

The Ethics of Migration Policy Dilemmas

Protection Here, There or Elsewhere? Why We Need to Consider How Non-arrival Policies Complicate the Dilemma. A response to [Aleinikoff and Owen \(2022\)](#)

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Introduction

The questions of who should receive international protection, how or in what form, and where have been high on the agenda of policymakers and political theorists alike for decades. The paper by Alexander Aleinikoff and David Owen (the authors) is an extremely valuable answer to the 'where' question that also explores the complex interplay with the issues of who should be protected and how.

The authors present the central question of the paper as 'a genuine ethical dilemma': 'conscientious policymakers' in the Global North are in the privileged position to decide between doing their share of global refugee protection in their territory ('here') or through development aid to countries hosting large numbers of refugees in the Global South ('there'). In disagreement with the 'protection there' or development approach, most notably advanced by Betts and Collier (2017), Aleinikoff and Owen ultimately call for 'a much greater mix of refugee protection than is currently available.'

In this response, I am going to argue that the way the choice between protection here and there is construed leaves out a third option, an increasingly popular one among policymakers in the Global North, which I call 'protection elsewhere.' I refer to it as the option of supposedly contributing to global responsibility sharing efforts through deterring asylum seekers in cooperation with other states instead of providing protection either 'here' or 'there.' Policymakers in Northern states turn to countries along migratory routes in the Global South, like Niger or Turkey, to externalise protection and turn away asylum seekers from their borders, deploying arguments partially overlapping with those advanced by the development approach and discussed in the paper.

I will suggest that, as currently posited, the discussion around the here v. there dichotomy is

not fully equipped to address the problem of responsibility shirking and the indeterminacy of protection in the framework of non-arrival policies exemplified by 'protection elsewhere.' To attend to this problem, I suggest that the here v. there problem could be addressed not only by demanding a greater mix of protection 'here' and 'there,' but also by putting clear limits on policies that aim to keep refugees away and leave the prospects of protection unspecified.

The 'Protection Elsewhere' Problem

When it comes to managing migration and asylum, policymakers in the Global North have been increasingly opting for a course of action that is not contemplated in the 'here v. there dilemma.' Take, for example, the European Union (EU) cooperation with Niger, a hub for migration routes from West and Central Africa to Europe; the Memorandum of Understanding between Italy and Libya in the field of migration; the EU-Turkey deal; or, most recently, the UK-Rwanda deal. These are examples of transit or neighbouring countries in the Global South, but the longstanding conflicts over asylum and responsibility sharing in the EU suggest that it could also be countries in the North, like Greece or Italy, fulfilling this function of containment for the main destination states.

These cooperation agreements have the objective of stemming arrivals to Europe by aiding transit or neighbouring countries in containing migration flows and deterring asylum seekers, with little consideration of the many violations of migrants' rights that this cooperation entails in practice.

Leaving these troubling issues to one side for a moment, notice that these instances of cooperation do not neatly fit the here v. there dichotomy presented by the authors. 'Protection elsewhere,' like 'protection there,' implies that states in the Global North opt for not giving protection 'here.' Unlike 'protection there,' though, this policy choice is predicated upon a supposed contribution to global migration management and remains agnostic as to whether protection and livelihoods prospects will be effectively available 'there,' namely close to the asylum seekers' countries of origin.

Aleinikoff and Owen's discussion of the geography of refugee protection could be strengthened by a discussion of the protection elsewhere option in three respects.

Firstly, the empirics suggest that it is problematic not to address the long-standing tendency towards containment, externalisation and dispersal of responsibility exemplified by 'protection elsewhere' or to treat it as a given. Favoured destination states in Europe, for example, have made long-standing efforts to control migration and create a 'Fortress Europe' ([Geddes 2008](#)). Recent years have seen a trend in the adoption of restrictive policies aiming to deflect or deter asylum seekers from accessing protection in the North, hampering the capacity of asylum seekers to access protection and putting them at life-threatening risk ([Thielemann and El-Enany 2010](#)). In this framework, extraterritorial cooperation with transit countries has been an integral part of the effort of keeping refugees away through the provision of funds, equipment, and training to transit countries, with insufficient safeguards to prevent human rights violations ([Ferstman 2020](#)).

The authors do touch upon remote control and nonentry measures against spontaneous

arrivals ([Aleinikoff and Owen 2022, 12](#); [Fitzgerald 2019](#)). Still, they do so by treating these measures mostly as contextual factors which may influence our assessment of the dilemma, but ultimately remain external to it and can hardly be changed. In fact, after having convincingly exposed the limitations of the development approach, they conclude that there are limited paths to push for a greater mix of protection ‘here and there’ “[u]nder current conditions in which the states of the Global North invest ever more resources in building remote control defences against the ‘spontaneous’ arrival of refugees ([Fitzgerald 2019](#)) that both increase the risks of refugee journeys to these states and support the growth of the human smuggling industry” ([Aleinikoff and Owen 2022, 12–13](#)).

This conclusion prompts the question of whether these policies shouldn’t be addressed as part of the dilemma—or, better, the problem—instead. The Northern states’ widespread use of cooperation agreements with transit and neighbouring countries, usually in the framework of broader externalisation policies, suggests that we are not dealing with mere contextual factors, but deliberate and recurring policy choices that should be assessed on their own merits. In other words, this raises the question of whether these policies are viable or ethical and under which conditions, if any at all.

Secondly, and relatedly, while the examples of externalisation agreements and nonarrival measures that I mentioned at the outset strike us as blatantly unethical, defenders of the ‘protection elsewhere’ approach could contend that the human rights violations that these agreements are associated with could be solved by ensuring higher safeguards and better life prospects. Once we do this, their argument would go, this option should count, at least *prima facie*, as a legitimate course of action to control borders, manage migration flows, and share the related costs.

