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The Disappearing Border: How Wealthy Nations Are Legally Outsourcing Their Refugee Obligations

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ABSTRACT

This article analyses the process of increasing global externalization of asylum obligations from the origins of the Australian Pacific Solution of 2001 through to its contemporary manifestations in the British Rwanda asylum scheme, the Italian Albanian scheme, and the emerging 'offshore asylum returns hub' model in the European Union. Through an analysis of international human rights law and regional case laws, and an examination of comparative policy, this paper seeks to demonstrate that externalization of asylum processes constitutes not a legitimate form of migration governance, but rather an attempt by states to evade their obligations under the 1951 Convention relating to the Status of Refugees, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. While courts have found such programs in breach of the non-refoulement obligations and prohibitions of collective expulsion at all levels of jurisdiction, from national supreme courts up to the Court of Justice of the European Union and the European Court of Human Rights, governments have not changed their policies, but resorted instead, to legislative fixes, interpretative shifts and the signing of new bilateral treaties. The article highlights a structural enforcement problem in the relationship between the international law that prohibits it, and the domestic political incentives that reward it, exacerbated by the mainstreaming of far-right electoral pressure throughout Europe. It is also a clear example that the financial costs of externalization are far greater than the costs of domestic processing and that the protection results are demonstrably worse. The article concludes that the 1951 Convention is not being openly repealed but is being systematically hollowed out, and that without enforceable accountability mechanisms, the international refugee protection framework faces a crisis of institutional legitimacy.

KEYWORDS

Externalization, Non-Refoulement, Offshore Asylum Processing, Safe Third Country, Enforcement Gap

I. INTRODUCTION

The right to seek asylum is one of the oldest and most fundamental principles of contemporary international law. Set out in the 1951 Refugee Convention in light of the disastrous experiences of the interwar period, it was meant to protect the provision of humanitarian assistance from considerations of political expediency. But that protection is steadily being eroded. Since 2001, an increasing number of states with a prosperous economy have been exploring, what is known in diplomatic circles as the process of externalization of asylum seeking, the method of shifting asylum seekers to another country which is not within the jurisdiction of the state receiving asylum claims. Australia pioneered the model. The UK, Italy, and the European Union have all tried to replicate it; with devastating constitutional implications, financial consequences and in every recorded instance illegally. In this paper we trace the process, explore the legal structure which is under threat, and question its future in the face of a growing political opposition.

II. THE BLUEPRINT WAS ALWAYS AUSTRALIAN: THE ORIGINS OF THE OFFSHORE MODEL

Modern offshore asylum processing did not begin in Europe. Australia had already established a system in place to exclude asylum seekers coming by sea from using its domestic refugee determination system, long before the United Kingdom introduced its Rwanda plan and Italy its Albania arrangement.

In 1992, the Australian Government changed the Migration Act 1958 to impose mandatory detention on all unauthorized non-citizens, including asylum seekers, without any individual assessment, no time limit or any judicial trigger.[1] The rupture occurred on 26 August 2001 when the Norwegian freighter MV Tampa rescued 433 largely Hazara Afghan asylum-seekers from another vessel and attempted to take them offboard at Christmas Island, which was then an Australian territory. The Howard government refused entry, boarded the vessel with SAS troops, and transferred the passengers to Nauru and New Zealand.[2] When the Federal Court held the government lacked legal authority to exclude the Tampa,[3] Parliament responded not by complying, but by legislating around the judgment passing the Migration Amendment (Excision from Migration Zone) Act 2001, which physically removed Christmas Island

[1] Migration Act 1958 (Cth) s 189 (Austl.) (as amended 1992); Immigrant Justice Ctr., *Offshoring Asylum* ch. 3, at 1–2 (2025).
[2] Nat'l Museum of Austl., *Tampa Affair* (2021), https://www.nma.gov.au/defining-moments/resources/tampa-affair.
[3] Victorian Council for Civil Liberties Inc v. Minister for Immigration & Multicultural Affairs [2001] FCA 1297 (Austl.).

and Australia's external territories from the domestic migration zone.[4] No entry into the zone meant no access to the asylum system, no right of review and no pathway to protection. The 1951 Refugee Convention was not repealed,[5] it was circumnavigated.

This was the "Pacific Solution" - the first systematic application of legal geography against asylum seekers in the world. It was formalized through Memoranda of Understanding with Nauru (in 2012, 2013, 2021) and a parallel arrangement with Papua New Guinea's Manus Island, with Australia funding all operational costs.[6] From July 2013, the government declared that no person transferred offshore would ever be resettled in Australia, regardless of refugee status.[7]

The human cost was catastrophic, the "Nauru Files": over 2,000 leaked internal incident reports documented systematic child sexual abuse, acute mental health deterioration, self-harm and deaths.[8] Australia spent AUD $415 million on Nauru operations in one fiscal year, which is an estimated AUD $350,000 per detainee per annum.[9] In 2017, a AUD $70 million class action settlement was approved by Australia's Supreme Court in Kamasaee v Commonwealth for Manus island detainees, the largest human rights class action settlement in its history.[10]

The international legal reckoning came on 9 January 2025, when the UN Human Rights Committee issued decisions in two cases involving 25 asylum seekers in which 24 of whom unaccompanied minors that were transferred to Nauru in 2013-2014.[11] Australia argued it retained no ICCPR (International Covenant on Civil and Political Rights) obligations because the detainees were physically in a sovereign third state. The Committee rejected this, finding Australia exercised effective control over the Nauru facility and had violated Article 9(1) (freedom from arbitrary detention) and Article 9(4) (right to challenge detention before

