



Protect

The Right to International Protection

Deliverable 1.3 The overall framework to be
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DEVisING THE POLICY TOOLS OF A HUMAN RIGHTS-BASED INTERNATIONAL PROTECTION SYSTEM

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Global Compact on Refugees (GCR) has brought new hopes and new controversies around international refugee protection. Although it does not replace the 1951 Geneva Convention on the Status of Refugees (Convention) but adds to it a framework to facilitate voluntary responsibility-sharing among states, there are divergent views about its potential impact: For some, it has a realistic potential to improve refugee protection (Türk and Garlick 2016), and it potentially increases states' protection commitments (Betts 2018). For others, it is too thin to address the current human rights and refugee protection challenges (Hathaway 2018), and it dilutes the right to seek asylum stipulated in the Convention (Chimni 2018). In PROTECT, a Horizon 2020-project with 12 partner universities located in Europe, Canada, and South Africa (<https://protect-project.eu>), we posit that GCR can be a new window of opportunity to improve the international refugee protection system if proper means are deployed in its implementation.

However, neither GCR nor other new policy initiatives – such as the European Union's (EU) Common European Asylum System (CEAS) and New Pact on Migration and Asylum (New Pact) – recommend any concrete tools for the states to use when adjusting their national protection policies. That is, while UNHCR and EU introduce new institutional frames and policy measures to facilitate and coordinate international collaboration on, respectively, global and regional levels, they leave the choice of protection tools mostly to states and other stakeholders. This may contribute to sustaining a multilateral, intergovernmental system where states prioritize their national interests and particularistic refugee protection norms, deploy governance mechanisms deriving from their historical state structures some of which may be inapt for international refugee protection, and conceive refugee protection from the perspective of their national citizenship discourses that may have narrower approaches to protection than the Convention (cf. Sicakkan 2004). Since the states and other stakeholders have such a massive room for maneuver, the quality of the international protection system depends more on the performance of national protection policies than the work of international organizations and other stakeholders.

However, there is no comprehensive overview of how the nationally inspired protection tools available to states and other stakeholders have been performing in the past or may perform in the implementation processes of GCR and the New Pact. In this respect, the death statistics in the Mediterranean, and the way mass refugee inflows are managed by states elsewhere, testify to that existing state infrastructures are not functioning well in situations of mass refugee arrivals. This is one of the main problems that GCR is trying to find solutions for. On the other hand, comparative research shows too that not all states have good records in ‘normal’ times, especially concerning handling of individual asylum seekers (e.g., Neumayer 2005, Sicakkan 2008). When there is such a diversity of national protection policies with different outcomes, it is worthwhile to assess how different state norms, modes of governance, and discourses that currently exist can facilitate or impede the GCR implementation processes. Therefore, PROTECT has set out to develop a new research concept (Sicakkan 2021a) and a targeted comparative research framework (Sicakkan 2021b) to identify and devise the norms, the modes of governance, and the discourses that are needed to bring the international protection system closer to high international human rights standards by using the GCR processes as a new opportunity to fill the policy gaps.

In this paper, we describe our expected outputs. First, we briefly remind about the main goals of PROTECT and outline the expected results from the project. Next, we delineate a frame for testing the feasibility of the best-performing norms, governance modes, and discourses uncovered in PROTECT’s other research components. Finally, we list the potential policy implications of our expected results.

1 PROTECT’s expected results and policy implications

PROTECT is a multifaceted, multi-level, and cross-disciplinary research project. As mentioned, its purpose is to assess whether or how GCR can be an opportunity to bring international protection closer to high international human rights standards. This includes GCR’s interactions with the Global Compact on Migration (GCM) and regional protection frames like CEAS and the New Pact. For this purpose, we explore:

- (i) new constructions of the relationships between the right to international protection and pre-existing international legal framework of human rights that best serve the goal of providing resilient human rights-based approaches to refugee protection (*rights*)
- (ii) the legal and institutional frameworks of governance that (have) best serve(d) the goal of providing a human rights-based international protection (*governance*)
- (iii) the attitudes and discourses of citizens and non-state-organizations as well as media framings that (have) best serve(d) the goal of providing public recognition to human rights-based approaches to refugee protection (*recognition*)

