognised the opposition National Coalition¹⁰⁵ as the 'legitimate representative' of the Syrian people, following an announcement by Foreign Secretary William Hague a month earlier.¹⁰⁶ Hague stated to Parliament that the coalition would be welcome to appoint a political representative to the UK and would be given £1.6 million to help with communications equipment.¹⁰⁷ The UK also helped the coalition set up 'political and humanitarian structures' and a 'stabilisation response' in Syria.¹⁰⁸

The FCO continued to support the opposition by backing the HNC,¹⁰⁹ which has represented the Syrian opposition in UN negotiations and has advocated for a negotiated political settlement based on the Geneva Communiqué of June 2012, a document outlining the steps for a political

¹⁰³ FCO, 'Foreign Secretary Condemns Deluded Assad', Press Release, 10 February 2015, <https://www.gov.uk/government/news/foreign-secretary-condemns-deluded-assad>, accessed 6 March 2018.

¹⁰⁴ FCO, 'UK Foreign Secretary and French Foreign Minister: Assad Cannot be Syria's Future', Authored Article, 27 February 2015, <https://www.gov.uk/government/speeches/uk-foreign-secretary-and-french-foreign-minister-assad-cannot-be-syrias-future>, accessed 6 March 2018.

¹⁰⁵ Comprised of the National Coalition of the Syrian Revolutionary and Opposition Forces.

¹⁰⁶ 'Syria Profile: Timeline', *BBC News*, 7 February 2018, <http://www.bbc.co.uk/news/world-middle-east-14703995>, accessed 6 March 2018.

¹⁰⁷ In March 2013, the UK pledged £13.25 million on non-lethal equipment and practical support such as training to the opposition, but by December 2013, the US and UK suspended the support for rebels in northern Syria after reports that Islamist rebels seized bases of the Western-backed Free Syrian Army. 'Syria Profile: Timeline', *BBC News*, 7 February 2018.

¹⁰⁸ The UK also supports a range of projects involved with supporting human rights organisations to gather evidence of violations of international criminal law and international humanitarian law, including documentation of sexual violence for use in a future court and training and support for women's empowerment, policing, civil defence and local councils inside Syria. See, FCO, 'Syria-Human Rights Priority Country', 21 July 2016, <https://www.gov.uk/government/publications/syria-human-rights-priority-country/syria-human-rights-priority-country>, accessed 4 July 2018.

¹⁰⁹ The HNC or High Negotiations Committee of the Syrian Opposition is the umbrella organisation formed at the end of 2015 that represented the moderate political and military groups opposing Assad's regime as discussed in Chapter 4. FCO, 'UK and The High Negotiations Committee of The Syrian Opposition', 6 September 2016.

transition in Syria.¹¹⁰ In September 2016, the UK Foreign Secretary hosted the HNC and numerous foreign ministers from across the world. However, regardless of the shared objectives of the FCO and HNC, only a military intervention imposing regime change will force Assad from power, which has been the source of non-consensus at the UN Security Council and has left the Geneva talks at a perpetual impasse.¹¹¹

With the shift in political objectives in Syria by the Gulf States and the US, particularly during the brutal fall of Aleppo, reports surfaced suggesting that some elites within the UK government considered negotiating with Assad for peace in Syria over the pursuit of political transition.¹¹² Several news outlets reported that UK Foreign Secretary Boris Johnson hinted that the UK may need to consider a peaceful Syria with Assad in power.¹¹³ Peter Ford, the UK's ambassador to Syria from 1999 to 2003, claimed that the UK's policy on Syria had been wrong because pushing for a political transition in Syria with little backing on the ground made the situation far worse by generating false hope and provoking bloody consequences.¹¹⁴ However, this is not the view held across the FCO as interviewees maintained that the FCO still sees a political transition away from Assad as the solution to Syria as it is the best way to stop the humanitarian suffering. According to the interviews, the UK has an interest in resolving the conflict because 'Syria is a strategic interest' with migration and refugee issues affecting regional stability and terrorism, which reflect the UK's wider foreign policy objectives.¹¹⁵ Thus, Parliament and the FCO share the same objectives of Assad's departure and political transition in Syria.

¹¹⁰ Action Group for Syria, *Final Communiqué*, 30 June 2012. Adopted unanimously by the UNSC Res. 2118, 27 September 2013.

¹¹¹ Yasmine Nahlawi, 'Why Civilian Protection is a Must in Syria', *Syria Notes*, APPG Friends of Syria, 8 March 2016, p.14-15, <http://www.appgfriendsofsyria.org/p/syria-notes.html>, accessed 4 July 2018.

¹¹² As discussed in Chapter 4.

¹¹³ For example, Patrick Wintour, 'Boris Johnson Signals Shift in UK Policy on Syria's Assad', *The Guardian*, 26 January 2017, <https://www.theguardian.com/politics/2017/jan/26/boris-johnson-signals-shift-in-uk-policy-on-syria-bashar-al-assad>, accessed 9 March 2018.

¹¹⁴ Joe Watts, 'Former UK Ambassador to Syria Accuses Foreign Office of Lying about the Country's Civil War', *The Independent*, 23 December 2016, <http://www.independent.co.uk/news/uk/politics/uk-ambassador-syria-peter-ford-foreign-office-lying-civil-war-policy-aleppo-evacuation-russia-putin-a7491976.html>, accessed 6 March 2018; see also, Nikolaos van Dam, 'Foreign Intervention in Syria: Isn't it Time to Admit that the War against the Syrian Regime is being Lost?', Lecture presented at the Bruno Kreisky Forum for International Dialogue, Vienna 7 March 2018, published on *Syria Comment*, <http://www.joshualandis.com/blog/foreign-intervention-in-syria-isnt-it-time-to-admit-that-the-war-against-the-syrian-regime-is-lost-by-nikolaos-van-dam/>, accessed 9 March 2018.

¹¹⁵ Interview 11. Additionally, the recently appointed UK Special Envoy to Syria, Dr Martin Longden, (October 2017) stated that the UK intended to maintain strong links with the Syrian opposition and that 'the only lasting solution is a political transition that can protect the rights of all Syrians, unite the country and end the conflict'. FCO, 'Change of UK Special Envoy to Syria', News, 23 October 2017, <http://www.gov.uk/government/news/change-of-uk-special-envoy-to-syria>, accessed 20 February 2018. His predecessor, Gareth Bayley, also argued that political transition is the only solution. See, Gareth Bayley, 'Syria: The Myth of a Regime Victorious', 20 October 2017,

In terms of the methods used for reaching the objectives in Syria, the FCO agreed with Parliament on the legality of humanitarian intervention outside the UN Security Council. The FCO presented its position on how the doctrine of humanitarian intervention and R2P co-exist in an official submission to questions posed by the House of Commons Foreign Affairs Committee in January 2014 subsequent to the UK's failed motion for military intervention against the Syrian regime in December 2013. The position is almost identical to the reports released by policymakers in Parliament as it relies on the same justifications used for humanitarian intervention in Kosovo in 1999.¹¹⁶ The FCO report focuses on Pillars I and II and describes the endorsement of R2P at the 'high level political event' as politically meaningful in terms of expressing a readiness to take collective action, but that R2P did not 'create new legal rights and duties nor *modify existing ones*'¹¹⁷. Furthermore, R2P is 'aimed at making sure that the Security Council does take action[,] but does not 'address the question of unilateral State action in the face of an overwhelming humanitarian catastrophe to which the Security Council has not responded'¹¹⁸. The FCO agreed with Parliament that there is a separate legal path for military humanitarian intervention outside the UN Security Council because R2P did not modify the emerging custom following Kosovo and its predecessor cases.

However, the main difference is that the FCO has largely focused on diplomacy for bringing about the shared objectives while Parliament has been the scene of heavy debates to gain

<https://aawsat.com/english/home/article/1058271/gareth-bayley/syria-myth-regime-victorious>, accessed 9 March 2018.

¹¹⁶ FCO, 'Further supplementary written evidence from the Rt Hon Hugh Robertson MP, Minister of State: Humanitarian Intervention and the Responsibility to Protect (USA 19)', 14 January 2014. A state is permitted under international law to take exceptional measures including military action in order to avert a humanitarian catastrophe, but only where three strict criteria are met: (i) there is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief; (ii) it must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved; and (iii) the proposed use of force must be necessary and proportionate to the aim of relief of humanitarian need and must be strictly limited in time and scope to this aim (i.e. the minimum necessary to achieve that end and for no other purpose). APPG Friends of Syria, 'Syria: Humanitarian Intervention outside the Security Council', Report by the Secretariat, 5 December 2016. The Prime Minister's Office put out statements on 29 August 2013 and 14 April 2018 arguing the same legal justifications for a right of humanitarian intervention in response to alleged chemical weapons use by the Syrian regime. See, Prime Minister's Office, 'Chemical Weapon Use by Syrian Regime: UK Government Legal Position', Policy Paper, 29 August 2013 and Prime Minister's Office, 'Syria action – UK Government Legal Position', Policy Paper, 14 April 2018; see also, FCO, 'Written Evidence (RTP0016)', Responsibility to Protect and Humanitarian Intervention Inquiry – Publications, Foreign Affairs Select Committee, 3 July 2018, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries/parliament-2017/inquiry8/publications/>, accessed 4 July 2018.

¹¹⁷ FCO, 'Further supplementary written evidence from the Rt Hon Hugh Robertson MP, Minister of State: Humanitarian Intervention and the Responsibility to Protect (USA 19)', 14 January 2014, part (ii), p. 4.

¹¹⁸ *Ibid.*

support for a military intervention.¹¹⁹ The FCO vision remained adamant that there ‘can be no military solution to this tragedy’¹²⁰. The FCO’s objective is regime change through a democratic political process brought about by diplomatic efforts¹²¹ because they see ‘military intervention [as][sic] the failure of diplomacy’¹²². As such, the discourse and the interviews in the FCO reflect the same objectives in Syria as Parliament (Assad’s departure and political transition) and agree that the method of military intervention outside the UN Security Council is legal, but in the FCO’s case, it is not preferable. The next sub-section discusses the underlying rationale for the FCO’s methods for reaching the shared objectives in Syria and the role of R2P in shaping those responses, particularly in the context of resettlement.

5.4.2.2 Localising R2P in the FCO: R2P Constrains the UK’s Foreign Policy Options

The research revealed that R2P has little, if any, direct influence on the UK’s development and shaping of its foreign policy goals overall. Instead the goals are influenced first at the ministerial level (Parliament and PM and Cabinet) which will reflect the political interests of the sitting government.¹²³ Then, within the FCO, the foreign policy priorities are shaped by legal frameworks such as international humanitarian law and international human rights law.¹²⁴ The FCO process initially involves seeking legal advice on the UK’s obligations when a case presents itself.¹²⁵ The protection of *civilians* is a constant theme and informs the diplomatic activity in Syria particularly in regard to the UN Security Council.¹²⁶ R2P did not come up in any of the interviews (except one) until the researcher introduced it. All interviewees answered that they knew what it was but that they were ‘not experts on R2P’ and therefore had little to say about it. However, after encouraging participants to reveal their understandings of R2P, the following ‘meanings-in-use’ of R2P in the FCO were revealed. Each is discussed in turn.

First, success under R2P is about reaching the shared objectives in Syria. When asked what R2P success would look like, interviewees at the FCO envisioned success as the moment ‘when people can safely return to Syria, there is a political process and a government transition’¹²⁷.

¹¹⁹ The official discourse and interviews revealed that Parliamentarians tend to see military intervention and regime change as the answer to an R2P case like Syria.

¹²⁰ FCO, ‘Change of UK Special Envoy to Syria’, News, 23 October 2017.

¹²¹ *Ibid*; Interviews 8.

¹²² Interview 8.

¹²³ Interviews 11, 14.

¹²⁴ Interview 14.

¹²⁵ Interview 11. Interestingly, the initial seeking of advice is whether the UK is obligated under law to respond instead of deciding on a response and asking whether it complies with law which suggests that the default position is one of non-response.

¹²⁶ Interview 8.

¹²⁷ *Ibid*.

Like Parliament, the FCO defines the successful implementation of R2P as the moment the UK's preferred outcomes in Syria are reached. In effect, this would mean an end to the conflict, regime change, democracy and the peaceful return of refugees. As such, the UK's implementation of R2P is based on a successful and specific outcome. Where these outcomes are not reached, R2P was seen as having failed.¹²⁸ This suggests that the FCO sees R2P as having a fixed definition of what would help protect Syrians.

Second, attaining the shared objectives in Syria within the R2P framework is impossible because R2P only applies when there is UN Security Council agreement on both the shared objectives in Syria and the means for reaching them. A high-level policymaker at the FCO stated 'R2P articulates cases for interventions'¹²⁹, which implies a presumption that R2P is about military intervention. However, R2P was described as 'useless'¹³⁰ in Syria because the case is 'way past an R2P response'¹³¹ as the norm was thought to direct action to the UN Security Council: 'The debate goes there—that's what R2P says'¹³² and the 'Syria R2P problem of Security Council non-consensus'¹³³ endures. Again, rather than focus on fostering consensus in the UN Security Council by adjusting the objectives, the FCO has remained fixed on Assad's departure and political transition as methods for bringing an end to the humanitarian suffering and therefore, R2P has been perceived as useless due to its UN Security Council authorisation problem.

Third, the interviews revealed that R2P is seen as a constraint on both the development of the UK's foreign policy objectives and the means for reaching them. Whether R2P was linked to military intervention or resettlement was irrelevant as FCO individuals saw a diminished array of policy options if R2P was explicitly mentioned.¹³⁴ The interviews revealed a real fear of invoking R2P because it could pigeonhole the UK into responding the same way across mass atrocity cases. The 'problem with R2P is not thinking about the consequences—we need discretion in deciding what to do and it can limit that discretion'¹³⁵. This high-ranking FCO official explained that there was a fear in the FCO that linking R2P to any UK response on Syria in one particular case would set a precedent requiring the same response in a future case

¹²⁸ Based on all four interviews in the FCO.

¹²⁹ Interview 11.

¹³⁰ This phrase was used several times by different interviewees. Interviews 8, 11, 14 and at the conferences attended under Chatham House Rule.

¹³¹ Interview 11.

¹³² Interview 11.

¹³³ Interview 8.

¹³⁴ 'If we say it, it will constrain us'. Interview 8.

¹³⁵ *Ibid.*

which may conflict with better policy options. ‘R2P is a good reminder to encourage action internationally, but if misconstrued then it can be used as a stick to beat government with because of its perception across the media/public/HR groups’¹³⁶. The other worry was that linking R2P to Syria would ‘require a Libya answer’ and the FCO ‘does not want to be forced into a military intervention in Syria because it is a failure of diplomacy’¹³⁷. Again, the fear was that the same response would be required in future cases, which would diminish the FCO’s discretion to use any other relevant options.¹³⁸ Interviewees explained that the UK did not want to be seen as a ‘failure to care’ if it did not respond the same way to each case, which they understood R2P to require.¹³⁹

Towards the end of each interview, the researcher read Pillar III of R2P aloud. Participants agreed that the non-coercive methods for exercising responsibility towards Syrians fleeing mass atrocities was about ‘making it safe for them [Syrian refugees] to go home’¹⁴⁰. Again, the FCO felt that avoiding a link between R2P and resettlement of refugees fleeing mass atrocities was preferable as there was fear of creating a precedent and getting potential blame over consistency and fairness across cases.¹⁴¹ Thus, the FCO’s silence over R2P was intentional and not neutral as those interviewed saw ‘R2P [to][sic] be more harmful than good’ because it could be used as leverage ‘to push against the government to do more’¹⁴² or act differently, which would ultimately constrain policy options.

The only caveat to this silence occurred in an interview with a high-level official who confirmed that ‘Syrian refugees indeed need our help and DFID’s humanitarian response is working on diminishing the threat, so they can return home’¹⁴³. This was the only interviewee who demonstrated some understanding that the UK’s humanitarian aid to the region around Syria was a way of fulfilling its R2P duty and a way of helping protect refugees fleeing mass atrocities. Overall, the interviewees saw humanitarian aid and refugee protection as part of the UK’s broad humanitarian response but not as duties under R2P, particularly due to the fear that invoking R2P would allow political leverage against the government to do more.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.* Interviews 11, 14.

¹³⁹ Interview 8. Confirmed by the other interviews and conference participants under the Chatham House Rule.

¹⁴⁰ Interviews 8; repeated in similar words by interviews 11, 14 and by conference participants under the Chatham House Rule.

¹⁴¹ Interview 8.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

Finally, the UK responsibility to Syrians fleeing mass atrocities was mostly guided by the principles emanating from the UK's international role as a leader, the protection of civilians, and work with No. 10, DFID, the Ministry of Defence (MOD) and the Home Office.¹⁴⁴ The reputation of the UK as a moral leader in the international realm underlies the policymaking around the UK's responses to Syria more than R2P. The interviews also exposed a reluctance to use R2P as a label because 'it creates a perception that rules are making our response happen' and 'we want to do it on our own due to a moral responsibility'¹⁴⁵. The 'UK accepts and cherishes its responsibility and wants to show leadership'¹⁴⁶. When the researcher asked about R2P's humanitarian and other peaceful means for implementing the international community's response to Syria, one interviewee stated that 'We [The UK] don't need R2P to know that we need a humanitarian and diplomatic response. We support the doctrine, but we would be doing this anyway'¹⁴⁷.

5.4.3 Localising R2P in the Home Office and DFID: Implementing Humanitarian Objectives

This section involves looking at what sources of responsibility underlie specific policies that have been implemented in pursuit of the UK's humanitarian objectives. The Home Office and DFID implement the sitting government's humanitarian objectives through migration policy and humanitarian aid and development respectively. This section sets the context and identifies the specific policies undertaken by both the Home Office and DFID and then analyses the data to find what sources of responsibility inspire the policies, particularly the role of R2P in making policy. Finally, this section answers the main research question concerning the link between the UK's R2P and its Syrian resettlement policy.

5.4.3.1 Home Office: The UK's R2P to Syrian Refugees

The UK has protection responsibilities to Syrian refugees under the 1951 Refugee Convention and the 1967 Protocol along with EU law. The UK was one of the principal drafters and one of the first signatories to the Refugee Convention which gives refugees a legal right to seek asylum once they arrive on the territory of a party.¹⁴⁸ Additionally, the UK has been a significant donor and supporter of UNHCR since its inception, an initial member of its Executive Committee

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ Interview 11.

¹⁴⁸ Martin Jones, 'The Rights of Resettled Refugees in the United Kingdom: Lessons for "New" Resettlement States and Rights Based Advocacy for Refugees' *International Journal of Migration and Border Studies* 3/1: 67-97 (2017).

(ExCom) and an active participant in the earliest resettlement programmes.¹⁴⁹ However, the UK has had a policy of actively restricting access to asylum over the last ten years and has not figured significantly in refugee resettlement save for some large scale European refugee crises.¹⁵⁰ Thus, the UK has a history of resettling refugees, but mostly on an *ad hoc* basis.¹⁵¹ Resettlement policy in the UK became formalised a decade and a half after it was used as a response to Kosovar refugees.¹⁵² UK policy choices and the accompanying discourse show a tendency to favour resettlement over providing asylum because those taken from dangerous regions are seen as more deserving.¹⁵³ As a result, resettlement is ‘increasingly the only way that refugees can enter and gain status in the UK’¹⁵⁴.

As discussed in Chapter 3, resettlement is not binding on signatories of the Refugee Convention or its 1967 Protocol. Because resettlement is discretionary, section 59 of the *Nationality, Immigration and Asylum Act 2002*, sets out the legal context for resettlement in the UK¹⁵⁵ and the Asylum Policy Instructions set out the two main resettlement programmes in the UK prior to the Syrian programme that was enacted in 2014.¹⁵⁶ The UK has traditionally resettled refugees through three separate programmes, including two established resettlement programmes and through domestic immigration law: (1) Gateway Resettlement Programme; (2) Mandate Refugee Programme; and (3) Family reunification under immigration policy.¹⁵⁷ The UK’s largest and first state-led formal policy on resettlement, the Gateway Protection Programme, began in 2002 and is comprised of annual quotas of groups of refugees that are approved at the

¹⁴⁹ Jones, ‘The Rights of Resettled Refugees in the United Kingdom’.

¹⁵⁰ *Ibid.* In fact, the UK has a long history of rejecting the idea that a state cannot ‘refuse entry to refugees at the frontier of their countries of origin’. The UK rejected this condition of the Convention of 1933 which served as the model for the 1951 Refugee Convention. See, Gilbert Jaeger, ‘On the History of the International Protection of Refugees’, *ICRC* 83/843: 727-736, 730 (2001).

¹⁵¹ George J. Wright IV, Kim Ward and Esme Peach, ICAR, *Navigation Guide to Key Issues: Resettlement Programmes and the UK*, May 2003, updated September 2004, p.18, <http://icar.livingrefugeearchive.org/navgdresettlement.pdf>, accessed 6 March 2018.

¹⁵² Martin Jones, Centre for Applied Human Rights, University of York Law School.

¹⁵³ Home Office, Oral Statement to Parliament, ‘Home Secretary’s Update on the Migration Situation in Europe and the Middle East’, 16 September 2015, <https://www.gov.uk/government/speeches/home-secretarys-update-on-the-migration-situation-in-europe-and-the-middle-east>, accessed 4 July 2018; Alan Travis, ‘Theresa May Criticised for “Compassion Quota” in Asylum Strategy’, *The Guardian*, 27 February 2016, <https://www.theguardian.com/uk-news/2016/feb/27/theresa-may-criticised-for-compassion-quota-in-asylum-strategy>, accessed 18 June 2018.

¹⁵⁴ Jones, ‘The Rights of Resettled Refugees in the United Kingdom’.

¹⁵⁵ *Nationality, Immigration and Asylum Act 2002*, section 59, <http://www.legislation.gov.uk/ukpga/2002/41/section/59>, accessed 4 July 2018.

¹⁵⁶ UK Visas and Immigration, ‘Asylum Policy Instructions’, <https://www.gov.uk/topic/immigration-operational-guidance/asylum-policy/latest>, accessed 4 July 2016.

