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Robert Schuman Centre for Advanced Studies
DILEMMAS

WORKING PAPER

Debating Refugee Protection 'here' or 'there'

Rainer Bauböck, Julia Mourão Permoser, Martin Ruhs,
and Lukas Schmid (Eds.)

European University Institute
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Series editors:

Rainer Bauböck (European University Institute and Austrian Academy of Sciences)

Julia Mourão Permoser (University of Continuing Education Krems)

Martin Ruhs (European University Institute)

Lukas Schmid (Goethe University Frankfurt)

Abstract

This working paper combines T. Alexander Aleinikoff and David Owen's article "Refugee protection: 'Here' or 'there'?" with a set of critical responses and concludes with a rejoinder by the authors. Aleinikoff and Owen argue that policymakers in the Global North are confronted with the ethical dilemma of deciding whether to use their resources to provide refugee protection within their own countries or to support refugee protection in the Global South. Aleinikoff and Owen claim that this dilemma presents a real and practical challenge, rather than just a theoretical one. Apart from a discussion of how Northern policymakers may deal with the dilemma of how to support refugee protection, Aleinikoff and Owen also outline the ethical dilemmas faced by policymakers in the Global South, highlighting the different issues Northern and Southern policymakers are confronted with in their regional contexts. In a first response, Matthew J. Gibney acknowledges the significance of Owen's and Aleinikoff's insights into the global division of refugee responsibilities, discussing them against the background of recent trends of Northern states preventing refugees from accessing their territories. Gibney delves into the desirability of proposals for differentiated responsibility between Northern and Southern states, exploring whether "over there" approaches might be acceptable from a realistic-utopian perspective. The second response by Cathryn Costello and Ashwini Vasanthakumar argues that acknowledging a "genuine ethical dilemma" here concedes too much to the status quo, and questions the usefulness of the Global North/Global South distinction when addressing refugee obligations. Instead, Costello and Vasanthakumar suggest concentrating on the costs and detriments of containment and abolishing the distinction between "here" and "there" to enhance refugee protection on a global scale. The third response by Eleonora Milazzo suggests that the ongoing debate on providing refugee protection in the Global North versus the Global South overlooks a third option that she calls "protection elsewhere". Milazzo argues that this approach, favored by many Global North policymakers, involves implementing non-arrival policies that evade responsibility and make protection uncertain. To address this issue, Milazzo proposes that in addition to balancing protection between the Global North and the Global South, clear limits should be placed on policies that aim to keep refugees away without specifying their protection prospects. This working paper ends with a rejoinder by Aleinikoff and Owen, in which the authors express gratitude for the respondents' engagement and address some key points, agreeing on the importance of seeking better global responsibility-sharing mechanisms.

Keywords

refugees, protection, asylum, development, responsibility, Global North, Global South

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Kick-off contribution

Refugee protection: 'Here' or 'there'

T. Alexander Aleinikoff (The New School) und David Owen (University of Southampton)

Abstract

Policymakers in states of the Global North are in the privileged position of having a genuine ethical choice concerning whether to devote their resources to providing refugee protection in their territory (e.g. by enabling safe passage of refugees to their borders and offering generous resettlement opportunities) or to prioritise resourcing refugee protection in the Global South. For these policymakers the question 'Should we protect refugees here or there?' posed in this global context represents a real, and not merely a notional, ethical challenge. The primary focus on this article is the ethical dilemma confronted by the conscientious policymaker in the Global North concerning where (and how) to support refugee protection. A secondary focus is the ethical dilemma faced by conscientious policymakers in the Global South in relation to the global context and the issues confronted both Northern and Southern policymakers in their distinct regional contexts.

Keywords

refugees, protection, asylum, development, responsibility

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Refugees and the Right to Citizenship...Somewhere

Matthew J. Gibney (University of Oxford)

(Originally published [online](#), on the 'Dilemmas website', on 21 June 2022).

