

# Fortress Europe and the Responsibility to Protect: Framing the Issue

Jennifer Welsh  
Professor and Chair in  
International Relations,  
European University Institute (EUI), Florence, Italy  
[Jennifer.Welsh@eui.eu](mailto:Jennifer.Welsh@eui.eu)

The 'Lampedusa Dilemma':  
Global Flows and Closed Borders.  
What should Europe do?  
EUI, Florence  
17-18 November 2014

## INTRODUCTION

The **EUI Forum on Migration, Citizenship and Demography** is a joint initiative by the four departments of the EUI, the Robert Schuman Centre for Advanced Studies and the Max Weber Programme. It brings together critical analysis, informed debate and policy recommendations from the wider field of citizenship and democracy, demography, migration and asylum governance, and the management of cultural diversity.

**Professor Anna Triandafyllidou is the Scientific Organiser of the Forum's Inaugural Event: The 2014 Conference on the Lampedusa Dilemma.**

Policy experts and scholars from a variety of disciplines will share their views on migration governance, human rights, asylum-seeking and international protection, as well as irregular migration.

The Lampedusa disaster of October 2013 demonstrates the dramatic events taking place in the Mediterranean area which require urgent, forward-looking and well-thought out responses.

In 2005, at the 60<sup>th</sup> anniversary summit of the United Nations, heads of state and government unanimously endorsed the principle of the responsibility to protect (RtoP).<sup>1</sup> Despite the debate that has surrounded RtoP, the principle embodies a very simple assertion: that there is a collective responsibility to protect populations from acts which the international community has stigmatized as crimes: genocide, crimes against humanity, war crimes, and ethnic cleansing. That responsibility, as the Summit Outcome Document makes clear, rests first and foremost with the state in which populations live – and that responsibility extends to *preventing* such crimes from occurring. But outside actors also have a responsibility to assist states, in a variety of ways, to fulfill these protection responsibilities. In addition, if a state is manifestly failing to protect – either from a breakdown in capacity or from the express intention to inflict atrocities on its population (or a portion of its population) – outside actors have a residual protection role.

This paper seeks to examine why and how the principle of RtoP could be relevant to conceptualizing and operationalizing Europe's response to the 'Lampedusa Dilemma'. It does so by first elaborating on the origins of RtoP, and establishing that it can be implemented through a variety of tools (only some of which are coercive). It then discusses how Europe has sought to implement RtoP, which has involved a primary focus on the principle's 'foreign policy' implications. Turning to the particular issue of migration, the paper provides an overview of irregular migratory trends from the southern bank of the Mediterranean (which registered a record increase in 2014), outlines the criticism that has been addressed to the EU with respect to these trends - notably by the UN Special Rapporteur on the rights of migrants - and summarizes the EU's response to this criticism. The paper concludes by discussing the challenge of 'shock migration' – when atrocity crimes are real or imminent – and suggests that the appropriate ethical framework in this context is the idea of collective responsibility. The next step is develop more robust political theory, and policy guidelines, on how that responsibility can best be distributed among actors with the capacity to protect those fleeing persecution and widespread violence

## THE THREE PILLARS OF THE RESPONSIBILITY TO PROTECT

**State sovereignty was no longer about undisputed control over territory, but rather had become a conditional right dependent upon a state's adherence to minimum standards of 'good' behaviour**

While the responsibility of individual states to protect their populations has been a recurrent theme in political theory<sup>2</sup> and forms part of contemporary law on human rights and state responsibility, the proposition that the international community might have not only a right, but also a responsibility,<sup>3</sup> to protect individuals inside (or coming from) the jurisdiction of a particular state is more novel and controversial. This more expansive idea was at the heart of the 2001 ICISS report, *The Responsibility to Protect*,<sup>4</sup> which developed a new case for the use of force on humanitarian grounds, in exceptional circumstances. The Commissioners' argument was based on a more fundamental claim that state sovereignty was no longer about undisputed control over territory, but rather had become a conditional right dependent upon a state's adherence to minimum standards of 'good' behaviour.<sup>5</sup> But their work drew heavily on work that was done in the early 1990s at the Brookings Institution, by the former Special Representative of the Secretary General, Francis Deng, whose notion of 'sovereignty as responsibility', rather than 'sovereignty as authority', was influential in thinking about how to protect internally displaced peoples.<sup>6</sup>

