



# Protect

## The Right to International Protection

Deliverable 1.1 The overall theoretical perspective

Dissemination level: Public

Lead Beneficiary: The University of Bergen

Co-lead Beneficiary: Ryerson University



This project has received funding from the European Union's Horizon 2020 research and innovation program under grant agreement No 870761.





PROTECT DELIVERABLE No. D1.1

Published by the PROTECT Consortium.

Copyright © 2021 by Hakan G. Sicakkan and the PROTECT Consortium.

All rights reserved.

#### PROTECT CONSORTIUM

The PROTECT Consortium publishes original research on international refugee protection. The Consortium is composed of:

University of Bergen, University of Catania, Ghent University, Giessen University, Ljubljana University, Lund University, Open University (London), Queen Mary University (London), University of Surrey, University of Stuttgart, Ryerson University (Toronto), University of Witwatersrand (Johannesburg),

To cite this publication:

Sicakkan, Hakan G. (2021). Conceptualizing the Right to International Protection: A Cleavage Theory Approach. PROTECT Deliverable no. D1.1. Bergen: PROTECT Consortium.

# Conceptualizing the Right to International Protection: A Cleavage Theory Approach

Hakan G. Sicakkan  
The University of Bergen

Despite clear humanitarian intentions behind the international protection system, different ideological interpretations and practices of the right to international protection have recurrently been a massive challenge for the implementation of the international refugee law. Not surprisingly, critical voices rising from some states, organizations, scholars, and not least constantly growing citizen grievances, indicate that the United Nations' Global Compact for Refugees (GCR) is not an exception from this historical trend. Politicization of the right to international protection has been further exacerbated by financial crises, refugee crises, and the recent public health crisis brought by the Covid-19 pandemic. The crises have subsided refugee protection and catalyzed its politicization. Despite its predicaments, the GCR can be a new window of opportunity for advancing the right to international protection even in this gloomy picture. For this to happen, the right to international protection should be understood correctly, and realistically, as a global conflict and contestation issue. Understanding the ways in which society is divided into groups with different political beliefs and different stances on international protection – known as political cleavages – will help policy actors navigate the current global political landscape more predictably in their efforts to achieve their policy goals.

As I will show later, the groups contesting in the global political cleavage system (GPCS) for having their own international protection perspectives prevail, offer different legal norms, governance modes, and a variety of discourses on refugees, adding up to distinct alternative visions of international protection policy. We observe such variation, for example, in national policies, where states use additional legal norms that derive from their own (constitutional) asylum laws, governance modes that adhere to their state structures, and discourses that buttress citizen privileges. This country-wise variation in approaches to international protection is further complicated by how it is handled at the international and regional levels. There are two ways of dealing with the diversity of approaches to international protection. First, one can simply assume that such diversity weakens the international protection system and suggest standardizing the norms, governance modes, and official discourses across countries. This is the direction that the European Union is currently heading. Second, an alternative approach is to regard such diversity as a policy toolbox and explore what the different approaches can achieve in different situations. This is the course that the UNHCR is navigating on.

However, do we know which norms, governance modes, and discourses are the most efficient tools for refugee protection? Can all such country-specific contributions to the GCR serve the goal of advancing the right to international protection on a global scale? Indeed, none of the contesting groups within the GPCS really offer proper assessments of the potential consequences of their protection policy suggestions. This paper outlines an approach that can be used for evaluating the efficiency of a variety of norms, governance modes, and discourses, on which policymaking, policy debates, and academic discussions about international protection can be based.

Do we need another conceptual approach to international protection when we already have a deeply rooted refugee studies field with an enormous body of academic and policy literature? Currently, there are initiatives for policy change in international protection. The GCR and the EU's New Pact on Migration and Asylum (the New Pact) are introducing norms like 'international solidarity' and 'flexible and mandatory European solidarity'. They are suggesting new modes of governance comprising a comprehensive response framework, multi-stakeholder perspective, supranational coordination, a single asylum procedure along with a border screening procedure, regional relocation schemes, integrated border management, and third country agreements. And they are reinvigorating discourses promoting, respectively, "humanity and solidarity" and "human and humane". While the GCR leaves much room to the choices, interpretations, and initiatives of stakeholders, and does not offer a clearly delineated global governance model, the New Pact proposes a detailed supranational migration and asylum governance mechanism. All these are happening in a politically turbulent global context that adds to complexity, and we do not know much about their consequences for the right to international protection. In other words, new things are happening in the refugee and asylum policy field that require a fresh gaze.

In the following, I first identify the policy challenges that this paper responds to. This is followed by a typology of the international protection approaches contesting in the GPCS. The typology will provide a more intelligible understanding of the policy initiatives by the UN, the EU, states, and other stakeholders. The third section presents a research frame for evaluating different models of international protection. The fourth section presents the research components planned.

## **1 Current policy challenges to international protection**

Convincing the states to join the GCR efforts was the very first challenge during the processes that led to the adoption of the New York Declaration in 2016. Although this was partly solved by making contribution to responsibility-sharing voluntary and by continuing to build the multi-stakeholder governance of international protection on the states' pre-existing institutional arrangements, there

are still some countries that prefer to stay miles away from the GCR.<sup>1</sup> During the First Global Refugee Forum (GRF) in December 2019 in Geneva,<sup>2</sup> a continuation of this was observed in the pledges submitted by the states. Some states simply listed the contributions that they had been making before the GRF, others offered symbolic contributions beyond their usual contributions, and some offered significant contributions to responsibility-sharing in the spirit of the GRC. During the plenary pledge announcements by Denmark and Poland, for example, the speakers clearly declared their national policy: as sovereign states they would decide their asylum and refugee policies themselves, clearly taking distance from the GRC and responsibility-sharing. In contrast to the *nativist* and *nation-statist* appeals by Denmark and Poland, speakers from overburdened countries like Costa Rica, Mexico, Pakistan, and Turkey adopted a *globalist* perspective, advocating the international responsibility-sharing objective of the GCR and blaming other states for not doing enough and for causing conflicts that lead to mass refugee movements. Appeals from a globalist perspective by the UNHCR and others received enthusiastic applause from the humanitarian organizations participating in the GRF 2019. The UNHCR's strategic choice of making contribution to responsibility-sharing voluntary and leaving its governance basically to the member states and humanitarian organizations may contribute to reinforcing the diverse approaches to global governance of international protection.