Thirdly, leaving out of the picture the ‘protection elsewhere’ option makes the answer to the where question less equipped to address the abuses or weak safeguards for asylum seekers involved in all policies directly aimed to contain, stem, or discourage spontaneous arrivals, as in the case of cooperation agreements. The global picture of refugee protection is one of dispersal of responsibility beyond the here v. there dichotomy. However, as currently framed, the dilemma does not zero in on this issue and fails to provide the tools for a normative assessment of the range of options which are actually on the table, at least empirically, to policy makers in the Global North to avoid having to offer protection ‘here’.

Genuine Choices and Conscientious Policymakers: Two Objections

Should we then consider ‘protection elsewhere,’ too, to determine the mix of efforts that states should commit to under their global responsibility for refugee protection? Accepting that ‘protection elsewhere’ is in fact another option on the table would run into at least two objections. In the framework proposed by Aleinikoff and Owen, we would first have to show that there is a genuine choice at stake; and, second, that this choice does apply to policymakers that are conscientious in the sense meant by the authors. Let me start with the former.

These agreements come with measures that make arrival in the Global North very difficult or virtually impossible, creating conditions for violations of migrants’ rights in these countries. Clearly, then, introducing the protection elsewhere option would run into the objection of being straightforwardly unethical, as it involves the violation of basic rights, migrants’

autonomy, and arguably of the principle of non-refoulement.

Recall that the authors frame the genuine choice at play here as “a real, and not merely a notional, ethical challenge” (*ibid.*, 1) determined by the fact that, unlike states in the Global South, the borders of Global North states are not porous, and they are not compelled by the principle of nonrefoulement to take in asylum seekers in the same way that neighbouring countries in the Global South are. Still, defenders of ‘protection elsewhere’ could counter that nonarrival measures via cooperation agreements are genuine options, just like protection-there is, as long as they manage to satisfy their responsibilities under the principle of nonrefoulement via cooperation with transit states.

Moreover, it could be objected, supposed contributions to global responsibility sharing via cooperation with transit and neighbouring countries involve many of the same problems that the development option does, and that the authors discuss, including insufficient protection, poor guarantees, restrictions on refugees’ autonomy and preferences. If ‘protection there’ counts as an option in the refugee protection dilemma, ‘protection elsewhere’ supporters would conclude, then there is no reason to think that cooperation with Southern countries to keep refugees out of the Global North should not as well, once we have established clear criteria for their protection. Would this option be acceptable under specific conditions, or should we reject it a priori? At the very least, the ‘protection elsewhere’ problem demands that more should be said about the genuine choices at stake in the decision regarding how to contribute to protection.

What about the assumption that the policymakers that Aleinikoff and Owen have in mind are conscientious ones? Conscientious policymakers as defined by the authors are those who are confronted with the ethical dilemma that maintaining “reasonable control over exposure to refugee flows requires the combination of resource transfers to Southern hosting states and the offer of resettlement places with the widespread use of non-entry measures designed to obstruct spontaneous arrivals that intensify the dangers of refugee journeys and support the growth of the people smuggling industry” (*ibid.*, 15). The authors convincingly suggest that this is a dilemma that cannot be solved by recourse to development aid alone. If this is the dilemma facing conscientious policymakers, then cooperation with Southern countries and non-entry measures are political choices that they contemplate and, in fact, appear bound to consider, at least for prudential reasons. This gives us an additional reason, I believe, for including the ‘protection elsewhere’ option in the discussion and assessing it on its own terms, rather than just accepting it as a status quo that is only tangentially relevant to the ethical questions under consideration.

Conclusion

Non-arrival measures implemented through cooperation agreements with countries in the Global South contribute to the indeterminacy of the ‘where’ of protection and blur the definition of what should count as an ethical contribution to a global refugee regime.

In this response I have suggested that the discussion of the ‘here v. there’ dilemma could be revisited by demanding not only a greater mix of nuanced forms of protection ‘here’ and ‘there’, but also by giving a clear indication as to whether, to what extent, and under what conditions policy choices exemplified by the ‘protection elsewhere’ approach should

be included in this mix and count as legitimate policy options. This is both for pragmatic reasons, because the empirical evidence suggests that policymakers are increasingly likely to opt for this course of action, and to establish whether and why doing so should be rejected as normatively undesirable or unacceptable.

This brief discussion suggests that we should first ask whether protection can be effectively provided 'elsewhere.' At a minimal level, for 'protection elsewhere' to be a morally defensible course of action, it should come with strong guarantees of human rights protection in the countries where refugees and asylum seekers are returned to, including by giving them options to rebuild their lives. Compared to protection 'there,' though, protection 'elsewhere' would still encounter the problem that refugees would not necessarily be in the proximities of their countries of origin, and their conditions might be worse 'elsewhere' than 'there,' assuming that many refugees prefer to stay in their region.

Secondly, the 'protection elsewhere' problem prompts the question of whether policies whose success is measured in non-arrivals in the Global North should count as legitimate contributions to global protection duties. In a context where the priority of conscientious policy makers motivated by prudential reasons is to keep refugees out of their territory, at the very least, the 'elsewhere' option should be accompanied by the obligation to keep borders open and provide viable alternatives to staying in the Global South.

These considerations should inform the assessment of 'protection there,' too, making strong human rights safeguards, livelihood prospects, and the existence of safe routes to move legally to other destinations necessary conditions for 'there' and 'elsewhere' contributions to be morally acceptable.

References

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About the “Dilemmas” project

This commentary contributes to the [‘Dilemmas’ project](#) at the EUI’s Migration Policy Centre. Dilemmas analyses and debates fundamental ethical dilemmas in policy-making on migration and refugee protection.

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