Almost a decade has passed since Member States of the United Nations endorsed the responsibility to protect in the World Summit Outcome Document. Since that time, there have been a series of efforts to implement the principle, based on the implementation plan drafted in 2009 by the UN Secretary General, Ban Ki-moon.<sup>7</sup> Critical to that plan is a three-pillar framework for RtoP, which extrapolates from the language of the Summit Outcome Document. Pillar One, drawing on pre-existing legal obligations,<sup>8</sup> is the responsibility of individual states to protect their own populations (whether nationals or not) from genocide, war crimes, ethnic cleansing, and crimes against humanity. Pillar Two calls upon the international community (acting through the UN system and partner organizations) to help states fulfill these responsibilities (for example, by encouraging states to meet their legal obligations, helping them to build capacity for the prevention of these crimes, or providing extra protection capacity in times of crisis). Finally, following the original logic of the ICISS report, Pillar Three specifies that if the state in question is manifestly failing to protect its population, UN Member States have a residual responsibility to respond collectively, in a "timely and decisive manner" using the full range of political, economic, and military tools.<sup>9</sup> The report goes on to insist that all three pillars are of equal weight, and that the implementation of R2P is a multi-layered agenda including both consensual and coercive means.<sup>10</sup>

**As discussion of RtoP has continued within the United Nations, states have consistently expressed a preference of the use of non-coercive means, given the cost, devastation, and unintended consequences of military tools**

Thus, while much of the debate on RtoP has focused on whether or when military force can be used to protect populations from atrocity crimes,<sup>11</sup> states and international organizations (both governmental and non-governmental) have a variety of instruments at their disposal to prevent such crimes from occurring or to respond to their commission.<sup>12</sup> Indeed, as discussion of RtoP has continued within the United Nations, states have consistently expressed a preference of the use of non-coercive means, given the cost, devastation, and unintended consequences of military tools. With respect to the focus of this Forum, the UN Secretary General has explicitly discussed the potential contribution states can make in preventing atrocity crimes through ensuring grants of asylum and refraining from refoulement of

persons fleeing violence (with the help of UNHCR, where appropriate).<sup>13</sup> More specifically, in relation to the on-going crisis in Syria, neighbouring countries such as Jordan have been praised for accepting refugees as part of fulfilling the international responsibility to protect.

## EUROPE AND THE RESPONSIBILITY TO PROTECT

European states, both individually and as part of the European Union, have been among the strongest supporters of the principle of RtoP. At the United Nations in New York, they are active members of the Group of Friends on RtoP, and regularly support the efforts of various UN actors (including the Special Adviser on the Responsibility to Protect) to implement the principle. Some, such as France, employ the principle openly in their foreign policy statements and doctrine, and have been leaders in negotiating text within the Security Council that endorses the commitments contained in the Summit Outcome Document.<sup>14</sup> In April of 2013, The European Parliament (EP) passed a resolution calling for the High Representative on Common Foreign and Security Policy (CFSP), the European External Action Service (EEAS), and the European Commission (EC) to, inter alia: develop an inter-institutional ‘Consensus on Responsibility to Protect’; include updates on implementation of RtoP in the High Representative’s annual report to the EP on CFSP; and to better integrate RtoP into the European Union’s programmes on development assistance, preventive diplomacy, conflict mediation and resolution, and crisis response.<sup>15</sup> While the latter agenda is still very much a work in progress,<sup>16</sup> the imperative to incorporate an atrocity-crime perspective into the external work of the EU has broad support. There are also concrete cases in which the EU has directed its civilian and military stabilization efforts to focus on protecting civilians – such as in the 2008-9 mission to protect refugees from Darfur in eastern Chad, or the February 2014 decision of the Council of the European to deploy a peacekeeping mission to the Central African Republic.