We all owe a debt of gratitude to David Owen and Alex Aleinikoff for their thoughtful reflections on the desirability and practicality of proposals and practices that divide the world between refugee hosting states (in the Global South) and refugee protection financing states (in the Global North). Given the way the winds have blown over the last decade, with Northern states assembling numerous measures to contain refugees in the South and to prevent them from accessing their territory, there can be few issues more important to the future of refugee protection. It is important to understand the costs and desirability of schemes, like those proposed by Betts and Collier (2017), which aim to harness the interests of Northern and Southern states and entrench this kind of division of labour to ensure refugee protection.

That said, as I write, just this way of conceptualising asylum is being thrown into question. The war in Ukraine has made European states host to millions of refugees. The distinction between a part of the world that generates and receives refugees and one that simply funds them is looking rather problematical, to say the least. What does this newfound receptivity to refugees in Europe tell us about how responsibility for refugees and forced migrants might be divided between states? It's too early to tell. Europe's response may still sour and reset to its default position. Yet the Ukrainian situation does drive home the point that the barriers to more inclusive responses to refugees in the North are largely political rather than demographic or economic.

In this response I want to focus on the question of the *desirability* of proposals for what we might call differentiated responsibility between Northern and Southern states, the part of Aleinikoff and Owen's discussion that considers whether 'over there' approaches might be acceptable from a realistic-utopian perspective. This is, of course, only a section of their paper, but it is one that reveals important differences between the authors.

According to Owen and Aleinikoff a major problem of the kind of "over there" schemes proposed by Betts and Collier (and endorsed, in varied forms, by many states and implicitly in the recent Global Compact on Refugees) is that they condemn refugees to a situation of 'civic limbo': they confine refugees to neighbouring host states for indefinite periods where their economic and basic security needs are met, largely through access to work, but deprive them of political rights and other means to shape a future according to their own aspirations and values. The authors argue that any normatively defensible account of what refugees are owed must take us out of this situation of civic limbo. But how? Here the authors, revealing refreshing honesty, differ.

Owen draws upon his influential international legitimacy account of asylum to argue that states must provide refugees with citizenship, either immediately, in the case of refugees from persecution, or after a period of residence, in the case of what he terms 'sanctuary' refugees. The international system of states lacks legitimacy unless it provides each of its denizens with effective state membership, and this is just what has been lost in the case of refugees.

I have long found Owen's position a powerful one. It offers a rebuke to the acceptability of approaches that see economic zones and basic rights protections as a morally sufficient response to refugees. However, I'm less sure that Owen's approach deals a killer blow to the idea of corralling refugees in the Global South. While the legitimacy view demands that refugees be reincorporated into citizenship, it's unclear why this reincorporation could not be done primarily "over there". Owen does try to argue against this possibility. He suggests, first of all, that the distributional effects of membership-composition should be fairly shared across states and, secondly, that states ought to respect refugees' *own* decisions on where they wish to be a member (it is, he proposes, "desirable that members of a state identify the conditions of their own autonomy") ([Aleinikoff and Owen 2022](#),

7). But, in terms of the first argument, it is not obvious why it would be unacceptable (as opposed to impractical) for states to agree upon an arrangement where some states did the bulk of the incorporating (and were perhaps compensated for doing so). In terms of the second argument, that of refugee preferences, Owen now seems to be appending a new standard (viz., that the refugee should identify with their citizenship country) to his legitimacy account. Or perhaps not. He simply says that an individual's identification with their country of citizenship is 'desirable'. Perhaps so, but it's unclear just what kind of constraint this desirability criterion provides once it comes up against the considerations of what is realistic.

Aleinikoff offers a quite different view of how to escape the problem of civic limbo. He argues that refugees should ideally have a right to enter, work and live in any country of their choosing, via a modern Nansen-passport-type regime. This right would not be unlimited; states could impose reasonable quotas to prevent refugees congregating in any single country. Importantly, citizenship does not appear to be on the table. Instead, refugees would be protected by the rights enshrined in the 1951 Refugee Convention, and states would similarly be constrained by their obligations set up thereunder. Aleinikoff's preferred approach would enable refugees to do what, he believes, they clearly already want to do: to move to countries of their choosing to join family, compatriots and seek out welcoming environments in which to live and work.