Table 1: PROTECT’s Expected Results and Policy Implications

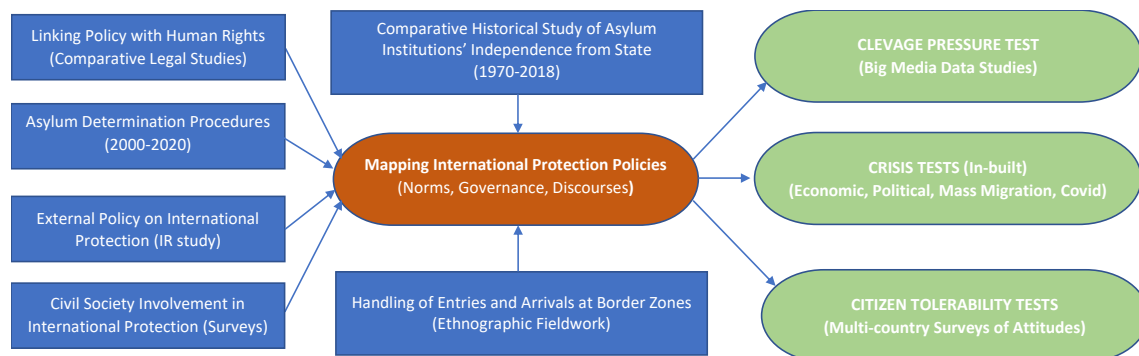
Research Component	Expected Results	Policy Implications
Constructions of the relationships between the GCR and human rights (WP2)	Ways of integrating the human rights protection instruments that came into force after 1951 and that are mentioned in GCR into the international refugee protection system on a global basis	Extension of the legal grounds for granting refugee status
Asylum determination procedures, including external policy (quantitative mapping) (WP3)	Legal and institutional frames of asylum determination that have performed the best in normal and crisis times (2000 and 2020)	New designs of governance for asylum determination
History of building asylum institutions (historical case studies) (WP3)	Ways of organizing <i>national asylum determination</i> that have historically performed the best in normal and crisis times (since 1970)	Best performing models for institution building for an effective asylum governance
Handling of entries and arrivals at border zones (ethnographic fieldworks) (WP4)	(1) Ways of organizing collaboration and networks between the whole range of international, national, local, and non-state organizations involved in handling <i>vulnerability at border zones</i> (2) Discourses of state and non-state actors participating in refugee protection work	Best performing designs for effective institutionalized collaboration at border zones
Civil society’s attitudes and involvement in international protection (quantitative organization surveys) (WP5)	(1) Ways of organizing collaboration and networks between non-state organizations and other <i>stakeholders involved in international refugee protection and asylum seeker aid work</i> . (2) Patterns of relationships between non-state organizations’ positions in the GPCS and attitudes to selected aspects of GCR, CEAS, and the New Pact	(1) New designs for effective collaboration at multiple levels of governance (2) Non-state organizations’ tolerability of potential policy proposals (Civil society pressure on policymaking)
Citizens’ attitudes to international protection (quantitative citizen surveys) (WP6)	Patterns of relationships between citizens’ ideological positions in the GPCS and attitudes to selected aspects of GCR, CEAS, and the New Pact.	Citizens’ tolerability of potential policy proposals (Citizen pressure on policymaking)
Media’s framings of international protection related news (media study, big data) (WP7)	(1) Patterns of relationships in media debates between ideological positions in the GPCS and stances on selected aspects of GCR, CEAS, and the New Pact. (2) Networks of stakeholders formed around the main migration/refugee discourses.	Influential public sphere actors’ tolerability of potential policy proposals (GPCS pressure on policymaking)
Final comparative study (WP8)	Norms, modes of governance, and discourses that best serve the goal of creating and sustaining a human rights-based international protection system which is also resilient in crisis times.	The norms, governance modes, and discourses needed to sustain (or devise) a resilient international protection system

Whereas the first five research components seek to discover the international protection tools that are instrumental in providing a human rights-based international protection system, the others assess their feasibility. The last research effort (WP8) brings these components together in order to devise an overall system of international protection that is both resilient during crises and acceptable for citizens, non-state organizations, states, and regional and international organizations.

