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**The Global Spread of
Safe Country Policies:
Introducing the
SACOP Dataset**

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The Global Spread of Safe Country Policies: Introducing the SACOP Dataset

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Abstract

Safe Country Policies have been a central tool used by states to restrict access to asylum. Despite the salience of such policies for both host states and people seeking protection, we lack a coherent conceptualization of the different types of Safe Country Policies and systematic information on their adoption in all world regions. Aiming to fill these conceptual and empirical gaps, I introduce the Safe Country Policies Dataset (SACOP), which provides original information on the adoption and characteristics of Safe Country Policies in 195 states from 1951 until 2021. Drawing from this dataset, we learn that Safe Country Policies are not only widespread in the Global North but are increasingly being adopted by states in the Global South. The global spread of these policies does not only challenge the principle of responsibility-sharing in asylum governance, but it may also create new patterns of injustice between states in regions that host the bulk of displaced people.

Keywords

Asylum, migration data, refugees, responsibility-sharing, safe country policies

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1 Introduction

Since the 1960s, states have restricted access to refugee status determination and protection by introducing Safe Country Policies (SCPs). SCPs are policies that allow states to either reject an asylum application in an accelerated procedure (by arguing that an applicant originates from a country in which no persecution generally prevails) or to shift responsibility for examining an asylum application to another country that is deemed to be safe (see, e.g., Costello 2005; Freier, Karageorgiou & Ogg 2021). As SCPs tend to disincentivize people from seeking protection in a host state, they are perceived as key elements of the “architecture of repulsion” (FitzGerald 2019, p. 6), the “deterrence paradigm” (Gammeltoft-Hansen & Tan 2017, p. 30), and the “externalization of migration control” (Boswell 2003, p. 622). While most measures aim to hinder people seeking protection from physically reaching national territories, SCPs restrict formal access to asylum procedures for those who have successfully crossed national borders. Because most SCPs allow states to shift responsibility for an asylum applicant to another state, the unilateral adoption of such policies tends to challenge the principle of responsibility-sharing among states. In addition, the use of SCPs may lead to a situation of *refugees in orbit*, in which no state accepts responsibility for assessing an asylum application.

SCPs have been subject to critical scrutiny by legal scholars questioning their legality (e.g., Goodwin-Gill 1992; Moreno-Lax 2015), political scientists studying their mobility (e.g., Lavenex 1999; Engelmann 2015), and civil society organizations calling their safety into question (e.g., Amnesty International 2003; ECRE 2015). Because comparative migration research focuses primarily on states in the Global North¹, we lack systematic information on the adoption and characteristics of SCPs in all world regions. This North-centrism in refugee studies is especially striking as 86% of displaced people worldwide are hosted by developing countries (UNHCR 2020). Aiming to tackle this knowledge gap, I introduce the Safe Country Policies Dataset (SACOP), which features systematic information on the adoption and characteristics of SCPs and National Asylum Frameworks (NAFs) in 195 countries from 1951 until 2021.

Drawing from the dataset, we can differentiate two waves of legislation. In the first legislative wave from the 1950s, states accepted and regulated their responsibility toward people seeking protection and established NAFs. In a second legislative wave, from the 1960s until the present, states have introduced SCPs and limited their responsibility without formally repudiating international refugee law. Thereby, states have used different types of SCPs, applying techniques of rejection, deflection, and repulsion to restrict access to refugee status determination and protection. The first legislative wave signaled the juridification of asylum and indicated state solidarity with refugees (at least formally) and potentially would have set the ground for an equal distribution of responsibility for the protection of refugees among states. The second wave, in contrast, has witnessed the spread of policies limiting asylum access and reflects a move away from the principle of responsibility-sharing. The legislative waves are closely related: only states that have adopted a NAF and recognize responsibility toward people seeking protection may then opt to reduce their responsibility by using SCPs. As the adoption patterns of NAFs thus pre-determinate the adoption patterns of SCPs (at

¹ However, the North-centric bias in refugee studies does not imply a total absence of studies focusing on asylum policies in the Global South. Notable empirical or conceptual contributions to comparative research on asylum policies in the Global South include, for example, Adamson & Tsourapas (2020), Blair, Grossman & Weinstein (2021a), Chimni (1998), Davies (2006), Freier (2015), Hammoud-Gallego (2021), Khan & Sackeyfio (2021), Klaaren & Rutinwa (2004), Milner (2009), Natter (2018), and Norman (2020).

least to some extent), the spread of NAFs is given equal attention in the present paper. By mapping the global spread of SCPs, we find that restricting access to asylum procedures by using such policies is not only a standard response of states in the Global North but has become increasingly popular in parts of the Global South, especially in Central Asia and Sub-Saharan Africa.

The paper is divided into three broad parts – conceptual, empirical, and interpretative – and proceeds as follows. It begins with a conceptual discussion, in which I present the SACOP dataset and different types of SCPs. Next, in the empirical part, I map the emergence of NAFs and the temporal and spatial adoption patterns of SCPs in all world regions. Finally, in the interpretative part, I identify the juridification of asylum and the deflection of responsibility as major global trends in asylum governance. Not only does the global spread of SCPs challenge the principle of responsibility-sharing in asylum governance, but it may also create new patterns of injustice between states in regions that host the bulk of displaced people.

2 The Safe Country Policies Dataset (SACOP)

The Safe Country Policies Dataset (SACOP) provides original and systematic information on the introduction and substance of NAFs and SCPs in 195 states from the adoption of the 1951 Refugee Convention through to 2021.² Compared to other datasets on asylum and migration policies (e.g., DEMIG, IMPIG, IMPALA), the SACOP dataset is more specific by focusing especially on the adoption and characteristics of different types of SCPs, but broader in terms of temporal and geographical coverage. Moreover, in contrast to the literature on SCPs (e.g., Costello 2005; Goodwin-Gill 1992; Moreno-Lax 2015), the coverage of the SACOP dataset extends beyond the states of the Global North, allowing us to map the temporal and spatial adoption patterns of NAFs and SCPs in all world regions.

2.1 Conceptualization and Categorization

The conceptualization of the SACOP dataset³ is essentially based on the definitions of NAFs and the categorization of different types of SCPs.

National Asylum Frameworks

The variable National Asylum Framework indicates whether a state has regulated the key features of asylum in domestic law. Establishing a NAF is often a stepwise process and does not necessarily imply the adoption of a single national law on asylum and refugees. For instance, some states formally recognize the right to seek asylum in the constitution or adopt regulations or decrees that lay out some aspect of refugee protection before establishing a more comprehensive asylum law. Other states lack a dedicated asylum law but thoroughly regulate refugee protection in several pieces of legislation or a more general law on migration. Therefore, the existence of a NAF does not necessarily signal the adoption of a unified domestic asylum law; nor does the absence of such a law imply that the critical features of asylum have not been enshrined in domestic law. For the

² The SACOP (Version 1.1) data and codebook can be publicly accessed through the repository Zenodo via the following link: <http://doi.org/10.5281/zenodo.5886863>.

³ An interactive visualization of the dataset, designed by Andreas Perret (nccr – on the move), can be found here: <https://tabsoft.co/3AUKrRu>.

SACOP dataset, a state is found to have established a NAF when it has adopted one or more legal texts that (1) list the grounds on which a person or group receives protection, (2) identify the authority responsible for examining an asylum application, (3) clarify the procedure for granting protection, and (4) regulate the rights and obligations of refugees in a host state.

A state thus has to cumulatively meet four criteria to be recognized as having established a NAF. It is not necessary for the process of granting protection to be based on an individual refugee status determination – legal texts that are based on group determination can also form a NAF, as long as all above-mentioned criteria are met. A NAF can be based on a relatively short piece of legislation when all key features of asylum are covered, as is the case with Costa Rica's *Decreto ejecutivo no. 14845-G*, enacted in 1983. In contrast to this example, some states have extensively regulated the specifics of refugee protection but left out essential details such as the criteria for granting protection or the process of refugee status determination. As such, they are not viewed as having established a NAF. Moreover, to be viewed as contributing to the establishment of a NAF, legal texts are supposed to use terms such as "asylum seeker" and "refugee", and not regulate the stay of people that could potentially seek protection under categories such as "alien", "foreigner", or "infiltrator".

Safe Country Policies

The types of SCPs used by migration scholars derive from the terms used in national and international laws. While refugee studies has witnessed a proliferation of terms, in general, three types of SCPs are distinguished: Safe Country of Origin Policies (SCOPs), First Country of Asylum Policies (FCAPs), and Safe Third Country Policies (STCPs) (see, e.g., Byrne & Shacknove 1996; Costello 2005; van Selm 2001). While the use of these categories of practices in the academic literature secures the exchange of knowledge between practice and academia, it tends to mix up policies with distinct logics and implications in the term STCPs. Therefore, I differentiate between two types of STCPs and differentiate an additional type of SCP with a distinct underlying logic using the term "Safe Fourth Country Policy". In so doing, I take up the calls of scholars advocating for the "fourth country" category to describe practices by which states refuse responsibility toward people seeking protection based on bilateral agreements with other countries to which an asylum seeker has not necessarily a connection (Bar-Tuvia 2018, p. 476; Ghezelbash 2020, p. 501).