The timing seems right for Aleinikoff's proposal, realistic utopian though it claims to be. Ukrainian refugees are currently being offered something like a Nansen scheme, through the EU's temporary protection directive which offers many of the benefits of such a scheme within a framework of secure rights accorded by the EU. However, it's worth noting that what is currently on offer is *regional* free movement, not a global right to settle and move *anywhere*. And, a sceptic might ask, if regional free movement is an acceptable arrangement and consistent with refugee autonomy, why could it not be regional free movement within the Global South, providing certain standards of security and stability were met? Refugee autonomy (and the escape from 'civic limbo'), as Aleinikoff sees it, may not be inherently inconsistent with an 'over there' approach.

While I am sympathetic to the practical arguments he marshals along with Owen, Aleinikoff doesn't say much about why Northern states are morally required to promote refugee autonomy. If state obligations to refugees are humanitarian in nature, they would seem to be limited to ensuring that refugees enjoy their basic rights, something that may be compatible with the Betts/Collier proposal. Arguably a more fruitful moral basis by which to challenge the 'over there' position is obliquely alluded to by Aleinikoff when he notes that what is 'arbitrary' (a political theorist might say, 'unjust') about the 'over there' response is that "[i]t pushes burdens onto states that usually are not responsible for the conditions in a neighbouring state that produce refugee flight" ([Aleinikoff and Owen 2022, 8](#)). We might turn this around and say that where Northern states are implicated, as they sometimes are, in causing the generation of refugees (through, for example, military intervention or, perhaps, contributing to global warming), they have a *special* duty above other states to compensate the refugees concerned. This duty would include hosting them and providing refugees with the conditions necessary to rebuild their lives ([Souter 2022](#)). More generally, any realist-utopian arrangement should, I believe, make some allowance for the special responsibilities states incur when refugees emerge as a result of their actions.

For all this, perhaps the most controversial aspect of Aleinikoff's proposal is the way it omits citizenship as a necessary feature of a realistic utopian response to refugees. Aleinikoff's account contrasts then not just with Betts and Colliers' approach that keeps refugees in the region, but also with Owen's membership reincorporation approach. Aleinikoff seems to be motivated here by the need to provide a realistic position that states might embrace, as well his belief that citizenship is becoming less important due to the emergence of new forms of municipal membership (though he offers no detailed discussion of the character of these new membership arrangements).

Aleinikoff is surely right that in most situations refugees care more about gaining the opportunity to enter a country of their choosing than they do about acquiring citizenship. Yet this might tell us more about the dire trade-offs that refugees are forced to make than what a morally acceptable state of affairs might look like. More importantly, the very things refugees look for when they move between societies are most firmly guaranteed when citizenship is held, largely because it is a status that protects individuals from expulsion and provides unique possibilities for political voice and recognition in national politics ([Gibney 2008](#); [Buxton 2021](#)). Because they do not possess effective citizenship elsewhere, refugees have a singular interest in just this kind of security where they reside. My worry is that for all that Aleinikoff's proposal does to expand the sphere of refugee opportunities, without political and national membership rights it simply doesn't do enough to combat the 'civic limbo' of the Betts/Collier proposal. The problem is simply displaced to a larger, international stage.

Where does that leave us? It seems to me that a realistic utopian position simply must, at a minimum, rule out the possibility of long term, de facto statelessness. The movement rights that Aleinikoff helpfully focusses on must be fused with clear pathways to citizenship, or at least some kind of formal political inclusion (cf, [Ziegler 2017](#)). Of course, refugees should be free, if they want, to decline citizenship, if, like Aleinikoff, they feel that their rights can be adequately protected outside it, or if they do not wish to have the corresponding identity (though, cf. [De Schutter & Ypi 2015](#)). But taking seriously the autonomy of refugees seems to me to require that they at least be given the choice.

Refugee Containment and the Costs of Creating False Dilemmas

Cathryn Costello (Hertie School) and Ashwini Vasanthakumar (Queen's University)¹

(Originally published [online](#), on the 'Dilemmas website', on 22 June 2022).