2 Testing the ingredients of a resilient international protection system

In its first four components in Table 1 (WP2 to WP4), PROTECT uncovers the norms, the modes of governance, and the discourses that have been working the best with a focus on normal times and crisis times. The first part of the non-state organizations survey (WP5.1), where we study these organizations’ networks and collaboration patterns, is also included in this mapping exercise. The logic behind this is to identify the elements of the current international protection system that can be used further in protection work. In the second part of the non-state organizations survey (WP5.2), where we study their attitudes to selected protection policies, and in the rest of the research components (WP6 and WP7), we assess the factors that can affect the viability of the norms, governance modes, and discourses observed, including GCR, CEAS, and the New Pact, by asking the citizens, non-state organizations, and media platforms what they think about them.

Figure 1: Testing the Core Ingredients of an International Protection System



Source: Sicakkan 2021a

These research components feed results into the final comparative study (WP8), where we perform a final synthesis assessment of how effective and realistic it is to use the best performing elements altogether as core elements of a new international protection system. Further, PROTECT’s main policy recommendations will be made in this final comparative study. The main criteria for selecting policy recommendations are their past performance and their performance in our three feasibility tests:

2.1 Crisis tests

The global and regional crises since the 1950s show that the international protection system locks down when faced with large-scale crises. This concerns economic, political, mass migration, and public health crises. A public health crisis is currently observed in connection with the ongoing Covid-19 pandemic, which resulted in border closures, curfews, and mobility restrictions. Events during the last two decades have shown that the international refugee protection system is not immune to crises.

During global financial crises that lead to mass unemployment and significant income losses, national politics is usually reduced to identity politics among social groups competing for limited resources (Fukuyama 2018). When a crisis hits, new discourses emerge that aim to justify limiting powerless groups' access to resources. Minorities, marginalized groups, immigrants, and refugees are usually the very first victims targeted by such discourses. Discourses comprise scapegoating of migrants, refugees, international organizations, and state and civil society elites that remain committed to their countries' international responsibilities. When the Oil Crisis hit the world in 1973, the fastest changing policy domain was migration policy in the Global North. This was accompanied by public discourses that justified restrictive migration policies (Castels and Kosack 1973).

During crises, populist parties usually make use of such discourses to attract voters in elections (cf. Caiani and Graziano 2019), something which translates the new discriminatory discourses into restrictive protection policies. Currently, this has turned into a democratic backsliding (Bermeo 2016), including established democracies. When responding to citizen grievances, governments tend to re-channel the limited public resources to state-bearing, powerful citizen groups from international protection and marginalized groups. In this sense, economic and political crises are closely interconnected, and their effects are amplified when they collide with mass migration and refugee inflows.

The norms and governance modes that we scrutinize in the third research component (best-performing governance modes between 2020-2020 in 17 countries and historical analyses of asylum institution-building in Belgium, France, Germany, Greece, Italy, the Netherlands, Canada, and South Africa between 1970-2018) give us a unique opportunity to measure the long-term effects of crises on international refugee protection. This includes both their individual and joint effects. Further, ethnographic fieldworks in France, Greece, Italy, Spain, Canada, and South Africa will provide additional, in-depth information about the challenges in crisis times, particularly concerning the Covid-19 pandemic and vulnerable groups, and their possible solutions.

The crisis tests will be performed by comparing how different norms, governance mechanisms, and discourses perform in normal and crisis times. The crises included are the economic crisis of the post-industrial transition from the 1970s onwards, the latest global economic crisis that started in 2007, the still ongoing democratic backsliding in the Global North during the 2010s, and the Covid-19

pandemic that arrived the Global North in the beginning of 2020. PROTECT's media analyses of public sphere discourses in 17 countries, including 14 EU countries, the USA, Canada, and South Africa, will inform us about the effects of these crises on citizen attitudes and discourses in the public sphere. This will enable us to look at the chain reactions within the crisis-discourse-policy nexus.