The EU suggests going in the opposite direction by making member states' contribution to European solidarity mandatory, which may lead to additional challenges in convincing them to contribute. The New Pact addresses all the four main GCR objectives – reducing pressures on receiving countries, increasing refugee self-reliance, expanding refugees' access to third country solutions, and increasing safe returns. Beyond the GCR frame, the New Pact requires EU member states to contribute to responsibility-sharing either by accepting relocations into their territory or by paying and organizing rejected asylum seekers' returns and re-admissions. This comes in addition to a series of other proposed measures. The EU interprets the GCR's notion of international solidarity from a *Europeanist* rather than *globalist* perspective. Thus, solidarity in the New Pact is confined to solidarity between EU member states. This is evidenced by a combination of two aspects: First, the right to asylum is overshadowed by an overwhelming focus on returns, readmissions, border security, and third country and neighborhood agreements to mitigate irregular migration and human smuggling. Second, this weighty focus on migration prevention is accompanied with a proposal on using visa policies as a conditionality to make third countries comply with the EU's migration policy goals. Combined with the intention to use the EU-Turkey agreement from March 2016 as a model for future compacts with other

---

<sup>1</sup> The GCR certainly offers some institutional innovations beyond this reliance on the member states' institutions and resources, such as the Global Refugee Forum, Asylum Support Platforms, and networks like the Global Academic Interdisciplinary Network which the UNHCR initiated.

<sup>2</sup> This author was invited to the First Global Refugee Forum by the High Commissioner and the Swiss Government and participated in all the high-level plenary meetings.

third countries, will these policies realize the full potential of the GCR's call for genuine international solidarity? If the proposal is passed as it is by the European Parliament and the Council, the EU may solve the problems of its overburdened border states. This may be in the interest of asylum seekers as well since relocations may give them better conditions while waiting for their applications to be processed in the system. At the same time, the EU may also end up embedding its asylum policy even deeper than before in its broader migration policy objectives in contrast to the Convention's clear intention to distinguish between migration and refugee policies. This poses a potential risk of diluting the rights of refugees and the right to seek asylum.

The extreme ends of the policy spectrum are better revealed in states' and other stakeholders' reflexive responses in times of crises. Policy debates around potential forced displacement and protection challenges in connection with the expected *climate change crisis* are continuing, though this is not my focus in this paper. The *financial crises* during the past two decades did not only bring about instability, conflicts, and subsequent displacements of people, but also a collapse of the international protection system in tragic ways. The latest *political crisis* – characterized by growing nativist sentiments and nationalism, de-democratization and autocracy, and scapegoating of international organizations – has spilled over to migration policies and limited asylum seekers' access to safe territory through strict border policies, securitization, and externalization of migration and refugee policies. The still ongoing *public health crisis* caused by the Covid-19 pandemic has resulted in the legitimization of mobility restrictions and border closures in the eyes of the public, rendered asylum seekers' access to safe territory nearly impossible, and obscured the increasing discriminatory practices and violations of the human rights of migrants, refugees, and asylum seekers.

As the examples above demonstrate, policy challenges concerning international protection cover a wide spectrum of issues on norms, governance, and discourses. The discussion about international protection norms revolves around human rights, non-refoulement, access to safe territory, responsibility-sharing, and expansion of the refugee definition. Policy debates on governance are multi-faceted and address, among others, the powers, roles, and collaboration of stakeholders in the formation and running of the global governance of international protection. Finally, sophisticated policy debates are transpiring on the question of how to advance human-rights based discourses on international protection in current discursive contexts that are dominated by the nativists.

However, if one is to point to the one critical policy challenge amidst the abundance of alternative approaches to international protection, it is how to align the implementation of the GCR, the development of the New Pact, and states' policy change initiatives, with the Convention and the pre-existing human rights instruments. This conceptual framework addresses the policy challenge of better aligning the ongoing refugee and asylum policy initiatives of the UN, EU, and states with human rights. It does so by pinpointing the norms, governance modes, and discourses that best serve this goal.

## 2 Policy Approaches to international protection in the global cleavage system

As noted in the beginning, these issues will be approached from the perspective of global political cleavages. The terms “political cleavage” and “political cleavage system” were introduced into social sciences by the late Norwegian political scientist Stein Rokkan (1921-1979). I use this perspective to develop a typology of contesting policy approaches to international protection. The impacts of the different types of approaches to international protection will be assessed later in other components of the broader project PROTECT.

As the sources on the cleavage theory are abundant (see especially (Flora et al. 1999; Hooghe & Marks 2018; Sicakkan and Heiberger, nd.), it will suffice to define the GPCS briefly. The GPCS is a set of *structural, resilient, and mutually reinforcing* conflicts, contestations, and collaborations over a web of global political issues. Each political issue around which an enduring worldwide polarization is formed, is a global cleavage. Today, examples of such global political cleavages are seen, among others, around climate change, energy resources, human rights, international migration, refugee protection, and the ongoing pandemic. These polarizations are between groups that operate partly or completely at the global level. International organizations, states, non-state organizations, private sector enterprises, political parties, civil society organizations, citizen groups, individuals – that is, all kinds of actors – can be taking sides along global cleavages. International protection has become one of the main sources of conflict and contestation in the international arena. It is important to understand how it relates to the ideologies of the main political groups contesting worldwide. To conceptualize the diversity of approaches to international protection, I propose a taxonomic typology of them, linking them to the variety of norms, governance modes, and discourses on international protection in the GPCS.

To start with, it is essential to spell out who the contesting groups are within the GPCS. Research on cleavage systems reveals the presence of *globalists, regionalists, nation-statists, and nativists*, though partly with different labels (Hooghe and Marks 2018, Koopmans 2010, Sicakkan 2016, Sicakkan and Heiberger, n.d.), where international migration and globalization figure as the most important conflict issues. These groups are contesting for defining the premises of the international protection system. *Globalists* suggest a global protection system that allocates binding duties to all stakeholders, particularly the states. This approach is observed among some non-state idealist organizations working in the field of human rights protection as well as some states that are overburdened by massive refugee flows. *Regionalists*, like the European Union, African Union, and some of their member states, put more emphasis on a regional governance system to manage the regional migration flows they are exposed to, balancing between concerns for human rights and realpolitik. *Nation-statists* may or may not share the universal human rights and refugee protection goals but oppose to the idea of a binding global protection system. *Nativists* call for abolishing all international protection initiatives and prefer protecting merely ‘their own’.