In their paper, Alex Aleinikoff and David Owen ([2022](#)) (the authors) frame as a 'genuine ethical dilemma' for 'conscientious policy makers in the Global North' whether to devote 'resources' to refugee protection in their territory *or* 'in the Global South'. The authors critique Betts and Collier ([2017](#)), and we share those criticisms. We also agree with much of the authors' prior scholarship, in particular on refugee mobility ([Owen 2019](#); [Aleinikoff & Zamore 2019](#)).

While we we agree with many of the conclusions in this piece, we argue these conclusions do not go far enough. We argue in particular that accepting that there is a 'genuine ethical dilemma' in this context concedes too much ground to the *status quo*. We open with some observations about the problems this framing entails, and question whether a Global North / Global South heuristic is really useful when discussing obligations to refugees. We suggest instead that focusing on the costs and harms of containment, and denaturalizing the distinction between 'here' and 'there,' is an important element of improving refugee protection everywhere.

Genuine dilemmas and hard choices

The authors frame their analysis as addressing the 'genuine ethical dilemma' confronting the 'conscientious policymaker' in two scenarios: a realistic utopia and a non-ideal world characterised by widespread non-compliance. Yet, they do not define an ethical dilemma. Typically, an ethical dilemma arises when the actions required by two ethical principles conflict, and it is uncertain which principle prevails. Refugee protection may well throw up ethical dilemmas, but whether or not a choice is, in fact, a dilemma is not obvious, and the authors do not tell us why the choice between protection 'there' or 'here' is a dilemma.

Framing a choice as a dilemma has two important implications. First, it seems to legitimate granting discretion to the policymaker; after all, if there truly is a dilemma, there is in principle no single right action to take. And second, framing a choice as a dilemma masks the extent to which the range of policy options results from *prior* deliberate decision-making. In this case, we suggest that the apparent choice results from extensive and long-standing efforts to contain refugees elsewhere.

Not every hard choice, or choice made under conditions of epistemic uncertainty, is a dilemma. The appropriate response to epistemic uncertainty is to pursue better information and decision-making mechanisms²—and not rest on speculative assertions about how well physical proximity tracks refugees' cultural and social affinities or their abilities to contribute politically to the home country ([Vasanthakumar 2021](#)). In short, framing the choice between protection 'here' or 'there' as a 'genuine ethical dilemma' without justification is question-begging, risks enabling arbitrary rather than evidence-based policymaking, and obfuscates the extent to which apparent dilemmas are in fact the result of prior policy choice.

¹ We are grateful to Mitali Agarwal and Jara Al-Ali for research and editorial assistance.

² For example, the Global Action Platform on Forced Displacement proposed by Aleinikoff and Zamore might be able to aid in decision-making tailored to particular displaced populations and contexts ([Aleinikoff and Zamore 2019](#), at 120-122).

We appreciate that this framing arises in part because the authors are contributing to a debate on migration policy dilemmas, and we agree that it is important to recognize the 'existence of competing moral goals' (Bauböck, Mourão Permoser and Ruhs 2022). However, by uncritically accepting the premise that protection 'here' or 'there' is a 'genuine ethical dilemma,' the authors cede too much ground. We concur with the authors' ultimate conclusion calling for a mix of protection 'here' *and* 'there,' but we question the very dichotomy between 'here' and 'there.' In particular, we highlight the refugee containment practices that are necessary to *create* the apparent choice between protection 'here' or 'there.' The extensive harms these practices inflict call into question the moral permissibility of the choice between 'here' and 'there'; the futility of such containment efforts in keeping refugees 'there' undermines the practical utility of this choice to policymakers. Instead of taking as a given that protection 'here' or 'there' is a choice (much less a genuine ethical dilemma) in either the 'realistic utopia' or 'real world,' we suggest key aspects of policies and practices that ought to be on the table of any serious reform discussion, among policymakers and scholars alike.

Understanding the maldistribution of refugees

The article is framed around protection 'here' and 'there', the Global North and Global South. The article's empirical starting point is the statistic that 'The proportion of refugees hosted in the Global South has increased from 75% to 85% over the past decade or so', not least because of the conscious efforts made by states of the Global North to prevent refugees arriving at their borders ([Fitzgerald, 2019](#)).