¹⁵⁷ Ewa Jamroz and Pip Tyler, *Syrian Refugee Resettlement: A Guide for Local Authorities*, Migration Yorkshire, Spring 2016, <https://www.local.gov.uk/sites/default/files/documents/syrian-refugee-resettleme-229.pdf>, accessed 4 July 2017; Jones, ‘The Rights of Resettled Refugees in the United Kingdom’.

UK ministerial level and then taken from refugee camps for resettlement in the UK where they are given indefinite leave to remain upon arrival.¹⁵⁸ The Gateway Programme settles approximately 750 refugees per year, which equates to about one percent of the total number of refugees resettled formally.¹⁵⁹ Those that qualify for the Gateway Programme enter the UK outside the immigration rules as they are recognised as Convention refugees (within the Refugee Convention definition and by UNHCR which has a broader definition that includes those fleeing conflict), are nominated for resettlement by UNHCR and meet certain UK admissibility requirements.¹⁶⁰

Second, the UK's Mandate Refugee Programme, which began in the 1990s, accepts around 200 refugees every year.¹⁶¹ Mandate refugees must have 'close ties' to individuals within the UK and the UK must be 'the most appropriate country for resettlement'¹⁶². Individuals resettled under the Mandate programme must have been granted refugee status by UNHCR and must meet UNHCR's criteria for resettlement.¹⁶³ In fact, both the Gateway and Mandate programmes prohibit direct applications for resettlement to the UK.¹⁶⁴ Third, the UK's family reunion resettlement programme, which is not state lead, occurs under the UK's immigration law and permits close, pre-existing family members of refugees that are already within the UK to apply for resettlement to the UK.¹⁶⁵ According to Martin Jones, '[n]umerically, the family reunion of refugees dwarfs formal resettlement'¹⁶⁶.

¹⁵⁸ For a discussion, see Jones, 'The Rights of Resettled Refugees in the United Kingdom'.

¹⁵⁹ *Ibid.* Nationality, Immigration, and Asylum Act 2002, section 59.

¹⁶⁰ For a discussion of critical gaps in protection (such as no right of appeal) due to UNHCR's role in determining eligibility for resettlement for the UK, see Katia Bianchini, 'The Mandate Refugee Program: A Critical Discussion', *International Journal of Refugee Law* 22/3: 367-378 (2010); Jones, 'The Rights of Resettled Refugees in the United Kingdom'.

¹⁶¹ There are no statistics available, but Martin Jones argues sources suggest no more than 200, but the figure is likely to be significantly lower. Jones, 'The Rights of Resettled Refugees in the United Kingdom', p. 72.

¹⁶² Bianchini, 'The Mandate Refugee Program', p. 370.

¹⁶³ Mandate refugees may be living in their country of origin and for this reason, they may not qualify for resettlement under state programs since they will not meet the full definition of a Convention refugee as they remain in their own country. For a discussion, see *Ibid.*, p. 368.

¹⁶⁴ For a discussion of the critiques on this, see Jones, 'The Rights of Resettled Refugees in the United Kingdom'.

¹⁶⁵ This programme is distinct from family immigration under the usual immigration rules. Close family members include spouses (married and unmarried, including same-sex spouses) and minor children (under the age of 18). *Ibid.*, p. 73.

¹⁶⁶ According to Jones, 'refugee family reunification remains a small proportion (less than 10%) of overall family reunion.' UKBA, *Family Migration: Evidence and Analysis 2nd ed.* (UKBA, London, 2011), p. 3 (Table 1)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/115900/occ94.pdf, accessed 4 July 2018. Discussed in Jones, 'The Rights of Resettled Refugees in the United Kingdom', p. 73.

From 2011 to 2014, the UK government's predominant response to Syria was to commit large amounts of humanitarian aid to the region and to negotiate Assad's departure and a political transition diplomatically through its role on the UN Security Council. Thus, from early on in the Syrian conflict, the Home Office shared the idea that the UK's greatest contribution to Syria was by working 'to end the conflict altogether...seek a peaceful settlement that enables a political transition and an end to violence...the greatest need is in the region and the United Kingdom can make the largest impact there'¹⁶⁷. As such, resettlement was not initially offered to Syrian refugees even through the UK's existing programmes. Syrians were still able to claim asylum if they made it to the UK's territory and from October 2012, the Home Office allowed a temporary concession which allowed those already in the UK to apply for an extension to their visa or switch into a different visa category without having to leave the UK.

Resettlement has been seen as part of the broad humanitarian response to the Syrian humanitarian crisis, but it is generally small and targets the especially vulnerable who cannot benefit from the UK's financial assistance in the region.¹⁶⁸ Three years into the Syrian conflict, the UK enacted the Syrian Vulnerable Persons Resettlement programme (SVPR) following a campaign led by the Refugee Council and other charities and considerable public pressure.¹⁶⁹ The SVPR was set up in January 2014 to help the most vulnerable Syrian refugees, such as women and children at risk, people in severe need of medical care and survivors of torture and violence who cannot be supported effectively in their region of origin (particularly from Jordan, Lebanon, Iraq, Egypt and Turkey).¹⁷⁰ The programme involves pre-selection of resettlement candidates by UNHCR and initial processing by the IOM and local authorities. Refugees granted entry and leave under the SVPR are given five years humanitarian protection (HP) and then the option to apply for permanent settlement or return to Syria. The SVPR was initially

¹⁶⁷ Home Office, The Rt Hon James Brokenshire MP, Immigration and Security Minister, 'Written Statement to Parliament, Vulnerable Persons Relocation Scheme for Syrian Nationals', 25 March 2014, <https://www.gov.uk/government/speeches/vulnerable-persons-relocation-scheme-for-syrian-nationals>, accessed 30 January 2016.

¹⁶⁸ UK Mission to the United Nations Geneva, 'UK Statement on the Resettlement of Syrian Refugees Conference in Geneva', 30 March 2016, <https://www.gov.uk/government/news/uk-statement-on-the-resettlement-of-syrian-refugees-conference-in-geneva>, accessed 23 October 2017.

¹⁶⁹ The programme was enacted under Prime Minister David Cameron.

¹⁷⁰ See, Home Office, DFID and Ministry of Housing, Communities and Local Government, Syrian Vulnerable Persons Resettlement (VPR) Programme, *Guidance for Local Authorities and Partners*, 28 October 2015, <https://www.gov.uk/government/publications/syrian-vulnerable-person-resettlement-programme-fact-sheet>.

overseen by the Home Office and was small in scale as it resettled just 239 refugees by the end of September 2015.¹⁷¹

This targeted resettlement was meant to be modest and aimed to discourage mass flows of refugees out of the region. The official discourse highlighting the UK's response to Syria reveals that the main motivations for keeping resettlement targeted and small scale was to discourage irregular migration by taking refugees from the region and not those that travelled to the European mainland or who were smuggled. As such, the UK did not participate in the EU–Turkey agreement or in the EU's relocation scheme.¹⁷² In September 2015, during the European refugee crisis, Former UK Home Secretary Theresa May explained why the UK would not participate in either programme:

[T]he UK believes this approach risks encouraging even more people to risk their lives making the dangerous journey across the Mediterranean or into Europe. Instead, we should be—as the UK is doing—resettling people directly from the region, including Syrian refugees from Turkey, Jordan and Lebanon....for three reasons. Firstly, it ensures that we are taking the most vulnerable people—not just those who are sufficiently fit or who have enough money to make the journey to Europe. Secondly, it deters people—of any age or wealth—for attempting the perilous journeys which have already led to so many tragic deaths. And thirdly, it helps break the business model of those callous criminal gangs preying on human misery in this way.¹⁷³

In September 2015, former Prime Minister David Cameron expanded the SVPR by committing to resettling 20,000 vulnerable Syrian refugees between 2015 and 2020 and broadened the SVPR criteria on vulnerability to include all those recognised as vulnerable by UNHCR.¹⁷⁴

¹⁷¹ Home Office, National Audit Office, Report by the Comptroller and Auditor General, 'The Syrian Vulnerable Persons Resettlement Programme', HC 626 Session 2016-17, 13 September 2016, p. 5, <https://www.nao.org.uk/wp-content/uploads/2016/09/The-Syrian-Vulnerable-Persons-Resettlement-programme.pdf>, accessed 23 October 2017.

¹⁷² The UK is permitted to opt out of any EU migration policy. Home Office, Report by the National Audit Office, 'The Response to the Syrian Refugee Crisis – An International Comparison', September 2016, p. 11, <https://www.nao.org.uk/wp-content/uploads/2016/09/The-response-to-the-Syrian-refugee-crisis-an-international-comparison.pdf>, accessed 23 October 2017. For further information on the EU–Turkey agreement and the EU relocation scheme, see the discussion in Chapter 4.

¹⁷³ Home Office, Oral Statement to Parliament, Home Secretary's Update on the Migration Situation in Europe and the Middle East, 16 September 2015, <https://www.gov.uk/government/speeches/home-secretarys-update-on-the-migration-situation-in-europe-and-the-middle-east>, accessed 23 October 2017.

¹⁷⁴ Home Office, Report by the National Audit Office, 'The Response to the Syrian Refugee Crisis – An International Comparison', September 2016, p. 5, p. 18. Must meet one or more of UNHCR's criteria including women and girls at risk; survivors of violence or torture, or both; refugees with legal or physical protection needs, or both; refugees with medical needs or disabilities; children and adolescents at risk and refugees with family links in resettlement countries. In 2017, the SVPR was opened up to all nationalities affected by the Syrian conflict and renamed the Vulnerable Persons Resettlement Scheme (VPRS). Home Office, Ministry of Housing, Communities and Local Government and DFID, *Community Sponsorship: Guidance for Local Authorities*, https://www.valeofglamorgan.gov.uk/Documents/_Committee%20Reports/Cabinet/2018/18-05-

While this target is significantly high as compared to past UK resettlement programmes, it still equates to only 0.4% of registered Syrian refugees in the region around Syria.¹⁷⁵

Following expansion in September 2015, the programme became the joint responsibility of the Home Office, DFID and the Department for Communities and Local Government who established a joint team to manage the programme located in the Home Office. The SVPR has become the UK's largest resettlement programme and is overseen by a small team within the Home Office's Resettlement, Asylum Support and Integration Directorate department.¹⁷⁶ Between June 2014 and June 2015, the UK resettled 166 Syrian refugees from camps in Jordan and other neighbouring countries under the SVPR.¹⁷⁷ The UK met its target to resettle 1,000 Syrian refugees by the end of December 2015, exceeding it by almost 10%. It resettled a further 1,561 Syrian refugees since then, taking the total to 2,659 by June 2016, 13% of the overall target.¹⁷⁸

The independent National Audit Office revealed that the programme team found the milestone unsustainable and as a consequence, the team took a step back in January 2016 to design a more efficient programme, which resulted in the target number of refugees for resettlement in the UK decreasing.¹⁷⁹ The programme team determined that meeting the 2020 target of 20,000 would mean (1) securing enough referrals from UNHCR in the field; and (2) receiving enough offers from local authorities to resettle refugees. In order to ease the pressures felt by councils willing to host Syrian refugees, such as a shortage of sustainable housing and school places, in October 2015, the then-Home Secretary announced that the UK would develop a community sponsorship scheme to allow individuals, charities, faith groups and businesses to directly

[21/Home-Office-Programme-to-Support-the-Resettlement-of-Vulnerable-Refugees-from-Syria-through-the-Community-Sponsorship-Scheme-Appendix-1.pdf](#), accessed 31 July 2018.

¹⁷⁵ Calculations based on UNHCR's 5.6 million registered Syrian refugees.

¹⁷⁶ It was previously the sole responsibility of the Home Office. A new ministerial post was created to oversee the programme. The minister reported to the Home Secretary and the Secretary of State for Communities and Local Government, as the chair and deputy chair respectively of the ministerial group on Syrian refugees. A minister was not re-appointed after the Cabinet reshuffle in July 2016.

Responsibility for overseeing the programme now lies with the Minister of State for Immigration. Ministers in the Department for International Development and the Department for Communities and Local Government retain interest and the programme reports to a cross-government inter-ministerial group. The Home Office programme director is responsible for programme delivery and reports directly to the Home Office Second Permanent Secretary, who is responsible for the programme budget. See, Home Office, National Audit Office, Report by the Comptroller and Auditor General, 'The Syrian Vulnerable Persons Resettlement programme', HC 626 Session 2016-17, 13 September 2016, p. 16.

¹⁷⁷ Harding et al, 'Refugees Welcome? How UK and Germany Compare on Migration'.

¹⁷⁸ Home Office, Report by the National Audit Office, 'The Response to the Syrian Refugee Crisis – An International Comparison', September 2016, p. 20.

¹⁷⁹ Home Office, National Audit Office, Report by the Comptroller and Auditor General, 'The Syrian Vulnerable Persons Resettlement programme', HC 626 Session 2016-17, 13 September 2016, p. 26.

support and resettle Syrian refugees in the UK.¹⁸⁰ The community sponsorship scheme was launched in July 2016. Refugees resettled under community sponsorship in the UK must still have been identified and referred by UNHCR.¹⁸¹ Additionally, the participation of UK local authorities to the SVPR is voluntary. Participating local authorities are responsible for securing accommodation for those they have agreed to resettle, meeting refugees at the airport and transporting them to their accommodation, registering them for health and education services and welfare benefits, and providing English language classes.¹⁸² As of the end of June 2016, the SVPR had resettled just over 2,800 refugees, but the programme team still believes it will make the 20,000 target by 2020.¹⁸³ Importantly, evidence exists that UK councils want and have capacity for more than 20,000 Syrian refugees and while ‘councils have been overwhelmed by community support’, government policy has lagged behind.¹⁸⁴

During the 2015 European refugee crisis, public outcry and campaigning by Lord Dubs resulted in former Prime Minister David Cameron agreeing to the Dubs Amendment in May 2016, which intended to accept 3000 unaccompanied child refugees (out of the estimated total of 90,000) from camps in Greece, Italy and France. However, by February 2017, after accepting only 350 unaccompanied minors, the UK under the new Prime Minister Theresa May withdrew from the Dubs commitment despite cross-party support in Parliament.¹⁸⁵ May stated that her concern with the programme was that it encouraged children to make perilous journeys to the European mainland in order to claim asylum, which echoed the reasons relied on for the UK’s

¹⁸⁰ *Ibid*, p. 36, p. 39.

¹⁸¹ Home Office, Report by the National Audit Office, ‘The Response to the Syrian Refugee Crisis – An International Comparison’, September 2016, p.14.

¹⁸² *Ibid*, p. 21.

¹⁸³ Home Office, ‘First Anniversary of Government Commitment to Resettle 20,000 Syrian Refugees’, 7 September 2016, <https://www.gov.uk/government/news/first-anniversary-of-government-commitment-to-resettle-20000-syrian-refugees>, accessed 4 April 2018; Home Office, National Audit Office, Report by the Comptroller and Auditor General, ‘The Syrian Vulnerable Persons Resettlement Programme’, HC 626 Session 2016-17, 13 September 2016, p. 7.

¹⁸⁴ Kate Lyons, ‘We Want More Syrian Refugees: Council Offers Exceed Official UK Pledge of 20,000’, *The Guardian*, 9 March 2017, <https://www.theguardian.com/world/2017/mar/09/we-want-more-syrian-refugees-offers-exceed-official-uk-pledge-of-20000>, accessed 6 March 2018.

¹⁸⁵ Known as the ‘Dubs Amendment’ (Lord Dubs). See, Alan Travis and Diane Taylor, ‘PM Accused of Closing Door on Child Refugees as “Dubs” Scheme Ends’, *The Guardian*, 8 February 2017, <https://www.theguardian.com/world/2017/feb/08/dubs-scheme-lone-child-refugees-uk-closed-down>, accessed 10 June 2018. The Home Office did agree to accept a further 150 under an accelerated Dublin III before shutting down the programme. The Dublin III regulation, another scheme that brings unaccompanied refugee children with direct family links to Britain may be ended under Brexit. The EU’s Dublin III regulation determines which EU state will determine an asylum application. Under Dublin III, an unaccompanied child who has made an asylum application has the right to have their application transferred to another EU state where they have a relative. However, if the UK leaves the CEAS, then it will not be able to deport asylum seekers who entered another CEAS country first. See, Home Office, Dublin III Regulation Guidance, 2 November 2017, <https://www.gov.uk/government/publications/dublin-iii-regulation>, accessed 10 June 2018.

exemption from the EU's programmes.¹⁸⁶ Instead, the Vulnerable Children's Resettlement Scheme (VCRS) was launched in 2016, with a view to resettling up to 3,000 individuals, including children deemed to be 'at risk', and their families, from the Middle East and North Africa (MENA) region.¹⁸⁷

The Home Office argued that local authorities were not prepared to take more refugees under the Dubs Amendment, which conflicts with local authorities' arguments that they have the resources and want more refugees.¹⁸⁸ By February 2018, the number of child refugees had increased by five times since 2010 and was estimated at more than 11 million of the total 22.5 million refugees across the world.¹⁸⁹

There has been no mention of R2P in relation to Syrian refugees across the discourse on the UK response to Syria in terms of resettlement policy.¹⁹⁰ For example, in a joint statement at a Ministerial Meeting on Syria in Doha, the UK along with ministers from Qatar, Saudi Arabia, United Arab Emirates, Jordan, Egypt, Turkey, Germany, France, Italy and the US met to discuss the Syrian crisis. In the press release, ministers 'urged the international community to fulfil its commitments' and go beyond financial support to Syria's neighbouring countries hosting Syrian refugees through other appropriate means 'in accordance with the principles of burden sharing'¹⁹¹. However, the principles of burden sharing stem from existing international refugee law and not from R2P.

The interviews with civil servants and elites overseeing the UK's resettlement policy further confirmed that R2P is not a motivating factor in developing Syrian resettlement policy. Home Office policymakers, particularly those responsible for developing and implementing the SVPR,

¹⁸⁶ Jessica Elgot, 'Government Defeats Attempts to Restart Dubs Scheme', *The Guardian*, 7 March 2017, <https://www.theguardian.com/uk-news/2017/mar/07/government-defeats-attempt-to-restart-dubs-scheme>, accessed 6 March 2018.

¹⁸⁷ Home Office, 'New Scheme Launched to Resettle Children at Risk', News Story, 21 April 2016, <https://www.gov.uk/government/news/new-scheme-launched-to-resettle-children-at-risk>, accessed 31 July 2018; Home Office, Ministry of Housing, Communities and Local Government and DFID, *Community Sponsorship: Guidance for Local Authorities*.

¹⁸⁸ See for example, House of Commons, 'Refugee Children: Family Reunion in the UK', Hansard, Volume 636, Mohammad Yasin (Lab), Column 174WH, 22 February 2018, <https://hansard.parliament.uk/Commons/2018-02-22/debates/E8F974BE-1EDA-449A-901B-CDDFAC04F0FA/RefugeeChildrenFamilyReunionInTheUK>, accessed 10 June 2018.

¹⁸⁹ *Ibid*, Hugh Gaffney (Lab), Column 166WH.

¹⁹⁰ For example, The Minister for Syrian Refugees, Richard Harrington, addressed delegates at an UNHCR conference but never mentioned R2P as a motivation for the UK's response to Syria. See, Home Office, Speech by Richard Harrington MP, Minister for Syrian Refugees, 'Minister Highlights UK Commitment to Syrian Resettlement', 30 March 2016, <https://www.gov.uk/government/news/minister-highlights-uk-commitment-to-syrian-resettlement>.

¹⁹¹ FCO, Press Release, Friends of Syria Core Group (Final Communiqué), 22 June 2013, <https://www.gov.uk/government/news/friends-of-syria-core-group-final-communication>, accessed 4 July 2018.

had no knowledge of R2P's existence at all. R2P never came up during the interviews until the researcher introduced the norm and read its third pillar aloud, specifically the UK's responsibility to use humanitarian and peaceful means for helping to protect populations from mass atrocities. There was acknowledgement that R2P could include resettling refugees in this context, but participants felt that R2P would not change the UK's response from what it currently is and thus, R2P would not add any value in terms of adjusting the Home Office's policy. Interviewees maintained that resettlement policy was separate from R2P because while it forms part of the broad humanitarian response to Syria, it is not sustainable and will not solve the Syrian crisis as required under R2P.¹⁹² Since participants said they had no prior knowledge of R2P, the common understanding that R2P would require an end to the conflict and violence in Syria must have been inferred at the point when the researcher read Pillar III. This idea that R2P requires more than helping to protect the Syrian population underpinned the rationale that resettlement was separate because it could not solve the crisis and therefore, did not fit within the purview of R2P. The interviewees from the Home Office were clear that only a political transition would end the violence and make it safe for refugees to return home.¹⁹³ Thus, the interviewees' objectives in Syria and the understanding that R2P requires more than helping to protect resonated with those of Parliament and the FCO.¹⁹⁴

Instead, resettlement was seen as part of the broad humanitarian response to Syrians fleeing mass atrocities that is required under international law and by the UK's policies aimed at protecting refugees. Policymakers who were also adamant that the UK must accept more refugees for resettlement did not view R2P as a source of responsibility.¹⁹⁵ Instead, it was public moral outcry, international pressure, reputational concern and the 'special responsibilities' arising from membership on the permanent UN Security Council that inspired the initial SVPR.¹⁹⁶

Furthermore, the expansion of the SVPR in 2015 was largely motivated by public and international pressure. Again, the international role of the UK and the domestic public's moral outcry following the pictures of Aylan Kurdi were the motivating factors for expanding the SVPR in 2015 following the European refugee crisis when 1.2 million Syrian refugees arrived on the European mainland. The expansion of the SVPR led to the appointment of Richard

¹⁹² Interview 7.

¹⁹³ *Ibid.*

¹⁹⁴ Interviews 4, 6, 7, 8, 11, 14, 15.

¹⁹⁵ Interview 10.

¹⁹⁶ Interviews 7, 8, 6, 10. All spoke of the UK's special responsibilities.

Harrington to a new ministerial position called the ‘Minister for Syrian Refugees’¹⁹⁷. Former Home Secretary Theresa May also spoke of finding ways to ‘harness the strong desire expressed by the public, and a range of organisations, to welcome these refugees to the UK’¹⁹⁸. As such, a government web page was set up for providing ways for domestic citizens to help.¹⁹⁹ Public pressure and generosity motivated the expanded resettlement policy and further underpinned the new approach to using private sponsorship for refugee resettlement.