As these examples reveal, however, RtoP for the European Union is framed still very much as a foreign policy issue: i.e., as something we do ‘outside’ our borders. In only rare cases, has the conversation turned inward, to ask what the prevention and response to atrocity crimes could mean for the European heartland itself. But if the spirit behind RtoP is one of collective responsibility – as opposed to a discretionary right to respond – then European states must ask themselves what actions they are taking as part of the shared task of protecting populations. This question sub-divides into two components: the reform of ‘regular’ migration policies, and the response to ‘shock migration’ seen in recent cases, such as Syria.

### Irregular migration and the critique of ‘Fortress Europe’

#### 1) *Irregular migration and the critique of ‘Fortress Europe’*

The Office of the United Nations (UN) High Commissioner for Human Rights (OHCHR) has estimated that more than 130,000 migrants and asylum seekers have arrived in Europe by sea so far in 2014, and that over 800 people have died in the Mediterranean this year.

According to UN High Commissioner for Refugees’ publication “Asylum Trends 2013”, the 28 Member States of the EU registered 398,200 asylum

claims in 2013, a 32 per cent increase compared to 2012 (301,000). EU States together accounted for 82 per cent of all new asylum claims submitted in Europe. In Southern Europe, the number of newly registered asylum-seekers increased by 49 per cent to 89,600, the highest on record. Turkey was the main recipient of asylum applications in the region (44,800), followed by Italy (27,800) and Greece (8,200).

On 30 October 2014, the UN Special Rapporteur on the Rights of Migrants, Mr François Crépeau, issued an open-letter to the EU, expressing criticism about the Union's migration policies.<sup>17</sup> (This letter followed upon the Special Rapporteur's "Regional Thematic Study: Management of the External Borders of the EU and its Impact on the Human Rights of Migrants", which was issued in May 2013.) In his report, the Special Rapporteur drew attention to a number of points of concern:

- European States are losing control over their borders: repressive policies without regular migration channels for asylum seekers and much needed low-wage migrants, only entrench smuggling operations and underground labour markets.
- Despite positive initiatives, such as the increase in search and rescue operations which have saved numerous lives, some European member states continue to officially advocate repression of irregular migration, and have not yet opened new legal channels for migration. Consequently, the number of migrants risking their lives on unseaworthy vessels over perilous sea routes can only increase. They migrate due to the push-factors in their countries of origin, as well as to pull factors from Europe.
- With time, continued repression of irregular migration is counterproductive, as it drives migrants further underground, thereby empowering smuggling rings, and creating conditions of alienation and marginalization that foster human rights violations, such as discrimination and violence against migrants.
- More concerted effort is also required from European member states to assist the frontline states such as Italy, Greece and Spain. The search and rescue programmes cannot be the sole responsibility of the frontline countries.
- With the current surge in migration, the EU should ensure that there are sufficient reception centres with adequate facilities to accommodate the new arrivals. Upon arrival at port or country of destination, and in collaboration with civil society organisations, asylum seekers and migrants should have access to medical care, psycho-social support and legal counsel, after which individual assessments should be implemented to determine their protection needs.
- While it may constitute an administrative offence, irregular migration is not a crime, neither against persons, nor against property, nor against State security.

The EU's view on migration reform can be found in the proceedings of the last Human Rights Council's interactive dialogue with the Special Rapporteur on the Rights of Migrants (13 June 2014) as well as in the detailed written EU response to the Rapporteur's May 2013 report. In its responses, the EU has emphasized that:

- Effective border management and fast and efficient returns, with respect for migrants' fundamental rights and the principle of non-refoulement, are vital to ensure the integrity of the EU migration systems.