This oft-repeated statistic serves an important moral function, reminding citizens of wealthy states that most refugees are far away, and that the states offering the most protection are poor. However, the contemporary distribution in the official statistics reveals that Europe is a key region for providing refugee protection. According to the UNHCR, out of a total of 24.5 million people displaced across borders (refugees, people in refugee-like situations and Venezuelans displaced abroad) at the end of 2020, around 6.8 million (28%) were protected in Europe, more than in any other UNHCR region. Over half of these, 3.7 million, were in Turkey alone. In comparison, the UNHCR regions of Africa and the Americas hosted around 6.5 million and 4.6 million refugees respectively ([UNHCR 2020](#)).³ Considering that EU member states now host around 4 of the 5 million people so far displaced externally by Russia's 2022 invasion of Ukraine, Europe's importance as a refugee-hosting region only seems to grow.

It is also worth considering the underlying counting mechanisms and demographic patterns more carefully. Many of the 'refugees' counted in the global statistics are born into exile; sometimes their parents or grandparents fled decades ago. Thus, the number of Afghan refugees in, say, Iran and Pakistan grows generation by generation, while those Afghans who seek protection in Europe may not be recognised as refugees, but often still stay for the long-term under tolerated status. The numbers of Afghan refugees in the 'Global South' swells, while Afghans seeking protection in Europe are invisibilised. We suggest that a more contextualised analysis of the number of people who have fled, sought, and enjoyed protection (including *ad hoc* and temporary protection) paints a very different picture: even more than the official statistics would suggest, European states accommodate a large proportion of the people fleeing conflict and persecution.

How do these empirical facts alter our understanding of the debate on protection 'here' or 'there'? In our view, they require us to pause and recalibrate any worldview that uses this dichotomy as a basic heuristic to understand the global refugee regime. In this section, we offer some empirical, political, and ethical correctives to this heuristic.

³ See Appendix for a detailed breakdown.

Empirically, we suggest that this dichotomy cannot account for Europe's role in refugee protection as described above. Irrespective of the many restrictions on mobility that states employ to prevent people from fleeing, refugees will arrive at Europe's borders given its geographical location. It is, after all, a small peninsula protruding to the north of Africa and the west of Asia. The authors assume that there is no real ethical choice for conscientious policymakers in the Global South but to admit refugees onto their territory' when refugees flee from states that are 'proximate'. But, legally and practically, we would contend that also applies for European states. Indeed, all states are obliged not to *refoule* ([Costello & Foster 2016](#)).

If the 'Global North' frame suggests that states can effectively keep refugees away, then it scarcely fits the reality of European states, notwithstanding their attempts to do so. If 'Global North' connotes mainly the US, Canada, Australia, New Zealand and perhaps the United Kingdom, what is the utility of the term? Should we not name and shame these states that devise and share policies that undermine protection for the other 190 states in the world? The 'Global North' heuristic seems to play some role in enabling these states to normalise and legitimate their worst practices. Indeed, as we write, Australia's abhorrent offshore practices are being mimicked in grotesque fashion by the United Kingdom and Denmark. However, in both these cases, legal constraints make it doubtful whether these policies will ever go beyond spectacle. It is difficult to envisage courts in either the UK or Denmark accepting Rwanda as a 'safe third country' (see generally [Freier, Karageorgiuo and Ogg 2021](#)).

Moreover, as the authors acknowledge, 'here' and 'there' also belies the fact that refugees do not flee equally into all proximate states in the Global South. Rather, they follow well-worn migratory and historical paths, assessed in light of contemporary protection opportunities. Most of all, as the authors are well aware, the decision to flee immediately to a neighbouring country, or stay in the nearest states, is significantly dictated by the barriers to refugee flight that states in the Global North have erected. In the world of visas and carrier sanctions, there is, as Fitzgerald ([2019](#)) characterises it, a moat and dome preventing many protection seekers from using regular, safe means of travel (planes and ferries). This does not mean refugees don't come. On the contrary. It is at least arguable that irregular refugee arrivals tend to be en masse when containment backfires, as the best explanations of Europe's 2015 'refugee crisis' would suggest.