In sum, the UK agreed to and then expanded its Syrian resettlement scheme in order to mollify moral calls within the British public and civil society along with the political demands within the international community following the pictures of the toddler, Aylan Kurdi.²⁰⁰ The interviews confirmed that resettlement is not seen as an R2P response, but as part of the broad humanitarian response to Syria. UK resettlement policy is small and forms part of the UK’s larger migration policy that is developed and implemented by the Home Office, so it is not part of UK foreign policy beyond its acknowledgement that resettlement is part of the broad humanitarian response to Syria in partnership with DFID and the FCO.

5.4.3.2 DFID: R2P Localised as Humanitarian Means?

The UK’s initial national response to Syria was to provide humanitarian assistance through DFID’s Syria Crisis Response team. The UK is one of the largest single-state bi-lateral donors of humanitarian aid to the Syria Humanitarian Response Plan.²⁰¹ Since 2012, the UK has committed £2.46 billion in humanitarian aid since the start of the conflict to over 30 partners, including UN agencies, international NGOs and the Red Cross to meet the immediate needs of vulnerable people in Syria and refugees in the region such as food, shelter, medical care and clean drinking water.²⁰² DFID’s aid also focused on providing safe education for Syrian

¹⁹⁷ Home Office, ‘Home Secretary’s Update on the Migration Situation in Europe and the Middle East’, Oral Statement to House of Commons, 16 September 2015, <https://www.gov.uk/government/speeches/home-secretarys-update-on-the-migration-situation-in-europe-and-the-middle-east>, accessed 14 April 2018. However, this position was ended after the Cabinet reshuffle in July 2016. Responsibility for overseeing the programme now lies with the Minister of State for Immigration. Ministers in both DFID and the Department for Communities and Local Government retain interest and the programme reports to a cross-government inter-ministerial group. The Home Office programme director is responsible for programme delivery.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ Indeed, a spokesperson from a large humanitarian organisation (Interview 2) felt the UK had responded well to public pressure by increasing its commitment to host refugees from Syria.

²⁰¹ The UK does not contribute to the Regional Refugee and Resilience Plan. Nicole Ostrand, ‘The Syrian Refugee Crisis: A Comparison of Responses by Germany, Sweden, the United Kingdom, and the United States’, *Journal on Migration and Human Security*, 3/3: 255-279, 258 (2015).

²⁰² DFID, Syria Crisis Response Summary, 23 October 2017, <https://www.gov.uk/world/organisations/dfid-syria-crisis-response>, accessed 14 April 2018.

refugee children and creating jobs for Syrian refugees in refugee hosting states like Jordan, Lebanon and Turkey.²⁰³

Additionally, DFID allocated £46 million from the UK Conflict, Stability and Security Fund ‘to support local capacity and build stability’²⁰⁴. The UK trained and equipped the civil defence stations across Syria who carried out search and rescue, fire-fighting and first aid.²⁰⁵ For example, the UK supported the ‘White Helmets’ who saved over 30,000 lives from March 2013 to December 2015 and were nominated for a Nobel Peace Prize.²⁰⁶ DFID also supported a range of projects involved with supporting human rights organisations to gather evidence of violations of international criminal law and international humanitarian law, including documentation of sexual violence for use in any future trials, and training and support for women’s empowerment, policing, civil defence and local councils inside Syria.²⁰⁷ Following expansion of the SVPR in 2015, DFID became a partner with the Home Office and the Department for Communities and Local Government while it continued to oversee the humanitarian aid response to Syria and the region. As such, DFID has responded in many humanitarian ways to Syrians.

No explicit link is made between R2P and DFID’s humanitarian assistance in the region in the official discourse. Elites in DFID were not available for interviews for further inquiry, so the research depends heavily on the discourse and the researcher’s attendance at a few closed conferences that included DFID and FCO representatives. Even so, the information from the conference participants along with the official discourse allow some plausible conclusions. During one of the closed conferences, the researcher asked a conference participant whether DFID’s humanitarian aid to the Syria region is a way of implementing R2P. Her response was,

²⁰³ The UK, Germany, Kuwait, Norway, and the UN co-hosted a conference in London on 4 February 2016 to raise significant new funding to meet the immediate and longer-term needs of those affected. The conference raised over US\$ 12 billion in pledges – \$6 billion for 2016 and a further \$6.1 billion for 2017-20 to enable partners to plan ahead. See, DFID, Closing Remarks by Justine Greening, UK International Development Secretary, 5 February 2016, <https://www.supportingsyria2016.com/news/closing-remarks-by-uk-international-development-secretary/>, accessed 14 April 2018; Supporting Syria and the Region, London 2016, <https://www.supportingsyria2016.com>, accessed 14 April 2018; Supporting Syria and the Region UNGA Side Event Chairs’ Summary, 3 October 2016, <https://www.supportingsyria2016.com/news/supporting-syria-region-unga-side-event-chairs-summary/>, accessed 14 April 2018.

²⁰⁴ See, DFID, Syria Crisis Response Summary, 20 December 2016,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/579340/DFID-Syria-Crisis-Response-Summary2016-12-20.pdf, accessed 14 April 2018.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.* In July 2018, the UK along with international partners decided to offer resettlement to a group of White Helmets and their families. DFID and FCO, ‘Resettlement of White Helmets from Syria: Statement’, Press Release, 22 July 2018, <https://www.gov.uk/government/news/statement-on-white-helmets>, accessed 13 August 2018.

²⁰⁷ FCO, Syria-Human Rights Priority Country, 21 July 2016.

‘R2P is sadly a brand not at the height of its powers—if you want votes at the UN Security Council, you don’t mention R2P very sadly—the concept is great’²⁰⁸. Another participant on the panel pressed her further on whether the Libya intervention and its conflation with military intervention has made the UK sensitive to using the norm in policy since it may interrupt DFID’s development agenda.²⁰⁹ She did not want to engage with the question and moved to the next speaker. In the interviews, some of the NGOs working closely with UK policymakers reasoned that DFID wanted to avoid its policies being conflated with intervention and liberal democracy-building because of the damage the military intervention conflation may inflict on its development work in Syria and other countries.²¹⁰

DFID’s objectives reflect the broad, cross-agency UK policy objectives in Syria that ‘Assad must go’ while the provision of aid and liberal democracy building represent DFID’s core remit. DFID’s key objectives in Syria in addition to providing aid to the most vulnerable are stated as: ‘Build resilience at individual, community and institutional levels to enable people to cope in the short term and provide the foundation for a future political transition’ and to ‘Strengthen the moderate opposition’s capacity to provide governance and basic services and thereby provide an alternative to extremist groups such as ISIL and to the Assad regime’²¹¹.

DFID’s position is that development is the best way to prevent mass atrocities. However, the 2017 report by the Foreign Affairs Committee on ‘Burma’ provides some perspective as it determined that the UK was quick and generous in terms of providing aid to the region, but that ‘there was too much focus by the UK and others ...on supporting the “democratic transition” and not enough on atrocity prevention’²¹². This mirrors a consistent complaint by civil society organisations working in UK mass atrocity prevention and response policy.²¹³

While R2P’s conflation with military intervention is used by Parliament to justify military intervention, this conflation is also the reason R2P is explicitly avoided by the FCO. It is

²⁰⁸ Answered by a conference participant on the panel at a closed conference under the Chatham House Rule, 2017.

²⁰⁹ Asked by a panel participant at a closed conference under the Chatham House Rule, 2017.

²¹⁰ Interviews 1, 3, 5. This was a common argument made by the CSOs interviewed. However, this hypothesis could not be confirmed through formal interviews with agents within DFID.

²¹¹ DFID, Syria Crisis Response Summary, Key Objectives, 20 February 2018, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650177/UK_Syria_Crisis_Response_Summary_2017_10_03.pdf, accessed 23 February 2018.

²¹² The Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the FCO and its associated bodies. See, House of Commons Foreign Affairs Committee, Violence in Rakhine State and the UK’s Response, First Report of Session 2017-19, HC 435, 11 December 2017.

²¹³ Interviews 1, 2, 3, 5 and 9 all mentioned this argument.

plausible that the conflation also makes DFID explicitly avoid R2P. It will be interesting to see how DFID's discourse on R2P changes or remains the same with the new Permanent Secretary, Matthew Rycroft, who was a UK Permanent Representative at the UN from 2015 to 2018 where R2P was very relevant.²¹⁴ Most notably, he stated in February 2018 that he had been careful not to invoke R2P in relation to humanitarian aid access resolutions over fears of a Russian veto due to discomfort with R2P's third pillar.²¹⁵

5.5 Conclusion

As a permanent member of the UN Security Council and a member of the International Syria Support Group, the UK is a key player in the international effort to address the Syrian crisis. This chapter disaggregated the UK's discursive and practical understanding of what it means to discharge its responsibility to protect Syrians from mass atrocities across some of the relevant governmental bodies. The findings in this chapter stem from the interpretative analysis of two primary sources: Official documents and interviews with respondents based in Parliament, the FCO, the Home Office and DFID.

The UK responded to Syria and Syrian refugees in a myriad of ways, but the official documents and the interviews revealed a unified vision of the UK's objectives and responsibilities in Syria. The UK government has held steadfast to its political objectives of Assad stepping down and political transition in Syria and these goals were shared across the agencies researched. There have been differences, however, over the methods for reaching these ends as Parliament has argued for military intervention, the FCO has continued to exhaust diplomacy and DFID has generously donated money and assistance to refugees in the region and to developing regional opposition and political structures to replace Assad. Even resettlement has been part of the broad humanitarian response to Syria as the Home Office enacted the SVPR for vulnerable Syrians in 2014 and expanded resettlement policies in 2015, at the height of the European refugee crisis after thousands of lives had been lost at sea.

Thus, Parliament, the FCO, the Home Office and DFID implemented diplomatic, humanitarian and other peaceful means for helping protect Syrians in Syria and the region but only Parliament explicitly connected its advocacy for military intervention to R2P in its discourse. Still, the UK could be deemed to be practicing its R2P because all of these methods discharged

²¹⁴ Rycroft became Permanent Secretary at DFID officially in January 2018.

²¹⁵ DFID, Matthew Rycroft CBE, Permanent Secretary, Department for International Development and UK Permanent Representative at the UN 2014-2018, *How to Prevent Mass Atrocities*, Chatham House, London, 20 February 2018, public transcript available with researcher's questions asked and answered on record, <https://chathamhouse.souttron.net/Portal/Default/en-GB/RecordView/Index/172381>.

by the different governmental bodies are aimed at helping to protect the Syrian population. However, R2P as an explicit motivation has limited significance for the UK's policies on Syria. In particular, the UK used resettlement as a broad humanitarian response due to public and international pressure along with its desire to be seen as a moral global leader following Brexit and the decision of the US to become more isolationist after the US presidential election in 2016. In the UK more broadly, the R2P norm has not replaced the Blairite doctrine of humanitarian intervention because R2P is seen as ineffective for ending mass atrocities in cases like Syria where there is no P5 consensus on the UK's preferred objectives in Syria (Assad's departure and political transition) or the means of reaching the objectives. This resonates with Wiener's theory of determining normative meaning through practice whereby the UK understands R2P in practice to be military intervention or diplomacy to encourage Assad's departure which will end human suffering and bring political transition to prevent future atrocities. Moreover, the analysis also resonates with Acharya's localisation theory as the UK has adapted R2P to fit when it serves its foreign policy objectives. Where R2P is unable to do that, it is replaced by the doctrine of humanitarian intervention.

Therefore, on the international level, R2P is localised as the protection of civilians requiring a response in the manifestly failing state that ends the mass atrocities. On the domestic level, R2P is localised as military intervention that has UN Security Council authorisation to give effect to the UK's foreign policy goals in Syria. This demonstrates almost no understanding of the non-coercive aspects of R2P because the UK does not implement or speak of any other means for implementing R2P besides Assad's departure and political transition through military intervention or diplomacy, despite having implemented other humanitarian and peaceful means such as financial/humanitarian assistance and resettlement. This suggests that the UK is contesting the non-coercive aspects of R2P which has informed its localisation of the norm. This is not based upon the failure to link resettlement specifically to R2P as resettlement is not an explicit requirement of R2P. It is about the failure to exhaust R2P's explicit requirements of using non-coercive means, which could be ameliorated by linking existing humanitarian and peaceful means to R2P.

One of the crucial reasons that the UK localised R2P as 'military humanitarian intervention *with* UN Security Council consensus' is because the UK does not view humanitarian aid or resettlement as fulfilment of its R2P in Syria because neither can end the mass atrocities. All

the interviews demonstrated a belief that R2P requires ‘ending the slaughter’²¹⁶, which demands more than helping to protect populations from mass atrocities. Officials agreed that resettlement could be a ‘humanitarian’ or ‘peaceful means’ under R2P, but the common response was that R2P is not useful in terms of ‘ending the human slaughter’²¹⁷ and R2P demands a response in the manifestly failing state which excludes resettlement since it is a response to the host state. For this reason, the UK has localised R2P in a way that excludes the non-coercive aspects of the norm. This means the UK is contesting R2P’s non-coercive means to the extent that they cannot lead to realisation of the political objectives in Syria nor can they end the mass atrocities which the UK understands R2P to require.

Furthermore, there was additional contestation by the FCO that using R2P to develop and implement particular policies might set a precedent and then constrain policy options in future cases. There was a consistent fear that linking R2P to *any* policy on Syria would be used as ‘a stick to beat government’²¹⁸ into using the same responses in future cases. Such a reading of R2P means that R2P is generally seen as requiring a fixed response regardless of the context. The problem is the conception that R2P demands a fixed response across cases without contextual flexibility even though R2P accepts a case-by-case analysis due to an inherent acceptance that cases will differ and require tailored responses. Because the political objectives in Syria have remained fixed, so have the possible methods for reaching them as only diplomacy or a military intervention will bring about Assad’s departure and political transition. As such, the UK has nowhere to go in terms of policy on Syria (no UN Security Council consensus and no national support for intervention to pursue the fixed objectives), which strengthens the criticism that the UK has remained passive during the humanitarian crisis (as argued by Parliament). Being labelled as passive during an international humanitarian crisis was one of the concerns in the FCO as interviewees argued that linking existing policy to R2P explicitly in one case might constrain responses to other cases as any variations in the types of responses might provoke challenges to the UK’s reputation of being consistent and fair. This suggests that R2P constrains the determination of what the objectives are as well as the methods employed for reaching them. Thus, R2P is seen as inhibiting the freedom to pursue both the methods and the preferred objectives of the sitting government which need to reflect national interests and the policy goals of the sitting government. More understanding is needed in terms of R2P’s non-coercive aspects and the norm’s flexibility to individual cases of mass atrocities.

²¹⁶ Interview 6.

²¹⁷ *Ibid.*

²¹⁸ Interview 8.

Understanding the difference between R2P's requirements and aspirations could ameliorate its perception as a military tool or as a constraint on policy options because most policies implemented to help protect Syrians fleeing mass atrocities would likely comply with the norm.

The official discourse and interviewees from the FCO and Parliament revealed that their respective organisations are also contesting R2P's ultimate deference to international politics which they see as blocking realisation of the UK's objectives of ending mass atrocities and ensuring Assad's departure and political transition in Syria. As a result, both modified R2P to be only relevant where UN Security Council consensus existed. In practice, the UK sees R2P working more on the international level where it does not influence the development and shaping of the UK's national decision-making around foreign policy even national policymaking on mass atrocity responses. This was echoed by the way the discourse and the interviewees spoke about how the UK demonstrates support of R2P as an international norm through the UK's support to the UN Office of Genocide Prevention and R2P and to the GCR2P. Instead, the UK's foreign policy ends and means influence the positioning of R2P. This inevitably leads to a question over the value of R2P. Those interviewed consistently stated: 'We support it, it's good but not very useful'²¹⁹. [The UK is a] 'major supporter of R2P but it does not tell [us] what to do in a situation like Syria'²²⁰. 'It's a good guiding principle to have in our back pockets, but it is too simplistic to bring out in every conflict particularly if it doesn't work because then it can become meaningless'²²¹. As a result, R2P has not changed the UK's more general foreign policy objectives or the responses for giving them effect. Instead, the UK has localised R2P (according to the official discourse and the interviews) in a way that resonates with Bellamy's notion that the value of R2P is limited to a general agreement that gross human suffering is unacceptable and is of concern to the international community. This demonstrates a rhetorical commitment to R2P and a practical one when R2P normatively fits with the UK's foreign policy objectives (Libya), which resonates with Acharya's norm subsidiarity theory that norms will be adapted to fit within the context of stronger domestic norms and practices—here the UK's foreign policy objectives around counter-terrorism, democracy-building for mass atrocity prevention and regime change, political transition and humanitarian assistance for mass atrocity prevention and response. Thus, R2P with its core objective of helping protect populations from mass atrocities is subordinate to these domestic norms and practices similar to the CAT case in the US where the domestic anti-terrorism norm took precedence and conflicted

²¹⁹ Interview 1. All the interviews 2-15 used similar words.

²²⁰ Interview 11.

²²¹ Interview 8.

with the anti-torture norm. Critically, R2P's normative core of helping to protect populations from mass atrocities would not have been in conflict with the UK's foreign policy objectives had there been *enough* international or domestic support on both the means (diplomatic or military) and the objectives (Assad's departure and political transition) in Syria.²²² Without the necessary agreement or support for the UK's objectives in Syria, it becomes apparent how the UK has localised R2P. Therefore, localisation of R2P in the UK national sphere has been limited to military intervention that has UN Security Council agreement and where agreement is impossible, the norm has been modified and subordinated to military humanitarian intervention as executed in Kosovo. It becomes apparent that the UK's meanings-in-use of R2P is that Assad's departure and political transition through military intervention or diplomacy are the best ways to stop the slaughter of Syrian civilians and without these objectives, R2P is not relevant. These fixed political objectives that have resulted in modifying the R2P norm, rather than modification of the objectives themselves, reveals that the inter-subjective value of R2P is not simply helping to protect populations from mass atrocities, which could be done without either of these objectives. Instead, as Ralph argues, this 'problematic interpretation' of R2P that specifically requires regime change and political transition to end mass atrocities leads to a problematic response that does allow an effective or useful response to the overall problem that needs solving (ending the slaughter). As a result, there is now evidence that the UK has localised R2P as regime change and political transition, which is highly controversial because it reflects less powerful states' fears that R2P may be misused by powerful states. It also helps explain civil society's localisation and contestation of R2P as discussed in the next chapter.

²²² Because there was enough consensus for intervening in Libya to subsequently *effect* regime change and political transition (even if these specific outcomes were not agreed to), the case of Libya does not evidence the UK's localisation of R2P as clearly as the Syrian case where these objectives have been prevented but not resulted in a change in the UK's approach.

6 Localising R2P in Civil Society

6.1 Introduction

Chapter 5 revealed that the UK envisions the resettlement of refugees as a component of the broad humanitarian response to especially vulnerable Syrians, but it is not envisioned as a method of discharging the UK's responsibility to protect Syrians from mass atrocities. Instead, there is consensus across the UK government that R2P entails a foreign policy response, which must serve the national interests in the region.

Even so, 'states are not the only significant actors in world politics'¹ because they are considerably influenced by civil society as discussed in Chapter 2.² Alliances between civil society and government actors can lead to the progressive realisation of human rights as demonstrated by Keck and Sikkink's 'boomerang effect' where domestic groups ally with transnational advocacy groups in order to pressure reluctant states into internalising international human rights norms domestically.³ Indeed, in this research civil society had a significant impact on the UK's enactment and augmentation of its Syrian resettlement policy. In fact, the resettlement of vulnerable Syrians from the region to the UK was not triggered by its commitment to R2P, but in response to civil society and public pressure to respond to one of the greatest humanitarian crises since the Second World War, which influenced the UK's additional decision to expand its Syrian resettlement programme during the European refugee crisis of 2015-2016.

Therefore, to fully understand state behaviour, attention also needs to focus on the role civil society plays, particularly in terms of how civil society uses the UK's commitment to R2P as leverage for increased protection around Syrian refugees. This involves understanding how civil society has localised R2P in terms of its link to resettlement and the overall value of the norm more broadly as an advocacy tool. Thus, the key point of this chapter is to present and analyse the empirical findings which aim to understand how civil society has localised R2P and how the norm's meaning has been derived from its practice. The research included a desk-based discourse analysis of official statements followed by 8 interviews with civil society actors

¹ Robert Keohane and Joseph Nye, 'Transnational Relations and World Politics: A Conclusion' *International Organisation* 25/3: 721-748 (1971).

² Margaret E Keck and Kathryn Sikkink, 'Transnational Advocacy Networks in International and Regional Politics', *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998).

³ *Ibid.* For example, see, Global Centre for the Responsibility to Protect, 'Advocate, Educate, Legislate: The Role of Parliamentarians in the Prevention of Mass Atrocities', Policy Brief, May 2017, <http://www.globalr2p.org/media/files/2017-parliamentarians-brief.pdf>, 19 April 2018.

in order to understand R2P's meanings through practice in terms of how civil society uses it in its advocacy to the UK government around policy responses to Syrian refugees.

The sections that follow begin with a discussion of the meaning of civil society and its relevant history in this research context, followed by presentation of the civil society actors comprising this research. The subsequent sections examine R2P's meanings-in-use based on the empirical findings and arrive at some conclusions concerning civil society's localisation and contestation of R2P, which is inter-related to how the norm is localised by the UK government.

6.2 Defining Global Civil Society: A Brief History

Civil society has remained a contested concept because it is not static. Early conceptualisations of civil society were bound within the territorial state. As the nature of the relationship between the state and civil society changed, the emergence of different theoretical approaches for defining global civil society arose, which included constructivism, critical theory, normative theory and post-modernism.⁴ This research adopts Mary Kaldor et al's empirical definition of 'global civil society' as 'the sphere of ideas, values, institutions, organisations, networks, and individuals located between the family, the state, and the market and operating beyond the confines of national societies, polities, and economies'⁵. Global civil society is also a process that 'includes all those organizations, formal and informal, which individuals can join and through which their voices can be heard by decision-makers.'⁶

The rise of global civil society led to an environment conducive for cultivation of progressive human rights norms like R2P.⁷ NGOs proliferated and gave rise to a 'new humanitarian

⁴ See, for example, John Keane, *Global Civil Society* (Cambridge: Cambridge University Press, 2003); Mary Kaldor, *Global Civil Society: An Answer to War* (Cambridge: Polity Press, 2003); Ronnie D. Lipschutz, 'Reconstructing World Politics: The Emergence of Global Civil Society', *Millennium-Journal of International Studies* 21: 389-420 (1992); Jens Bartelson, 'Making Sense of Global Civil Society' *European Journal of International Studies* 12/3: 371-395 (2006).