Safe Country of Origin Policies (SCOPs) allow states to reject an asylum application based on the reasoning that the applicant originates from a country in which no persecution generally prevails. Based on *First Country of Asylum Policies (FCAPs)*, a state is allowed to deny access to refugee status determination when an applicant has already been granted protection in another country. Through a *Safe Third Country Policy 1 (STCP1)*, states may refuse responsibility for examining an asylum application when the applicant has a substantial or personal connection (i.e., family, visa or residence permit, asylum application lodged or rejected, voluntary stay over five months) to another country, in which the applicant could have applied for and been granted protection. Based on a *Safe Third Country Policy 2 (STCP2)*, a state can deny responsibility when a weak or coincidental connection to such a country exists (i.e., no substantial or personal link, connection based on transit, or voluntary stay under five months). *Safe Fourth Country Policies (SFCPs)* are based on a bilateral agreement between the host state and another country that accepts the responsibility for determining an asylum application and granting protection, irrespective of whether the applicant has any link to this country.

These types of SCPs differ regarding the country that is found to be safe in terms of the connection to the other country and the technique applied to deter people from seeking asylum in host states. While for the SCOP, the country of origin is perceived as a safe country and the host state formally accepts responsibility for examining the asylum application, for all other SCPs, access to refugee status determination is already restricted, and the country that is deemed to be safe is one other than the country of origin and the host state. The SCOP is thus based on a *technique of rejection*, whereas the FCAP and the STCPs are based on a *technique of deflection*. The SFCP, finally, is instead based on a *technique of repulsion*, based on which states tend to refuse responsibility for all asylum seekers.

2.2 Data Collection and Data Coding

SACOP is based on data collection and coding of national migration and asylum legislation⁴ and thus focuses on de jure law, not de facto implementation and case law.⁵ The data collection is based on extensive online research of national and international law databases, whereby the coding of the legal texts has been carried out according to the definitions of NAFs and SCPs and the variable descriptions laid out in this working paper and the codebook. The data collection and coding have been realized by the author of this working paper and two research assistants. Based on the available language skills, legal texts in English, French, German, Italian, Spanish, and Portuguese could be analyzed and coded in the original language. Yet, whenever possible, reference is made to English translations of the legal texts found in national or international law databases. Overall, 498 legal texts were found to be potentially relevant for coding, out of which 472 (94.8%) could be accessed and analyzed.

For every state, the data collection and coding followed a four-step procedure:

- 1) First, it needed to be determined whether or not a state has established a NAF. This first step derives from the reasoning that a state may only legally restrict access to asylum procedures if it has adopted legislation that regulates the asylum procedure. A state that has not adopted a NAF has no incentive or reason to adopt an SCP into domestic law. To establish whether a state has adopted any legal text that could form a NAF, two sources were systematically verified for every state: the latest applicable UNHCR submission to the Universal Periodic Review and the latest country reports of the US Department of State available at the time of the coding. When both sources provided clear and consistent information that the respective country has never adopted any legal text that could form a NAF, the country was coded as neither establishing a NAF nor any SCPs. When information was contradictory or unclear, the secondary literature on the respective state was reviewed, and national and international law databases were checked to decide whether a state had adopted a NAF. States that were found to have established only some relevant features were coded as not having established a NAF, and a respective remark was included in the dataset. Overall, 73 countries were found not to have established a NAF and have been excluded from the subsequent steps.

⁴ The term “legislation” as it is used in this working paper refers to a wide variety of legal texts and includes, among others, decrees, regulations, and laws.

⁵ While the implementation gap of asylum laws in the Global South (see, e.g., Lavenex 2018) might imply that asylum and migration laws are of little relevance in this world region, to address these gaps requires reliable information on the adoption of policies and laws in the first place. Moreover, recent research shows that displaced people are rather well-informed about policies in potential host states and that the knowledge of these policies affects their decisions (Blair, Grossman & Weinstein 2021b; Holland & Peters 2020).

For reasons of comprehensibility, all legal texts that entail at least some elements of a NAF have been listed under the legal sources.

- 2) Second, for every state that was found to have established a NAF, a list of all original and unamended legal texts on asylum and refugees was compiled. The most recent legislation cited in the relevant UNHCR submission to the Universal Periodic Review served as a starting point. Based on the references in this legal text that were replaced, preceding legislations were searched, whose references led again to preceding texts. This procedure was applied until no previous legal text on asylum and refugees could be found. When a legal text did not contain any references, the secondary literature on the respective state was used to compile a list of national legislation on asylum and refugees that has been officially published in the gazette or any other official source. Then, national and international law databases were searched to find the referred legislation and to complete the list of legal texts. Legal texts covering only specific issues – such as the organization or functioning of an administrative body or the granting of visa or residence permits for people seeking protection – without any potential reference to SCPs were excluded and neither listed nor analyzed in detail. For Australia, Europe, and North America, it proved most successful to start with official repositories of national laws on governmental websites and gazettes. For other world regions, it was more effective to first search regional or global law databases. For every state, the national legislations of the databases Refworld of UNHCR and NATLEX of the International Labour Organization, as well as the national laws of the European Country of Origin Information Network database, were searched. In addition, regional law databases such as the Refugee Law Reader that focuses on Asia and Africa, the Asylum Information Database focusing on Europe, the database of the Pacific Island Legal Information Institute, or the database Legislationonline of the Office for Democratic Institutions and Human Rights that focuses on states of the Organization for Security and Co-operation in Europe (OSCE) were searched. Based on this extensive online research of these and additional national and international repositories and law databases, the vast majority of the original and unamended legal texts could be accessed.

- 3) Third, for every state, the coding started with a content analysis of the first relevant legal text published in the official gazette or any other official source.⁶ Then, any subsequent legislation was reviewed until it was found that a state had adopted all types of SCPs or all national legislation on the list had been searched.⁷ If an SCP was found in a legal text, whether the SCP might have been adopted in an amendment prior to that legislation was verified. In such a case, prior amendments were searched, and if an SCP was found to have been introduced via an amendment, the respective amendment was added to the list of national legislation. In general, SCPs come at the beginning of legislation under exclusion reasons for granting protection, or they are listed as grounds for inadmissibility or examples

⁶ The year of publication was selected as it appears most relevant for the aim of the study – namely, to ascertain the potential influence that the adoption of an asylum policy in one country could have on the adoption of an asylum policy in another country.

⁷ In three cases bilateral agreements or multilateral conventions have been coded as having introduced SCPs at the national level. First, in the European context, the Dublin Convention (and the subsequent Dublin II and III Regulations) are coded likewise for EU member states, as their adoption is compulsory for these states. Second, the USA-Canada Agreement of 2002 has been coded as STCP given its outstanding relevance due to the geographical and political position of both states for people seeking protection. Third, all bilateral agreements that enclose the SFCP have been coded similar to the adoption of SCPs in domestic law, since these policies are necessarily based on such agreements.

of manifestly unfounded asylum applications. While the placement and wording of asylum and migration laws generally leave little room for interpretation as to the existence of an SCP, the distinction between the STCP1 and STCP2 has proven to be challenging as in most legislation, the connection requirements that determine which third country could be held responsible is formulated rather vaguely. Therefore, it was decided that if legislation does not name a strong connection requirement to another country – such as a family link, visa or residence permit, asylum application lodged or rejected, voluntary stay over five months – it is coded as STCP2 because it cannot be excluded that a coincidental or weak connection is already viewed as sufficient for shifting responsibility to another state.

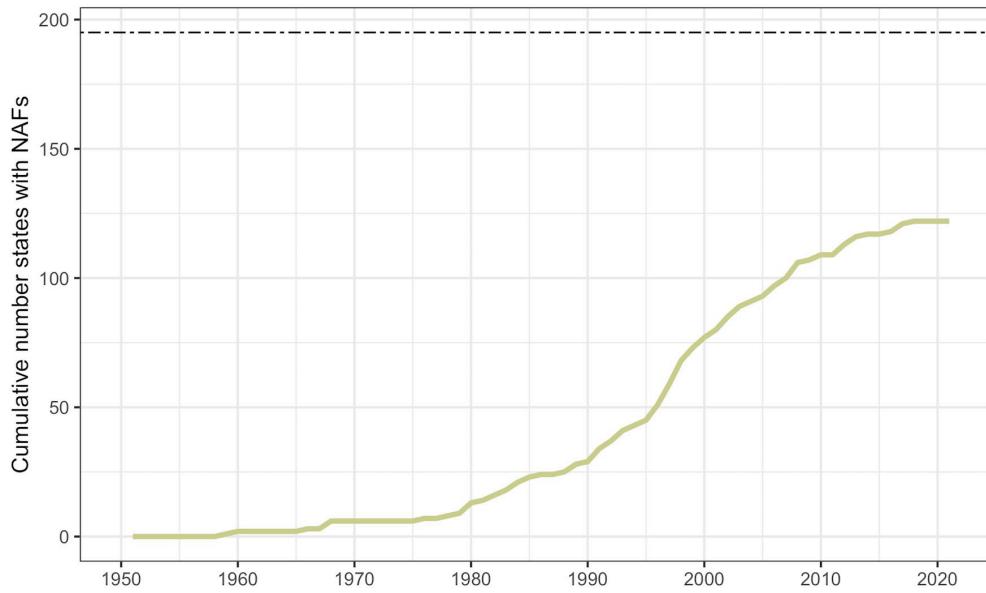
- 4) Fourth, the validity and quality of the data were established through multiple measures. Most importantly, the coding for every state was cross-checked by a second coder. Moreover, the coding of every type of SCP was compared across states to ensure the consistency of the coding for the different types of SCPs. In addition, the coding for the different countries was checked with secondary literature on national legislation on asylum and refugees and existing data collections on SCPs. For Europe, for instance, the list of SCOPs of 27 European Union member states by Engelmann (2015) and the query of the European Migration Network (2014) across 25 European states and their use of SCPs was used. Furthermore, when the language or the content of laws left room for interpretation, national country experts were contacted to verify the coding. Finally, the codebook and the dataset – which includes all sources selected and coded – have been made publicly available, and users are kindly requested to signal any mistake found in the coding.