The harms and costs of containment

The authors offer us good reasons to reconsider policy prescriptions that seem to allow rich states to choose to protect refugees 'there' rather than 'here'. But perhaps the greatest harm of setting up the discussion as a dilemma is that it seems to obscure the harms of containment, in that it does not examine the policies that prevent refugees from moving to seek protection, the costs they entail and the harms they inflict. This is not to suggest that all refugees would move if they could, but rather that discussing whether to protect 'there' or 'here' seems to imagine some fungibility in refugee protection. Supporting those in need with humanitarian and development assistance (refugees and local communities) reflects one distinct set of duties on rich states. Those duties exists independently of duties to enable and encourage all states to protect refugees.

Refugee containment is the defining feature of the global refugee regime in the late 20th and early 21st centuries. Containment practices are built around the system of visas and carrier sanctions. Visa policies distribute mobility opportunities unequally, often bearing down particularly heavily on those seeking protection ([de Haas et al 2019](#); [Czaika, de Haas, and Villares-Varela 2018](#)), sometimes deflecting them into irregular routes and statuses ([Czaika and Hobolth 2016](#)). A longer view of refugee protection in the era before containment became normalised reveals a very different picture, with refugees often permitted and enabled to migrate onwards. Carrier sanctions prevent those without visas from travelling safely, and are also of relatively recent origin ([Baird & Spijkerboer 2019](#)). Indeed, it is notable that when first adopted, UNHCR argued strongly and cogently that carrier sanctions were illegal, as powerfully articulated by Erica Feller ([1989](#)). While carrier sanctions are

the keystone in the edifice of refugee containment, they get relatively little attention in ethical or policy discussions, and are barely mentioned in the Compacts, for example ([Costello 2018](#)).

With visas and carrier sanctions in place, refugees journeying beyond the (few) neighbouring states open to them are frequently illegalised. Framing refugees as 'illegal immigrants' is no mere rhetoric and leads to a cascade of human rights violations ([Costello 2020](#); [Costello and Mann 2020](#); [Vasanthakumar 2018](#)). Those states that wish to shirk their legal obligations to refugees focus their activities on combatting illegal immigration by means of policing and militarising their borders. Thereafter, depending on political vicissitudes, further fortification, surveillance and militarisation of borders appears legitimate. The vast sums spent on containment and bordering practices do not feature in the authors' discussion, although this must surely be part of the debate about where resources should flow in a fair global refugee regime. Moreover, while these policies have profound impacts and harm refugees, they do not actually contain refugees.

Improving refugee protection everywhere?

In spite of our qualms about the framing of the piece, we agree with the authors that 'any cogent scheme of refugee protection should involve a much greater mix of refugee protection "here *and* there" than is currently available. Notably, the dilemma the authors stipulate at the outset is one they ultimately dissolve. Even so, we suggest that their prescriptions are underwhelming in light of the harmful nature of containment practices they largely seem to take as a given, and for which their suggestions of enabling refugees to access labour migration programmes or encouraging inclusion at the municipal level do not provide sufficient remedy.

Before our eyes, we see in the EU's reaction to the millions who have fled Ukraine since the Russian invasion a refugee response based on mobility, agency and work rights. By happenstance, Ukrainians have not needed visas to enter the EU since 2017. With the Russian invasion, the EU decided to further enable their mobility, in effect according them temporary legal status and permitting them to move onwards to choose their own place of refuge. Their status accords them immediate access to work and social rights. It appears that, at least for now, the system of self-allocation is working, and does not require formal responsibility-sharing mechanisms.

This example demonstrates that practices deemed completely unrealistic when the EU faced mass arrivals from Syria are now in place, and apparently working. One day's 'realistic constraints' that shape policy prescriptions and debate evaporate the next. To be clear, temporary protection is not a panacea: its temporariness means that decisions on stay or return will have to be made in a short three years. But it forestalls the need to make individual and costly individualised asylum determinations, and affords agency and dignity during the waiting period. While its application in this particular legal form is novel for the EU, the general practice of making swift mass protection decisions is not. Such systems are a longstanding feature of the global refugee regime, protecting Syrians in Turkey, for example, Venezuelans in Colombia, and most refugees in Africa.