- The Schengen area, composed of 26 Member States and associated countries, is an area without internal borders. The management of the external borders is a task common to these Member States. The EU is developing an integrated border management policy in an effort to ensure that Member States can effectively meet the challenges of managing a common external border, both as regards regular and irregular crossings of the external border. Border management is, nevertheless, only one response to addressing migration pressure. At EU level both a common asylum policy and a framework for a common immigration policy are being developed. A humane and effective return policy — in line with the Charter of Fundamental Rights and based on the principle of giving preference to voluntary return — is essential to a comprehensive and sustainable migration policy.
- The EU pursues the protection of migrants' rights in a number of ways. The Lisbon Treaty foresees the accession of the EU to the European Convention on Human Rights, which is an effective tool for the protection of individual rights. Moreover, the Charter of Fundamental Rights, which applies to all individuals, thereby including third-country nationals, is now part of the Treaty and must be respected by Member States when implementing EU law. Therefore, the EU does not share claims (including by the Special Rapporteur) that migration and border control have been increasingly integrated into security frameworks that emphasise policing, defence and criminality over a rights-based approach.

Despite the arguments advanced by the EU, there clearly remains unease on the part of the Member States concerning the Union's approach to irregular migration, and the perception that security concerns 'trump' human rights. The adaption of the EU's response to migration constitutes a priority of the current Italian Presidency of the Council of the European Union (which runs from June-December 2014), largely in response to the tragic events off the coast of Lampedusa in October 2013. Until 2011, Italy's policy was based on a bilateral agreement with Libya and foresaw the blocking of immigrants at sea in front of the Libyan coast.<sup>18</sup> As a short-term reaction to the dramatic increase of migratory flows during the second half of last year, however, the Italian Navy launched the Operation Mare Nostrum (OMN), which involves control, rescue and aid of migrants who leave Africa trying to reach Italy in the entire stretch of the sea from the Italian coast to the Libyan coast. In implementation of this change of policy, Italian authorities have also called on EU institutions to re-double efforts at EU level to respond to migration and to show solidarity with EU States on the northern bank of the Mediterranean Sea.

## Shock Migration

### 2) *Shock Migration*

The second area of policy reform, which more directly relates to the acts covered by RtoP, concerns the response to refugees and displaced persons fleeing persecution and widespread violence — or what Ruhs and Triandafyllidou call 'shock migration'. For Europe, this challenge has been posed most tragically by the on-going events in Syria, where evidence has been found of both war crimes and crimes against humanity. But it is also extending to Iraq, where an estimated 5.2 million people are now in need of humanitarian and protection assistance due to ongoing violence and atrocity crimes.<sup>19</sup> Given current trends in internal displacement in Ukraine, and the

failure thus far to address the deteriorating situation for vulnerable populations, the EU may also face a more proximate challenge (particularly as winter sets in).

In the responding to ‘shock migration’, Ruhs and Triandafyllidou suggest that European policy-makers are faced with four policy options for fulfilling their protection responsibilities: permanent protection by admitting refugees and granting them full refugee status; protection by admitting refugees on a temporary basis; containment aimed at keeping refugees either within the shock country or in neighbouring countries; and/or do nothing. Their analysis detects a move away from permanent or temporary protection (as practiced with respect to turmoil in the Balkans in the 1990s), to policies focused on regional containment (as in the Middle East and North Africa currently). Indeed, as noted in the Policy Brief for this Forum, of the 2.8 million refugees which have fled Syria, only 123,000 asylum applications have been made to Europe.

As Ruhs and Triandafyllidou rightly note, there may be long-term consequences to the current short-term strategies of containment – particularly if sectarian violence in the countries generating ‘shock migration’ intensifies. In the case of Iraq today, for example, there are serious questions to be asked about whether displaced communities can return to their original homelands, given the degree to which ISIL has exploited and fuelled sectarian tensions – thereby further damaging the social fabric. Witnesses have recounted cases in which local people – even neighbours – have collaborated with ISIL fighters and helped them to point out the religious affiliations of victims or to identify those supporting the Iraqi Security Forces. In such a situation, European states may need to consider more radical strategies to protect populations.<sup>20</sup>