3 The Emergence of National Asylum Frameworks

In this first empirical section, I map the emergence of NAFs during the first legislative wave on asylum from the 1950s, which to some extent predetermined the subsequent adoption patterns of SCPs.

We can roughly divide the temporal adoption of NAFs into the early adoption phase (1959 until 1979), the majority adoption phase (1980 until 2009), and the late adoption phase (since 2010). The Iraqi Refugee Act of 1959, the Ugandan Control of Aliens Refugees Act of 1960, and the Austrian Asylum Act of 1968 were early examples of states regulating their responsibility to people seeking protection and establishing an encompassing domestic framework on asylum at the national level. Nevertheless, until the 1980s, only a handful of other states followed the early adopters. The period from the 1980s to the 2000s represents the most dynamic phase, in which most states decided to adopt a NAF and establish a domestic protection framework. The year 2007 marks the turning point in which regulating the grounds for seeking protection, the process of refugee status determination, and the rights and obligations of refugees became the majority approach worldwide. From the 2010s on, the number of new adopters declined significantly, and states that introduced a NAF after that can be perceived as late adopters, with Djibouti (2016); Eswatini, Uzbekistan, and Zambia (all 2017); as well as Qatar (2018) as the true laggards. By 2021, 122 of the 195 states in the dataset had introduced a NAF, whereas 73 states had not. The temporal adoption pattern is reflected by the s-curve in Figure 1, which shows the cumulative number of NAFs established between 1951 and 2021.

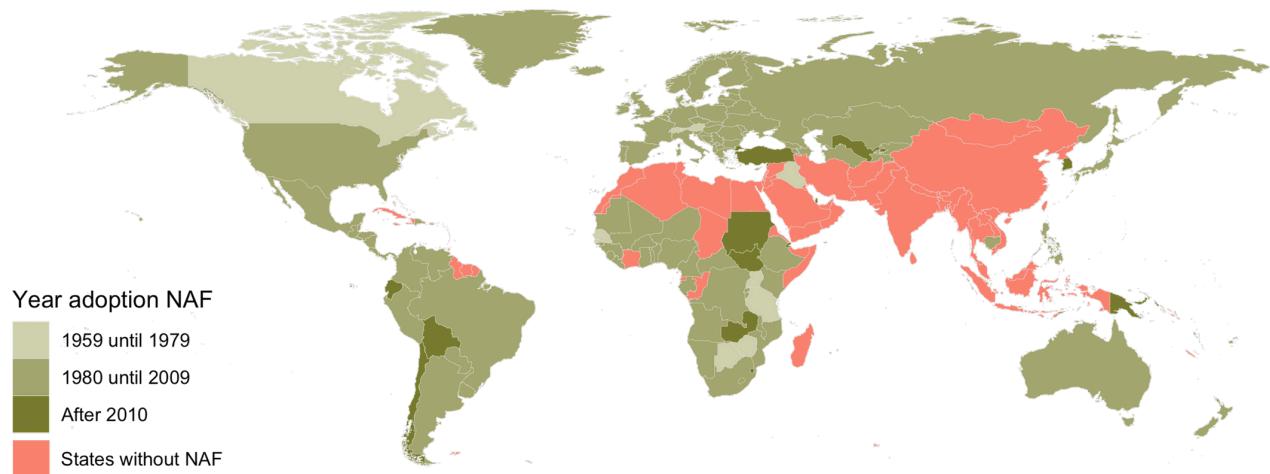
Figure 1: Cumulative Evolution in the Number of National Asylum Frameworks Worldwide⁸



Source: SACOP 1.1

In terms of the spatial adoption patterns, we see a clear geographical clustering, separating adopting and non-adopting states (Figure 2).

Figure 2: Map of National Asylum Framework Adoption



Source: SACOP 1.1

Whereas all (or at least the vast majority) of the states in America, Central Asia, Europe, and Sub-Saharan Africa have established a NAF, none or only a small minority of countries in the Caribbean, Eastern Asia, Southern Asia, South-eastern Asia, and Northern Africa have introduced a domestic protection framework. The biggest deviation within a region can be found in Oceania, where a bit less than half of the states have adopted a NAF. Remarkably, almost all non-adopting states that are not islands have a common land border with other non-adopting states. Thereby, we also find states with a significant number of people seeking protection (e.g., India, Libya, Pakistan) among the non-adopters of NAFs.

⁸ A figure showing the adoption wave of new NAFs worldwide per year is included in the appendix (see A1).

The adoption of a NAF tends to decrease the discretionary power of states in response to people seeking protection. However, neither the existence nor the absence of NAFs alone can unequivocally be interpreted in terms of restrictiveness. The non-adoption of a domestic protection framework may be combined either with a rather generous or a highly restrictive approach toward people seeking protection. The lack of a NAF may also be due to the low salience of refugee protection issues. Many of the states without a NAF are small islands with very few asylum applications (e.g., Antigua and Barbuda, Saint Kitts and Nevis, Kiribati) that decide these cases on an ad hoc basis.

Equally, NAFs can be established for different reasons, and a government's willingness to adopt a framework can depend on a range of factors. For instance, it can be driven by a human rights-based approach or result from the politics of conditionality when states are forced to adopt an asylum law to gain political and economic benefits. Moreover, adoption can reflect a state's intention to improve its standing in the international community.

Rather than a simple transfer from one world region to the other regions, the global spread of NAFs reflects complex and parallel processes. In fact, NAFs have spread more or less simultaneously across different world regions but with substantial differences in timing, speed, and coverage. Among the earliest adopters that established NAFs before 1980, states in Sub-Saharan Africa were prominent early adopters (see Figure 2). The 1980s and 1990s saw mostly European states introduce national protection frameworks. In contrast, most Sub-Saharan African and Latin American states elected to establish NAFs only in the 2000s. Overall, given its sizable overall share of the world's states, Sub-Saharan Africa has driven the adoption of NAFs, with adoption waves at both ends (i.e., before 1980 and after the 2000s), with European states being the leading adopters in the intervening period.

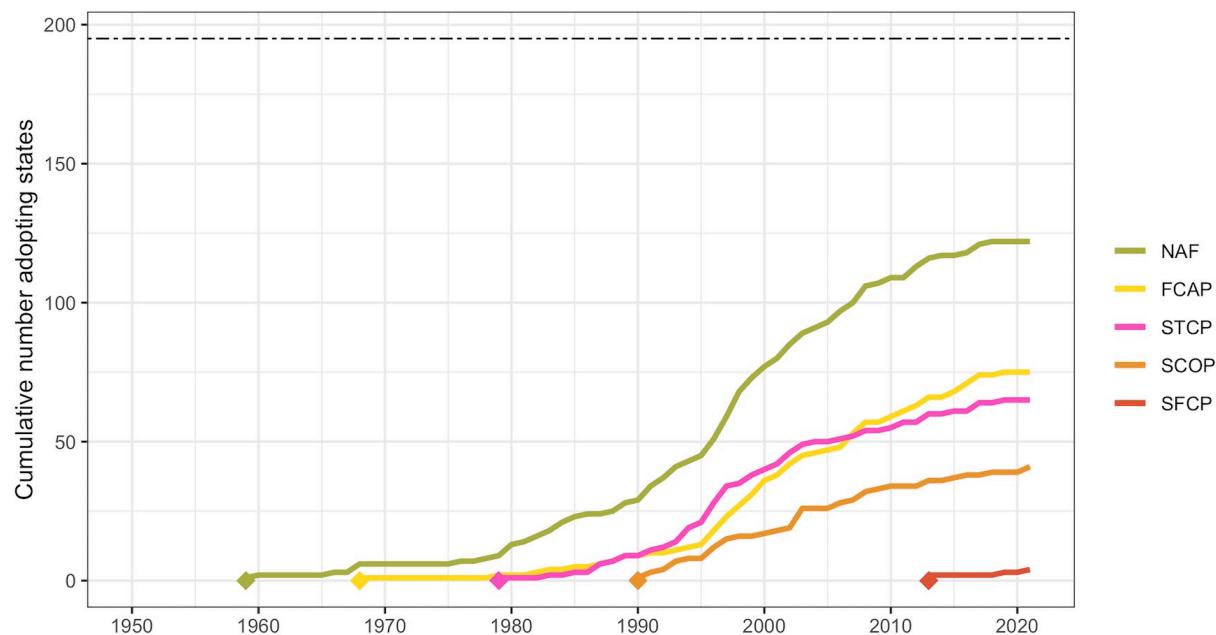
4 The Spread of Safe Country Policies

4.1 Temporal Patterns of Adoption

In 1968, Austria was the first state to introduce an FCAP in its asylum legislation, followed by Switzerland in 1979 introducing the first STCP. Shortly after these first moves, many European states followed suit, and similar policies were introduced during the 1980s. The twenty years between 1990 and 2010 was a boom period for the popularity and emergence of SCPs in (almost) all world regions, albeit with significant differences in the regional coverage and types of SCPs adopted. After 2010, only a few late adopters introduced SCPs into their asylum legislation or established a first NAF that included such policies. Figure 3 shows that the FCAP and STCP adoption curves resemble that of the NAFs, whereas the SCOP has been less popular, and the SFCP is the exception in terms of adopting states.

For states that have adopted a NAF, restricting access to refugee status determination and protection using SCPs has become a standard approach vis-à-vis people seeking protection but with significant variation in the number of adopting states depending on the type of SCP. For example, while 75 states with a domestic protection framework have introduced an FCAP, 65 states have adopted an STCP, and 41 use the SCOP, only four states have established the SFCP.