We know that states' responses to refugees depend on local and global political interests, resulting in discriminatory practices ([Abdelaatay 2021](#)). In a world where all states have ethical and legal obligations towards refugees, the role of law should be to assist to level up and generalize good practices. We know from the most convincing scholarship that international human rights commitments depend on domestication for their efficacy, which in turn depends on civil society and transnational alliances ([Sikkink 2017](#)). Given these insights, it would be more fruitful to focus on engaging in and supporting the sorts of activism, alliances and institutions that support refugee rights in all states, rather than dividing the globe in a way that enables the richest states to shirk their obligations. Shirking mechanisms are often of recent provenance and should be directly confronted, rather than assumed as necessary features of a realistic worldview.

Protection Here, There or Elsewhere? Why We Need to Consider How Non-arrival Policies Complicate the Dilemma

Eleonora Milazzo (King's College London)

(Originally published [online](#), on the 'Dilemmas website', on 5 September 2022).

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.

Responding to critics

T. Alexander Aleinikoff (The New School) and David Owen (University of Southampton)
(Originally published [online](#), on the 'Dilemmas website', on 13 December 2022).

We are grateful for the engagement of the commentators with our original paper and would like to briefly respond to some of their arguments.

Our commentators have taken issue with the 'here' versus 'there' distinction. Cathryn Costello and Ashwini Vasanthakumar note, as does Matthew Gibney, that, as the Ukraine situation shows, it does not map onto a Global North/Global South distinction. And Eleonora Milazzo helpfully urges us to think beyond 'here' and 'there' to consider 'protection elsewhere.'

We are persuaded by Milazzo's suggestion that our analysis should be expanded to consider (the increasing recourse to) 'protection elsewhere.' And she helpfully sketches out how that analysis might run, in terms we find compatible with our approach. We think there is no easy answer here. Protection elsewhere, as currently practised, is largely about enforcing a 'not here' strategy. But it could also be the basis for a global responsibility sharing system that is sorely needed if the current regime is to be improved. In any event, it needs consideration on its own.

Likewise, we accept Costello's and Vasanthakumar's critique that the empirical framing of our distinction between Global North and Global South fails to "account for Europe's role in refugee protection" (where Europe is construed as including Turkey): "If the 'Global North' frame suggests that states can effectively keep refugees away, then it scarcely fits the reality of European states, notwithstanding their attempts to do so" (page 13 of this volume). But whether or not the protection here or there distinction perfectly fits the North/South distinction is of course not the issue. The question we are addressing is whether we would find acceptable an ideal or realistic world in which the vast majority of the world's refugees are limited to receiving protection in countries of first asylum.

The more important claim of Costello and Vasanthakumar is that the part of our critique of 'protection there' proposals (and its here/there framing) that focused on the treatment of the supposed policy dilemma in realistic terms "obscure[s] the harms of containment, in that it does not examine policies that prevent refugees from moving to seek protection, the costs they entail and the harms they inflict" (page 13 of this volume). To Costello and Vasanthakumar, it's as if we are sitting at a table of global policymakers deciding, in neutral and wonkish language, how best to maximise the utility of refugees and states.

But we do not simply take things as they are and ask what is to be done. Rather, the questions that motivate us arise because the developed world—that is, that part of the world most able to absorb large numbers of forced migrants—has adopted policies that dramatically restrict refugee agency and impose huge costs on developing states. Containment is the *cause* of the policy dilemmas we discuss, as well as the often-unspoken basis for arguments about providing protection 'there.' Any fair and just resolution of the matters at hand—as with questions of social justice in general—demands a reckoning with the past, recognition of how those with power have exercised it to their advantage, and an exclusion of unjust reasons for action. Our paper details the harsh measures adopted by developed states; and it does not seek to examine reasons for those measures, but rather to think through to a better world.