**Table 1: A Typology of Approaches to International Protection**

		GROUPS IN THE GLOBAL POLITICAL CLEAVAGE SYSTEM			
		Nativists	Nation-statists	Regionalists	Globalists
<b>NORMS</b>	<b>What is most worth to protect?</b>	<u>Ethnic Belonging</u> Dispersed nations' rights in terms of ethnic/diasporic identification, language, and territorial belonging	<u>National Belonging</u> Citizens' rights and duties in terms of civic culture; states' interests; and the international order	<u>Regional Belonging</u> Members' rights and interests in terms of dignity, lives, liberties, and estates in a civil society	<u>Humanity</u> Individuals' rights and interests in terms of dignity, lives, liberties, and estates in a civil society
	<b>Is it a duty or charity to protect the refugees?</b>	<u>No duty to protect others than co-ethnics</u> Constitutional asylum	<u>Protection is given as charity, not a duty</u> Convention, temporary, and constitutional asylum as legal grounds	<u>Protection is given as an entitlement, not a duty</u> Convention asylum and subsidiary protection as legal grounds	<u>Protection is duty and entitlement</u> Convention asylum as legal grounds
	<b>Minimum Criteria for protection</b>	<u>Endangering</u> Endangering by persecution, oppression, assimilation, or non-protection by a state or non-state actors supported by a state	<u>Persecution</u> Persecution by a state; or persecution by the majority or non-state actors combined with effective state collaboration	<u>Persecution</u> Persecution by a state; or persecution by the majority or non-state actors combined with effective state collaboration	<u>Non-protection</u> Non-protection, discrimination, or persecution by a state; persecution by non-state actors combined with states' negligence
	<b>Who is responsible for protection?</b>	<u>Co-ethnic states</u> Individual states with historical relations with their diasporas and the states where these diasporic groups reside are responsible.	<u>Intergovernmental</u> Individual states primarily, and the international community secondarily have the responsibility to protect.	<u>Supranational</u> The regional authorities primarily, and member states, are responsible for protection.	<u>International</u> The international community / the international society has the responsibility to protect.
<b>DISCOURSES</b>	<b>Policies cited in discourses</b>	<u>Ethnicization of the refugee problem</u> Territory and autonomy claims for diasporic groups; population exchanges; unilateral actions such as condemnation and intervention, and bilateral agreements.	<u>Nationalization of the refugee problem</u> Focus on root causes; preventive diplomacy, economic relief, forced / voluntary repatriation, military aid, and intervention.	<u>Regionalization of the refugee problem</u> Focus on root causes; extensions of sovereignty to stateless communities; regional devolutions; temporary collective protection; creating regional safe zones; externalization; repatriation	<u>Universalization of the refugee problem</u> Focus on human rights; individual protection; cooperation across borders; preventive diplomacy; economic aid and relief; voluntary repatriation.
	<b>Where to protect?</b>	In the country of escape, or of asylum	In the country of escape or of resettlement	In or near the country of escape or of origin	In the country of asylum
<b>GOVERNANCE MODES</b>	<b>How to organize protection?</b>	<u>Uni-lateral or bilateral state actions</u>	<u>Voluntary unilateral, bilateral or multilateral state cooperation</u>	<u>Mandatory state cooperation</u>	<u>Global multilateral binding cooperation</u>
	<b>Governance modes and actors</b>	<u>State-centric centralist governance</u> - States - Other states in bi-lateral agreement - Nativist non-state organizations - Ethnic minority organizations in refugee sending countries	<u>State-centric corporatist governance</u> - States - Other states in bi- and multi-lateral agreement - National non-state organizations funded by the state - Local authorities	<u>Region-centric pluralist governance</u> - Regional organizations (eg. EU) - States - International organizations - Transnational non-state organizations - National non-state organizations - Local authorities	<u>Global corporate-pluralist governance</u> - International organizations - Regional organizations - States - Transnational non-state organizations - National non-state organizations - Local authorities



Table 1 outlines a four-fold typology of approaches to international protection, and they are described in further detail below. The descriptions of the four approaches should be regarded as models rather than accurate depictions of reality. The models will be used as a conceptual framework in PROTECT's comparative studies to outline the roles and contributions of international organizations, regional inter-state unions, states, non-state organizations, civil society organizations, media outlets, and individuals in international protection. It is not possible to find countries or organizations that are the same as the models below. We will most probably observe cases that combine characteristics of several models and even alternative models that are entirely different from those in Table 1. Despite this, such models are useful points of departure in large-scale comparative projects because they provide a common denominator for data collection and comparative analysis according to which one can depict the commonalities and differences between the countries or organizations that are studied.

The four-fold typology in Table 1 is constructed with respect to their suggested norms, governance modes, and discourses on international refugee protection. The four groups are distinguished from each other by (1) their position on the particularism-universalism continuum, (2) what they regard as the "natural" political unit (social group, nation, region, the world), and (3) what role and power they want to give to international organizations, states, non-state organizations, and private sector actors in global governance. Below, I elaborate more on their features.

## **2.1 Globalists and the right to international protection**

For globalists, humanity is an indivisible whole. On the universalism-particularism axis, they are positioned at the high end of the universalist wing. They prefer international institutions like the United Nations, World Bank, World Trade Organization, World Health Organization, and international courts to have more say in politics, especially in balancing the national and local particularities that create unfairness for people. As they believe nations or regional inter-state unions unfairly divide humanity, they want a *global multilevel polity*.

These preferences are projected on to globalists' approach to international protection as an international solidarity norm for meeting the protection needs of forcibly displaced people. For them, the right to international protection is an entitlement, and it is a duty of all to protect the refugees. The emphasis on international solidarity is unfolded in their design of the governance of international protection as a strengthening of the global institutions that safeguard the right to international protection through binding international agreements. At the same time, the globalists have a pluralistic approach to organizing international protection by facilitating involvement of all types of stakeholders – from international organizations, regional inter-state unions, states to transnational and national non-state organizations, civil societies, and private actors. Both in discourse and policy, the globalists regard international protection challenges as an international, universal responsibility and duty.