Figure 3: Temporal Patterns in Adoption of National Asylum Frameworks and Safe Country Policies⁹



Source: SACOP 1.1

In 1968, the FCAP was the first SCP to be adopted in a NAF, followed by the STCP in 1979, the SCOP in 1990, and the SFCP in 2013.¹⁰ Whereas early SCPs affect only a small number of people with a strong connection to another state, the more recent SCPs have tended to increase the range of people affected and decreased the responsibility of states toward people seeking protection. This evolution toward more restrictive SCPs is caused by the changing nature of the connection requirement between an asylum applicant and the country to which responsibility for examining an application is shifted. The FCAP is limited to people who have been granted protection in another country, which affects only a small proportion of asylum seekers. For the STCP, a hypothetical element was introduced, and the possibility to grant or have protection granted was found to be sufficient to deny access to asylum procedures so that the range of people affected may substantially be expanded. Finally, for the SFCP, no link is required as it is solely based on a bilateral agreement between the host state and another country. For this reason, it potentially affects all persons seeking protection.

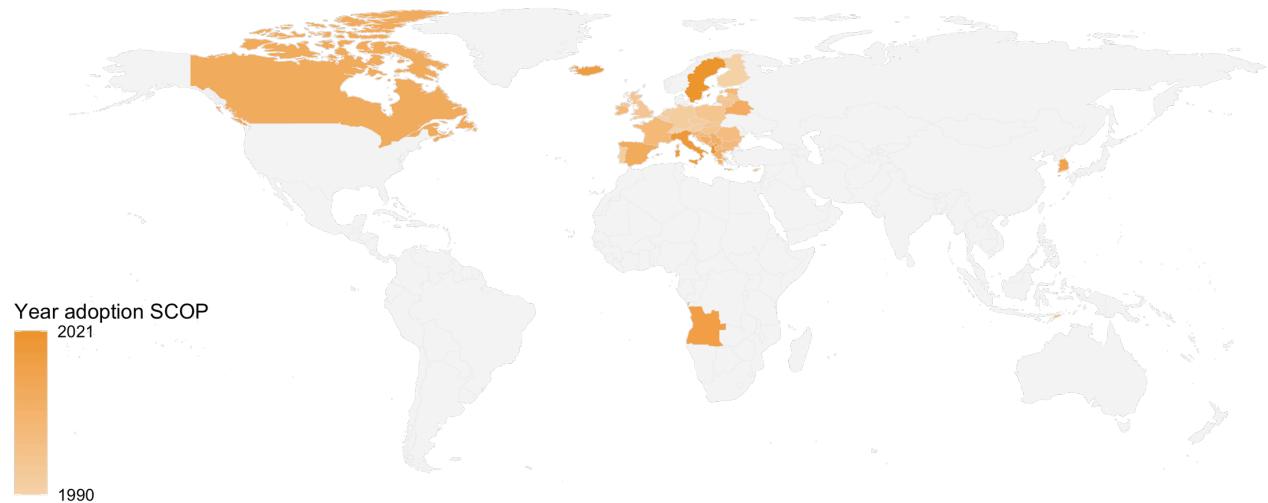
4.2 Spatial Patterns of Adoption

Turning to the spatial patterns of adoption, we find – similar to the adoption of NAFs – clear geographical clustering, whereby the non-adopters are most evidently separated from the adopters when we look at the adoption of SCOPs (Figure 4).

⁹ Figures on the evolution of the NAFs and different types of SCPs in all world regions can be found in the appendix (see A2).

¹⁰ The appendix also contains figures illustrating the adoption wave of each SCP in combination with the adoption wave of NAFs worldwide (see A3).

Figure 4: Spatial Patterns in Adoption of the Safe Country of Origin Policy

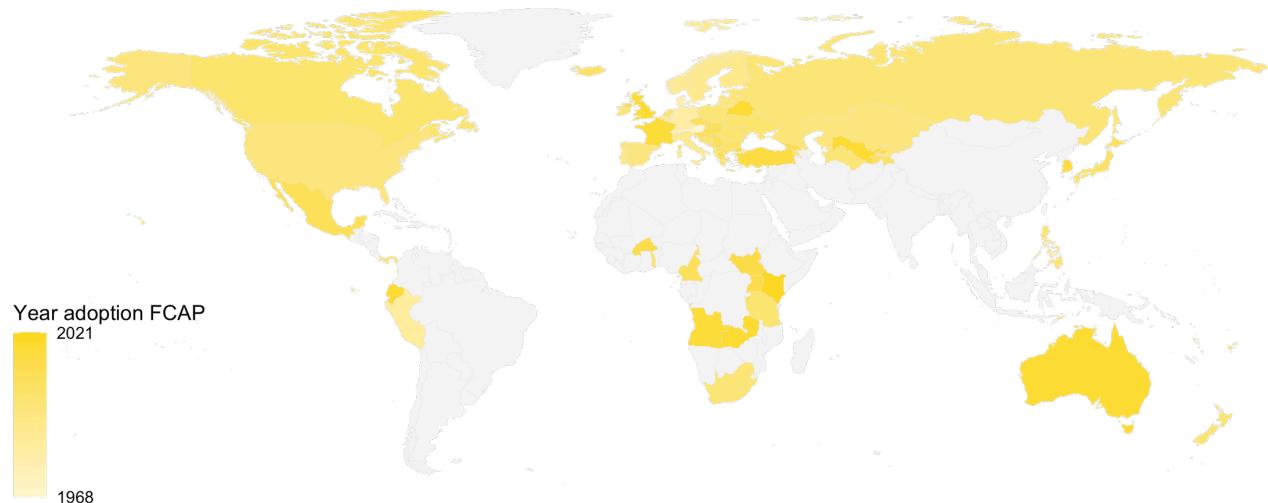


Source: SACOP 1.1

The SCOP has become especially popular across European countries, as almost all states in this world region have enshrined the policy in national legislation. Cyprus (2003), Timor-Leste (2003), Canada (2010),¹¹ South Korea (2013), and Angola (2015) are the only non-European states that have introduced the SCOP. However, since the policy was only introduced in 1990 (by Switzerland), we currently do not know whether the more recent adoptions of the policy by non-European states signal the beginning of more widespread adoption in other world regions.

The FCAP is not only the least controversial SCP but the one that has been most widely spread across the world (Figure 5).

Figure 5: Spatial Patterns in Adoption of the First Country of Asylum Policy



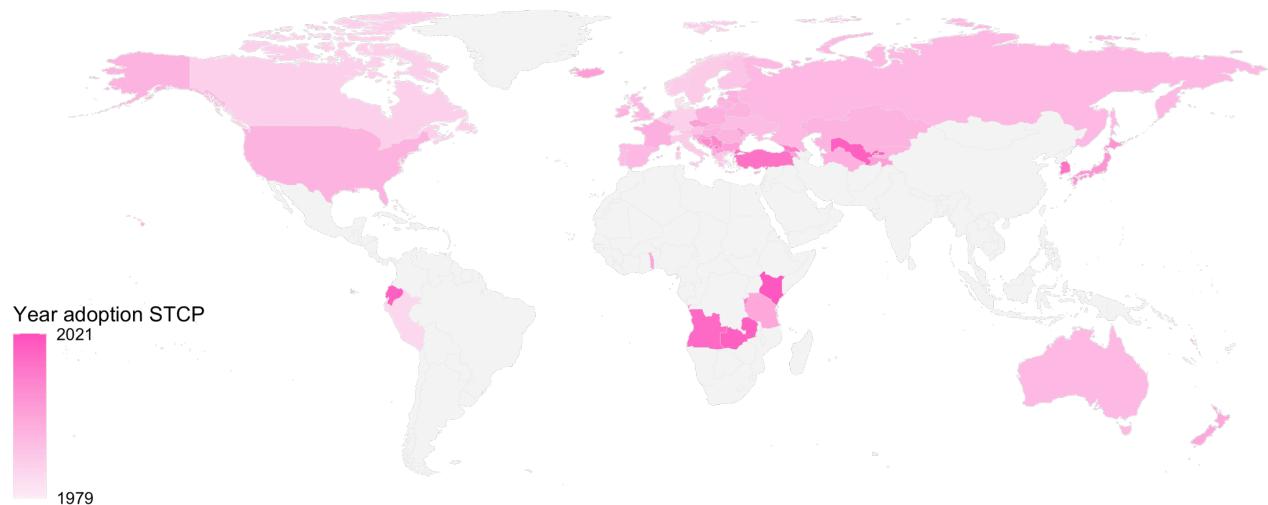
Source: SACOP 1.1

¹¹ In 2019, Canada officially announced it would refrain from future use of the SCOP, declaring that it has not brought the expected increase in processing speed in asylum applications. This came after several elements of the SCOP had been annulled by the Federal Court (Government of Canada 2019).

In contrast to the SCOP, we find a less unified spatial clustering in the adoption of this policy. The FCAP has not only been adopted in the Global North but also been introduced by states in Central Asia, Latin America, and (most often) in Sub-Saharan Africa. While South Africa (1998) was the forerunner in Sub-Saharan Africa, Tanzania (1999), Togo (2000), Cameroon (2005), Burundi (2008), Uganda (2010), Burkina Faso (2011), South Sudan (2012), Angola (2015), Zambia (2017), and Kenya (2019) followed the example, accounting for regional ripple effects. However, this policy only affects a small number of people who have already been granted protection in another country.