2.2 Citizen-tolerability tests

Few governments that score reasonably high on democracy indexes will introduce policies that are unpopular among citizens. On the other hand, citizens' attitudes are not shaped only by their beliefs, desires, and preferences but are contingent also on factors that are outside their control. These are, among other things, availability of correct information, exposure to false news, political orientation, collective identities, dominant discourses, feelings of insecurity, economic status, demographic factors, etc. No matter how they are shaped, citizen attitudes are a pressure factor on policymaking.

PROTECT maps citizens' attitudes to international protection at two levels: organized civil society level and lay-citizens level. We pose the same questions to non-state organizations and individual citizens. In addition to questions about regular demographic and causal factors used in similar studies, both surveys contain questions mapping the respondents' positioning within the GPCS and their attitudes to international protection in general and their approval of the protection tools and policies specified in GCR, CEAS, and the New Pact. In this sense, the surveys directly measure citizens' approval of the refugee protection measures introduced by GCR, CEAS, and the New Pact. This also includes some protection measures that are being devised by PROTECT. The surveys incorporate questions about citizens' use of media and their sources of information, linking the survey to PROTECT's big-data media studies. After having identified the best-performing norms, governance modes, and discourses in other research components, the final comparative study will evaluate their acceptability by citizens.

2.3 Cleavage-pressure tests

PROTECT maps the interplays between the three dimensions of international protection – rights, governance, and recognition - within a cleavage theory model (Sicakkan 2021a). Achieving a resilient human rights-approach to international refugee protection depends on the resources, powers, and persuasiveness of the actors that partake in the global struggle over international refugee protection. In global politics, political actors position themselves in relation to certain visions of world political order competing in a global political cleavage system (GPCS) – i.e., globalism, regionalism, nation-statism, and nativism (cf. Sicakkan 2021a for definitions). The GPCS is the main constraining context in which international protection occurs. PROTECT conceptualizes the contestations between different approaches to international protection as a cleavage in the GPCS.

In this respect, it is important to detect the potential tensions that may arise when different policies and measures are put into use by states and stakeholders. To make this more concrete, an example is some non-state organizations' attempts to rescue refugees in the Mediterranean Sea and the subsequent state prosecutions of them for going against state policies to deter potential migrants and refugees from travelling to Europe. After having run hundreds of missions to save migrants from drowning in the Mediterranean, for example, the ship *Iuventa* and its crew from the German NGO *Jugend Rettet* (Youth Rescue) were forced ashore by the Italian Coast Guard in August 2017 and prosecuted for helping drowning refugees. The Italian authorities encountered a huge global pressure against prosecuting NGOs for saving human lives, a policy which became unpopular worldwide after media pressure.

Another example is the German Chancellor Angela Merkel's welcoming words on refugees in 2015 and, when Hungary and other EU border states were violently deterring them, Germany's generous admission of refugees. The German policy triggered conflicts among EU member states as well as appraisals by humanitarian organizations and media. These happened when states were concerned about mass refugee arrivals and humanitarian organizations were worried about not being able to save refugees' lives. These two cases illustrate the importance of the GPCS pressure when introducing policies and new measures.

Global cleavage pressures on norms, governance modes, and discourses of international protection are uncovered by doing big data analyses of discourses on refugees and refugee policies and stakeholder networks around these discourses in social media and other internet media. This is done in two ways: First, by inductively mapping the characterizing traits of major discourses without imposing any theoretical search criteria on the data material. Second, by searching for the discourses around theoretically defined international protection models. The latter mapping is done by using the four models that are outlined in PROTECT's concept papers – nativism, nation-statism, regionalism, and globalism (cf. Sicakkan 2021a,b). Whereas the inductive mapping will inform about potential pressures not foreseen by PROTECT's conceptual framework, the theoretically informed mapping will give clues about global cleavage pressures on currently known, concrete protection models.

In a globalized world, it is a challenging task to formulate policies that does not affect the interests of other players in global politics. However, it is usually possible to navigate past many of the hindlers if one knows what they are and where they are located. In the final comparative study, results from these two mapping exercises will allow us to evaluate the potential pressure on policymakers when they attempt to introduce new norms, governance mechanisms, and discourses. Also, cleavage-pressures on the policies specified in GCR, CEAS, and the New Pact are to be specially evaluated.