To capture the attributes of the GPCS, further qualifications are necessary. The distinction between market-driven and human rights-driven globalists is an important cleavage dimension within the GPCS. There are two types of globalists that represent distinct globalizing forces. While one globalizing force is energized top-down by the needs of the global and transnational markets that demand jurisdictions which make the national markets predictable for them and is less interested in citizen and human rights, the other is energized by bottom-up citizen politics and motivated by the needs and rights of persons seeking democracy, security, association, and good life.

Although not included in Table 1, the distinction between market-globalists and human-rights globalists is clearly manifested in their approaches to international protection, especially regarding its governance. The two approaches share the norms of international solidarity and international protection as an entitlement and duty. However, the market-oriented approach gives a decisive role to private sector actors' involvement in the governance of international protection. Concerning discourses, they suggest replacing public sector actors with private sector actors, which they believe will liberate refugees from "dependency" and empower them. Other benefits they see are transition from "humanitarianism", "public good" and "refugees as burden" to, respectively, "development", "private good" and "refugees as benefit" (Betts et al. 2012, Betts & Collier 2017).

## **2.2 Regionalists and the right to international protection**

For regionalists like Africanists and Europeanists, the world is composed of regions that compete in the international system. They are positioned somewhere in the middle between globalists and nation-statists on the universalism-particularism continuum. The idea of regionalism contains visions about supranational regional political (e.g., the European Commission, the African Union), juridical (e.g., the African Court of Justice, the Inter-American Court of Human Rights) and economic institutions (e.g., the European Central Bank) with more power than nation state institutions. Their vision of global order is a *world of regional inter-state unions*.

These features are echoed in the regionalists' approach to international protection. In encounters with massive refugee flows, the regionalists' human-rights idealism is somewhat dwindled, as compared with globalists, and it is supplemented with realpolitik concerns. The international solidarity norm is complemented, or may even be replaced, by a regional solidarity norm, as we observe in the New Pact proposed by the EU. Although the regionalists share globalists' view that international protection is a human entitlement and it is a duty of all to provide protection to refugees, this may be regarded as being contingent on some conditions like asylum seekers' numbers and protection capacity. Regarding the governance of international protection, regionalists tend to embed it in the existing multilevel regional governance mechanism with a tendency towards supranationalism. For this purpose, regional institutions and policies of refugee protection are invented such as the EU New

Pact's 'returns coordinator' and 'relocations'. The variety of actor types encouraged to participate in governance of protection includes nearly all types of actors but gives less room for international organizations and non-state organizations than what is the case in the globalist governance mode. Regionalist discourses on the right to international protection endorse the above depiction as well as regard refugee protection as a shared duty of the states within the regional inter-state union, thus curbing international solidarity to solidarity with the region of the world they belong to.

### **2.3 Nation-statists and the right to international protection**

For nation-statists, the world is composed of historically formed nation-states. Nation-statism should not be confused with any specific notion of nation – e.g., ethnic, civic, or multicultural nation. The idea of nation-statism sees the nation-state as the “natural” political entity in the international system, regardless of whether it is entrenched in an ethnic, civic, or multicultural idea of the nation. On the universalism-particularism continuum, nation-statists are positioned between the regionalists and nativists. Their vision of global order is an *intergovernmental world of nation-states*.

This is mirrored in nation-statists' approach to international protection in a variety of ways, depending on the type of nation-state they envision. For the purposes of this paper, I delineate the minimum denominators, excluding the states that have proceeded in a more nativist (e.g., Austria, Denmark, Hungary, Poland), regionalist (e.g., Germany, Italy), or globalist direction (Costa Rica, Lebanon, Turkey). Nation-statists usually have a constitutional asylum status in their international protection schemes in addition to the Convention status. Constitutional asylum norms vary from state to state, following national histories. To exemplify, many countries that experienced liberation wars from authoritarian regimes in the 20<sup>th</sup> Century in Europe have (or previously had) a mention of “freedom fighters” in their constitutional asylum rules (e.g., France, Germany, Greece, Italy, and Spain). Although they recognize international agreements and the Convention, nation-statists do not see refugee protection as a duty or international obligation, but rather as a voluntary and generous act of charity. Having their own conceptions of how to protect, the nation-statists oppose to the idea of a binding international protection system and but organize it multilaterally on a voluntary basis. They tend to exclude international organizations and foreign actors from their governance of refugee protection. As to discourses, the nation-statists endorse a refugee conception and a governance system in lines mentioned above, they tend to perceive international protection as a national matter and adopt forms of nationalizing discourses that empathize more with the refugees experiencing the same life-threatening problems as their nation faced in near history.