The STCP1 and 2 have not only spread across all world regions but also tend to affect a wide range of people. In Figure 6, both types of STCPs – those based on a personal or substantial link between the asylum applicant and another country (STCP1) and those based on a weak or coincidental connection (STCP2) – are combined.¹²

Figure 6: Spatial Patterns in Adoption of the Safe Third Country Policies



Source: SACOP 1.1

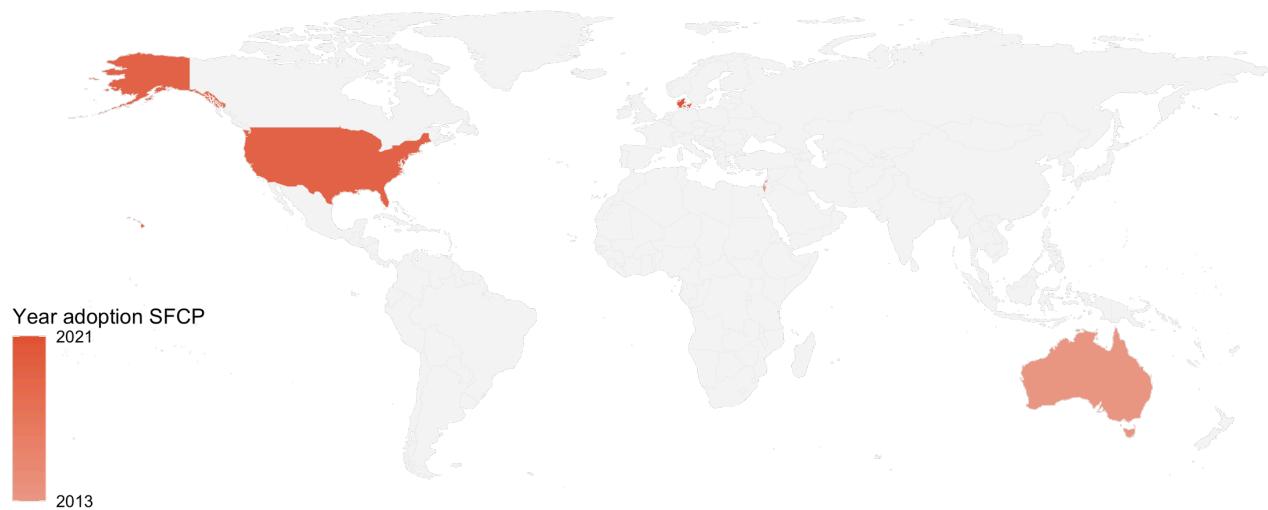
In Europe, the Dublin Convention (which first entered into force in 1997) has substantially increased the use of the STCP across the continent. However, it did not introduce such use, since STCPs had been unilaterally adopted in some countries well before the Dublin Convention was signed in 1990, including Switzerland (1979), Denmark (1983), Belgium (1987), Germany (1987), Norway (1988), Sweden (1989), and Italy (1989). Like the FCAP (but to a lesser extent), the STCPs have spread across some countries in Latin America and to a greater extent across Central Asia and Sub-Saharan Africa. The policy spread fastest in Central Asia – Kazakhstan (1996), Kyrgyzstan (1996), Turkmenistan (1997), and Tajikistan (2002) all adopted the STCP within a decade after Russia (1993) did so. In Sub-Saharan Africa, the adoption pattern remains patchier and more stepwise, as Tanzania (1999), Togo (2000), Burundi (2008), Angola (2015), Zambia (2017), and Kenya (2019) have adopted STCPs over a longer stretch of time.¹³

¹² Separate spatial adoption patterns of the STCP1 and 2 can be found in the appendix (see A4.1 and A4.2). Overall, there is a great geographical overlap between the adoption patterns of both policies as the majority of states uses both, although countries in Latin America are refraining from using the STCP2. Most states introduce STCP1 before adopting the more restrictive version of this policy.

¹³ In addition to these states in Sub Saharan Africa that have enshrined an STCP in domestic law, Botswana (see UNHCR 2017) and South Africa (see Khan & Rayner 2020; Moreno-Lax 2015) have applied the policy in practice, despite the lack of any legal foundation.

The least successful in terms of spread has been the SFCP. It has only been adopted by Australia, the United States, Israel, and Denmark (see Figure 7). Australia has negotiated bilateral SFCP agreements with Papua New Guinea and Nauru, and the United States has entered into similar agreements with Guatemala, Honduras, and El Salvador.¹⁴ Israel has established agreements with Rwanda and Uganda.¹⁵ For its part, Denmark has yet to sign a bilateral agreement.

Figure 7: Spatial Patterns in Adoption of the Safe Fourth Country Policy



Source: SACOP 1.1

Despite its limited geographical spread, the SFCP has generated significant attention and criticism from academics, media, and civil society organizations. The critique is that the policy fundamentally contradicts the principle of refugee protection and the aim of more equitable responsibility-sharing. Moreover, because the SFCP is not based on a specific connection requirement between an applicant and another country, it potentially affects all people seeking protection in a host state.¹⁶

5 Global Trends in Asylum Governance

In this section, I focus on the implications of the temporal and spatial adoption patterns of NAFs and SCPs for refugee studies and asylum governance. I argue that the emergence and spread of NAFs have reflected a global trend toward the juridification of asylum and potentially would have set the ground for solidarity among states in terms of responsibility-sharing. In contrast, the spread of SCPs can be interpreted as a move away from the solidarity principle in migration governance.

¹⁴ In early 2021, however, the Biden Administration formally annulled these bilateral agreements, which were entered into by the Trump Administration in 2019 (U.S. Department of State 2021).

¹⁵ While the government of Israel has not officially disclosed the names of these countries, there is little doubt that its SFCP is based on agreements with Rwanda and Uganda (see Bar-Tuvia 2018).

¹⁶ In early 2021, prior to the adoption of the SFCP, Danish Prime Minister Mette Frederiksen declared that Denmark's goal should be to accept "zero" asylum seekers (The Local 2021).

5.1 The Juridification of Asylum

Datasets on asylum and migration policies usually focus on states of the Global North¹⁷ and measure the evolution of policies regarding the level of restrictiveness toward people seeking protection (e.g., DEMIG, IMPALA, IMPIC). Researchers drawing from these datasets often aim to explain the factors that lead to more restrictive or liberal policies. However, due to the geographical and temporal limitations of these datasets – as well as the binary categorization of policies as either restrictive or liberal – they tend to overlook a more fundamental trend and one of the most salient factors for people seeking protection. Essential to the evolution of asylum since the 1951 Refugee Convention has been the trend toward *juridification of asylum* at the national level, which is reflected in the emergence of NAFs in the SACOP dataset. It enables responsibility-sharing among states (at least theoretically) and reflects a strong commitment (at least formally) to the principle of solidarity with people seeking protection in migration governance.

The trend toward juridification implies, in turn, that most states have previously maintained a discretionary approach by not regulating their responsibility toward people seeking protection. In fact, most states have only established a comprehensive domestic protection framework within the past decades. The approach of non-regulation and maintaining the broadest possible discretionary power over asylum (and letting non-state actors cover the costs and services that are elsewhere taken over by states) has recently been dubbed “strategic indifference” (Norman 2020). This discretionary approach is still clearly the dominant approach in most parts of Asia, the Caribbean, and Northern Africa, and the decline in the adoption speed of new NAFs does not point to a sudden change in state responses in these world regions toward people seeking protection.¹⁸ However, as no state has returned to a discretionary approach after having regulated asylum, the discretionary approach is unlikely to become dominant outside of Asia, the Caribbean, and Northern Africa.

While not all states have regulated responsibility toward people seeking protection, juridification has proven to be a steady and irreversible process in both the Global North and the Global South. This evolution has also resulted in the harmonization of approaches on asylum and a process of “isomorphic change” (DiMaggio & Powell 1983), by which dissimilar polities adopt similar policies. However, the legal regulation of asylum does not imply an evolution toward liberalization of asylum policies and can be driven by various motivations. For instance, in exchange for economic or other benefits from an external power, a new government entering office may adopt a national asylum law to fulfill a formal condition imposed by a supranational organization or a powerful state. Nevertheless, while the reasons for adopting a domestic protection framework may vary, the effect is the same for all polities.

5.2 The Deflection of Responsibility

After states have regulated their responsibility toward people seeking protection by adopting NAFs from the 1950s on, they have begun to reduce their responsibility by shifting their responsibility to other countries from the 1970s on. This trend in asylum governance toward restrictive policies and *deflection of responsibility* has been well described by migration scholars who have described in

¹⁷ But see the recent dataset DWRAP on asylum policies in developing countries by Blair, Grossman & Weinstein (2021a) as well as the dataset APLA on asylum policies in Latin America by Hammoud-Gallego (2021).