⁵ Helmut Anheier, Mary Kaldor and Marlies Glasius, Chapter 1, 'The Global Civil Society Yearbook: Lessons and Insights 2001-2011' in Mary Kaldor, Henrietta L. Moore and Sabine Selchow (eds.), *Global Civil Society 2012: Ten Years of Critical Reflection* (Basingstoke: Palgrave Macmillan, 2012), p. 2-26, p. 2.

⁶ As Mary Kaldor points out, NGOs are mentioned in Article 71 of the UN Charter and are therefore not new. Indeed, international NGOs (INGOs) were established in the nineteenth century. For example, the International Red Cross in 1864. Kaldor, *Global Civil Society: An Answer to War*, p. 86-87; Keck and Sikkink, *Activists Beyond Borders*; Michael Barnett and Raymond Duvall, 'Power in International Politics', *International Organisation* 59/1: 39-75 (2005); Michael N. Barnett and Kathryn Sikkink, 'From International Relations to Global Society', in Robert E. Goodin (ed.) *The Oxford Handbook of Political Science* (Oxford: Oxford University Press, 2011); Michael N. Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Ithaca, NY: Cornell University Press, 2004).

⁷ For background on civil society, see Kaldor et al (eds.), *Global Civil Society 2012*; Kaldor, *Global Civil Society: An Answer to War*; David Chandler, *Constructing Global Civil Society: Morality and Power in International Relations* (Basingstoke: Palgrave Macmillan, 2004); Ann Florini, 'Transnational Civil

discourse that challenged the geopolitical discourse of the centralized war-making state⁸. Against the backdrop of the genocides in Rwanda and Srebrenica, global civil society embraced new norms of responsibility in tension with traditional ideas of sovereignty.⁹ In particular, Kaldor et al argue that global civil society contributed ‘to a new global consensus on human rights [sic], leading to the new norm of humanitarian intervention [sic] [and] the establishment of the International Criminal Court [sic]’¹⁰. Kaldor et al state: ‘By the end of the 1990s...pressure from global civil society had given rise to widespread acceptance of humanitarian norms’ as states were sometimes moved to intervene in other states where populations were facing gross human rights violations.¹¹ Kaldor argues that the emerging norm of military humanitarian intervention was the culmination of global civil society’s advocacy for states to uphold and enforce humanitarian and human rights.¹² However, some R2P scholars argue that despite wide consensus around aspects of R2P, the interests of powerful states have not been constrained by the moral arguments of global civil society.¹³ Importantly, the relationship between the state and global civil society remains dynamic and thus, provides a context for understanding how, not if, civil society influences state behaviour from a constructivist lens, which is the theoretical approach used throughout this PhD thesis.

In sum, civil society forms part of the picture when analysing the motivations underlying state behaviour. As global civil society, with its ‘transnational advocacy networks’¹⁴, significantly influences state behaviour, examining how civil society uses R2P in practice when advocating to the UK government for more effective Syrian refugee protection provides information on how R2P is localised by civil society and provides deeper insight to how the UK government understands the norm. Importantly, this research found that the UK’s localisation of R2P also directly affects how civil society contests and localises R2P. Therefore, the relationship between civil society and the UK government is iterative as each informs the other in terms of what motivates the need to respond to mass atrocities.

Society’, in Michael Edwards and John Gaventa (eds.), *Global Citizen Action* (Boulder: Lynne Rienner, 2001), p. 29-40, p. 30; Aidan Hehir, *Humanitarian Intervention after Kosovo: Iraq, Darfur and the Record of Global Civil Society* (Basingstoke: Palgrave Macmillan, 2008).

⁸ Kaldor, *Global Civil Society: An Answer to War*, p. 77.

⁹ Mary Kaldor, Chapter 6, ‘A Decade of the War on Terror and the “Responsibility to Protect”’ in Kaldor et al (eds.), *Global Civil Society 2012*, p.88.

¹⁰ Helmut Anheier, Mary Kaldor and Marlies Glasius, Chapter 1, ‘The Global Civil Society Yearbook: Lessons and Insights 2001-2011’ in Kaldor et al (eds.), *Global Civil Society 2012*, p.15.

¹¹ Kaldor, Chapter 6, ‘A Decade of the War on Terror and the “Responsibility to Protect”’ in Kaldor et al (eds.), *Global Civil Society 2012*, p.88.

¹² *Ibid.*

¹³ Hehir, *Humanitarian Intervention after Kosovo*.

¹⁴ Keck and Sikkink, ‘Transnational Advocacy Networks in International and Regional Politics’.

6.3 The Civil Society Actors in this Research

Before examining and discussing how R2P is localised by civil society, it is important to define the type of civil society that participated in this research. There are different types of global civil society actors, but this research focuses mostly on NGOs, which are officially registered institutional, professional and ‘value-driven’¹⁵ organisations.¹⁶ Belloni has helpfully categorised the three main types of civil society: (1) Major monitoring and advocacy organisations that provide information and analysis to policymakers on R2P situations and lobby for responses like Amnesty International (AI) and Human Rights Watch (HRW); (2) Humanitarian organisations that work closely with UN agencies and provide assistance and development on the ground such as Oxfam International (Oxfam); and (3) Local civil society groups ‘working indigenously’¹⁷. Importantly, some organisations straddle more than one category such as Oxfam and MSF, which provide humanitarian assistance and engage in advocacy to policymakers. This research uses Belloni’s first and second categories and refines them to also include the relevant specialised mass atrocity prevention and response organisations based locally in the UK, which engage with UK policymakers on international policies.¹⁸ These organisations fit within the remit of Belloni’s first category in terms of their advocacy purpose, but they are much smaller and are locally-based in the UK. As such, all the civil society organisations researched here are based on their link to UK policymaking and include: (1) large transnational organisations that provide humanitarian assistance in Syria and the region and advocate for robust policies concerning the conflict in Syria and the protection of refugees by states like the UK, and (2) local UK organisations that primarily advocate to the UK government on mass atrocity policy. As such, understanding how R2P informs their provision of humanitarian aid and their advocacy to the UK, specifically around refugees, offers insight to how the norm has been localised directly by civil society. This in turn will provide deeper

¹⁵ Kaldor, *Global Civil Society: An Answer to War*, p. 86.

¹⁶ While Kaldor argues that the mobilisations of 2011, specifically the Arab Spring, marked a new period in the concept of global civil society as the ‘protestors in different parts of the world tend[ed] to talk of themselves as “the people” rather than as civil society; indeed, civil society [was][sic] often viewed warily as the associational realm’. Kaldor’s 2012 yearbook noted that the number of international NGOs continued to rise but at a much slower pace than in the 1990s largely due to factors like less need for them as political spaces broadened and communication became less costly and more global (internet). Anheier et al, Chapter 1, ‘The Global Civil Society Yearbook: Lessons and Insights 2001-2011’ in Kaldor et al (eds.), *Global Civil Society 2012*, p. 3, p. 19.

¹⁷ Roberto Belloni, ‘Civil Society and the Responsibility to Protect’, *Global Society* 28/2: 158–179, 159–160 (2014).

¹⁸ This research does not engage with Belloni’s third category of civil society that is working indigenously because it is outside the scope of this dissertation since Belloni’s conception of indigenous civil society would apply to local civil society in Syria, not the UK.

understanding of how the norm is understood and practised by the UK government as civil society frames its advocacy in ways likely to result in its policy objectives.¹⁹

6.4 Civil Society and R2P: An Historical Context

It is important to look at the role of civil society in the development of R2P in the past to contextualise how the norm is localised and what it means in practice today. Civil society, including large NGOs like Oxfam and smaller local organisations, contributed to the development of R2P from the time of the ICISS report. Norm entrepreneurs, like Bernard Kouchner, who founded MSF contributed humanitarian ideas that are considered precursors to the development and endorsement of the R2P norm. According to Belloni, during and after the ICISS report, civil society was generally unified over its discomfort with the central role of the UN Security Council, which was seen as too political and subject to misuse by powerful states, and over its caution in supporting the development of a norm of military humanitarian intervention.²⁰ Instead, civil society envisioned its role to be the promotion of dialogue around R2P cases, education of the media and public and use of ‘R2P’ language in its advocacy work among a host of other activities.²¹

Following the WSOD R2P endorsement in 2005, civil society contributed to R2P’s development and implementation in several ways.²² For example, HRW, Oxfam and Refugees International along with governments and members of the human rights community created the Global Centre for the Responsibility to Protect (GCR2P), a think tank with close links to the UN.²³ Civil society continued to advocate for states to make explicit and public commitments to R2P during the 2009 General Assembly debates, followed by formation of the International Coalition for the Responsibility to Protect (ICRtoP). The ICRtoP is a coalition of organisations including the GCR2P, HRW, Oxfam, UNA-UK and many others, which brings together an international alliance of NGOs ‘to strengthen normative consensus for RtoP, further the understanding of the norm, push for strengthened capacities to prevent and halt genocide, war crimes, ethnic cleansing and crimes against humanity’ and mobilise civil society to advocate

¹⁹ A final note that due to the sensitivity of the research, the identity of an organisation is only revealed where the discourse is available in the public domain, but this does not imply that such organisations were also interview participants.

²⁰ For example, Russia’s misuse of R2P for legitimising its invasion of Georgia. For a discussion, see, Roberto Belloni, ‘Civil Society and the Responsibility to Protect’, *Global Society* 28/2: 158–179, 162-164 (2014).

²¹ *Ibid*, p. 163.

²² For a discussion, see *Ibid*, p. 162-164.

²³ William R. Pace, ‘Launch of the International Coalition for the Responsibility to Protect’, Press Release, New York, January 2009, <http://www.responsibilitytoprotect.org/>.

protection of populations in R2P contexts.²⁴ However, Belloni's research argues that civil society has localised different interpretations of R2P which has resulted in implementation problems.²⁵ Therefore, it helps to examine these organisations' mandates around strengthening R2P on the practical level. This research found that civil society was mostly unified in continuing to support the aspirational values underpinning R2P but felt the need to rebrand the norm in practice for greater chance of reaching their policy objectives through UK policymakers. The Syrian case provides a means for understanding how civil society's views of R2P are localised in practice.

The following sections build upon Belloni's research on civil society and R2P by adding an empirical dimension in the context of the UK and Syrian refugees, which ultimately forms a picture of how R2P has been localised in terms of what it means and how it is used by civil society in practice. The sections synthesise the public discourse and the interview material for those organisations tasked with advocating for the protection of Syrians fleeing mass atrocities, particularly refugees in need of resettlement.

6.5 Localising R2P: Contestation, Modification or Degeneration?

As discussed in Chapter 2, applying critical constructivist theory means accepting contestation as the starting point for understanding the meaning of R2P because contestation helps indicate which particular aspects of R2P have not been accepted and which aspects are congruent with the local context, both providing information as to the norm's meaning(s). This research looked at global civil society/humanitarian organisations and UK civil society to understand how these different entities may be contesting and localising R2P and how it may cause norm degeneration. All have localised or contested R2P in different ways with different results, but with a single catalyst. The type of contestation or the process of localisation have all been a result of how the UK has localised R2P. A discussion of each follows.

6.5.1 Humanitarian Organisations: From Norm Contestation to Norm Degeneration

The War on Terror and the invasions of Afghanistan, Iraq and Libya have served to divide the humanitarian community over military humanitarian intervention.²⁶ As a result, R2P has suffered some of the consequences. The value of using R2P as leverage has continued to face

²⁴ See, ICRtoP, <http://www.responsibilitytoprotect.org/index.php/about-coalition/current-members>, accessed 11 April 2018.

²⁵ Belloni, 'Civil Society and the Responsibility to Protect'.

²⁶ For an in-depth discussion, see Kaldor, Chapter 6, 'A Decade of the War on Terror and the "Responsibility to Protect"' in Kaldor et al (eds.), *Global Civil Society 2012*.

erosion because international mobilisation for a response to the Syrian crisis under R2P has continually been framed in coercive terms under Pillar III, which ignores R2P's other tenets.²⁷ This has perpetuated the misconception that R2P is nothing more than humanitarian intervention with military force,²⁸ which has been the source of R2P contestation by humanitarian organisations in this research. This section demonstrates how non-neutral applicatory contestation of a norm can eventually become justificatory contestation to the inter-subjectiveness of a norm and thus, lead to norm weakening or degeneration over time.

As the dialogue on Syria became mostly arguments over the use of force for Assad stepping down and political transition, humanitarian organisations' contestation became degenerative to R2P. The catalyst for transforming the applicatory contestation into justificatory contestation was states' localisation of R2P as military intervention with little attention to its non-coercive aspects. As humanitarian organisations have progressively seen R2P become a military intervention norm for some powerful states, they have come to contest the inter-subjectiveness of the norm. In this case, the UK's meaning-in-use of R2P is that Assad's departure and political transition through military intervention or diplomacy are the best ways to stop human suffering and without these objectives R2P is not relevant. However, Oxfam and MSF do not share this inter-subjective value. Thus, their contestation goes to the heart of the normative value of R2P as ascribed by the UK in practice, which can result in norm degeneration (regardless of whether the state's localisation is based on misunderstandings around the norm). The following section analyses this particular norm localisation process for the humanitarian organisations researched.

6.5.1.1 *The Limits of Contestation: R2P's Normative Degeneration for Humanitarian Organisations*

The evolution of Oxfam's early explicit support of R2P to its current implicit support of R2P's underlying values and aspirations provides an example of how R2P's localisation by states has affected some organisations' advocacy around state responses to mass atrocities. In this context, how states have localised R2P, specifically as military intervention, has led to some organisations' outright rejection of R2P. As discussed in Chapter 2, critical constructivists expect norms to encounter contestation, which does not necessarily signify non-commitment to a norm. However, as Deitelhoff and Zimmermann argued, there are limits on the type of

²⁷ E. Tendayi Achiume, 'Syria, Cost-sharing, and the Responsibility to Protect Refugees', *Minnesota Law Review*, 100/2: 687–762, 718 (2015); UN, Statement of the Special Advisors of the Secretary-General on the Prevention of Genocide and on the Responsibility to Protect on the Situation in Syria, *News Centre*, 14 June 2012, <http://www.un.org/apps/news/infocus/Syria/press.asp?sID=44>, accessed 26 April 2016.

²⁸ Achiume, 'Syria, Cost-sharing, and the Responsibility to Protect Refugees'.

contestation in terms of when it transforms from constitutive to degenerative contestation, which will affect whether the norm will be strengthened or weakened. This research on humanitarian organisations' contestation of R2P exemplifies this transformation from constitutive to degenerative contestation. Critically, this transformation is not because these organisations do not understand R2P in terms of its requirements, its potential or its aspirations, but precisely because of how some powerful states, like the UK, have localised the norm. R2P's normative degeneration for humanitarian organisations is a result of powerful states localising R2P as military intervention. The story of Oxfam exemplifies the transformation of R2P's contestation from applicatory to justificatory resulting in normative decline.

Oxfam was a strong supporter of R2P from the start as it 'placed a higher priority on protecting civilians' which matched the organisation's developing agenda on human rights including the right of protection from violence.²⁹ Oxfam even presented key principles for undertaking military humanitarian intervention through the UN under certain circumstances in order to protect *civilians*.³⁰ Following endorsement of the WSOD in 2005, Oxfam declared R2P a 'significant stride towards ending the obscene levels of civilian suffering in today's conflict zones'³¹ and became a founding member of the ICRtoP.³² For a few years after the 2005 endorsement, Oxfam used R2P to frame its advocacy around protecting civilians. Initially, 'Oxfam's global advocacy to protect civilians was framed in R2P terms'³³ and the organisation used the terms 'citizens', 'people' and 'civilians' interchangeably with R2P. However, following cyclone Nargis, Oxfam began intentionally using the protection of 'civilians' outside the R2P framework.

By 2008, Oxfam became hesitant at using R2P to frame its humanitarian advocacy due to its damaging effects on its field operations and what it saw as a lack of practical impact on the ground especially in Syria.³⁴ First, R2P began to look like the western military intervention norm that was feared by those very governments Oxfam was trying to influence to protect their populations.³⁵ NGOs based in the Global North are particularly wary of fuelling arguments that

²⁹ Edmund Cairns, 'R2P and Humanitarian Action', *Global Responsibility to Protect* 6/2: 146-161, 146, 148 (2014).

³⁰ Oxfam International, *Note on the Responsibility to Protect* (London: Oxfam GB, July 2008).

³¹ Cairns, 'R2P and Humanitarian Action', p. 150.

³² *Ibid*, p. 149.

³³ *Ibid*. Despite R2P's broader protection goals of 'populations', Oxfam's discourse appears to be inadvertently about civilians before Iraq in 2003 and intentionally about civilians after Libya.

³⁴ *Ibid*, p. 155.

³⁵ Chloë M. Gilgan, 'Exploring the Link Between R2P and Refugee Protection: Arriving at Resettlement', *Global Responsibility to Protect*, 9/4: 366-394 (2017).

they are part of western imperialism when their field operations are in the Global South.³⁶ For Oxfam, R2P lost all credibility after the French Foreign Minister Bernard Kouchner called for a response to cyclone Nargis through the delivery of aid via the military followed by the 2011 military intervention in Libya that toppled a government and led to the chaos and violence in Libya today.³⁷ R2P has since disappeared from Oxfam's humanitarian advocacy:

...most humanitarian workers around the world, even those who put a high priority on protecting civilians, continue to be cautious about invoking R2P in their work, because of two principal concerns. Firstly, that invoking R2P on specific crises may deliver few positive results. And secondly that, in some countries at least, it could simply fuel the hostility to Western aid workers and Western-based humanitarian agencies that many now feel.³⁸

Second, the 'international dissention on Syria has done nothing to suggest that R2P has yet become a powerful argument to change most government's policies' and therefore, 'it plays no part in Oxfam's specific advocacy to see civilians better protected in real crises'.³⁹ Indeed, according to an interviewee, the UK is one of the EU countries that responded to the organisation's specific call for wealthy countries to offer more equitable solutions to Syria and refugees by surpassing the requested financial aid to the region and increasing resettlement places for Syrian refugees, and the UK did this without the organisation resorting to leveraging the UK's commitment to R2P.⁴⁰

At most, Oxfam sees R2P as an important 'reaffirmation' of international humanitarian law.⁴¹ Oxfam is adamant about 'never putting a global ideal, however noble, before what will reduce real human suffering now'⁴². As such, reaching the practical goals for specific humanitarian ends informs the prevailing judgment on how the advocacy will be framed. If R2P is not useful for those humanitarian ends, then it will not be used despite overall support for its ideals. If R2P helps states mind their domestic and international protection duties, then it is useful as a

³⁶ Belloni, 'Civil Society and the Responsibility to Protect', p. 170-171.

³⁷ Cairns, 'R2P and Humanitarian Action', p.153-154.

³⁸ *Ibid*, p.155. Aid workers continue to face attacks, crossfire, kidnapping or arbitrary detainment. 'As of January 2016, 34 UN staff members were detained or missing...a 10 percent increase from January 2015' and '[S]ince March 2011, 81 humanitarian workers have been killed' with the number of Syrian NGO workers killed potentially much higher. Big Heart, Syrian American Medical Society, Norwegian Refugee Council, Syria Relief and Development and Oxfam International, *Fuelling the Fire: How the UN Security Council's Permanent Members are Undermining Their Own Commitments on Syria*, March 2016, p. 12, <https://www.oxfam.org/en/research/fuelling-fire>, accessed 4 July 2018.

³⁹ Cairns, 'R2P and Humanitarian Action', p. 153.

⁴⁰ Interview 2.

⁴¹ Oxfam International, *For a Safer Tomorrow: Protecting Civilians in a Multipolar World*, 26 September 2008, p.6, <https://www.oxfam.org/en/research/safer-tomorrow>, accessed 4 July 2018.

⁴² Cairns, 'R2P and Humanitarian Action', p. 157.

frame. In practice, however, R2P has been damaging as there is repeated evidence that some states, such as the UK, US and France, ‘actively support’ R2P but have misused it as in Libya when the toppling of a government exceeded the agreed upon resolution.⁴³ Moreover, R2P’s conflation with military humanitarian intervention has made Oxfam cognisant of not being ‘an alibi for the abuse of R2P to justify inappropriate military action—for example, no-fly zones over Syria [sic] [n]ot because military action to protect civilians is inherently wrong, but because military action where the benefits do not clearly outweigh the risks is too easily justified by loose talk of both “R2P and “humanitarian”, and that is true in Syria as in countless crises before’⁴⁴. The UK’s 2015 decision to join a coalition engaging in air strikes against Daesh without UN Security Council authorisation has provoked negative reactions from civil society.⁴⁵ Several NGOs, including Oxfam, have accused four of the UN Security Council’s permanent members of ignoring and undermining their commitments to protecting the civilian populations by amplifying their military presence, which has effectively escalated the conflict and harmed civilians.⁴⁶ As such, Oxfam will not frame its protection advocacy in terms of R2P while there is still suspicion of R2P in the Global South where the organisation operationalises its humanitarian agenda. Despite the refusal to explicitly link advocacy to R2P, Oxfam continues implicit support of the norm as it remains a member of both the GCR2P and ICRtoP. However, Oxfam made public its intention to frame its advocacy under the ‘protection of civilians in armed conflict’, a UN framework that is both similar and distinct from R2P.⁴⁷ Thus, as an initial ‘norm-taker’, Oxfam’s contestation of R2P has led to discursive neglect in its advocacy and justificatory contestation of R2P based on its interpretation that powerful states have localised the norm as military intervention, which conflicts with its humanitarian work. According to the critical constructivists that argue there are limits to contestation, this may be a case of norm degeneration over time.