## **2.4 Nativists and the right to international protection**

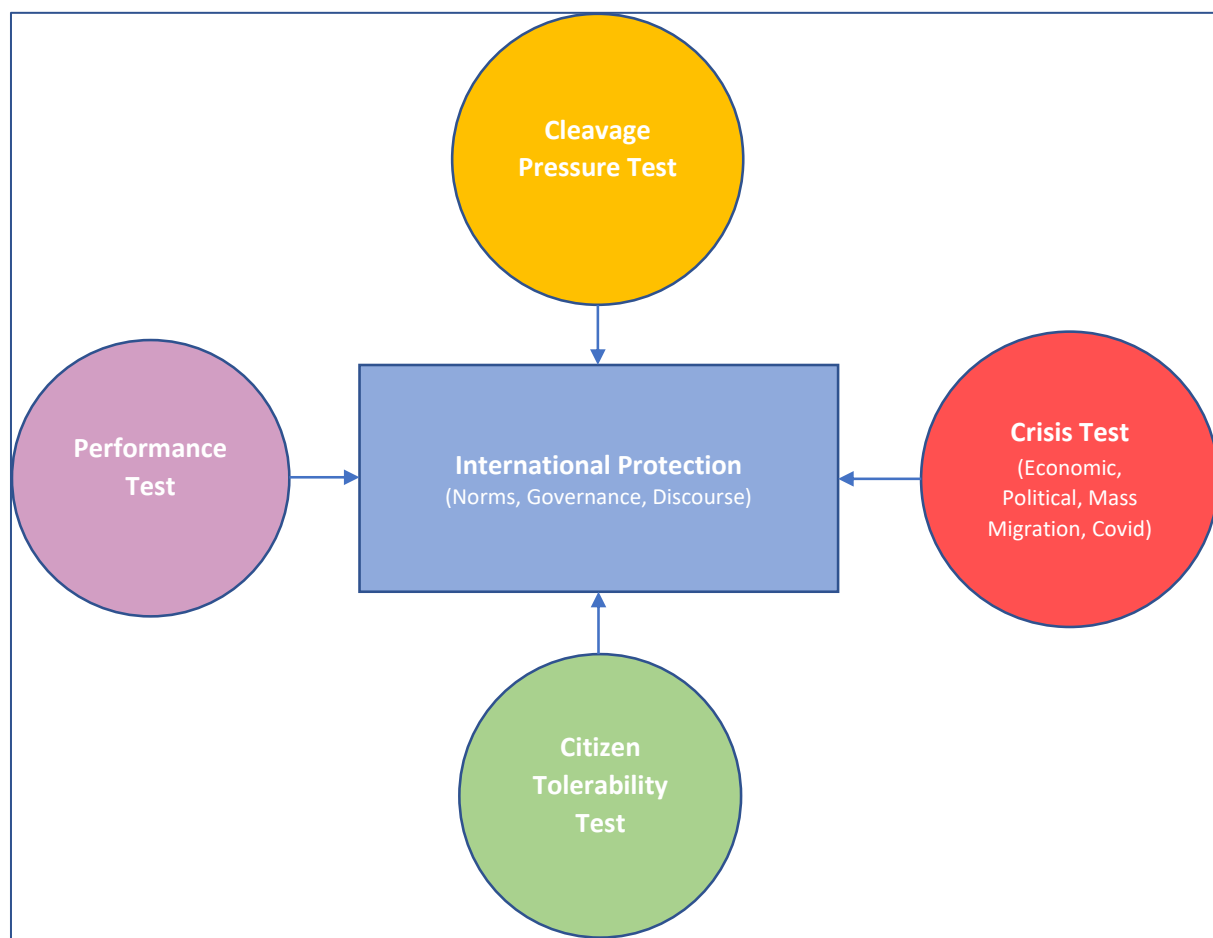
For nativists, the world consists of peoples that are defined by their ancestors' historical territorial origins. All politically determined borders are unnatural to them. Between universalism and particularism, they are positioned at the high end of particularism. That is, they regard privileging themselves over others as highly natural. Nativists are close to the idea of an ethno-national radical democracy that is vastly responsive to citizens' daily needs and concerns. As opposed to the other discourses depicted above, this implies a dislike of the rule of law, human mobility, checks-and-balances, civic nation-states, regional polities, and global institutions. The nativist vision of global order is a *world of natives in local societies* that rule themselves.

As documented by massive research, these premises are systematically reflected in nativists' approach to international protection. Most importantly, nativists do not distinguish between migrants and refugees. For them, there is no duty to protect others than their own. The only duty they have in relation to international protection is their own diaspora groups or their own emigrants living under the rule of foreign states. To protect them, they suggest unilateral actions or bi-lateral agreements with other states hosting them. They exclude all sorts of foreign actors from their international governance mechanisms. Regarding discourses, they oppose nearly all international obligations or collaboration except territory and autonomy claims on behalf of diasporic groups, condemnation and diplomatic and military intervention, and bilateral agreements. The absence of asylum and refugee protection is one of the most characterizing features of the nativist discourses.

## **3 Towards a cleavage theory-inspired research concept**

There is a need to understand what informs approaches to international protection mechanisms. Therefore, the cleavage theory inspired research concept starts by mapping stakeholders' contesting approaches to international protection in terms of how close or distant they are to the models in Table 1. The research in this first stage should reveal the norms, governance modes, and discourses available to and used by different stakeholders. In the second stage, the purpose is to assess to which extent different approaches to international protection, and which of their policy tools, facilitate or impede the implementation of the newly emerging protection policies – e.g., the GCR, the New pact, and new state policies – in ways that promote human rights. *Policy performance* tests can be done by studying the impacts that the norms, governance modes, and discourses in Table 1 previously had on the right to international protection. In the third stage, the objective is to identify the international protection policies (norms, governance modes, discourses) that accommodate human rights better than others, based on the results from the second stage.

Figure 1: A Policy Evaluation Model



It should be remembered that only a few of the policy suggestions brought by the GCR, the New Pact, and states are completely new. Most of these had been previously tried in different refugee situations, and some of them are now proposed for worldwide or region-wide use. This feature can be utilized in *policy performance tests* to gauge performance by using the past performance of the proposed policies as an indicator.

Without citizens' consent, policymaking attempts are in vain (Page&Shapiro 1983, Wlezien 1995, Burstein 2003). Thus, as part of the policy evaluation efforts in the third stage, *policy performance tests* should be complemented with *cleavage pressure tests* (pressure on policymakers from the GPCS) and *citizen tolerability tests* (acceptability of policy proposals by citizens). This can be done by identifying the essential features of policy proposals in the GCR or the New Pact or states' policies, like the EU's new policy innovation on relocations or the international solidarity norm, and study whether they have support among the citizens. While doing cleavage-pressure and citizen-tolerability tests, support to previously used policies that are known to the public (e.g., resettlement) can be studied through media framing and attitude survey methods whereas support to new policies that are not known to the public (e.g., relocations of the New Pact) can be scrutinized through survey experiments and fieldwork.

Earlier research has observed that international organizations, inter-state unions, states, and other stakeholders adapt their international protection policies to new conditions during crises, and they do so in a variety of ways. In this research, the crises included are the financial, political, mass migration, and the COVID-19 pandemic, which affected the functioning of the international protection system. The research concept here facilitates comparisons between normal times and crises times to enable us to observe how protection policies and their performances have changed and which policies have worked better in times of crisis. Consequently, the norms, governance modes, and discourses are also put on *crisis tests* by comparison of the respective time periods.