¹⁸ The non-adoption of NAFs and the dominance of a discretionary approach toward asylum in Asia, the Caribbean, and Northern Africa explains as well why only few states in these regions have adopted SCPs.

great detail policies and practices established by countries in the Global North to hinder people from seeking protection in this world region (e.g., FitzGerald 2019; Gammeltoft-Hansen 2014; Mountz 2020). Yet, while migration scholars have generally focused on the consequences of restrictive asylum policies in the Global North for people seeking protection, they have paid scant attention to the effect that these policies could have on the policies of states in other world regions. Consequently, the spread of restrictive policies and deflection techniques in states of the Global South has been largely overlooked in refugee studies (but see, e.g., Rutinwa 1999). The empirical part of this paper shows that SCPs have indeed emerged and are most widely spread across countries in the Global North, but that these policies are increasingly gaining popularity in regions such as Sub-Saharan Africa and Central Asia.¹⁹

The most consequential of all SCPs may be the STCP, which states use as part of a deflection technique to shift responsibility to another country. These policies have not only spread widely across (almost) all world regions but equally tend to affect a wide range of people.²⁰ When states shift responsibility to other states, this raises the “neglected question of justice between states” (Gibney 2015, p. 1). For instance, the Dublin procedure has been criticized for distributing responsibility between states unevenly since those at the external borders of the European Union often find themselves responsible for determining an asylum application based on their geographical location (Garcés-Mascareñas 2015; Mouzourakis 2014). The deflection technique may be especially popular for states because it promises to substantially reduce the number of people they have to accept responsibility for but rarely provokes a public outcry. Unlike measures such as building fences to restrict access to territory, deflection techniques are a quite subtle way of exercising power. They permit states to adhere formally to their legal obligations toward people seeking protection and at the same time limit their own responsibility and reduce the number of asylum seekers they are required to admit. The approach thus reflects a “schizophrenic attitude towards international refugee law” (Hathaway & Gammeltoft-Hansen 2014, p. 61).²¹

The fact that major traditional host countries such as Kenya, South Africa, and Tanzania have introduced or considered enforcing SCPs could increase the pressure on neighboring countries to host a larger number of asylum seekers and refugees – or adopt similar policies. This evolution could thus signal the beginning of substantial changes in the context and condition of the world regions that host the most displaced people and could diminish the ability of people seeking protection to choose a host country. At the same time, the spread of the SCPs may not only lead to a harmonization of restrictive policies on a global scale but equally change regional dynamics in asylum governance and create new patterns of injustice between states. In return, the adoption of SCPs by countries of the Global South could also reaffirm the adoption of these policies in the Global North.

¹⁹ However, the spread of restrictive asylum policies in states of the Global South must not be confused with a general evolution toward restrictiveness in the Global South. SCPs have spread unevenly in the Global South and are generally adopted in a set of policies, wherefore they can be introduced in a context of growing restrictiveness or liberalization. For instance, Hammoud-Gallego (2021) has shown that states in Latin America have overall adopted increasingly liberal asylum policies in the past 30 years, and Blair, Grossman & Weinstein (2021a) found that asylum policies have overall become more liberal over time in developing countries.

²⁰ STCPs and techniques of deflection are also integral to the EU–Turkey Agreement of 2016. According to the agreement, people arriving in Greece from Turkey are returned to Turkey, and for every person returned one person is supposed to be resettled from Turkey to the European Union.

²¹ In this way, the global spread of NAFs and SCPs could be read as a solidification of the “schizophrenic attitude” in asylum governance, by which states adopt or adhere to liberal asylum policies and international refugee law but equally establish physical and procedural barriers to hinder people from accessing national territories and asylum procedures.

6 Conclusion

Access to asylum has arguably been “the single most prominent topic in refugee studies for the past three decades” (Costello 2019, p. 646). As SCPs have been a critical feature used to restrict access to asylum, they have been under critical scrutiny by academics and civil society organizations since their introduction (e.g., Goodwin-Gill 1992; UNHCR 1992). Aiming to fill a knowledge gap, I have introduced the SACOP dataset and mapped the spread of NAFs and SCPs in all world regions. Overall, the empirical findings of the SACOP dataset endorse the view of the spread of restrictive asylum policies in the Global North but challenge the erroneous view on restrictive measures as being limited to states of the Global North to exclude people from the Global South. As a matter of fact, SCPs have not only spread widely in the Global North but have gained increasing popularity across states of the Global South, which host the vast majority of people seeking protection. Moreover, SCPs can be expected to remain an important feature in the future because international initiatives on asylum governance such as the Global Compact on Refugees also fail to establish a binding obligation or system of sharing responsibility across states – despite official commitments toward more solidarity with the leading host states (Micinski 2021).

The SACOP dataset enables mapping of the global evolution of NAFs and SCPs and provides relevant insights on global trends in asylum governance. Nevertheless, it has at least two significant limitations. First, as it is based on de jure law, the dataset does not describe the de facto implementation of NAFs and SCPs. Thus, it shows neither whether (and how) states that have introduced SCPs use them in processing asylum applications nor whether states that have not formally adopted such policies nevertheless apply them in practice. Second, the dataset does not provide information on the relative restrictiveness of states toward people seeking protection, as this would require a much broader measurement of asylum policies and practices. Instead, the dataset allows a broad categorization of states and their regulation or avoidance of responsibility toward people seeking protection.

In the following, I want to lay out several avenues of further research based on the SACOP dataset and the empirical findings that have been presented. First, research is needed to study the forces that have driven the spread of NAFs and SCPs. Based on policy diffusion studies (e.g., Blatter, Portmann & Rausis 2021; Ghezelbash 2014; Simmons, Dobbin & Garrett 2006), research could focus explicitly on whether the spread of SCPs in the Global South is the result of independent or interdependent policymaking and what the mechanisms of diffusion have been. Second, researchers might focus on how SCPs are put into practice and what the consequences and effects on people and policies are. In so doing, they could take up the question of whether the spread of these policies to the Global South is having consequent effects on the policies and practices of asylum governance in the Global North. Finally, the SACOP dataset could also offer migration research a way to conceptualize and measure the evolution of distinct paradigmatic approaches in different world regions that is not limited to a binary categorization of “liberal” versus “restrictive” approaches but equally takes non-regulation and discretionary approaches into account.

Overall, rather than establishing a global system to share the “collective responsibility of states to protect refugees” (Hurwitz 2009), we can expect the continuous spread of policies that allow states to deflect the responsibility they have toward people seeking protection.

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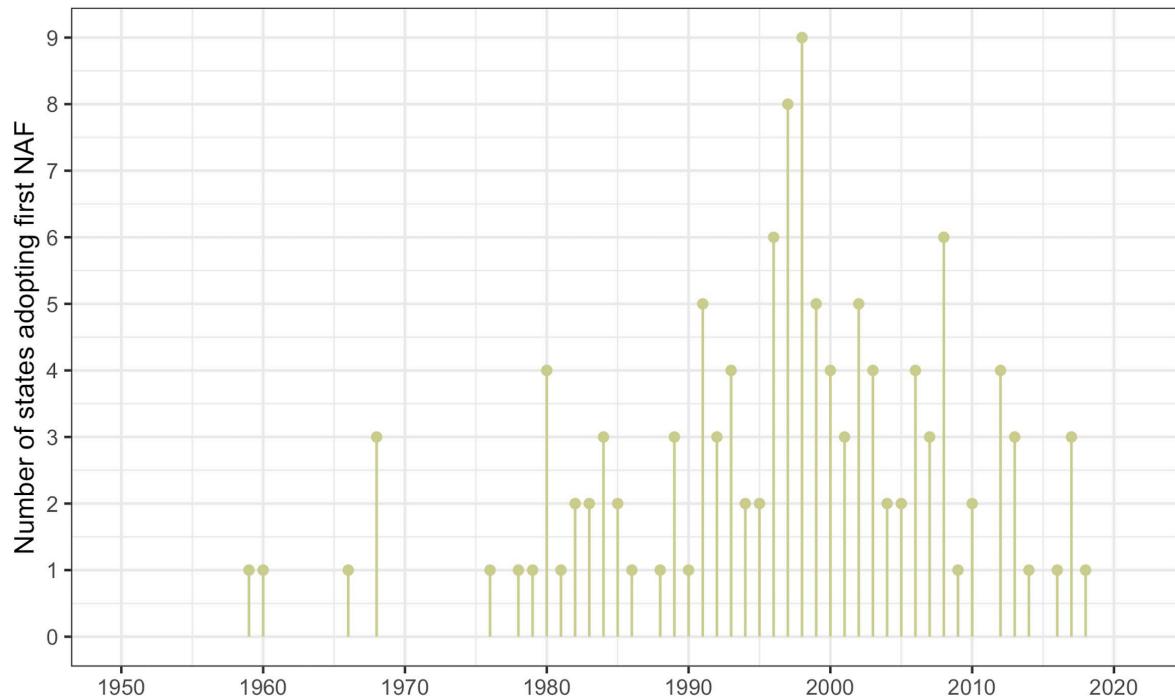
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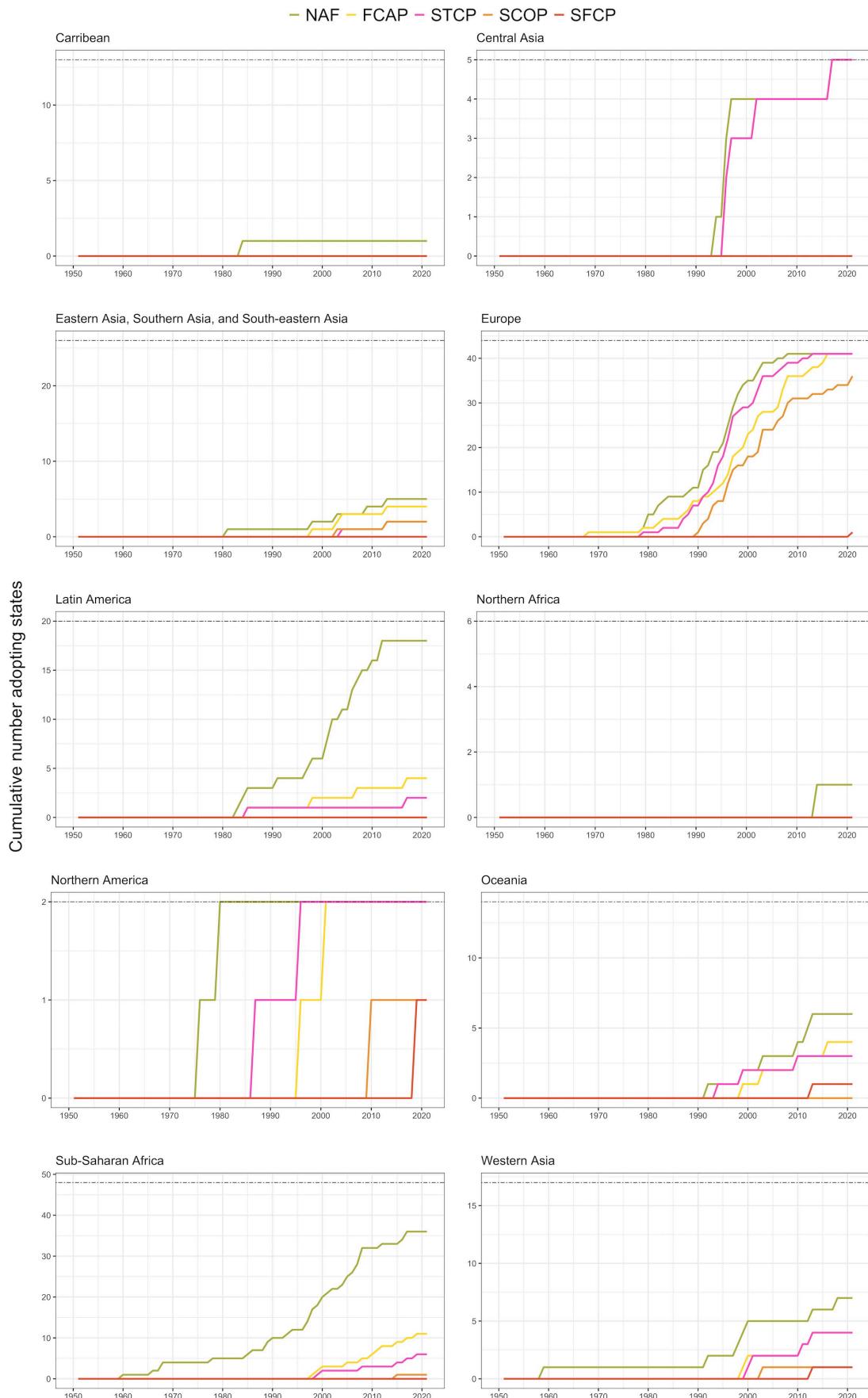
Appendix