Costello's and Vasanthakumar's arguments lead them to the following conclusion: that "it would be more fruitful to focus on engaging in and supporting the sorts of activism, alliances and institutions that support refugee rights in all states, rather than dividing the globe in a way that enables the richest states to shirk their obligations" (page 14 of this volume). We agree that this is a fruitful approach, but this complaint fails to recognise a central aim of our discussion, namely, to show that we do not have reason to endorse the 'protection there' proposals (and the framing they operate with) even if we hold everything else (including the operation of containment policies) constant, that is, even if we work with a scenario which seems most advantageous to the advocates of 'protection there.'

We noted in the original piece that we reached our shared conclusions through occasionally diverging routes. In a sharply focused contribution, Gibney argues that each of the authors confronts a problem with their preferred ideal theory views. He is sceptical that Owen's legitimacy view can rule out as "unacceptable (as opposed to impractical) for states to agree upon an arrangement where some states did the bulk of the incorporating" (page 9 of this volume). If limited to the case of (most) sanctuary-refugees, this seems right. Although Owen argues that, as a matter of principle, the distributional effects of membership-composition should be fairly shared across states, his view also allows for states to engage in responsibility-exchanges which would, in principle, allow for the kind of variable distribution that we currently see. However, two points can be noted in response. First, this would not apply to asylum-refugees nor to that sub-section of sanctuary-refugees who have special needs that cannot be addressed in neighbouring states. Second, even if the view allows this possibility in principle for most sanctuary-refugees, it places the power to determine such distributions in the hands of the relevant states and does not limit itself to the contingencies of geography.

Gibney takes issue with Aleinikoff's position that a 'solution' to refugee situations might better focus on mobility and guarantee of rights than ultimate membership in a political community. He states that "a realistic utopian position simply must, at a minimum, rule out the possibility of long term, de facto statelessness" (page 10 of this volume). Aleinikoff does not disagree. In *The Arc of Protection: Reforming the International Refugee Regime*, co-authored with Leah Zamore, he argues that "a fair and just international regime for the forcibly displaced" would "in effect amend article 34 of the Convention to provide a right to citizenship—or at the very least, permanent residence status—after a lengthy stay as a refugee with no prospect of return in the foreseeable future" ([Aleinikoff and Zamore 2019, 80](#)).

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Appendix

Appendix I: Breakdown of Refugees, people in refugee-like situations and Venezuelans displaced abroad, by UNHCR Regions. UNHCR Global Trends 2020, page 15.

Table 1 | Refugees, people in refugee-like situations and Venezuelans displaced abroad, by UNHCR regions | 2020

UNHCR regions	Start-2020				End-2020				Change (total)	
	Refugees	People in refugee-like situations	Venezuelans displaced abroad	Total	Refugees	People in refugee-like situations	Venezuelans displaced abroad	Total	Absolute	%
- East and Horn of Africa and Great Lakes	4,388,700	-	-	4,388,700	4,511,500	-	-	4,511,500	122,800	3%
- Southern Africa	744,400	-	-	744,400	720,400	-	-	720,400	- 24,000	-3%
- West and Central Africa	1,204,700	-	-	1,204,700	1,353,500	-	-	1,353,500	148,800	12%
Total Africa*	6,337,800	-	-	6,337,800	6,585,400	-	-	6,585,400	247,600	4%
Americas	592,900	108,800	3,582,200	4,283,900	650,300	108,800	3,856,300	4,615,400	331,500	8%
Asia and Pacific	4,114,400	48,700	-	4,163,100	3,968,400	48,000	-	4,016,400	-146,700	-4%
Europe	6,543,500	27,000	-	6,570,500	6,671,900	105,300	-	6,777,200	206,700	3%
Middle East and North Africa	2,602,400	40,300	-	2,642,700	2,483,500	26,000	-	2,509,500	-133,200	-5%
Total	20,191,000	224,800	3,582,200	23,998,000	20,359,600	288,100	3,856,300	24,504,000	506,000	2%

Editors

Rainer Bauböck

European University Institute and Austrian Academy of Sciences

rainer.baubock@eui.eu

Julia Mourão Permoser

Danube University Krems

julia.mourao-permoser@donau-uni.ac.at

Martin Ruhs

European University Institute, Migration Policy Centre

martin.ruhs@eui.eu

Lukas Schmid

Goethe Universität Frankfurt

L.Schmid@jur.uni-frankfurt.de