### **3.1 Assessing the impacts of norms**

Earlier research on the impacts of international protection norms has focused on several topics. A topic that frequently pops up in policy debates is the extension of the Convention's refugee definition to reflect new types forced displacement (e.g., climate change, severe poverty), new grounds for persecution (e.g., sexuality), new persecuting actors (e.g., transnational corporations, non-state actors, clans), and inclusion of subsidiary and constitutional asylum norms as grounds for granting people refugee status. That is, there is contestation about the validity of the convention and whether it is outdated or not. Further, the international solidarity norm has been quite a frequent topic, especially concerning policy debates on how to make states re-assume their responsibility to protect refugees. This norm has come to the agenda now more significantly than before with the GCR and the New Pact.

In the context of this specific research, I define successful international protection policy as one that advances the internationally recognized human rights in international protection. An important research component in this respect has to be legal-comparative and doctrinal studies in order to reconstruct the relationships between new policy initiatives coming from the GCR, the New Pact, and the states and the pre-existing human rights instruments. Both the GCR and the New Pact have references to the Convention and existing human rights instruments; however, it is not clear enough how the relationships between these are to be constructed during their implementation. In this sense, the GPCS-theory approach is important because there are competing proposals for constructing these relationships based on the different approaches to international protection in Table 1. Within the overall framework of this project, a legal-doctrinal study, accompanied with comparative case studies, must inform the rest of the project about which norms would potentially bring the new international protection policy instruments closer to the internationally recognizes human rights standards.

Earlier research (Sicakkan 2008a, b) has shown that single asylum determination procedures that combine a variety of norms as examination grounds, lead to lower asylum recognition rates. On the other hand, partly separate asylum procedures lead to higher asylum recognition rates. In single asylum procedures, the asylum claim is examined on all available legal grounds including subsidiary

and constitutional asylum grounds. The partly separate procedure examines asylum applications only based on the Convention grounds and then automatically transfers the unjustified applications to another procedure for examining whether there are reasons to give the applicant leave to stay based on other grounds, including the respective country's general migration rules. In entirely separate asylum procedures, asylum seekers have to lodge a separate application for each legal ground available in the respective country. The trend in the EU has been towards a single asylum procedure for more than two decades now, which is seen as cost-effective for the host states but might pose a risk to the right to international protection by diluting the Convention norms by combining it with other international protection norms.

In addition to the doctrinal studies of the relationship between new policies and human rights, statistical performance tests of the single, partly separate, and separate asylum procedures on refugee status determination can give valuable insights into the impacts of the norms contained by these procedures, assessing their impacts on refugee protection and putting them on the aforementioned GPCS-pressure, citizen-tolerability, and crisis tests. Although no policy proposals on extending the refugee definition is in the horizon, this issue will surely come on the agenda as the climate change starts leaving countries under water or turns them into wastelands. Therefore, the idea of expanding the refugee definition should be put on citizen tolerability and GPCS-pressure tests already now through a media discourse study and survey experiment.

### **3.2 Assessing the impacts of governance modes**

Governance of international protection is a massive research field. The academic and policy debates basically revolve around two aspects. First, whether international protection should be done in unilateral, multilateral, or supranational arrangements. Second, which stakeholders should be involved in international protection, in which roles, and with what kind of decision power. As Table 1 shows, both aspects are systematically related to specific approaches to international protection.

The multinational versus supranational organization of collaboration is directly related with the GCR's international solidarity norm well as the EU's flexible-and-mandatory solidarity norm. Further, the degree of independence that a state aspires to regarding how to contribute to international protection, decides what roles and decision powers it allows for international organizations and other stakeholders. Through the GCR, the UNHCR introduces a multi-stakeholder approach to international protection and responsibility-sharing, listing a long range of stakeholders – from intergovernmental organizations and states to non-state, civil society, and private sector organizations, and faith organizations. Despite such a concrete list of stakeholders, the GCR indicates no clear governance mechanisms and collaboration methods, except some new institutional arrangements (e.g., GRF and Asylum Support Platforms) at the UN-level which are meant to function mainly as coordination

instances. The New Pact of the EU, on the other hand, puts weighty emphasis on supranational coordination of international protection at its border zones while giving little role to non-state organizations and deploying at the same time third countries as contributing actors in the EU governance of international protection. Indeed, this is a strengthened version of the EU's current international protection policy minus the Dublin Convention, which is replaced by the EU solidarity norm. Hitherto, the EU has had few successful governance mechanisms in the area of international protection, and it needs to rely on the experiences of its member states. In these respects, both the UNHCR and the EU need knowledge about the best performing stakeholder networks and collaboration patterns. This can be done through multi-sited ethnographic studies of stakeholders' practices of protection and their networks and collaboration patterns in refugee-intense border zones.

In the international protection system, individual asylum has a special place. The right to individual asylum has been governed in a variety of ways by different states. Historically, individual asylum seekers' claims have been processed by the states where such claims are lodged. States have been organizing their asylum decision-making based on their own established national governance mechanisms. For example, in centralized states like France, asylum applications are usually processed by a central asylum determination office whereas federal states like Germany have had decentralized asylum decision-making by letting *Länder* process asylum applications. Especially the degree of asylum determination bodies' independence from the state has clear consequences for the quality of asylum decisions (Caestecker 2006, 2017). Further, whereas some states have been including intergovernmental, non-state, civil society organizations, and private sector actors in different roles and capacities – e.g., as co-decision-makers, as observers, or as service providers – in their asylum determination procedures, other states tend to organize these procedures exclusively within the state. These different ways of organizing the governance of asylum determination has consequences for both the quality of decisions and asylum recognition rates (Sicakkan 2008a).

Although the variation in the governance of asylum determination is huge among the EU member states, the New Pact does not have any implications about how governance should be organized at the member state level. Since the EU endeavors to achieve a fair asylum system across its member states that does not encourage asylum-shopping, the variation in the governance mechanisms of its member states should be regarded as a decisive factor. The questions of who should be involved in decisions about relocations and returns of individual asylum seekers, what roles other actors than the EU and the member states should have in the newly proposed border procedure, and how to arrange institutionally the first and second asylum decision instances, and who should be involved in decision-making in the first and second decision instance are left open in the New Pact. To implement the New Pact, if approved, the EU needs knowledge of which institutional arrangements among the stakeholders are needed in asylum procedures to achieve the best international protection quality.