Appendix A1: Adoption Waves of NAFs Worldwide



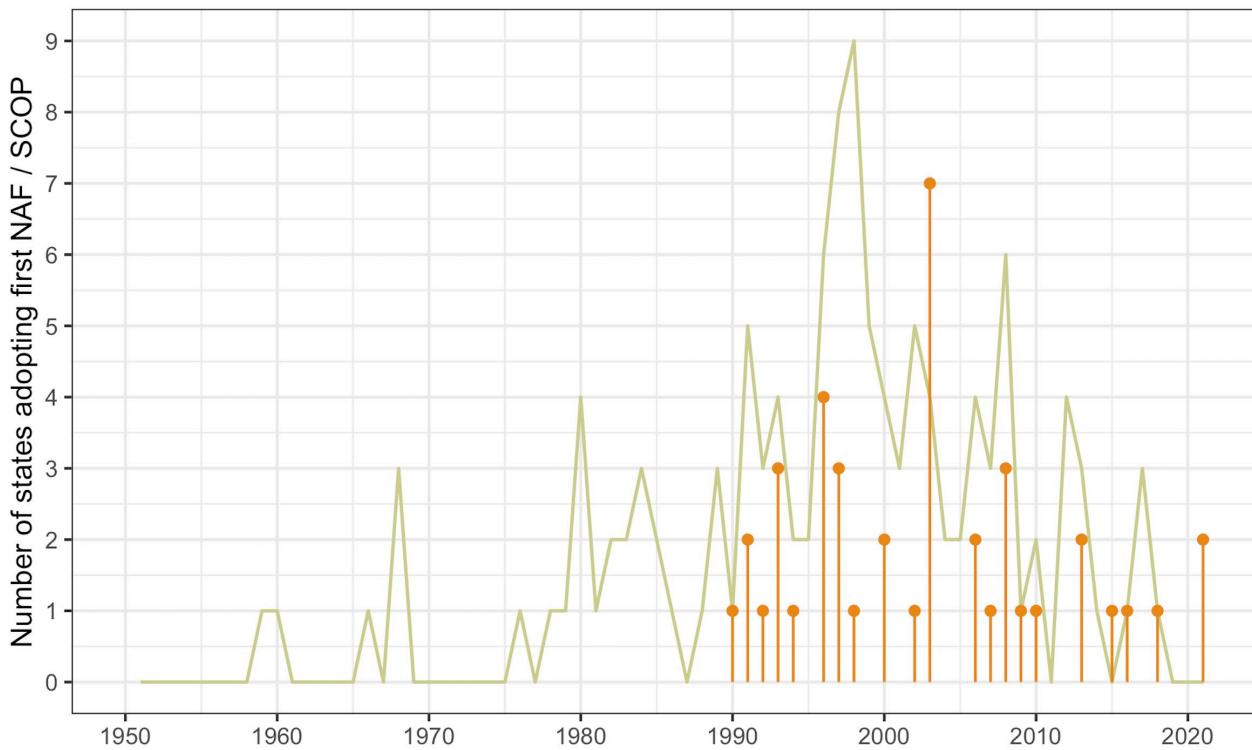
Source: SACOP 1.1

Appendix A2: Temporal Patterns in Adoption of NAFs and SCPs in All World Regions



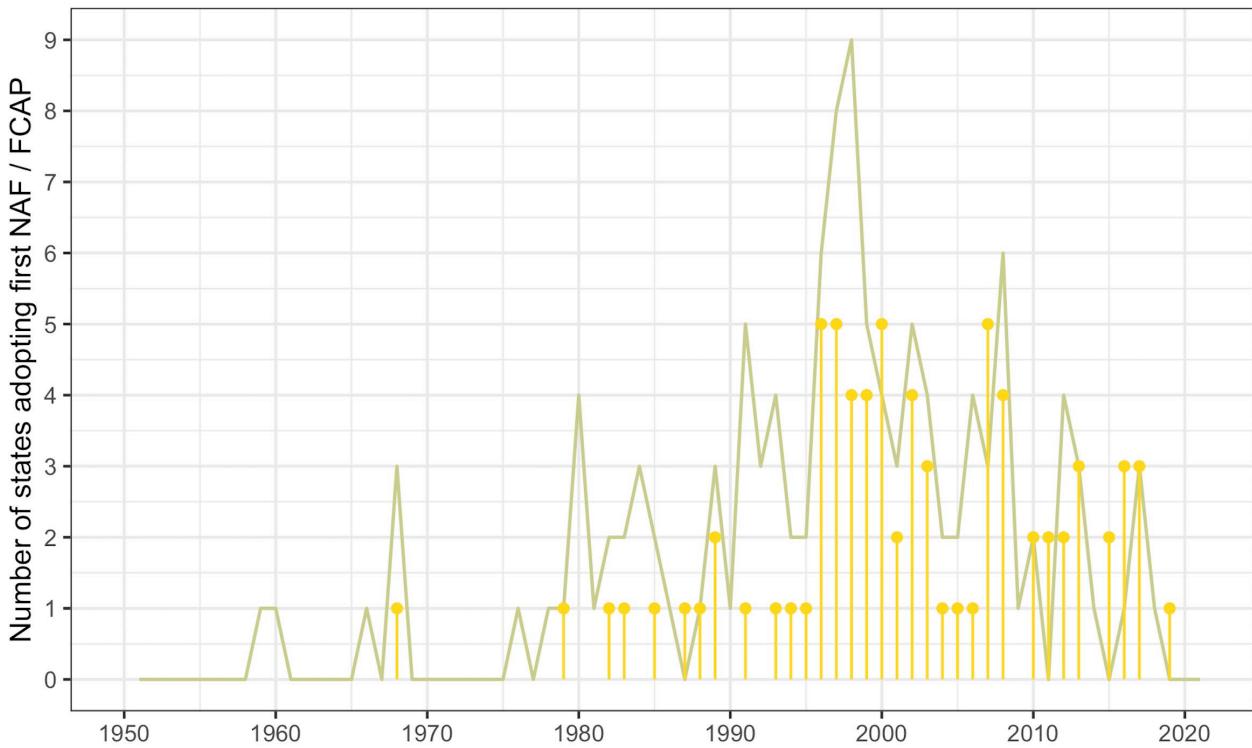
Source: SACOP 1.1

Appendix A3.1: Adoption Waves of SCOPs and NAFs Worldwide



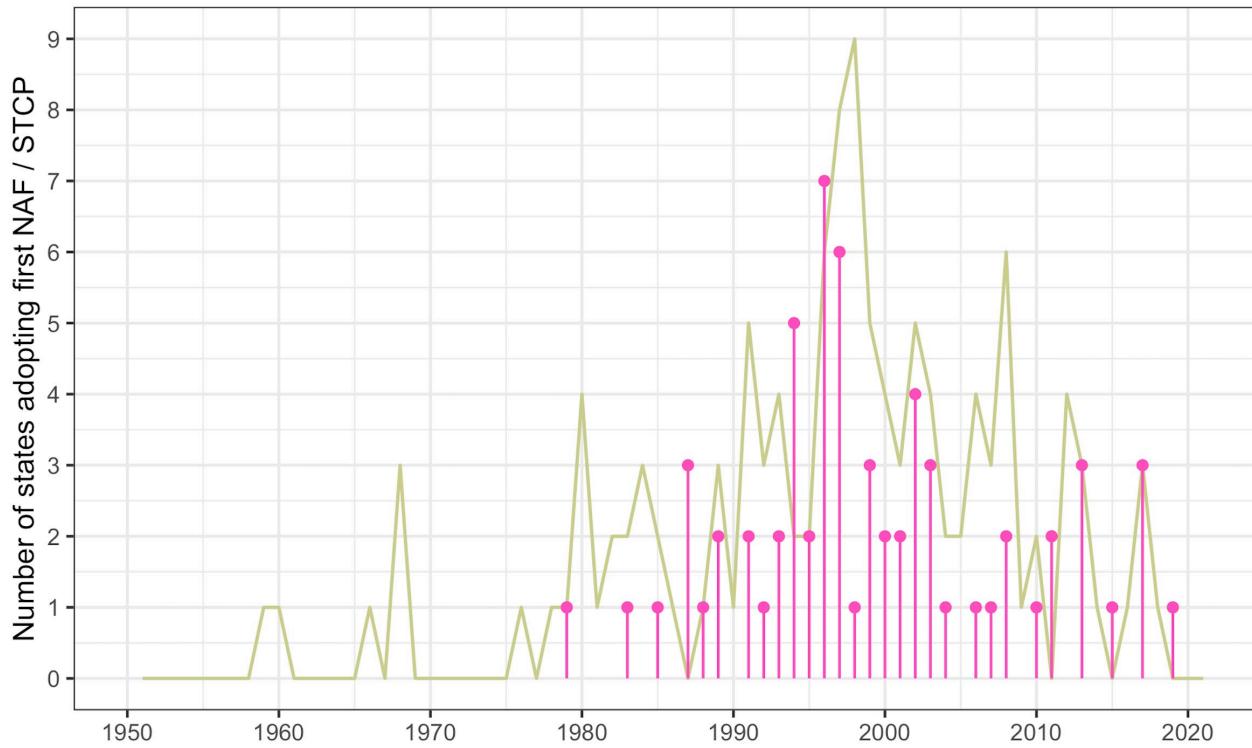
Source: SACOP 1.1

Appendix A3.2: Adoption Waves of FCAPs and NAFs Worldwide



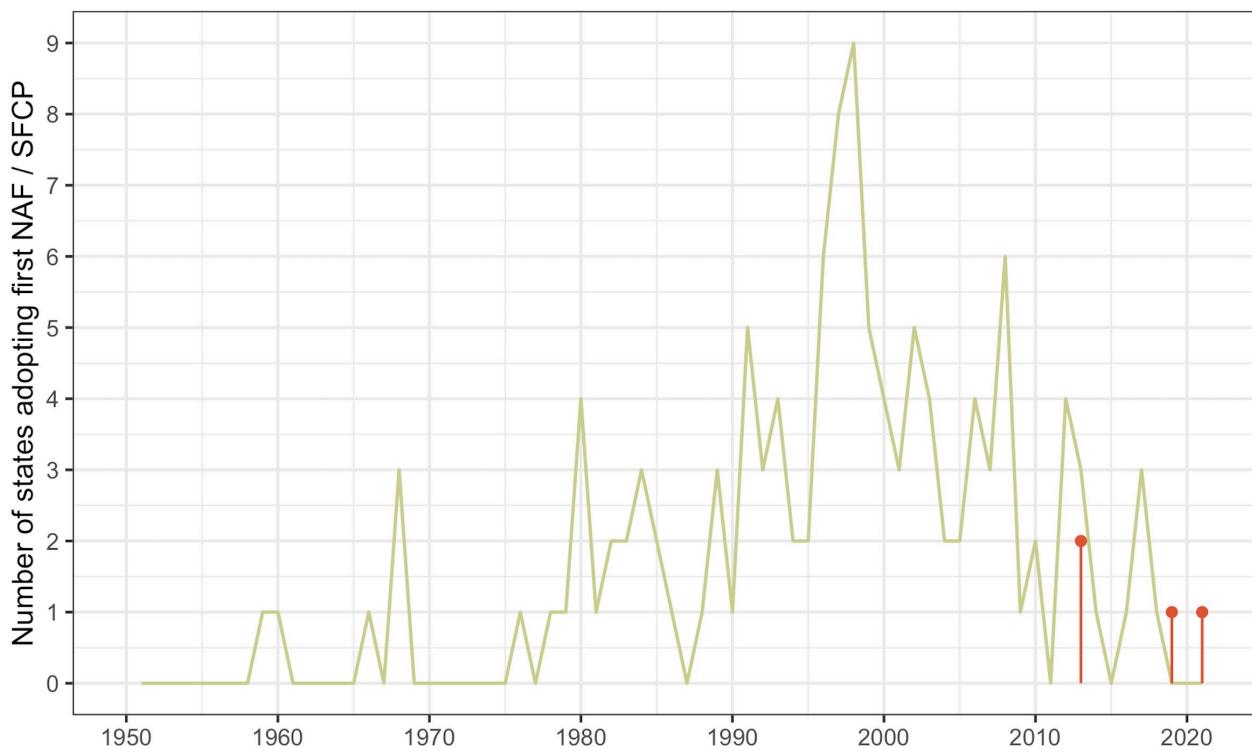