The fact that MSF has engaged in justificatory contestation of R2P from the beginning (contestation that goes to the heart of the norm) has also resulted in R2P’s weakening as the norm for protecting populations from mass atrocities in its advocacy. MSF does not support R2P because it does not want to ‘legalize a new form of imperialism as implementation of R2P is a reflection of the power relationships and domination patterns that shape the international

⁴³ *Ibid*, p. 152-153.

⁴⁴ *Ibid*, p. 161.

⁴⁵ And now with the UK’s recent 2018 decision to engage in air strikes against the Syrian regime’s chemical weapons store.

⁴⁶ Big Heart, Syrian American Medical Society, Norwegian Refugee Council, Syria Relief and Development and Oxfam International, *Fuelling the Fire*, p.19.

⁴⁷ Cairns, ‘R2P and Humanitarian Action’, p. 154-155.

stage⁴⁸. Unlike the majority of aid organisations, MSF has never explicitly supported R2P as a normative framework for the protection of civilians mainly due to its military intervention aspect.⁴⁹ MSF argues that deploying troops into the middle of a civil war or engaging in air strikes does not protect civilians on the ground as demonstrated by the histories of Sierra Leone, East Timor and Kosovo, three interventions hailed as successes.⁵⁰ Instead, military interventions do not ‘restore law and order’ but create ‘a new political order through violence’, which runs the likelihood of ‘failure, escalation, and the massacre of civilians’ as witnessed in Somalia in 1992 amongst other cases.⁵¹ It is therefore, oxymoronic for humanitarian organisations, like MSF, to support a norm which normalises military intervention because it will inevitably lead to harming civilians.⁵²

Moreover, on a practical level, many western aid agencies like MSF do not want to be seen as siding with the intervention as it makes field operations dangerous and might prevent access to civilians in need especially if the organisations are expelled from a state with vulnerable people still in need.⁵³ Thus, neutrality and impartiality are imperative for humanitarian organisations, and therefore, it is natural for them to distance their work from R2P if it is (incorrectly) associated primarily with military intervention.⁵⁴ MSF sees this as an ‘operational principle and a prerequisite for defending a position as a third party who demands not to be targeted in carrying out relief operations in any conflict’ because militarising humanitarian aid is an inevitable result of military intervention which transforms aid agencies into military targets.⁵⁵

⁴⁸ Fabrice Weissman, “‘Not In Our Name:’ Why Médecins Sans Frontières Does Not Support the ‘Responsibility to Protect’”, *Criminal Justice Ethics*, 29/2: 194-207, 204 (2010).

⁴⁹ Despite MSF’s founder, Kouchner’s development of humanitarian intervention. *Ibid*, p. 195. Belloni makes a distinction amongst humanitarian organisations working in the field in terms of their views on the relationship between politics and humanitarianism, and particularly military humanitarian intervention. (his category 2) between the Dunantist and Wilsonian groups. The Dunantist group sees humanitarianism as necessarily separate from politics in order to maintain neutrality and impartiality for unfettered access to those in need in the field (MSF). As such, military force by states connected to civil society groups would sacrifice these tenets of humanitarianism. The Wilsonian group have argued for impartiality and neutrality to give way in some extreme cases such as where the societal structure is a root cause of mass atrocities (Oxfam). See, Belloni, ‘Civil Society and the Responsibility to Protect’, p. 160. For example, at one-time, Oxfam proposed the criteria necessary for a legal and legitimate humanitarian military intervention. Oxfam, *Note on the Responsibility to Protect*.

⁵⁰ Weissman, “‘Not In Our Name:’”, p. 196.

⁵¹ *Ibid*, p. 197.

⁵² However, MSF does agree that there could be an extreme situation where it would support military humanitarian intervention such as the case of Rwanda, the only case where MSF has advocated for intervention. *Ibid*, p. 201-204.

⁵³ *Ibid*, p. 198.

⁵⁴ Gilgan, ‘Exploring the Link Between R2P and Refugee Protection’, p. 388.

⁵⁵ Weissman, “‘Not In Our Name:’”, p. 198. For example, the aid agencies in Afghanistan that were embedded with the intervention forces changed the landscape as they became legitimate targets. According to MSF, this militarisation of humanitarian aid runs in opposition to the purposes and principles of international humanitarian law.

Like Oxfam, MSF is contesting the ‘normative heart’ of R2P as a result of powerful states’ localisation of R2P as military intervention. The way states have implemented R2P makes its normative value completely dependent on military intervention, which directly conflicts with MSF’s purpose and practice. Indeed, MSF notes that explicit policies on accepting refugees within R2P’s ‘mass atrocities tool boxes’ are ‘curiously absent’⁵⁶. MSF argues:

...the evacuation of civilians across the border into a neighboring country where refugee camps would be secured—an option rarely referred to by partisans of R2P, who never consider the right to asylum as a way to shield civilians from violence.⁵⁷

Thus, organisations like MSF argue that the absence of engaging in more peaceful methods for protecting populations from mass atrocities, like effective refugee protection instead of the pursuit of refugee externalisation or containment policies, makes R2P a military intervention norm by default.

MSF now refuses to accept any funding from states because they see a hypocrisy in states’ rhetorical commitments to R2P, which have been accompanied by the escalation in violence against civilians in Syria as a result of the proxy war and the pursuit of policies that externalise and contain refugees fleeing mass atrocities.⁵⁸ Like MSF, other organisations, including Oxfam that were known to give explicit support of R2P have also withdrawn their public support of the norm in a pragmatic attempt to have a better chance of reaching their organisational objectives for protection. Thus, NGOs like Oxfam and MSF see a critical need for deeper engagement with the Global South in order to realise sustainable protection of populations from mass atrocities, but western-led interventions in the name of R2P have served to deepen their distancing from R2P in name and practice.⁵⁹

6.5.2 UK Civil Society⁶⁰: R2P Localisation as Norm Modification

The notion that R2P’s conflation with military humanitarian intervention is harmful to preferred policy outcomes has been an ongoing issue for R2P. However, R2P’s norm localisation process

⁵⁶ *Ibid*, p. 204.

⁵⁷ *Ibid*, p. 197.

⁵⁸ MSF, ‘MSF to no Longer Take Funds from EU Member States and Institutions’, 16 June 2016, <http://www.msf.org.uk/article/msf-no-longer-take-funds-eu-member-states-and-institutions>, accessed 14 June 2018.

⁵⁹ Additionally, a panel participant from a UK civil society organisation stated that the Quaker society, which is a significant funder and supporter of human rights, will not fund anything to do with R2P and mass atrocity prevention because R2P is not pacifist. Stated at a closed conference under the Chatham House Rule, 15 December 2017.

⁶⁰ This section relies on the interviews with local UK civil society, but also includes 2 interviews (numbers 12 and 13) at an international organisation that works closely with states at the international and local level and with civil society. Therefore, while they are distinct from ‘UK local civil society’, their interview material resonated with local civil society and helped further explain the findings.

for local UK civil society differs from the degenerative contestation it has undergone with international humanitarian organisations. UK civil society was less concerned about R2P's overall conflation with military intervention by UK officials as many interviewees saw a military intervention in Syria as potentially legitimate given the human suffering. In fact, interviewees were more open about invoking R2P to MPs in Parliament when advocating coercive responses to Syria such as 'no fly zones' or civilian protection areas. Unlike humanitarian organisations that are contesting R2P because of states' localisation of the norm as military intervention (resulting in its normative decline in terms of complete absence from their advocacy), these local civil society organisations are localising R2P by adapting or modifying the norm to fit within their advocacy to UK officials based on what they perceive UK policymakers to find acceptable about R2P. As such, the UK's localisation of R2P as military intervention has also been the cause of how local UK civil society has accepted and practiced the norm.

6.5.2.1 *Applicatory Contestation of R2P in the Context of Refugees*

Civil society is 'an important protection partner'⁶¹ that is 'well-suited to perform a number of R2P-related tasks including, among others, protecting the displaced population and advocating the implementation of R2P'⁶². This is especially the case where an organisation's *raison d'être* is to support, strengthen and advocate for the *implementation* of R2P in a particular state as was the case with the UK-based mass atrocity prevention and response organisations that were interviewed for this research.⁶³ Therefore, UK civil society has a potential role in how the UK decides to implement R2P responses in Syria through advocacy.⁶⁴ The perception that states have failed to exercise their responsibility to protect Syrians effectively has galvanised civil society to advocate for increased protection of Syrians fleeing mass atrocities, which makes examining R2P's role in advocacy relevant. Importantly, how civil society 'frames' its advocacy is determined by what is perceived to get policy results. According to constructivists like Keck and Sikkink, the practical role of civil society is to:

⁶¹ Ban Ki-moon, *Responsibility to Protect: Timely and Decisive Response*, A/66/874-S/2012/578, 25 July 2012, (p.12).

⁶² Belloni, 'Civil Society and the Responsibility to Protect'.

⁶³ Interviews 1, 5.

⁶⁴ Belloni, 'Civil Society and the Responsibility to Protect'; Gareth Evans, 'Preventing Deadly Conflict: The Role and Responsibility of Governments and NGOs', Public Lecture by Hon. Gareth Evans AO QC, President, International Crisis Group for the Centre for Study of Human Rights, London School of Economics, 2 February 2001, http://www.lse.ac.uk/humanRights/articlesAndTranscripts/Preventing_deadly_conflict.pdf, accessed 20 October 2017; Edward Luck, *The United Nations and the Responsibility to Protect*, Policy Analysis Brief, The Stanley Foundation, August 2008, <https://www.stanleyfoundation.org/publications/pab/LuckPAB808.pdf>.

...frame issues to make them comprehensible to target audiences, to attract attention and encourage action, and to fit with favourable institutional venues. By framing, we mean conscious strategic efforts by groups of people to fashion shared understandings of the world and of themselves that legitimate and motivate collective action.⁶⁵

Therefore, this section examines how civil society ‘frames’ advocacy around Syrian refugees to reveal how R2P is used in leveraging states’ international commitments to those fleeing mass atrocities in Syria. R2P has generally not been adopted as an explicit framework for civil society advocacy around Syrian refugees for two key, interrelated reasons. First, UK civil society is engaging in applicatory contestation of R2P in terms of its relevance to refugees. Participants all agreed that the sources of responsibility for the protection of Syrian refugees came from international law, from the concepts of morality and solidarity and because of certain special responsibilities emanating from the UK’s international role rather than from R2P. These sources of responsibility were seen to be more effective as leverage for increased protection because of what was interpreted as R2P’s applicability within the borders of Syria as the *loci* of the manifestly failing state. Second, R2P’s contestation by the UK government has informed how UK civil society is rebranding or modifying R2P for government uptake of their policies on mass atrocity response. Each is discussed in turn.

On a discursive and practical level, UK civil society has not used R2P as explicit leverage in their calls to the UK for responding to the Syrian refugee crisis despite their collaborative relationships with R2P advocates who are outspoken about the link⁶⁶ and despite the requests for advice on the link posed by MPs in Parliament to specific UK civil society organisations whose sole purpose is helping the UK to implement R2P and advocating for increased protection of Syrian refugees.⁶⁷ These actors have largely avoided linking R2P and refugees despite continued support for the norm. Explicit mention of R2P is limited to when participants point out that state support for the underlying aspirations of helping protect populations from

⁶⁵ Keck and Sikkink, ‘Transnational Advocacy Networks in International and Regional Politics’, p. 90. For more recent scholarship on framing, see Niina Merilainen and Marita Vos, ‘Framing by Actors in the Human Rights Debate: The Kony 2012 Campaign’, *Nordic Journal of Human Rights* 32/3: 238-257 (2014); Amy Risley, ‘The Power of Persuasion: Issue Framing and Advocacy in Argentina’, *Journal of Latin American Studies* 43/4: 663-691 (2011).

⁶⁶ Alex J. Bellamy, *The First Response: Peaceful Means in the Third Pillar of the Responsibility to Protect*, Policy Analysis for The Stanley Foundation, December 2015, p. 12, <http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/6053-the-stanley-foundation-the-first-response-peaceful-means-in-the-third-pillar-of-the-responsibility-to-protect>, accessed 27 April 2016.

⁶⁷ One prominent mass atrocity prevention and response organisation in London revealed that she had been in discussions with the late MP, Jo Cox, who had requested research linking R2P and refugee protection/resettlement as the prevailing understanding was that R2P may involve refugees fleeing from mass atrocities, but the norm did not require a refugee protection response. Interview 1.

mass atrocities is contradicted by states' continued externalisation and containment policies of refugees.

The organisations interviewed agreed that states have a responsibility to provide protection to refugees. However, R2P was not envisioned as the source of that responsibility by any participants including those organisations existing for the sole purpose of helping states and governments implement R2P and broader UN norms and practices.⁶⁸ Instead, there was a shared consensus across the discourse and from the participants' interviews that R2P's link with refugee resettlement is tenuous. R2P's non-coercive methods do not include resettlement because 'R2P is over [finished] when a border is crossed—it is about populations in a country'⁶⁹ which is manifestly failing to protect its population. This was the understanding across domestic and large international civil society organisations working in the mass atrocity context.⁷⁰ Civil society policymakers were clear that there is a distinction between 'obligation and non-obligation'⁷¹ in terms of the legal and non-legal sources of responsibility for leveraging states to offer more effective protection to Syrian refugees.

Interviewees explained that there is a clear legal responsibility or obligation to protect refugees fleeing mass atrocities in terms of asylum under the 1951 Refugee Convention or to responsibility share the refugees who have arrived on the European mainland (pre-Brexit) under EU law.⁷² However, interviewees focused primarily on the UK's *legal* responsibility under EU law to share in resettlement responsibility for the 1.2 million refugees who had arrived on the European mainland in 2016 because this obligation could not be evaded in the same way the UK has avoided its legal responsibilities to asylum seekers under the 1951 Refugee Convention due to its geographic nature as an island.⁷³ As such, a refugee response would fall under international refugee law, customary law and EU law rather than under R2P. Participants felt that relying on legal instruments for leverage was preferable to soft law or moral and political arguments, but that it would naturally have mixed results considering the UK's decision to leave the EU and the political atmosphere around immigration control.⁷⁴ Furthermore, the sources of legal responsibility would not extend to resettlement of Syrians from the region around Syria because resettlement is a discretionary norm and such refugees have not come within the remit

⁶⁸ Interviews 1, 2, 3, 4, 5, 12, 13.

⁶⁹ Interview 13.

⁷⁰ Interviews 1, 2, 3, 4, 5, 12, 13.

⁷¹ Interview 2. Approach confirmed in similar words by Interviews 1, 2, 3, 4, 5, 12, 13.

⁷² Interview 4.

⁷³ Interviews 1, 2, 3, 4, 5.

⁷⁴ Interviews 1, 2, 3, 4, 5, 12, 13.

of EU law as they are not physically present in Europe. For these reasons, interviewees explained that they use ‘non-obligation’ arguments that involve non-legal sources of responsibility to advocate for increased protection where there is no applicable legal responsibility.

Under the non-legal sources of responsibility for resettling Syrian refugee, R2P is still missing. Instead, the sources of responsibility for leveraging the UK’s commitments to Syrian refugees were based on solidarity, morality and the perceived special responsibilities accompanying the UK’s international role.⁷⁵ The decision to favour solidarity (like UNHCR) as leverage for states to practically realise the full extent of their responsibilities was echoed across the local UK civil society organisations that participated. Interviewees defined solidarity as ‘what is moral and acceptable behaviour’⁷⁶. ‘We use shared commitment to solidarity because it is a broader concept’ [than R2P]⁷⁷, which according to this interviewee was the way around R2P’s *ratione loci* requirement. Additionally, UK civil society preferred to rely on historical, inadequate responses by the international community (such as the response to Jewish refugees during the Holocaust) to encourage refuge for Syrians fleeing mass atrocities today⁷⁸ rather than framing their repeated pleas to the international community in terms of R2P. Such pleas urge UK government officials to ‘be on the right side of history’ and to ‘protect civilians’, but there is no mention of R2P as a source of responsibility for Syrians fleeing mass atrocities.⁷⁹

Additionally, UK civil society has mainly focused on using the ‘special’ role of the UK as a permanent member of the UN Security Council, which endows it with a ‘special responsibility’ to lead in demonstrating commitment to Syrian refugees on behalf of the international community even though it is not directly required under law.⁸⁰ Indeed, this ‘clear responsibility towards refugees’ is derived from ‘the UK’s role as a G-8 nation and a permanent member of the UN Security Council which brings a special responsibility to implement

⁷⁵ See, for example, how R2P underpins research on mass atrocities and refugees and dialogue between CSOs, Dr. Kate Ferguson, Protection Approaches, ‘Five Principles for a Responsible Internationalist Policy on Syria’, *Open Democracy*, 15 October 2015, <https://www.protectionapproaches.org/reports---publications.html>, accessed 4 July 2018; This document and others place refugee protection within the context of R2P but the responsibilities towards refugees are based on morality, special responsibilities and being on ‘the right side of history’.

⁷⁶ Interview 1. Exact words repeated by Interview 10.

⁷⁷ Interview 1.

⁷⁸ For example, see Dr. Becky Taylor and Dr. Kate Ferguson, *Refugee History: The 1930s Crisis and Today*, Policy Paper, December 2017, presented at ‘Warnings from the 1930s? Lessons from Britain’s Refugee History for Today, Panel Discussion, Houses of Parliament, <https://www.protectionapproaches.org/reports---publications.html>, accessed 4 July 2018.

⁷⁹ Interview 1.

⁸⁰ Every civil society participant used this specific phrase. Interviews 1, 2, 3, 4, 5, 12, 13.

effective policies for shared global problems'⁸¹. While 'there is no legal obligation to provide resettlement, basic humanitarian principles and the self-appointed role of the UK in the world along with its wealth endows it with a special responsibility to lead protection policies for the displaced'⁸². Furthermore, 'the failure of the UN Security Council to reach consensus on any meaningful action on Syria' gives rise to on-going international responsibility for finding alternative ways of protecting the refugees that continue to flee the violence.⁸³ Thus, the UK's responsibility for providing resettlement comes from a moral, political and international responsibility that must be implemented on its own due to its failure to find consensus in the UN Security Council.⁸⁴

Moreover, despite the consensus that R2P is meant to be a response in-situ, there was agreement that actors would support a link 'if it worked'⁸⁵ because a refugee response 'certainly fits within R2P'⁸⁶ even if it is not a requirement.⁸⁷ However, participants thought using R2P would not positively impact their objectives in contrast to using the preferred advocacy tools:

We don't work too much on the refugee crisis. If asked, we would support refugee protection [in relation to R2P advocacy], but it is not a main focus—states are not into it--they are focused on the UN Security Council—they are UN Security Council-oriented. They—high level diplomats--are not involved in refugees.⁸⁸

In sum, the UK civil society organisations interviewed have not used R2P to advocate for refugee resettlement due to their understanding that R2P is not a legal norm and is about states' responses in situ, so resettlement from a third country outside the EU does not link to R2P.⁸⁹ Instead, using solidarity, cooperation, international reputation and special responsibilities and legal, moral and historical arguments to leverage UK commitments to Syrian refugees are used as methods of getting around R2P's jurisdictional limitation as an in-situ response because these approaches are seen to 'expand responsibility outwards'⁹⁰ unlike R2P. Importantly, civil society's chosen framing of advocacy for increased protection of Syrian refugees fleeing mass atrocities reveals how civil society has localised R2P as a norm undergoing applicability

⁸¹ Interview 1. Confirmed by interviews 2, 3, 4, 5, 12, 13.

⁸² Interview 2.

⁸³ Interview 2.

⁸⁴ Interview 4.

⁸⁵ Interview 1 and 2 used these specific words.

⁸⁶ Interview 5.

⁸⁷ All interviewees stated they would support the link if it worked in practice. Interviews 1, 2, 3, 4, 5, 12, 13.

⁸⁸ Interview 13.

⁸⁹ Interview 4.

⁹⁰ Interview 1.

contestation in terms of its very limited value to the context of refugees beyond the idea that containing or externalising refugee protection contradict the aspirations and values underpinning R2P as a norm of protection.⁹¹ Thus, civil society's applicatory contestation of R2P means the norm does not apply directly in the refugee protection context, and therefore, it is not used in advocacy. The second reason R2P has not been adopted as an explicit framework for civil society advocacy around Syrian refugees is due to R2P's contestation by the UK government, which has informed how UK civil society is rebranding or modifying R2P for government uptake of any of their policies on mass atrocity response, which may also be one of the underlying reasons R2P is seen as separate to refugee protection. This is discussed in the next section.

6.5.2.2 *Modifying R2P through Framing*

Similar to UNHCR, UK civil society participants said they do not want 'to turn officials off by reminding them of their R2P'⁹² and risk the potential failure of their policy objectives.⁹³ UK civil society working in the mass atrocity context have also remained cautious in terms of using R2P for similar reasons to UNHCR and the humanitarian organisations interviewed. R2P's conflation with military intervention has affected UK government support for the norm,⁹⁴ which has impacted how local NGOs use R2P even where the central mission of the organisation is to promote R2P in UK policy. In this context, civil society approach their advocacy practically in order to attain their protection objectives, which requires gaining access and sustaining engagement and communication with the officials they are trying to influence.

First, UK civil society's perception that UK officials generally lack a willingness to engage with them affects organisational approaches for attaining policy results. Second, if civil society manages to get an opportunity to be heard, what the government is open to hearing also significantly informs how civil society shapes its advocacy. Indeed, a coalition of mass atrocity prevention organisations in the UK with international influence has struggled to receive a meeting with UK government officials for discussions on UK policy on mass atrocity prevention and response despite on-going cases like Syria.⁹⁵ The interviews made clear if a meeting were to arise, then UK officials' understandings of R2P would inform how civil society would approach leveraging the state's commitments for a mass atrocity response. One

⁹¹ *Ibid.*

⁹² Interview 1; Interviews 2, 3, 4, 5, 12, 13 made the same argument.

⁹³ Interviews 1, 2, 3, 4, 5, 12, 13.

⁹⁴ As discussed in Chapter 5.