### **3.3 Assessing the impacts of discourses**

Table 1 lists the policies preferred in the discourses of the four approaches to international protection. These are labeled as ethnicization, nationalization, regionalization (e.g., Europeanization, Africanization), and universalization of the international protection responsibility. When we do a preliminary analysis of GRC, we observe that its discourse universalizes the protection responsibility by promoting the international solidarity norm. The discourse of the EU's New Pact, on the other hand, Europeanizes the international protection responsibility by promoting solidarity only within the EU and excluding third countries from its newly suggested solidarity mechanisms. As noted in the beginning, many states have been using nationalizing discourses, which emphasize nation states' sovereignty in governing international protection. Ethnicizing discourses have been observed earlier in Greece's international protection approach which gave a special status to historical Greek-speaking minorities outside Greece. We observe the same discourse in Hungary, which in addition applies restrictive protection policies towards other people.

Universalizing, regionalizing, and nationalizing discourses are widespread among inter-governmental organizations, regional inter-state unions, states, and non-state organizations working in the field of refugee protection. Nationalizing and ethnicizing discourses are becoming increasingly more common among citizens. Also, nativist discourse hegemonies are emerging in some countries. The policy challenge in this respect is that these developments may affect policymakers' approaches to international protection (cf. Burnstein 2003). In such contexts, policies promoting international solidarity and human rights may not win the support of citizens, something which may impede the implementation of the GCR and the New Pact. It is important to compare the UNHCR's, the EU's, and other stakeholders' discourses with citizens' discourses on international protection when evaluating their feasibility through citizen tolerability tests.

### **4 A cross-disciplinary research concept**

The research concept introduced here views the GPCS as the main constraining context in which any stakeholders' international protection occurs. Therefore, it conceptualizes the contestations between different approaches to international protection as a cleavage in the GPCS. It proposes a research agenda which endeavors to identify the best performing norms, governance modes, and discourses in the different international protection approaches, using them as a policy toolbox. The policy challenge it addresses is the silence of the GCR and the New Pact regarding norms, governance modes, and discourses on the global, regional or state levels, which may be an impediment for the implementation of the GCR and the New Pact. The research to be conducted will have a broader application potential beyond the GCR, the New pact, and the states included in this study, including the evaluation of state policies as well as other stakeholders' approaches to international protection.

**Figure 2: Policy Evaluation Workflow**

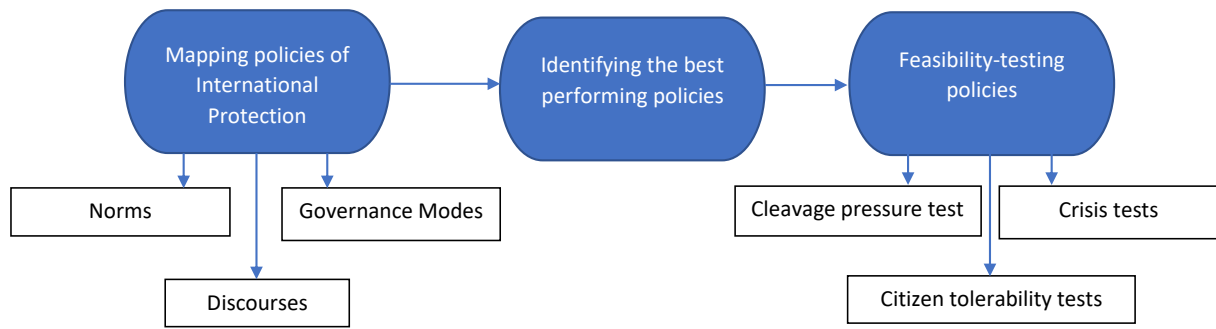


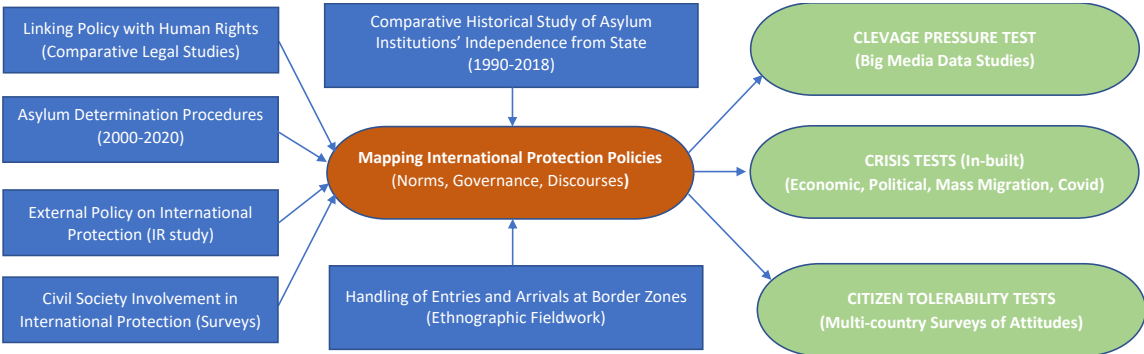
Figure 2 visualizes the workflow to achieve these objectives. There will be cross-disciplinary collaboration in each of the three components illustrated above. The cross-disciplinary research components under each main workflow item above are illustrated in Figure 3. We search for the different approaches to international protection (i.e., the different norms, governance modes, and discourses) in:

- the states and stakeholders' attempts to re-construct the legal relationships between the GCR, the Convention, and other human rights instruments that came into force after the Convention
- the history of asylum institutions with a focus on their degree of independence from the state since 1990
- the external policies of the EU regarding international protection that incorporate third countries into the EU's international protection efforts
- the institutional architectures of asylum determination procedures, both decision-making and service provision, since 2000
- the non-state actors' ways of involvement and patterns of collaboration in international protection
- the international collaboration between stakeholders in handling of entries and arrivals at border zones

The relationships between the GCR and the pre-existing international protection and human rights norms and instruments will be scrutinized in comparative-legal case studies of three jurisdictions (EU, Canada, and South Africa). Guild and Allison (2021) note that the GCR brings together, for the first time in one international document, the Convention and other human rights instruments that came into force after the Convention was signed. In the future, this may open a new opportunity for states to expand their legal examination grounds by incorporating these later human rights instruments.