3 Aligning policies with high international human rights standards

GCR is a new opportunity for all political groups to influence the direction of change in the international refugee protection system. This concerns also the processes related with CEAS, the New Pact, and state level policymaking. In global politics, there is a plethora of approaches to international protection, the proponents of which endeavor to instrumentalize GCR, CEAS, and the New Pact to make their viewpoints the fundament of a worldwide protection model. The main policy challenge in this connection is to steer the policy change processes towards high international human rights standards.

PROTECT's final comparative study will demonstrate how certain norms, governance modes, and discourses are tied to certain political groups in the global political cleavage system, each of which gives different importance and weight to human rights of migrants and refugees as compared with citizen rights and privileges. The study will highlight ways of dealigning the human rights of refugees from political groups' divergent political visions, rendering international protection a public good for the benefit of all. By assessing which norms, governance modes, and discourses have been bringing the international protection system closer to human rights, PROTECT identifies the instruments of a human rights-based notion of international protection. These can be used in the implementation of the GCR and other refugee protection frameworks.

PROTECT's second research component maps different reconstructions of the relationships between GCR and international human rights instruments. In this sense, this component informs the other research components about the norms that best link international protection with human rights. The third component maps the governance modes in asylum determination that give the most humane outputs in international protection. The fourth component does the same for vulnerable groups in limbo at border zones. Components five to seven assess the feasibility. That is, all of PROTECT's research components aim to uncover the ingredients of a human rights-based international protection system that is resilient and feasible. The final product of PROTECT will be a set of instruments that can be deployed in policymaking on international protection.

4 Potential policy implications

Diversity of states' asylum determination systems and collaboration methods in refugee-intense border zones may be an impediment or facilitator for the implementation of GCR, CEAS, and the New Pact, if passed as law in the future. Also, the struggles in global politics among ideological groups exert significant pressure on policymakers. PROTECT is trying to identify the factors that minimize the adverse effects of some governance mechanisms, norms, and discourses on the right to international protection and devise new ones where needed.

Each research component of PROTECT will report on the policy implications of their findings in detail by issuing policy briefs. Furthermore, policy implications will be discussed at more length in our academic publications. In this paper, we only list PROTECT's more general policy implications.

The most important policy implication of PROTECT is related with the multi-lateral, intergovernmental nature of international protection in general, and of GCR in particular. Once our results are confirmed, we will have knowledge of which instruments lead to a human rights-based international protection system. This should have consequences for states' and stakeholders' choices of protection tools and policies. This means that, in contrast to what is the case now, UNHCR, EU, and other interstate unions, like the African Union, may need to advise their member states about how to organize their norms and governance systems for international protection. *If our hypotheses prove true*, we may recommend the UNHCR and the EU to encourage their member states to:

- include in their asylum procedure the human rights instruments that came into force after the 1951 Refugee Convention
- organize their asylum procedures in separate bodies that are independent from state structures
- include multiple stakeholders institutionally in their asylum decision bodies and asylum procedures
- introduce partly separate asylum procedures where each application is first examined on Convention grounds and, if not granted, automatically transferred to other grounds, including subsidiary, constitutional, and humanitarian grounds
- expand EU's innovative "relocation" tool to neighbour countries to achieve more international solidarity beyond EU borders and export it to other regions
- separate the norms, governance, and discourses of international protection more clearly from migration policy objectives to avoid dilution of international protection in migration policies
- introduce discourses that clearly distinguish between refugees and migrants in order to increase society's acceptance of refugees
- introduce duly authorized agile on-site coordination agencies at refugee-intense border zones to organize well-functioning collaborative networks of stakeholders
- make basic rights, including health rights, independent of migratory status by law, including the times of refugee influxes, pandemics, and economic and political crises
- keep legal pathways to safe territories open at all times

As underlined, these policy implications still need to be supported by systematic, comparative empirical evidence, which is what PROTECT is endeavouring to do.

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