⁹⁵ Closed conference under the Chatham House Rule, 15 December 2017; confirmed by Interviews 1 and 3 who are part of the coalition on mass atrocity prevention in UK policy.

prominent international organisation revealed that they have to ‘adopt a cautious approach’ in advocacy depending on the state’s relationship to the country where mass atrocities are occurring and that mentioning R2P is ‘a challenge across the board’, particularly because the P3 often avoid linking the norm to their policy choices and because of their discomfort around it.⁹⁶ As a result, the organisation follows suit by avoiding leveraging their advocacy with R2P despite their ongoing support for the norm.⁹⁷ One interviewee summed up:

I think R2P has lower stock than a few years ago despite Libya then, as we are receding from internationalism and I see how the government increasingly sees R2P as something foisted upon it [the UK] despite being an engineer and supporter from the beginning.⁹⁸

Participants argued that R2P’s other non-coercive tenets, which are ‘subsumed by military intervention makes R2P an un-useful framework to influence governments’⁹⁹ because ‘there are deep scars from Iraq and Libya’¹⁰⁰. Based on interviews with civil society, the ‘jargon-y’ phrase R2P is considered toxic by elites in government due to the Libya intervention and its resulting humanitarian crisis.¹⁰¹ When R2P was brought up, participants made it directly or implicitly clear that R2P was perceived to be a norm about military humanitarian intervention in the government, which would never work in Syria given that the ‘UK thinks it died in Libya’¹⁰².

⁹⁶ Interview 12. This organisation working with high-level diplomats at the UN Security Council said the UK does not link R2P to humanitarian aid in the resolutions out of a fear that Russia will veto them due to leaving room for a robust response because of its distrust of R2P as a military intervention norm in practice. At a public and recorded event, *How to Prevent Mass Atrocities*, at Chatham House, London, 20 February 2018, Matthew Rycroft CBE, Permanent Secretary, Department for International Development and UK Permanent Representative at the UN 2014-2018, confirmed that the reason for avoiding explicit mention of R2P in relation to humanitarian aid was that Russia will undoubtedly veto any resolution on aid if R2P is mentioned. However, there is a failure to consider that it may instead be the linking of humanitarian aid to political transition/Assad’s departure that results in non-consensus. Jason Ralph and Jess Gifkins, ‘The Purpose of United Nations Security Council Practice: Contesting Competence Claims in the Normative Context Created by the Responsibility to Protect’, *European Journal of International Relations* 23/3: 630-653 (2017). It would seem that linking the norm to non-coercive measures could help alleviate the norm’s reputation as a military intervention tool (in combination with delinking humanitarian measures from Assad’s departure and political transition/democracy-building) as this would leave less space for a subsequent Chapter VII resolution, which is the fear of the BRICS. Furthermore, the UK has not apparently recognised the same problem with linking humanitarian aid with ‘political transition’ which arguably has had the same veto effect. It will be very interesting to see how a former diplomat at the UN level with knowledge of R2P proceeds as the new Permanent Secretary for DFID.

⁹⁷ Interviews 12, 13.

⁹⁸ Interview 1.

⁹⁹ Interview 3. Confirmed by interviews 2, 4, 5.

¹⁰⁰ Interview 1.

¹⁰¹ Interview 3.

¹⁰² Interview 5; confirmed in similar words by interviews 2, 3, 4, 5.

The perception that R2P is toxic to their objectives with state officials meant R2P would not be helpful in their advocacy to states.¹⁰³

As a result, R2P is used by civil society implicitly as a ‘theory underpinning [their] research and understanding’¹⁰⁴ while consciously avoiding explicit reliance on the norm in their advocacy to states.¹⁰⁵ Despite the reasons why R2P is not used (due to its perception as separate from refugee protection and its damaging military intervention component), the organisations interviewed all agreed that they still support R2P. To rectify these opposing realities, local UK civil society has engaged in norm modification of R2P through ‘active [re]construction (through discourse, framing, grafting, and cultural selection) of emerging universal ideas’ like the principles underpinning R2P to match local beliefs and practices.¹⁰⁶ Civil society has localised R2P as broad support for the principles underpinning the norm, which informs their own research and theories while the norm has been modified as ‘the responsibility to protect civilians’¹⁰⁷ which was perceived to gain better traction in UK policymaking due to the fact that it is a more established doctrine and because officials use this phrase more comfortably than they use R2P.¹⁰⁸ Belloni has argued that in practice, civil society has mistakenly conflated the protection of civilians (POC) with R2P, but this research found UK civil society to understand the differences between R2P and POC.¹⁰⁹ Instead, UK civil society has intentionally taken the ‘responsible sovereignty’ aspect of R2P and combined it with the POC as a way to water down the toxicity of R2P, particularly after the intervention in Libya.¹¹⁰

¹⁰³ This was said specifically by an international civil society organisation (Interview 13) working with UK policymakers, and was confirmed by the interviews with local UK civil society.

¹⁰⁴ Interview 1. Rephrased by Interviews 3 and 5.

¹⁰⁵ Interview 1.

¹⁰⁶ Amitav Acharya, ‘Local and Transnational Civil Society as Agents of Norm Diffusion’, Paper presented to the Global Governance Workshop, 1-3 June 2012, Department of International Development, Queen Elizabeth House, University of Oxford, UK, <http://amitavacharya.com/sites/default/files/Local%20and%20Transnational%20Civil%20Society%20as%20Agents%20of%20Norm%20Diffusion.pdf>, accessed 13 April 2017.

¹⁰⁷ Interviews 1, 2, 3, 4, 5 all used this phrase.

¹⁰⁸ This was the case across all the local civil society discourse and confirmed in the interviews. For example, see, Alexandra Buskie, ‘From Promise to Practice: Strengthening the UK’s Approach to Atrocity Prevention and R2P’, UNA-UK Briefing Report No.3, August 2015, <https://www.una.org.uk/sites/default/files/From%20promise%20to%20practice%20-%20strengthening%20the%20UK's%20approach%20to%20atrocity%20prevention%20and%20R2P.pdf>, accessed 4 July 2018. See also, for an example, Ferguson, ‘Five Principles for a Responsible Internationalist Policy on Syria’. According to Interview 3, the UK comfort around R2P is relegated to prevention.

¹⁰⁹ Additionally, Belloni’s argument was referring to global civil society and humanitarian organisations, not UK civil society, particularly organisations formed with the purpose of helping the UK implement R2P. However, it is still possible that government officials conflate R2P and POC.

¹¹⁰ Interview 1. Confirmed by Interviews 2, 3, 4, 5.

Participants were adamant that using this less controversial framework in their advocacy was not a rejection of R2P, but necessary in their valuations for successful outcomes on getting government to engage in a Pillar III response to Syria. As such, avoiding or reformulating R2P language was intentional but did not subtract from an overall commitment to the values and principles underlying the norm.¹¹¹ Interviewees agreed that R2P has not failed but shed a light on the failures of the UN Security Council and the broader problems with the UN system in terms of the World War II ‘spoiler powers being in charge’¹¹². One interviewee summed up the broad contribution of the R2P norm: ‘R2P is a welcome demonstration of how far the international community has come in terms of defining the limits of sovereignty’¹¹³. For those UK civil society organisations working in the mass atrocity context, ‘what is important is the concept of a shared global responsibility to protect, rather than the more rigid norm of R2P’¹¹⁴. There was recognition that civil society, like states, may be ‘doing R2P but not framing it as R2P’¹¹⁵ which does not subtract from R2P’s normative influence, but reshapes it in a way that is useful for reaching the ends it proposes to stand for.¹¹⁶ This is the very epitome of localising a norm to fit within the domestic reality as explained by Acharya in Chapter 2. However, localisation theory does not really provide a clear answer for when localisation can transform into norm degeneration. Even though Deitelhoff and Zimmerman refined critical constructivism through their argument that contestation must be limited or it will lead to norm degeneration, it is difficult to apply this theory to R2P because R2P’s ambiguous nature makes

¹¹¹ Interview 1. See also, for example, how R2P’s Pillar III is rebranded as the ‘responsibility to protect civilians’ in Ferguson, ‘Five Principles for a Responsible Internationalist Policy on Syria’; Protection Approaches, ‘Fact Sheet: The Responsibility to Protect and the UK’, 10 July 2015, <https://www.protectionapproaches.org/reports---publications.html>, accessed 4 July 2018.

¹¹² Interview 1.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.* Other participants confirmed this notion. See also, Dr. Kate Ferguson, ‘Did the Libyan Intervention Give R2P a Bad Name?’, *The Syria Issue*, UNA-UK, March 2017, <https://www.una.org.uk/did-libyan-intervention-give-r2p-bad-name>, accessed 4 July 2018. It must be said that while those CSOs interviewed agreed on their view of R2P in relation to their policy objectives, it is important to note that these varied organisations sometimes had very different goals that could also feed additional research around R2P. Due to the limit in scope of this research, such issues were not pursued. For example, one CSO working closely with the UK government clearly advocated military intervention in Syria as R2P was seen as a flexible framework that would allow a multilateral intervention without UN Security Council authorisation. The argument was that R2P was just a norm and such an intervention would still be legitimate even if illegal. This argument echoes some parliamentarians’ calls for intervention and certainly the government’s legal position as of April 2018. However, this research was limited to examining how R2P is used in advocacy around policy objectives concerning Syrian refugees and not about the objectives themselves.

¹¹⁵ Interview 13.

¹¹⁶ For example, Dr. Kate Ferguson writes about ‘our shared global responsibility to stand up and defend the right of all peoples to live without identity-based violence, whether it means providing safe passage, shelter, or rejecting the prejudice we witness in our own daily lives’. Dr. Ferguson does not always explicitly mention R2P but references the principles underpinning R2P. Dr. Kate Ferguson, Protection Approaches, ‘Steering a Perilous Course’, *Open Democracy*, 14 January 2015, <https://www.protectionapproaches.org/reports---publications.html>, accessed 4 July 2018.

it difficult to determine, let alone narrow down, its inter-subjective meaning(s). If R2P's inter-subjective meanings are as broad as Bellamy argues (internalised notion that mass atrocities are wrong and are worthy of concern to the international community), then any response towards this end would be considered localisation of R2P regardless of whether R2P actually *caused* the responses. This means it is difficult to know the difference between an R2P response that is implicit versus a response that completely neglects or abandons the norm, which can lead to norm degeneration. This would mean that the UK's humanitarian aid and Syrian resettlement policies may reflect a shared concern for populations facing mass atrocities which may potentially be equated to practising R2P even though there is no evidence that R2P inspired such policies (and there is evidence against). It appears that local UK civil society has localised this broader notion of R2P's inter-subjective values, which is very different from how the UK's practice of R2P and its resulting norm modification reveals a very specific inter-subjective value on R2P¹¹⁷ that is the catalyst for international humanitarian organisations to reject R2P resulting in norm degeneration across their advocacy.

Finally, for UK civil society, the UK government's contestation of R2P has informed organisational decisions to avoid referencing R2P or to modify the norm in accordance with the particular type of contestation existing in the particular government department. In contrast to the humanitarian organisations, UK civil society has localised R2P by modifying the norm in a more useful manner to avoid alienating UK policymakers that are contesting R2P's deference to geopolitics, its constraint on foreign policymaking and its conflation with military intervention. This means that the catalyst for UK civil society's localisation and modification of R2P varies depending on where the organisation is advocating due to some of the differences in contestation. Because UK civil society working in the mass atrocity prevention and response context wants to affect foreign policy in the FCO and DFID, those agencies' contestation of R2P's military aspect as a result of the Libya intervention, influences how UK civil society reshapes R2P to fit their goals of protection. At the same time, some of the UK organisations rely on the military intervention aspect of R2P when advocating to Parliament due to that body's greater comfort with R2P as a military intervention norm.¹¹⁸

¹¹⁷ The specific inter-subjective value referred to here was revealed in Chapter 5: R2P localised as regime change and political transition through diplomacy or military intervention with UN Security Council authorisation.

¹¹⁸ Interview 1.

6.6 Conclusion

In sum, the last few decades demonstrated ‘the growing role of civil society in settling global matters’¹¹⁹. As such, this chapter considered how civil society impacts state behaviour, which necessitates examining what sources of responsibility civil society relies upon to advocate to the UK in the context of Syrian refugees. This inquiry gave insight to how R2P is localised by civil society which brings further understanding of how the UK understands its responsibility towards Syrian refugees because civil society chooses to frame and advocate in a way that will not only give them access to UK policymakers, but result in reaching their protection goals.

This chapter has one broad conclusion: R2P is undergoing contestation, modification and degeneration all at the same time by different groups of social actors. Similar to UNHCR, as explored in Chapter 3, UK civil society is contesting R2P’s application to their remit. As a result, these actors rely on other approaches for advocacy around the protection of Syrian refugees including the UK’s international role and reputation, the principles of solidarity, or moral calls based on historical injustices and suffering, which are the preferred approaches for influencing UK government policy as these sources of responsibility are determined to be more effective for reaching organisational goals on protection than R2P.¹²⁰ UK local society is also engaging in norm localisation as modification of the R2P norm due to the perception that UK government officials in charge of foreign policy are wary of R2P following the particularly troubling implementation of R2P in Libya. For this reason, R2P has largely been localised as theoretically relevant as a new concept of responsible sovereignty, rather than practically relevant, to civil society, so when the norm is used to remind government officials of their commitments, it is called ‘the responsibility to protect civilians’, which is perceived to be less controversial. Thus, UK civil society has modified R2P to fit the UK context in order to pragmatically pursue its protection goals. Participants agreed that if the goal is to get greater protection for Syrian refugees, then using R2P as an explicit frame would not help reach the desired outcomes especially given the recent backlash against refugees, the norm’s controversial military intervention aspect and the geographical limitations on an R2P response.

Finally, according to some humanitarian organisations, implementations of R2P’s use of force aspect has actively harmed their operational work on the ground as aid workers have become military targets and the absence of engagement in more peaceful responses under R2P by states,

¹¹⁹ Ferenc Mészlivetz, Chapter 4, “‘Lost in Transformation’: The Crisis of Democracy and Civil Society” in Kaldor et al (eds.), *Global Civil Society 2012*, p. 54-71, p. 15.

¹²⁰ Confirmed by Interviews 1, 2, 3, 4, 5.

has resulted in transforming R2P's contestation from constitutive to degenerative. While this chapter began with an understanding that civil society predominantly affects state behaviour, another conclusion was reached. The relationship is iterative. How the UK has localised R2P has directly affected how civil society contests and localises R2P in response, which underscores how R2P internalisation, as a broad concept, interlinks and fundamentally varies across social agents in terms of the means for reaching the shared normative values underpinning the norm.

7 Conclusion

7.1 Introduction and Context

This thesis sought to answer how the UK is using the resettlement of Syrian refugees as a method of discharging its responsibility to protect populations from mass atrocities in Syria. Syria has become ‘the biggest peace and security [challenge] in the world’¹. The conflict began in March 2011 and by 2018, over 400,000 have died, while over 11 million people—more than half of Syria’s total population—have been displaced either within Syria or abroad.² While states proximate to Syria are hosting approximately 71% of the total 7 million Syrian refugees, European countries are ‘hosting’ approximately 14% combined, with Germany and Sweden accepting the most.³ The fact that wealthy European states have avoided sharing a proportionate number of Syrian refugees has fuelled criticism, particularly in the R2P literature, that European states are not committed to R2P in practice. Such a charge requires understanding what R2P means to states and whether R2P requires a refugee response.

First, to understand how the UK is using resettlement in relation to R2P required a broad understanding of how R2P has localised in the UK, which required engaging with the norm theory literature. However, there is scarce literature on the norm diffusion process for powerful liberal states, partly because such states are presumed to internalise the human rights norms they foster and support. Therefore, this research adopted a critical constructivist framework in order to understand how powerful liberal states may be contesting and localising R2P because the implementation of R2P varies across states, even like-minded liberal states. This research applied Acharya’s norm localisation theory and Wiener’s meanings-in-use theories to answer how the UK understands and practices its R2P. Additionally, the research utilised Deitelhoff and Zimmerman’s theory on the limits of contestation in terms of understanding when norm contestation can transform from constitutive to degenerative.

¹ Ban Ki-moon, Address to the General Assembly, 24 September 2013, <https://www.un.org/sg/en/content/sg/speeches/2013-09-24/address-general-assembly>, accessed 3 June 2018.

² Human Rights Watch, ‘Country Summary, Syria’, January 2018, https://www.hrw.org/sites/default/files/syria_2.pdf, accessed 3 June 2018.

³ Many of those ‘hosted’ in Europe are living in limbo waiting to apply for asylum. Calculations based on total numbers of Syrian refugees being 7 million, with 5 million in neighbouring countries and one million in Europe (others are in countries like the US). See, Phillip Connor, ‘Most Displaced Syrians are in the Middle East, and about a Million are in Europe’, Pew Research Centre, 29 January 2018, <http://www.pewresearch.org/fact-tank/2018/01/29/where-displaced-syrians-have-resettled/>, accessed 15 June 2018.

Second, to understand whether R2P requires a refugee response as presumed in the R2P scholarship, the research considered how R2P is conceptually aligned with refugee resettlement and what may be the practical value-added for linking the two. This involved analysing and interpreting the WSOD R2P's plain language in combination with the historical context around the ICISS and the WSOD versions, the official documents, reports, UN Security Council discourse (particularly in relation to the UK) to arrive at conclusions regarding its explicit requirements and whether there were any specific understandings by the UK during the development and endorsement of R2P. This sub-question also required analysis of how the R2P norm interacts with international refugee law. This research focused narrowly on the links between the norms of R2P and resettlement which involved analysing the conceptual requirements of each norm and how they have been linked in the literature more broadly in terms of international refugee law. The decision to focus on resettlement in the UK case reflected the fact that the UK has a significant resettlement policy for Syrians while its asylum record lags behind. Finally, the research looked at what the value-added would be for linking the two norms and how it varies across social agents.

After reaching a conceptual understanding of the relationship between R2P and resettlement, the research considered how R2P has or has not shaped refugee resettlement programs for Syrians in the UK. This sub-question is narrower than the principle research question because it is looking specifically at how the UK's resettlement policy may have been motivated or shaped by the UK's commitment to R2P despite the findings concerning the conceptual relationship between R2P and resettlement. This is because the UK's Syrian resettlement programmes could have been shaped by a commitment to R2P regardless of the conceptual findings around the links between the two norms as states have localised norms according to their own understandings and contexts. In contrast, if R2P was not a factor, then it became necessary to understand what did shape the UK's Syrian resettlement policy. This involved looking at how civil society influences states and how it may be contesting or localising R2P in the ways it advocates to states for increased resettlement of Syrian refugees, especially as the UK's Syrian resettlement programme was enacted and then expanded due to civil society activism and public pressure.

Finally, the research considered a sub-question around policy in terms of whether there is any added value for the UK to use resettlement of Syrian refugees as a method of discharging its responsibility to protect. This involved understanding the UK context such as how the different agencies interact with each other and how they have responded to Syria and the national context

around domestic politics and economics in relation to the Syrian conflict and migration. This sub-question aimed to consolidate the UK's different Syrian responses and connect them to the UK's rhetorical commitment to R2P to demonstrate how the UK may be operationalising its commitment.

7.2 Key Findings

- 1) **The UK is not using the resettlement of Syrian refugees as a method of discharging its R2P. Under international relations norm theory, a critical constructivist lens reveals that the UK has localised R2P as military intervention or diplomacy to protect civilians by ending mass atrocities. The UK sees this end achieved by Assad's departure and political transition in Syria that preferably has UN Security Council authorisation. However, if consensus is not possible, then the UK relies on the doctrine of humanitarian intervention to effect the desired objectives in Syria for saving civilians from mass atrocities. Additionally, the UK is contesting R2P across some of the agencies comprising the UK government. Thus, the UK's localisation and contestation of R2P rebuts the inherent presumption that norms diffuse in powerful liberal states without contestation or localisation.**

The UK has not used resettlement as a method for discharging its responsibility to protect Syrians from mass atrocity. This is because the UK has localised R2P as requiring a response in the manifestly failing state that protects civilians by ending the mass atrocities. Interviewees understood that ending the mass atrocities would require Assad to step down for a Syrian-led political transition to democracy. Agents in the government all agreed that R2P is useful as a framework for military intervention that has UN Security Council authorisation, but in its absence, they argued that military intervention was still legal and legitimate under the doctrine of humanitarian intervention. However, despite this unified vision of what R2P means and requires, the result is different levels of contestation to R2P which informs how R2P is localised in the UK.

On the international level, the UK is contesting R2P due to the influence of UN Security Council politics in terms of preventing realisation of the UK's objectives in Syria and in terms of trying to get consensus from the P2, which means the UK does not explicitly link R2P to its objectives in Syria at the UN Security Council. On a domestic level, R2P was generally not an explicit motive for the UK's national policies on Syria except those advocated or established by Parliament. Members of Parliament explicitly used R2P as a motivation for increasing the

political will for a military intervention in Syria. However, without the necessary UN Security Council or domestic support for a military intervention, the official discourse and the interviews across the departments argued that the doctrine of humanitarian intervention would provide a legal and legitimate path for the intervention outside the UN Security Council. Thus, in Syria, the UK has modified R2P's relevance to cases of mass atrocities that have UN Security Council agreement mirroring the UK's meanings-in-use of R2P in Syria. This was demonstrated by statements that relied on the humanitarian intervention doctrine and dismissed R2P's relevance in Syria because of the UN Security Council's non-consensus around the UK's objectives in Syria.

For the FCO, R2P's meanings-in-use were Assad's departure and political transition and the FCO also believed that military humanitarian intervention remained legal outside the UN Security Council. However, the FCO is contesting R2P on two different levels. First, it is contesting the UK's localisation of R2P as a military intervention norm because it sees diplomacy as preferable to military intervention. Because those interviewed understood R2P to require a military intervention as in Libya, interviewees were careful to avoid using R2P explicitly for fear they would be pressured into supporting such an intervention. Second, the FCO is contesting R2P more generally as the norm is seen as a constraint on foreign policy discretion to decide UK policy on individual cases of mass atrocity. This would be the case regardless of whether R2P were to be discharged as resettlement or military intervention.

The Home Office shared the same vision of responsibility and success in Syria but did not have any knowledge of R2P's existence at all even after becoming jointly responsible with DFID for the expanded Syrian resettlement programmes. Like the FCO, DFID representatives were familiar with R2P but did not explicitly connect their responses to Syria, or the Home Office's resettlement policies for Syrians, to the norm.