However, the discussions before, during, and after the First GRF show that such re-constructions are contested, and the GCR may be used by some stakeholders to dilute their international protection responsibilities. Therefore, this research component maps how the GCR is received in the EU, Canadian, and South African contexts, the legal aspects of its incorporation and implementation in these three jurisdictions, and the contestations around whether the GCR should develop into a binding international law or remain as an advisory guide on responsibility-sharing. In these legal studies, the GCR and the EU protection policies are also put on crisis tests, including the crises of mass migration and the Covid-19 pandemic to reveal how the three jurisdictions adapt their norms, governance, and legal discourses in times of crisis and whether the crises are an impediment for linking the GCR’s implementation with human rights instruments.

**Figure 3: Research Components**



The features of the EU’s (15 countries), Canada’s, and South Africa’s asylum procedures since year 2000 are to be mapped. The relevant features of these countries’ asylum determination procedures will be coded in detail to measure their effects on the quality of asylum determination. This is complemented with a study of the EU’s externalization of migration policy through incorporation of third countries in its governance. We also probe into the effects of national asylum institutions’ degree of independence from the state structures by conducting historical comparative case studies of the EU (Belgium, France, Germany, Greece, Italy, and the Netherlands), Canada, and South Africa. And we delve into the handling of mainly undocumented refugee arrivals in the border zones of the EU (France, Greece, Italy, Spain) and Canada and South Africa through multi-sited ethnographic fieldwork.

These research efforts also include systematic reflections on how the refugee and Covid-19 crises affected the international protection of refugees. For example, our study of the impacts of asylum procedures include data about measures introduced as a response to crises as well as comparisons of the effects of asylum procedures during normal and crisis times. In addition, we will conduct surveys with non-state organizations and individual citizens as well as big-data media studies in order to

measure the acceptability of the norms, governance modes, and discourses proposed or observed in the GCR and the EU international protection policy. In the surveys, we pose questions about the policy measures that are suggested in the GCR and the New Pact. Further, the surveys and media studies are linked with each other through questions regarding the media channels that respondents use. What connects all research components throughout the study is each component's focus on the discourses and networks of stakeholders in their efforts to contribute to international protection, which will provide valuable data about the contestations and collaboration among the stakeholders.

## 5 Conclusion

To recap, the objective of the above-mentioned research efforts is to identify the best performing and the most acceptable norms, governance modes, and discourses of international protection in order to facilitate a human-rights oriented implementation of the GCR and the New Pact. Further, the conceptual framework above is constructed to devise a human rights-based international protection system by devising innovative norms, governance modes, and discourses that can support such a system.

The results of our research efforts can be used by any stakeholder to achieve their international protection policy objectives. As shown above, we focus especially on the areas where the UNHCR and the EU have a policy deficit or where they do not have clear enough policy objectives. These areas are the organization of the governance of international protection in a range of areas – from asylum determination procedures and protection in border zones to external policies.

Although this paper has adopted a policy focus in its presentation, the results of this research will also make significant contributions to scholarship. Its academic contribution can be briefly summarized as being the first application of cleavage theory on a global scale as well as mapping the global political cleavage system with massive sets of different kinds of qualitative and quantitative data on laws, institutions, discourses, networks, and contestation and collaboration patterns. In this sense, it brings in a new perspective to the refugee studies field.

## References

- Betts, A., Bloom, N., Omata, L.. 2012. Humanitarian innovation and refugee protection. *RSC Working Paper Series* no. 85. Oxford: OU Refugee Studies Centre.
- Betts, A., Collier, P. 2017. *Refuge: Transforming a Broken Refugee System*. Penguin Allen Lane.
- Burstein, P. (2003). The Impact of Public Opinion on Public Policy: A Review and an Agenda. *Political Research Quarterly*, 56(1), 29–40.

- Caestecker, F. 2006. Tradition und Tendenzen Europäischer Flüchtlingspolitik in Benz Wolfgang (Hg.) Umgang mit Flüchtlingen. Ein humanitäres Problems. Berlin: Deutschen Taschenbuch Verlag, 2006, pp. 73-92.
- Caestecker, F. 2013. Sweden's exception ability to organize its immigration in Pär Frohnert and Mikael Byström (ed.), *Reaching a state of hope. Refugees, Immigrants and the Swedish welfare state 1930–2000.* p.331-365. Lund: Nordic Academic Press.
- Caestecker, F. 2017. Prémices de l'institutionnalisation de la politique des réfugiés dans l'après-guerre, expérimentations en matière de protection des réfugiés dans l'Europe des années 1930 in: A. Angoustures, D. Kevonian et C. Mouradian (eds) *L'invention de l'OFPRA.* Rennes: Presses Universitaires de Rennes, pp. 47-64.
- Flora, P. Kuhnle, S. and Urwin, D. 1999. *State formation nation-building and mass politics in Europe. The theory of Stein Rokkan.* Oxford: Oxford University Press.
- Guild, E., Allinson, K. 2020. The impact of the Global Compact on Refugees on the legal protection of refugee rights: What now for the 1951 Refugee Convention? PROTECT Blog at <https://protectproject.w.uib.no/what-now-for-the-1951-refugee-convention/> (accessed 10 April 2021).
- Hooghe, L. and Marks, G. 2018. Cleavage theory meets Europe's crises: Lipset, Rokkan, and the transnational cleavage. *Journal of European Public Policy*, 25:1, 109-135.
- Koopmans, R. and Statham, P.. 2010. The making of a European public sphere: Media discourse and political contention. Cambridge: Cambridge University Press.
- Page, B., & Shapiro, R. (1983). Effects of Public Opinion on Policy. *American Political Science Review*, 77 (1), 175-190.
- Sicakkan, H.G. 2008a. *Do Our Citizenship Requirements Impede the Protection of Political Asylum Seekers? A Comparative Analysis of European Practices.* New York: Edwin Mellen Press.
- Sicakkan, H.G. 2008b. Political Asylum and Sovereignty-Sharing in Europe. *Government and Opposition* 43(2): pp. 206-229.
- Sicakkan, H.G. 2016. *Integration, Diversity and the Making of the European Public Sphere.* Cheltenham and Camberley & Northampton, MA: Edward Elgar.
- Sicakkan, H.G. and Heiberger, R. n.d. (forthcoming), Between Europeanism and Nativism: Exploring a Cleavage Model of European Public Sphere in Social Media. *Javnost the Public.*
- Wlezien, C. (1995). The public as thermostat: dynamics of preferences for spending. *American Journal of Political Science* 39(4): 981–1000.