But the broader question, raised by the debate among political theorists contributing to this Forum, is whether state ‘choice’ and ‘discretion’ are the right lenses through which to examine responses to ‘shock migration’. While a citizenship-based framework might, for example, help to guide states’ policies with respect to honouring the right of free movement, it is of limited value in helping them address the claims of forced migrants seeking protection. The principle of RtoP magnifies the imperative of protection, for two reasons. First, it focuses on the ‘sharpest’ end of protection and the greatest threats to human security – genocide, crimes against humanity, war crimes, and ethnic cleansing; and second, and posits a collective responsibility to protect populations from these acts. As Miller and others have suggested, the next step is to think more systematically about how this collective responsibility should be distributed (for example, according to proximity? historical ties? capacity?),<sup>21</sup> and to design a fair burden-sharing scheme for accommodating populations fleeing widespread and systematic violence.

*Disclaimer: The views and opinions expressed in this paper are those of the author. They do not necessarily reflect those of the EUI’s Forum, its constituent parties or scientific directors and organisers. They also do not represent the UN Office of the Special Advisers on the Prevention of Genocide and the Responsibility to Protect*

## ENDNOTES

<sup>1</sup> “2005 World Summit Outcome”, UN doc. A/Res/60/1, 16 September 2005, paras. 138, 139 and 140.

<sup>2</sup> See Jennifer M. Welsh, *Sovereignty as Responsibility* (forthcoming); and Luke Glanville, “The antecedents of ‘sovereignty as responsibility’”, *European Journal of International Relations* 17 (20): 233-255 (2011).

<sup>3</sup> Sheri P. Rosenberg, “Responsibility to Protect: A Framework for Prevention”, *Global Responsibility to Protect* 1 (4): 422-477 (2009); and Jutta Brunnee and Stephen J. Toope, ‘The Responsibility to Protect and the Use of Force: Building Legality?’, *Global Responsibility to Protect* 2 (3): 191-212 (2010).

<sup>4</sup> *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Corporation, 2001).

<sup>5</sup> *Responsibility to Protect*, p. 8.

<sup>6</sup> Deng was among the first to use the phrase ‘sovereignty as responsibility’, developing it into a doctrine stipulating that when states cannot provide protection for their populations, they must request and accept outside offers of aid. See, for example, Francis M. Deng, *Protecting the Dispossessed* (Washington, DC: Brookings Institution, 1993); and Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington DC: The Brookings Institution, 1998).

<sup>7</sup> *Implementing the Responsibility to Protect*, Report of the Secretary General, UN doc. A/63/677, 12 January 2009.

<sup>8</sup> For a detailed examination of the obligations under this first pillar, see Sheri P. Rosenberg, “Responsibility to Protect: A Framework for Prevention”, *Global Responsibility to Protect* 1 (40): 442-477 (2009), esp. pp. 447-459.

<sup>9</sup> *Implementing the Responsibility to Protect*, paras .10-12.

<sup>10</sup> For further elaboration of the three pillars, see Alex Bellamy, *Global Politics and the Responsibility to Protect* (New York: Routledge, 2011), pp. 35-39.

<sup>11</sup> This debate became particularly heated after the UN-authorized military mission to protect civilians in Libya in March 2011.

<sup>12</sup> For an elaboration of the mechanisms under Pillar II, see *Fulfilling Our Collective Responsibility: International Assistance and the Responsibility to Protect*, Report of the Secretary General, UN doc. A/68/947, 11 July 2014. For an elaboration of Pillar III, see *The Responsibility to Protect: Timely and Decisive Response*, Report of the Secretary General, UN doc. A/66/874, 25 July 2012.

<sup>13</sup> See *Timely and Decisive Response*, para. 41.

<sup>14</sup> For examples of recent Security Council Resolutions reaffirming RtoP, see UN doc. SC/Res/2150 (2014) and UN doc. SC/Res/2171 (2014).