As such, the UK only explicitly linked R2P to its calls for military intervention to protect civilians in Syria. Since the UK did not explicitly link R2P to its humanitarian or other peaceful responses, it is plausible that the UK is contesting the 'humanitarian and other peaceful means' aspect of R2P because they are explicit requirements of R2P but the UK has continued to forward a particular interpretation of R2P as Assad's departure and political transition which cannot be realised via humanitarian assistance or resettlement.⁴ Given that there are no possible methods for reaching the objectives, the UK has determined that unauthorised military

⁴ Importantly, this is distinguishable from contesting resettlement as an R2P method as refugee protection is not an explicit requirement of R2P.

intervention to reach these objectives is legal and justifiable resulting in modifying R2P's relevance to cases where there is UN Security Council agreement on both the objectives and the means for reaching them. This reveals a plausible conclusion that the UK's localisation and use of R2P in practice means regime change and political transition. Humanitarian or peaceful means that help to protect Syrians fleeing mass atrocities, the core remit of R2P, are sacrificed in the short term to the larger political objectives of regime change and political transition, an interpretation of R2P that is feared by less powerful states and makes R2P unpopular with many humanitarian organisations. As Ralph argues, regime change and political transition may be the means for discharging R2P in terms of helping protect populations from mass atrocities in some cases, but when they are the objectives in a manifestly failing state, they are not helping to protect as required by R2P if they are impossible. According to Ralph and Gifkins, this is demonstrated in the Syrian case as holding firmly to these political objectives has led to paralysis on the UN Security Council and an ineffective response to the problem at issue. In effect, the actions the UK has taken to help protect the Syrian population, such as diplomacy, humanitarian aid and resettlement, have been undermined by the political objectives which are prolonging the war and thus, increasing refugee flows and exacerbating the humanitarian suffering in the short term.⁵ Thus, R2P has been localised in the UK, but in a narrow way that has thus far, been ineffective in terms of fulfilling the UK's understanding that R2P requires ending the mass atrocities.

In sum, this research demonstrates that powerful liberal states can localise and contest international norms, even those they helped develop and continue to discursively support. This means that post-institutionalisation of human rights-based norms do not necessarily enjoy normative tranquillity in powerful liberal states similar to illiberal or less powerful states.

2) R2P does not *require* resettlement.

The second key finding revealed the conceptual relationship between R2P and resettlement which depends on R2P's *prima facie* requirements, which provides part of the explanation for why states like the UK have localised R2P as a response in the manifestly failing state and therefore separate from resettlement. R2P requires states to use appropriate diplomatic, humanitarian and peaceful means for *helping* to protect Syrians fleeing mass atrocities. The idea that R2P requires ending the mass atrocities or resettling Syrians stems from the norm's underlying aspirations, which may reflect on a state's commitment to humanitarian ideals more

⁵ This does not absolve Russia and China from responsibility as the P2 have also allowed their own political interests to prevent an effective response to the mass atrocities in Syria.

generally but does not translate to failing an R2P responsibility. Thus, resettlement may be used as an R2P response since it fits within the humanitarian and peaceful remit, but it is not required because any response that is *helping* to protect suffices as R2P.

3) R2P is only conceptually and practically aligned with refugee resettlement to the extent that a state wishes it to be so. However, applying Ralph's pragmatic constructivist lens to the UK's responses to Syria reveals that the UK's humanitarian goals in Syria are limited by its political objectives.

The third key finding is related to the second in terms of how R2P and international refugee law interact and whether there is any added value for linking them. On a broad level, refugees are fleeing persecution and not mass atrocities. While those fleeing mass atrocities are more than likely fleeing persecution also and therefore qualify as refugees, those fleeing persecution are not necessarily fleeing mass atrocities. Thus, those working in refugee protection capacities argued that linking the two could erode international refugee protection over time as the lower threshold of persecution would be influenced by a consideration of whether mass atrocities were occurring. The predominant organisation providing refugee protection, UNHCR, does not use R2P as leverage in its calls to states to resettle Syrians who have fled mass atrocities. At the same time, R2P advocates use asylum and resettlement as methods for discharging R2P, particularly when other responses are not working. Their argument is that commitment to R2P means a commitment to hosting refugees. However, the responsibility to resettle refugees has limited conceptual alignment with R2P because resettlement removes refugees from a third country and not from the state that is manifestly failing to protect its population from mass atrocities. This means the refugees eligible for resettlement in Syria's neighbouring states may be facing egregious violations of their human rights, but they are no longer facing mass atrocities in a manifestly failing state which makes R2P's applicability tenuous. Resettlement only directly links to R2P in terms of preventing *refoulement* of refugees back to Syria where they would face on-going mass atrocities, which is far from offering a conceptually solid link. While international law prohibits *refoulement*, there is no enforcement authority, and 'allowing' *refoulement* actively or passively by another state is unlikely to translate into complicity in perpetrating mass atrocities. Therefore, R2P and resettlement are conceptually distinct and while providing resettlement may help to practically discharge R2P in terms of helping to protect, particularly when it may be pragmatic (Ralph), there is still a limited value-added for international refugee law advocates/practitioners. Finally, there is limited value-added for states like the UK who are experiencing anti-migration sentiment in their constituencies during

economic austerity if linking the two frameworks means increasing existing resettlement numbers. Civil society was generally united in supporting a link if it resulted in more refugee protection. However, interviewees from civil society and the UK government maintained that R2P is about responding in the manifestly failing state. Therefore, the value-added for finding an implicit link between the two frameworks varies across social agents and is limited by the conceptual gaps between R2P and resettlement. However, using resettlement as a pragmatic response makes social agents responsible for understanding the practical consequences that have resulted from their interpretations of R2P in Syria as argued by Ralph.

4) R2P has not shaped Syrian resettlement policy. Instead, civil society advocacy and public pressure have shaped resettlement policy. Civil society advocacy around increased resettlement has not relied on R2P.

The fourth key finding is that R2P did not shape the establishment or the expansion of the UK's existing Syrian resettlement programme. In finding that R2P was not a factor, the research revealed what variables did shape and modify the UK's resettlement programme for Syrians. Civil society advocacy and public pressure led to former Prime Minister David Cameron's establishment of the SVPR programme in 2014. Following the pictures of Aylan Kurdi, further advocacy by civil society and public pressure resulted in an expansion of the resettlement programme and additional programmes for the resettlement of refugees in the region. However, the UK's commitment to R2P was not used as leverage in the advocacy around increasing resettlement for Syrians. Instead, the research revealed that UNHCR, civil society and humanitarian organisations are contesting the meanings of R2P as well. In particular, international civil society/humanitarian organisations are contesting R2P because powerful states like the UK have localised R2P as military intervention which endangers their work in the field and conflicts with their humanitarian *raison d'être*. In contrast, UK civil society is not contesting R2P over a concern about the UK using military means for reaching the objectives of peace in Syria. Indeed, some of the UK organisations have agreed with the Jo Cox/APPG Friends of Syria stance that military safe zones are required to end human suffering. Instead, UK civil society has been very cautious in linking R2P to their advocacy to UK officials due to the different UK agencies' contestation of R2P. UK civil society supports R2P but has modified the norm to be the 'responsibility to protect civilians' because this phrase has better traction in UK policy circles as a result of contestation of R2P, especially by DFID and the FCO.

5) There is some added value for the UK to use its existing Syrian resettlement policy as a method for discharging R2P.

The fifth and final key finding is that the UK could use its existing resettlement policy to partially discharge R2P by making a link to the norm in the public discourse as it would help operationalise what has been called the UK's rhetorical commitment to R2P. Importantly, the added value exists because the UK continues to support and refer to R2P in its official discourse. In fact, consolidating all of the UK's responses to Syria under R2P benefits the UK because it requires a minimal policy shift, shows the UK can practice the norm without defaulting to military intervention and regime change (which mollifies less powerful states' concerns) and helps build further consensus around the norm (which continues to be a rhetorical objective of the UK, particularly at the UN Security Council level). Operationalising R2P non-coercively may reduce disagreement at the UN Security Council over time as Russia and China may be less likely to veto humanitarian resolutions that connect to R2P if there is practical evidence that R2P does not by default, result in military intervention or regime change.⁶ However, for this to happen, there needs to be better understanding of R2P across the UK agencies delivering responses to Syria and Syrian refugees.

7.3 Contribution to Knowledge

This thesis makes an original contribution to knowledge in five ways. The first two are interrelated. First, the research contributes broadly to critical constructivist norm theory by rebutting a general presumption that norms diffuse in powerful liberal states without contestation or localisation by looking at the UK's practice of R2P. The limited research engaging with the diffusion of norms in powerful liberal states permits an understanding that such states are homogeneously committed to important international norms. As a result, this research fills an analytical gap by investigating the UK's contestation and localisation of R2P by considering how intra-state differences among UK policymakers, their political offices and their domestic constituencies shape R2P's contestation, which then impacts how the UK has localised the norm.

⁶ For example, at a public event at Chatham House, former UN Permanent Member for the UK diplomatic team in New York, Matthew Rycroft made clear that the P2 and the BRICS more generally hear 'intervention' when R2P is mentioned even in the context of mass atrocity *prevention* at the UN Security Council and for this reason the UK delegates avoid using the norm by name. This would also strengthen the claim that it is Russia and China that veto humanitarian resolutions that conflict with their political interests, and not the P3. DFID, Matthew Rycroft CBE, Permanent Secretary, Department for International Development and UK Permanent Representative at the UN 2014-2018, *How to Prevent Mass Atrocities*, Chatham House, London, 20 February 2018, public transcript available with researcher's questions asked and answered on record, <https://chathamhouse.soutron.net/Portal/Default/en-GB/RecordView/Index/172381>.

Second, this research illuminates how critical constructivism does not provide a clear enough explanation for when the localisation of a norm becomes justificatory contestation of a norm, which is more likely to result in norm degeneration. Acharya and Wiener see norms as inherently fluid whereby there is no universal or inter-subjective understanding of a norm which means there is no need to evaluate or assess the norm as a result of how it is practiced. This means the analysis would conclude once a determination is made of how a norm is localised and any implementation of the norm will be considered compliance. Deitelhoff and Zimmerman proposed some limits to the critical constructivist framework by evaluating the different types of contestation and their effects on norms. However, there is limited explicit clarity on the particular relationship between contestation and localisation. The research findings in this case aimed to narrow this gap by connecting the UK's contestation of R2P to how it has been localised in order to apply Deitelhoff et al's limits to contestation and Ralph's pragmatic constructivist approach. Once the relationship between contestation and localisation was made, applying the existing limits of contestation to the UK case of localisation demonstrated one approach to 'anchoring' Acharya's localisation and Wiener's meanings-in-use theories in an effort to overcome either's potential concealment of norm degeneration as neither approaches lead to norm assessment. The UK case demonstrates that discursive neglect, a symptom of contestation that may evidence norm degeneration, must be distinguished from discursive selection. The UK's silence around R2P might look like neglect but is in fact a result of selecting R2P's relevance based on how the norm is localised in the UK. Further explanation and examination of the limits of critical constructivism illuminated by this case study are discussed in more detail in the next section on limitations.

Third, the research contributes to the R2P literature by examining how the norm's underlying aspirations relied upon in R2P advocacy are in constant tension with the UK's conceptual understandings and practice of R2P, which also influences how international and local UK civil society organisations contest and localise R2P meanings in their use of the norm. Importantly, the research advances the debate concerning R2P's contested norm status, which is more easily challenged when it is perceived to be failing on the ground due to politics as in Syria. The claim that the UK is only rhetorically committed to R2P because it is failing to end the mass atrocities in Syria and is refusing to resettle greater numbers of Syrian refugees is based on conceptual presumptions over what R2P requires. The academic literature considers the link between R2P and refugee protection, but it is too focused on asylum, and it relies on normative arguments that conflict with how powerful liberal states have localised R2P and how civil

society is advocating for increased protection of Syrian refugees.⁷ As such, this research illuminates the divide between R2P scholars, states, and civil society in terms of how each envisions the link between R2P and refugee resettlement. Understanding that resettlement is not a conceptual requirement of R2P, but a pragmatic peaceful option in some cases would create a space for more effective R2P advocacy to states rather than perpetuating a binary between what R2P commitment entails versus states' interests.

Part of understanding the gap between the R2P scholarship and how states are implementing R2P requires looking at how R2P and international refugee law interact. This is the fourth contribution of the PhD. Since the European refugee crisis, scholars have published widely on how refugees are related to R2P and how protecting them would help states discharge their R2P responsibilities. However, there is very limited research on how the two frameworks link conceptually, which may partially explain why states are generally not using resettlement as a method of discharging R2P. The claim that the UK is only rhetorically committed to R2P because it is failing to resettle greater numbers of Syrian refugees is based on conceptual presumptions over how the two frameworks interact and where an R2P response should occur. If states are failing to connect resettlement to R2P due to these underlying conceptual reasons (what R2P requires and how resettlement connects to the location of an R2P response), then R2P advocates and civil society advocates of increased protection can make better arguments for engaging states. This is compounded by the fact that UNHCR does not link the two protection norms in practice either. Thus, R2P advocacy needs to address the fact that the value-added for finding an implicit link between the two frameworks is not absolute. By not acknowledging these current deficits, the advocacy has limited effectiveness because proponents of refugee protection do not necessarily embrace R2P as motivating factor. Thus, the R2P advocates need to find new approaches for influencing states to increase protection of those fleeing mass atrocities while accounting for civil society's concerns.

The fifth and final contribution of the research is that the findings may promote more robust advocacy by civil society and more coherent government policy on mass atrocity response, which can include the resettlement of refugees. The findings have a potential policy impact in terms of how the different understandings and practices of R2P across the relevant agencies of the UK may be augmented into a more coherent policy on mass atrocity response as advocated by international and UK civil society. This research aimed to understand whether and how

⁷ Chloë M. Gilgan, 'Exploring the Link Between R2P and Refugee Protection: Arriving at Resettlement', *Global Responsibility to Protect*, 9/4: 366-394 (2017).

there might be value in linking the R2P norm with the refugee resettlement norm, which has practical implications. There is very little required in terms of a policy shift in the UK as the Home Office already oversees a few Syrian resettlement programmes, but they are not linked to R2P. Framing the Home Office's existing refugee resettlement programmes as 'other peaceful means' under R2P would help ameliorate some of the misconceptions and fears around R2P's conflation with military intervention and is a way for the UK to operationalise its commitment to R2P precisely when military force is impossible, and diplomacy is perceived to have been exhausted. Linking R2P to the UK's national responses to Syria advances the UK's commitment from rhetorical to practical and sets an example for other states, particularly in the context of Brexit and the US' receding role in international affairs. This would also signal to those wary that R2P is a military intervention tool that the UK implements the norm in non-coercive ways and does not conflate the norm with military intervention. Doing so would constitute tangible proof of the UK's commitment to R2P, and could improve the Home Office's reputation especially following the Windrush scandal⁸ and Brexit while requiring very little in terms of policy shifts. This is because the UK remains rhetorically committed to R2P in principle and appears open to gaining further understanding of R2P,⁹ which means the failure to link all of its non-coercive responses to Syria may be unintentional despite how the norm is localised. Therefore, the perceived neglect of R2P, as a result of its non-explicit linking to national policies that help protect Syrians, is not necessarily damaging contestation and has potential for helping ameliorate the ineffective way R2P has been localised in the UK (Ralph). The totality of the UK's responses to Syria (despite non-linking to R2P) also reflect Bellamy's internalised notion that there is international concern for mass atrocities. The UK's failure to link R2P to only some of its policies is not necessarily discursive neglect, a symptom of norm degeneration according to Deitelhoff and Zimmerman, but rather selective neglect based on particular understandings of R2P's meanings and requirements, which epitomises the concept of localisation (Acharya and Wiener). The UK continues to discursively support R2P and the Foreign Affairs Select Committee recently released its report and request that the UK government act 'urgently to produce a comprehensive atrocity prevention strategy and implementation plan to ensure it moves beyond words and towards concrete actions' by April 2019.¹⁰ This response reflects UK civil society's 'longstanding call for the UK to establish a

⁸ Thank you to Edward Newman for this suggestion.

⁹ The Home Office invited the researcher to present the findings at their offices after hearing about the context of the research.

¹⁰ House of Commons, Foreign Affairs Committee, *Global Britain: The Responsibility to Protect and Humanitarian Intervention*, Report, 10 September 2018, <https://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs->

cross-government atrocity prevention strategy' that is separate from its general conflict prevention agenda.¹¹ This is the moment for outreach and engagement with the UK government as it is changing the way it approaches mass atrocity prevention and response. The ongoing UK support for R2P and the Home Office's invitation to present these findings suggest that there is potential for connecting R2P to resettlement over time even if it begins with making a link to only existing behaviour.

Importantly, this last contribution also informs R2P practice because understanding how the UK has localised R2P can inform the advocacy around helping powerful states move towards greater consensus at the UN Security Council. This is especially true because the UK's modification of the R2P norm in order to find an alternative means for pursuing its political objectives of Assad's departure and political transition gives evidentiary support to other states' fears around R2P implementation. The way the UK has localised R2P may hasten the norm's degeneration as other states reject the UK's default understanding of R2P's core. As such, part of this contribution is in exposing a reality that has been suspected but not proven, which brings an opportunity for more honest engagement and the pursuit for better understanding of R2P throughout the UK that can feed back to the UN at the international level. As such, disseminating these findings in terms of how the UK contests and how it has localised R2P will help expand understandings around R2P implementation with the potential for building more consensus in practice.

7.4 Limitations and Further Research

There are six limitations to the findings in this thesis, which means there are additional avenues for research. This research was limited to a UK case study of Syria. Thus, there is some concern over the *external validity* or *generalisability* of the findings in terms of how this single case can be representative enough to apply in general to other cases.¹² The UK case can serve as an 'exemplifying case' to similarly situated liberal states because the tension between UK support and practice of liberal political values reflects the same issues found in the wider community of states. However, the UK case it is not meant to represent a 'sample of one'¹³,

[committee/news-parliament-2017/responsibility-to-protect-report-published-17-19/](#), accessed 10 September 2018.

¹¹ UNA-UK, 'UNA-UK Welcomes Parliamentary Support for an Atrocity Prevention Strategy', 10 September 2018, <https://www.una.org.uk/news/una-uk-welcomes-parliamentary-support-atrocity-prevention-strategy>, accessed 10 September 2018; Interview 1.

¹² Alan Bryman, *Social Research Methods* 4th Ed. (Oxford: Oxford University Press, 2012), p.69.

¹³ *Ibid*, p. 70; see also, Robert K. Yin, 'Analytic Generalization', in Albert J. Mills, G. Durepos, and E. Wiebe (eds.), *Encyclopedia of Case Study Research* (California: Sage, 2010), p. 21-23.

and so even though the UK case will be illustrative of other states with similar values and concerns¹⁴, more research needs to be done, particularly in other European states like Germany and Sweden where the responses to Syrian refugees were more generous. It would be very helpful to understand whether R2P shaped these more generous policies. Additionally, research needs to focus on how R2P has been localised by the other two powerful liberal states that sit on the UN Security Council, France and the US, as it would help put the UK case in context and it would further contribute to expanding the norm literature beyond illiberal states.

Second, the research was limited to analysing the official discourse and interviewing of some members of Parliament, the FCO, the Home Office and DFID. This means the argument for how R2P is localised in the UK is based on research across these four bodies in the UK. While they are very relevant to the inquiry they cannot be said to wholly represent the UK as there are other departments that are involved in the UK response to Syria, such as the Ministry of Defence (MOD). Therefore, further research could look at how agencies like the MOD have localised R2P.

Third, the research relies on the single case study of Syria, which is considered the largest humanitarian crisis since the Second World War. Therefore, the highly-publicised case of Syria may also influence the UK's attention and various responses to Syria which makes it difficult to use the Syrian case as the litmus test for how R2P is localised in the UK without looking at other similar cases for comparison. Unfortunately, there are many other cases of mass atrocities occurring in the world right now, and as a permanent member of the UN Security Council, the UK has a role in implementing responses to all of these cases. It is difficult to draw conclusions about these other cases based solely on the case of Syria. Thus, additional research on other case studies would add further context to how R2P is localised in the UK as these other cases may have very different responses which need to form part of the larger picture for understanding how R2P has been localised by the UK.

Fourth, there is also a limitation to the internal validity of the findings given the research's reliance on 15 semi-structured interviews. The limited number of interviews demonstrates a clear example of how 'serendipity'¹⁵ can affect empirical research as the project took place during a time of great political upheaval in the UK including former Prime Minister David

¹⁴ Robert K. Yin, *Case Study Research: Design and Methods* (California: Sage, 1994); Yin, 'Analytic Generalization', in Mills et al (eds.), *Encyclopedia of Case Study Research*, p. 21-23.

¹⁵ Simon Halliday and Patrick Schmidt (eds.), *Conducting Law and Society Research: Reflections on Methods and Practices* (Cambridge: Cambridge University Press, 2009).

Cameron's resignation, followed by Prime Minister Theresa May's call for an election, the UK's referendum on Brexit and the UK's triggering of Brexit which resulted in the government's primary and ongoing focus on the negotiations. Given the dominance of these other issues, access to participants was limited. Even so, those interviewed were generally the leaders on policy and because the interviews were unrecorded and confidential, participants were more likely to have been candid with their answers and discussed how their work linked to other agencies in the government. Moreover, there were very few people tasked with working on Syria or refugees in the FCO, DFID and the Home Office, so beyond those interviewed, there were few other relevant people to be interviewed within the Syria or resettlement context. Even so, in order to supplement the material derived from the 15 semi-structured interviews, information was also gathered through statements and answers at public and closed conferences under the Chatham House Rule.¹⁶

Fifth, there is an inherent limitation to conducting inter-disciplinary research because due to time and space constraints, the research had to choose one discipline while drawing on the other framework. This research around international norms naturally required examining international law and politics since both are intrinsically linked and it is very difficult to separate them. This PhD focused on R2P's localisation and drew upon international refugee law, particularly in relation to the resettlement norm. However, this is only half of the picture because linking the two norms also has an effect on international refugee law. Some of the participants working on the refugee protection side argued that R2P does not help refugees and that international refugee law is the proper protection mechanism for refugees. This is because they fear that the soft law political norm of R2P, which is still contested, will erode and narrow the hard law quality of international refugee law.¹⁷ In particular, practitioners fear that R2P's narrow application to mass atrocities will eventually restrict the application of international refugee protection from the lower threshold of persecution to mass atrocities and serve to diminish the responsibilities under the Refugee Convention.¹⁸ Therefore, more research needs to be done on how linking R2P to refugee protection impacts refugee protection from a legal perspective. This is a particular angle that the researcher is considering for a future project.