Source: SACOP 1.1

Appendix A3.3: Adoption Waves of STCPs and NAFs Worldwide

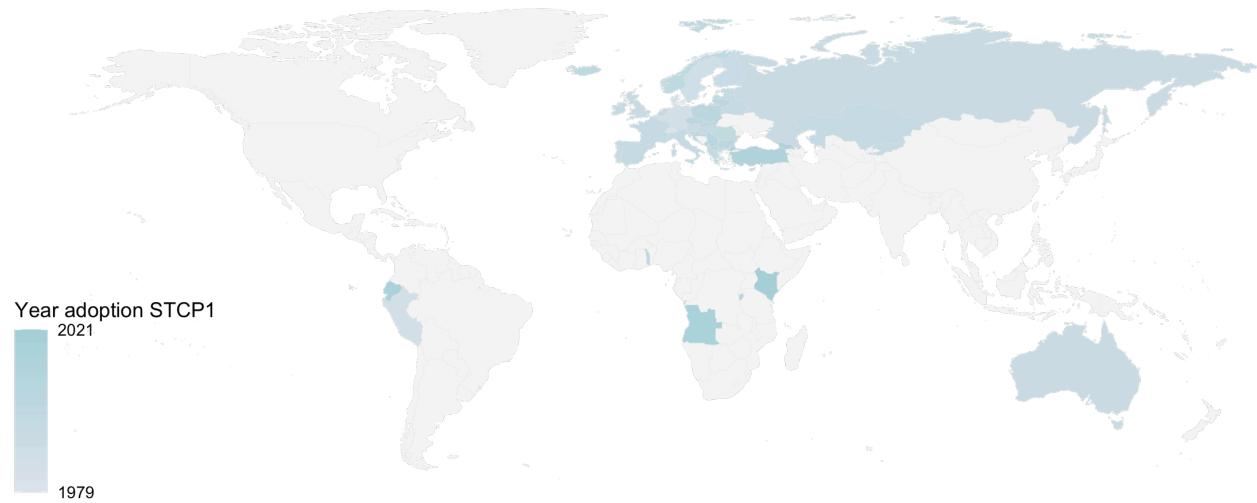


Source: SACOP 1.1

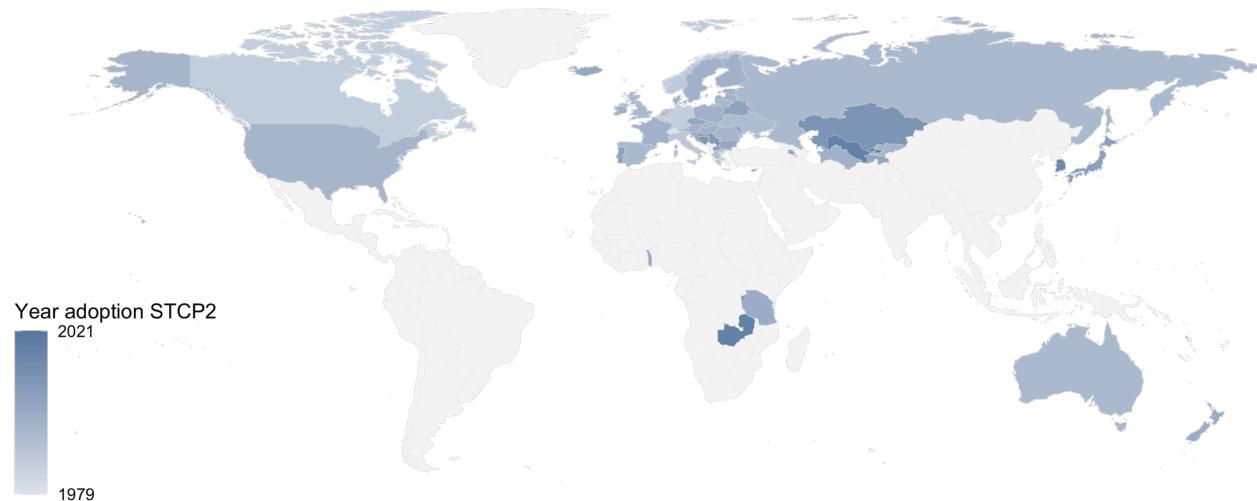
Appendix A3.4: Adoption Waves of SFCPs and NAFs Worldwide



Source: SACOP 1.1

Appendix A4.1: Spatial Patterns in Adoption of the Safe Third Country Policy 1

Source: SACOP 1.1

Appendix A4.2: Spatial Patterns in Adoption of the Safe Third Country Policy 2

Source: SACOP 1.1