<sup>15</sup> See the text of the resolution at <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0130&language=EN> (accessed 7 November 2014).

<sup>16</sup> For an assessment of the European Union’s current architecture for preventing and responding to atrocity crimes, see *The EU and the Prevention of Mass Atrocities: An Assessment of Strengths and Weaknesses*, Report of the Task Force on the EU Prevention of Mass Atrocities (Budapest: Budapest Centre for the International Prevention of Genocide and Mass Atrocities, 2013).

<sup>17</sup> See open letter at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15119&LangID=E#sthash.RgkEYmFq.dpuf>. (accessed 7 November 2014).

<sup>18</sup> On 1st November, FRONTEX launched the new EU-wide “Operation Triton” to replace the Mare Nostrum Operation. This joint EU operation does not include search-and-rescue plans but focuses on border protection, involving patrols within 30 miles of the Italian coast. However, in the words of Frontex spokeswoman Isabella Cooper, the mission is not receiving adequate support from all EU Member States: “We only have a few vessels and a few aircraft. The Mediterranean Sea is over 2.5 million square kilometres large – it is virtually impossible to have a full overview of what is happening at sea.”

<sup>19</sup> This figure includes approximately 1.8 million newly displaced people since January 2014 (many of whom are now seeking refuge in the Kurdistan region), and approximately 215,000 Syrian refugees. See UN Office of the Coordinator for Humanitarian Affairs, 2014-2015 Iraq Strategic Response Plan. Those minority communities fleeing the deteriorating security and human rights situation report forcible conversion, arbitrary killings and summary executions, women and children sold as slaves, abductions of entire families, and destruction of religious sites. In the case of the Yazidi population, action taken against it by ISIL may amount to the crime of genocide.

<sup>20</sup> One such radical idea, floated recently by former Canadian Prime Minister Jean Chretien, is for Western countries to mount large-scale refugee programmes – akin to what was done during the 1970s for South Asian communities in Uganda or for the Vietnamese. More specifically, he urged the Canadian government to immediately commit to taking in 50,000 refugees fleeing ISIL. See Jean Chretien, 'Canada's true role in the Middle East conflict', *The Globe and Mail*, 17 October 2014. Available at <http://www.theglobeandmail.com/globe-debate/canadas-true-role-in-the-mideast-conflict/article21138349/> (accessed 7 November 2014).

<sup>21</sup> David Miller, "Distributing Responsibilities", *The Journal of Political Philosophy*, 9 (4): 453-71 (2001).

## MORE ABOUT THE EUI FORUM ON MIGRATION, CITIZENSHIP AND DEMOGRAPHY

### Scientific Directors

**Professor Joseph H. H. Weiler**, President of the EUI  
**Professor Brigid Laffan**, Director of the Robert Schuman Centre for Advanced Studies, EUI

### Mission Statement

The **EUI Forum on Migration Citizenship and Demography** is a 2-year programme (2014-2016) that brings together professors, senior fellows, post-doctoral researchers and PhD students from the four EUI departments, the Robert Schuman Centre for Advanced Studies and the Max Weber Programme, over a set of themes of common expertise and interest.

Building on a wealth of academic publications, policy papers, conferences and workshops, produced by EUI scholars in the wider field of citizenship and democracy, demography and migration management, cultural diversity and ways to address it, the Forum offers critical analysis, informed debate and policy recommendations.

Topics to be addressed by the Forum activities in the form of Oxford debates, policy workshops and academic conferences include:

- The management of cultural and religious diversity in Europe at times of intensified globalisation trends and increased migration flows
- Balancing demographic and labour market challenges. How to build an effective and efficient migration and migrant integration policy in Europe?
- Upholding our asylum commitment in an increasingly volatile geopolitical framework: Ethical and political considerations.
- EU law and policy on migration and asylum: Fit for purpose for 2030?
- Europe: a continent of emigration, immigration and mobility. Past experiences, present challenges and future trends.

### FORUM website

<http://www.eui.eu/Projects/TheForum/Home.aspx>