¹⁶ Information gathered via these routes was and will be kept anonymous and confidential under the Chatham House Rule and University ethical requirements. Therefore, in order to maintain anonymity and confidentiality, limited details have been provided about the particular conferences.

¹⁷ Based on questions to migration practitioners at academic conferences.

¹⁸ Instead, refugee law scholars have considered the link between international refugee law and international humanitarian law. See, David James Cantor and Jean-Francois-Durieux (eds.), *Refuge from Humanity? War Refugees and International Humanitarian Law* (Leiden: Koninklijke Brill NV, 2014).

Finally, interpreting the research findings through a critical constructivist lens illuminated some of the limitations of critical constructivism in terms of what it explains well and what it is limited in explaining. It is helpful at justifying how and why a norm is implemented by a state in a particular way, and how implementation of the norm may vary in other similarly positioned states, even powerful liberal states that cannot be assumed to fully accept norms without contestation. However, within the realm of critical constructivism, the relationship between localisation and contestation is unclear. This research suggests that the limits of localisation need to analyse and account for what aspects of the norm are chosen and which aspects are neglected in relation to the existing contestation. Welsh argues that considering how states forward or ignore particular aspects of a norm will give information as to how the norm is contested, which will then inform its localisation. In this case, how R2P is localised in the UK reflects how it is contested and used in practice to fit within an acceptable UK context (Wiener and Acharya). Importantly, it became important to understand how R2P became more and more marginalised and less applicable to Syria as implementation of the UK's political objectives in Syria became less possible and therefore reaching any human protection goals also became less possible. Thus, the fixed political objectives augmented R2P's applicability to Syria and gave way to reliance on military humanitarian intervention which predates endorsement of the R2P norm. In this case, R2P localised in this way could still lead to norm degeneration, but the literature does not fully address when that would occur.

The distinction between contestation and localisation is important because there are proposed limits to contestation according to Deitelhoff and Zimemrman, but not to localisation. In other words, at what point does a norm's localisation evidence contestation, which can then be analysed under Deitelhoff and Zimmerman's test for whether the contestation is applicatory or justificatory in order to determine potential norm degeneration? The limits to contestation cannot be applied to localisation until the latter is determined to either be a form of, or evidence of, contestation (or at least have some connection). This research argued that the UK's contestation of R2P resulted in the particular way the norm is localised because many critical constructivists like Welsh and Wiener argue that the empirical analysis must start at the point of where the norm is contested across norm takers. Once the contestation is identified and understood, the narrative of why a norm is localised a particular way becomes plausible. This approach is not explicit in the literature.

However, when does that particular localisation become damaging *justificatory* contestation that goes to the inter-subjective values or normative core of the norm? The UK has indeed localised

R2P, but how the norm is narrowly localised in the UK evidences a level of neglect (which is also a subjective determination) and that R2P has a marginal influence on the UK's fixed objectives in Syria. (In fact, it is the fixed objectives that have influenced R2P's localisation). There are no limits to localisation due to the fluid nature of norms which means localisation does not lead to norm assessment and therefore any evaluation of the norm in relation to the state's behaviour is irrelevant. This means the findings may reflect norm localisation but there is no corresponding norm assessment to determine whether the way a norm is localised might lead to applicatory or justificatory contestation, signifying either norm strengthening or norm degeneration respectively. Indeed, Wiener and Acharya argue that there is no universal core to a norm. Therefore, finding the difference between a localised norm and a contested norm that may expire is absent in the literature.

In contrast, Sikkink argues every norm has some core purpose that may vary in terms of implementation. Similarly, Ralph's pragmatic constructivism resembles Sikkink's approach as both assess behaviour in relation to the wider objectives of the norm at issue. Sikkink mainly looks at behaviour that violates the core objectives of a norm and Ralph looks at behaviour that fails to address the core problem the norm is meant to ameliorate. Both approaches not only inject social agency but inject some social and political accountability for how norms are interpreted and implemented. However, Sikkink's core objective approach raises some problems too because determining a norm's core principle is also subjective and in the case of R2P, which is a prescriptive, not proscriptive norm, it is also ambiguous. Should the core attributes be drawn from the explicit language in the norm, such as R2P's requirement to use humanitarian (et al) options for *helping to protect populations from mass atrocities* or from a broader and more implicit universal perspective like Bellamy's notion that the international community shares a concern and a willingness to respond to mass atrocities? Critical constructivism does not recognise core attributes of a norm and conventional constructivism gives limited guidance in determining what the core attributes of a norm are. This research used both the plain language of R2P and Bellamy's internalised notion of R2P as core attributes of R2P because they do not contradict each other and serve similar purposes; however, one is broader and will therefore suggest a higher degree of norm health. The health of R2P as a norm plays out slightly differently depending on which core attribute is applied.

If the plain language meaning of R2P is applied, then the UK's fixed objectives and the modification of R2P to reach those objectives actually sacrifice the core meaning of R2P to some degree because where Assad's departure and political transition are impossible, remaining

fixed to them sacrifices humanitarian objectives such as getting aid into besieged areas of Syria, at least in the short term, as revealed by Ralph and Gifkins' research. However, these objectives help protect the Syrian population from mass atrocities in the long term if they were to happen; for example, through military humanitarian intervention outside the UN Security Council (regardless of the legality issues). Does it matter whether the long or the short term humanitarian goals are sacrificed and how does one determine the line between what is long and short-term? This is where Ralph's pragmatic approach is most useful because looking at the problem to be solved and the decisions in pursuit of resolution allow flexibility and fluidity in terms of the anchor (the problem being solved can change to fit the context as opposed to a stagnant core principle), but the effect of the implementation is still relevant to the analysis in contrast to using localisation theory.

However, adopting Bellamy's notion that mass atrocities are wrong and deserving of international concern means any response to a manifestly failing state as a result of such concern is exercising the core attribute of R2P, regardless of explicit R2P language. This means the UK's pursuit of its fixed objectives in Syria and its humanitarian aid and resettlement policy, all born of a concern for Syrians facing mass atrocities despite any explicit or implicit relation to R2P, would be characterised as R2P responses because they are 'expressing the spirit of the treaty' which is norm compliance according to Risse et al.¹⁹ This scenario would suggest R2P has not degenerated as a norm.

Because the researcher in this case comes from a legal background, there is comfort in relying on the plain language and meaning of R2P as the broad guide in determining whether the way the UK has localised and contested R2P suggests norm degeneration. Military intervention is an explicit and core method for both exercising international concern for mass atrocities in a manifestly failing state (Bellamy) and for helping to protect populations from mass atrocities in some cases (plain language). Therefore, how the UK has localised R2P is recognisable in terms of the core methods of responding to cases of mass atrocities because military intervention is an explicit response under R2P and it has been implemented this way before in Libya. In this sense, the contestation and localisation is not directly violating the normative core of R2P because it forms part of the norm.

¹⁹ Xinyuan Dai, 'The "Compliance Gap" and the Efficacy of International Human Rights Institutions' in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds.), *The Persistent Power of Human Rights: From Commitment to Compliance* (New York: Cambridge University Press, 2013), p. 85-102, 87.

Again, critical constructivism needs to clarify when the normative core is being violated. This researcher thinks it is important to take into account that the UK continues to support R2P by publicly endorsing the norm in its domestic and international statements and it has implemented several responses that are helping to protect Syrians from mass atrocities.²⁰ Thus, R2P in the UK is not a situation of discursive neglect, a symptom of norm degeneration according to Deitelhoff and Zimmerman, but a situation of *selective neglect* whereby one R2P method becomes the defining meaning of the norm at the expense of other existing responses that fit within R2P's remit. This decision to define R2P implementation narrowly does not compromise R2P's core attributes but demonstrates how R2P has been pruned and adjusted to be compatible with the UK's practice of humanitarian intervention, which is localisation as defined by Acharya. In this way, the UK has potentially shaped R2P to fit within the prevalent domestic identity which provides information about the UK's preference for military intervention as argued by Brockemeier et al. It also illuminates a challenge in terms of accepting the impact of R2P on state behaviour: R2P appears to frame the status quo and does not inspire new behaviours in the UK case. This was the argument of Moravcsik that ambiguous and prescriptive norms like R2P are likely to be endorsed by states like the UK because they accommodate the status quo and require minimal policy shifts from existing preferences.²¹ However, if liberal norms reflect liberal values then this is not too surprising, but it does make critical constructivism somewhat unfalsifiable when applied to liberal states.

Moreover, it is also important to point out that there are additional facts which can lead to an interpretation that the UK's localisation of R2P results in applicatory contestation which does not necessarily lead to norm degeneration.²² The UK has responded to Syria in humanitarian and peaceful ways. Indeed, the UK has given more financial assistance to Syrians than it has to any others in recent history. Furthermore, the UK has committed to higher resettlement numbers than it has before. While the UK was criticised for ending the Dubs Amendment, it did enact a special vulnerable children's resettlement programme in its place and in addition to the SVPR. The UK has also expanded both these programmes to include other nationalities besides Syrians as the programmes resettle from the entire MENA region. In considering

²⁰ Recalling this is one of Christian Reus-Smit's tests for identifying when a government has genuinely accepted a norm as discussed in Chapter 2. However, it is not enough.

²¹ Beth Simmons also made this argument that states would tend to endorse human rights norms that require minimal policy shifts. See, Chapter 2.

²² Chapter 2 (p. 83) discusses how there are two ways to analyse applicatory contestation rather than just one. The misapplication of R2P to Libya, not in terms of its context, but in terms of how the norm was implemented undermined the norm's validity to some degree which comes closer to justificatory contestation, so this scenario is also possible.

Bellamy's point that R2P internalisation across states has been a shared notion that mass atrocities are wrong and warrant international concern and Finnemore and Sikkink's argument that lack of reference to a norm may reflect a taken-for-granted quality, then the UK's significant change in humanitarian and resettlement terms may reflect these general ideas. As mentioned in Chapter 1, constructivist research requires an historical component that includes past behaviour in order to contextualise the present behaviour.²³ This is applicable to the UK because the current response to Syrian refugees in terms of resettlement is significantly different from its response to conflicts in the past. When judging localisation, the domestic context is of central relevance. 'Successful' norm internalisation described as localisation is subjective—it must also be judged on a spectrum of the state's historical responses to similar situations in conjunction with the state's understanding of the relevant norm's requirements. If R2P is seen as a political and military response that requires ending the mass atrocities, then the UK has possibly failed its own understanding of R2P and thus is politically accountable under Ralph's pragmatic constructivism because the methods it has employed have been impractical towards this end. However, the UK is still showing concern for those facing mass atrocities as suggested by Bellamy, and it is also responding, and more significantly than ever before, in accordance with the explicit requirements of R2P. Thus, the UK is practically demonstrating R2P's core attribute of humanitarian concern for populations facing mass atrocities (Bellamy) and is implementing R2P's core objective of helping to protect populations from mass atrocities (plain language).²⁴ In this case, the UK is practicing R2P but not *applying* it explicitly due to its own misunderstandings around the norm's requirements and constraints. This does not demonstrate neglect but misunderstanding, which goes to the *application* of the norm, not the spirit of the norm.

Thus, both localisation and contestation theories need refinement because interpreting the UK case from a critical constructivist lens can result in different findings of R2P's internalisation in the UK by making analysis of the same factors and their results unfalsifiable and variable depending on which particular critical constructivist theory is applied. More understanding is needed in terms of delineating where critical constructivist theories such as localisation may obscure norm degeneration, especially when an ambiguous and prescriptive norm like R2P

²³ '...any international political situation is located in time, and to understand it we must know...what the antecedent situations were out of which it grew, what the elements of continuity are that link it with what has gone on before and what the elements of change are that mark it out as different'. Andrew Linklater (ed.), *International Relations. Critical Concepts in Political Science* 1st Ed. (London: Routledge, 2000), p. 56. Discussed in Chapter 1 (p. 22).

²⁴ However, this does not mean the UK's responses are morally or politically sufficient, just that they comply with R2P.

possesses core values that coexist on a spectrum, which may lead to contradictory interpretations and findings. Additionally, more research needs to be done to flesh out some of these inherent limitations in using critical constructivism in relation to powerful liberal states since it is more difficult to discern when a norm is simply reflecting existing practices or inspiring those practices and whether it is important to make this distinction at all as long as implementation reflects or resembles the norm's core values. This leads to the ultimate problem with R2P. The norm is so broad, in terms of its prescriptive and ambiguous nature for responding to mass atrocities, that compliance is very subjective and thus, measuring the norm's state of health through a critical constructivist lens leaves so much interpretation to the 'eye of the beholder'.

7.5 Implications and Further Research

The research has several implications. First, R2P puts little demand on states in terms of a Pillar III response, which means R2P may have little normative value in terms of being the 'only anti-mass atrocity principle in existence'²⁵. Bellamy was right: R2P does not endow states with the will to respond. Instead, R2P represents an internalised notion that states should respond to mass atrocities. However, the UK's broader humanitarian objectives are sought regardless of R2P's existence. Instead, international reputation and domestic public pressure ignite the will to respond and these are best fuelled by moral arguments around solidarity and cooperation, historical references and international law where possible because the desire to be seen as a moral and responsible world leader underpins the UK's responses to Syria.

On the other hand, this lower threshold for responding may help to settle the FCO's fears that R2P constrains or forces particular responses contrary to national interests because the existing programmes are enough to comply with R2P, which may lead to the increased use of non-coercive measures over time. This brings up the question of why bother linking R2P to existing responses if it is R2P in action. The fact that the UK's fears and misconceptions around R2P are what are preventing the link suggests that it is not the norm itself that is the problem. As discussed in the Contribution section, linking the UK's practical responses that fit within an R2P response helps operationalise the state's rhetorical commitment. According to some of the civil society organisations, the UK has a reputation for giving rhetorical support to R2P without corresponding practical realisation of the norm, so this could ameliorate that situation to some degree as it provides tangible proof of the UK's commitment, particularly as those interviewed

²⁵ Alex J. Bellamy, *The Responsibility to Protect: A Defense* (Oxford: Oxford University Press, 2015).

feared the UK looked like it was doing nothing on Syria given the impossibility of reaching its fixed objectives. Finally, not calling the UK's responses R2P in action presumes that the UK is practising R2P and 'may be giving credit where credit is not due'²⁶.

A second implication resulting from the research is that the UK is failing its own R2P aspirations in Syria because it has localised R2P as requiring an end to the conflict and the cessation of humanitarian suffering. This can only mean the UK is doing a poor job of fulfilling its own interpretation of R2P as it has failed to be pragmatic in finding consensus on the UN Security Council as argued by Ralph and Gifkins. This is because evaluating a state's commitment to a norm can be assessed by looking at whether a state's understanding of the norm's requirements is also reflected in its own practice. The UK case highlights the need for states to be held accountable for how their objectives may play out differently in the long and short term when they are impractical or impossible, which may undermine R2P's core humanitarian objectives. In general, humanitarian intervention does not require the 'humanitarian' objectives to be primary to the other objectives which may be certain political or national interests. While R2P makes humanitarian protection primary, its lack of clarity in how to discharge that obligation can effectively provide cover for geopolitics. At some point, these different objectives can come into conflict as they have in Syria. In this scenario, R2P as implemented is not very effective as a norm for responding to mass atrocities.

Third, the research finding that R2P is subordinate and malleable to the UK's fixed objectives in Syria (Assad's departure and political transition) will have larger implications in terms of feeding the existing fears of less powerful states, which may have serious implications for the R2P norm at the international level. More research needs to be done across other powerful liberal states in order to engage in honest debate that addresses the realities and misconceptions around R2P in order to modify the norm, if necessary, in pursuit of protecting populations.

Fourth, R2P appears to have little normative value in terms of increasing resettlement of refugees fleeing mass atrocities. Despite the fact that R2P does not motivate the UK's humanitarian responses to Syria and Syrian refugees, public and international pressure do shape the UK's policies, particularly in terms of Syrian refugee resettlement, which evidences the instrumental role that civil society plays in informing and rallying the public to affect UK policy in Syria. However, R2P is highly contested by international humanitarian organisations and the findings on UNHCR are not conclusive. Thus, further research should focus on both these

²⁶ Thank you to Edward Newman for this suggestion.

social actors as they are crucial to advocacy around the protection of refugees fleeing mass atrocities.

Finally, there is an argument that R2P needs to diffuse amongst the public as some civil society participants argued that R2P is an elite New York doctrine. There was some frustration at what was perceived to be the elitism of the R2P community in relation to civil society because there is a distinction between those working with vulnerable people directly on the ground and those advocating R2P practice in these contexts.²⁷ While the former considers the underlying principles of responsibility and protection to be noble and worthy of support, this community feels the R2P elite have not sufficiently engaged with the NGOs working with the very people the norm is supposed to protect. To these NGOs, R2P is ‘jargon-y’ and far removed from the people they are actively protecting and advocating for.²⁸ There is a feeling that the R2P elite are talking above those they are intending to protect. This means R2P advocates need to engage more with civil society’s concerns around R2P and particularly how linking R2P to refugees needs to recognise the impact on all refugees, including those fleeing persecution and not just mass atrocities and those in other contexts that have been overshadowed by the case of Syria.²⁹ For example, one civil society interviewee stated:

The Syria context hurts other conflict situations in terms of refugees’ as there is a “hierarchy of suffering” that puts other conflict contexts in the shadow of Syria. The clear idea of refugees and persecution has been conflated by mass atrocities in Syria now which makes persecution almost rise to mass atrocities and there is a complete media blackout on any context other than Syria.³⁰

In sum, this research brings to light some important implications for future research while filling some of the existing gaps between the theory and practice of R2P in relation to Syria and Syrian refugees. It also highlights some inherent limitations in critical constructivism in the context of powerful liberal states.

²⁷ Interview 3.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.* The hierarchy of suffering also results in mass atrocity organisations, particularly those coming from the narrower genocide lens, competing with each other for attention from government on their cause.

Abbreviations and Acronyms

APPG	All Party Parliamentary Group
AI	Amnesty International
AU	African Union
BRICS	Brazil, Russia, India, China, South Africa
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
DFID	Department for International Development
ECHO	European Commission Humanitarian Aid and Civil Protection
ECOSOC	UN Economic and Social Council
EU	European Union
ExCom	Executive Committee of the High Commissioner's Programme
FCO	Foreign and Commonwealth Office
FRY	Federal Republic of Yugoslavia
FSA	Free Syrian Army
GNI	Gross National Income
HNC	High Negotiations Committee of the Syrian Opposition
HO	Home Office
HRC	Human Rights Council
HRW	Human Rights Watch
ICRtoP	International Coalition for the Responsibility to Protect
IHL	International humanitarian law
IHRL	International human rights law
ICISS	International Commission on Intervention and State Sovereignty
IDP	Internally displaced persons
IOM	International Organization for Migration
MENA	Middle East and North Africa region
MOD	Ministry of Defence
MSF	Médecins sans Frontières
NGO	Non-governmental organizations

OAU	Organization of African Unity
OPCW	Organisation for the Prohibition of Chemical Weapons
P2	Permanent Members of the UN Security Council: Russia and China
P3	Permanent Members of the UN Security Council: US, UK and France
P5	Permanent Members of the UN Security Council: US, UK, France, Russia and China
POC	Protection of Civilians
R2P	Responsibility to Protect
RP	Responsible Protection
RWP	Responsibility while Protecting
SDSR	Strategic Defence and Security Review
SNC	Syrian National Council
SRP	Syria Response Plan
SVPR	Syrian Vulnerable Persons Resettlement Scheme
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNSMIS	United Nations Supervision Mission in Syria
US	United States
USAID	US Agency for International Development
USDOS	United States Department of State
VCRS	Vulnerable Children Resettlement Scheme
VPRS	Vulnerable Persons Resettlement Scheme
WHO	World Health Organization
WSOD	World Summit Outcome Document
3RP	Syria Regional Refugee and Resilience Plan

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Interviews

This research involved 15 semi-structured interviews¹:

Parliament/House of Lords: 2

- Interview 6: MP, All-Party Parliamentary Group, Friends of Syria: London, 9 October 2017.
- Interview 10: House of Lords: London, 07 December 2017; Continuation by phone, 14 December 2018.
- Closed conferences under the Chatham House Rule during 2017-2018: All-Party Parliamentary Group, Refugees, All-Party Parliamentary Group, Syria, All-Party Parliamentary Group, UN.

Home Office: 1

- Interview 7: London, 10 October 2017.
- Closed conferences under the Chatham House Rule during 2016-2018.

FCO: 4

- Interview 8: London, 10 October 2017.
- Interview 11: Phone, 19 January 2018.
- Interview 15: Phone, 19 January 2018.
- Interview 14: Email, 31 January 2018.
- Closed conferences under the Chatham House Rule during 2016-2018.

DFID

- Closed conferences under the Chatham House Rule throughout 2016-2018.
- Public conference: DFID, Matthew Rycroft CBE, Permanent Secretary, Department for International Development and UK Permanent Representative at the UN 2014-2018, *How to Prevent Mass Atrocities*, Chatham House, London, 20 February 2018, [public transcript available with researcher's questions asked and answered on record, https://chathamhouse.soutron.net/Portal/Default/en-GB/RecordView/Index/172381](https://chathamhouse.soutron.net/Portal/Default/en-GB/RecordView/Index/172381).

Civil Society/UNHCR: 8

- Interview 1: London, 9 May 2017.
- Interview 2: Skype, 16 May 2017.
- Interview 3: London, 1 June 2017.
- Interview 4: Skype, 6 July 2017.
- Interview 5: London, 18 July 2017.
- Interview 9: London, 10 November 2017.
- Interview 12: Phone, 25 January 2018.
- Interview 13: Phone, 25 January 2018.
- Closed conferences under Chatham House Rule throughout 2016-2018.

¹ Information was also gathered through questions answered via public and/or closed conferences under the Chatham House Rule. Information details of these conferences have been kept minimal throughout this thesis in order to protect the anonymity and the confidentiality of the conference participants.

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