[4] Migration Amendment (Excision from Migration Zone) Act 2001 (Cth) (Austl.).
[5] Convention Relating to the Status of Refugees art. 33(1), July 28, 1951, 189 U.N.T.S. 137.
[6] Memorandum of Understanding Between the Government of Australia and the Government of Nauru (Aug. 29, 2012) (renegotiated 2013, 2021).
[7] Eur. Parliamentary Research Serv., *Extraterritorial Processing of Asylum Claims*, EPRS_BRI(2024)757609, at 3 (July 2024).
[8] *The Nauru Files*, Guardian Austl. (Aug. 10, 2016); Human Rights Watch, *Australia: Appalling Abuse, Neglect of Refugees on Nauru* (Aug. 2, 2016).
[9] *Id.*
[10] Kamasaee v Commonwealth [2017] VSC 537 (Austl.).
[11] U.N. Human Rights Comm., *Decisions Adopted Under the Optional Protocol to the ICCPR*, Commc'ns No. 3462/2019 & 3482/2019, U.N. Doc. CCPR/C/139/D/3462/2019 (Jan. 9, 2025).

a court).[12] Committee Member Mahjoub El Haiba stated: "A State party cannot escape its human rights responsibility when outsourcing asylum processing to another State."[13] Australia reaffirmed its commitment to the Nauru arrangement the same week.

This is the most important and the most perilous lesson the model teaches, not that processing is legal, but it can be politically viable even if it is illegal. Each of the United Kingdom, Italy and the EU imported a non-working system of law from Australia. It was proof that legal defeat and policy continuity can coexist indefinitely, provided the political will holds.

III. JURISDICTION FOLLOWS THE PERSON, NOT THE PASSPORT: THE LEGAL FRAMEWORK

In order to explore how individual governments have tried to offshore their asylum obligations, the doctrinal framework of the problem must be set out: What does non-refoulement prohibit, and does that prohibition extend to a state when it acts outside its own borders? International law has determined the answer to both questions and both answers have been ignored in practice.

Non-refoulement is contained in Article 33(1) of the 1951 Refugee Convention, which states that no contracting state shall expel or return a refugee in any manner whatsoever to the territories where his life or freedom would be threatened on grounds of race, religion, nationality, membership of a particular social group, or political opinion.[14] Critically, the obligation does not only apply to formally recognized refugees but also to those whose refugee status has not yet been determined because refugee status is in essence declaratory: a person does not become a refugee upon recognition, but is recognized because they already are one.[15] Non-refoulement is also contained in Article 3 of the Convention Against Torture 1984,[16] and in Article 6 and 7 of the ICCPR,[17] which together prohibit removal to any country where there is a real risk of irreparable harm, including torture or arbitrary deprivation of life.

[12] International Covenant on Civil and Political Rights arts. 9(1), 9(4), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; OHCHR, *Australia Responsible for Arbitrary Detention of Asylum Seekers in Offshore Facilities* (Jan. 9, 2025).

[13] UNHCR Asia Pac., *UN Ruling on Australia's Responsibility for People Transferred to Nauru* (Jan. 20, 2025).

[14] 1951 Refugee Convention, *supra* note 5

[15] UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol paras.* 6–8 (Jan. 26, 2007).

[16] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, 1465 U.N.T.S. 85.

[17] ICCPR, *supra* note 12.

UNHCR has established that the prohibition is a norm of customary international law, which is applicable to all states, irrespective of whether they have ratified a treaty.[18]

A central jurisdictional question is whether the state's responsibilities apply extraterritorially. Arguments that state responsibilities become void once the asylum seekers cross the borders of the state have repeatedly been rejected by international courts holding that legal responsibility may continue where a state exercises effective control.

The first major attack against such a claim was made in the case of Sale v. Haitian Centers Council, when the United States Supreme Court in 1993 ruled that Article 33(1) was inapplicable to interdiction and deportation of Haitian asylum seekers on the high seas on the basis that it had territorial limitations.[19] In response to this ruling, UNHCR swiftly delivered its Advisory Opinion on Extraterritorial Application of the Non-Refoulement Principle in 2007, which stated clearly that Article 33(1) was applicable irrespective of the location of the state, exercising jurisdiction, be it frontier, high seas, or territory of another state.[20] What mattered most in the opinion of UNHCR was not the physical presence of the person in the territory of the state but his presence within the authority and control of the state.[21]

The most authoritative judicial treatment of this issue came in the case of Hirsi Jamaa and Others v. Italy (2012) at the European Court of Human Rights. In this case, coast guard ships of the Italian government intercepted vessels carrying Somali and Eritrean migrants in the open sea and transferred the intercepted persons to Libya without any individual assessments. In a unanimous decision, the Grand Chamber ruled that applicants came within Italy's jurisdiction as defined in Article 1 of the ECHR because the state had continuously and exclusively exercised de jure and de facto control of the transfer.[22] Italy violated Article 3 of the ECHR, which is prohibition of torture and inhumane treatment from which the principle of non-refoulement originates and prohibition of collective expulsion.[23] Italy, according to the Court, could not avoid its obligations under the Convention by transferring responsibility of the act to Libya.

[18] UNHCR Advisory Opinion 2007, *supra* note 15
[19] Sale v. Haitian Ctrs. Council, 509 U.S. 155, 183 (1993).
[20] UNHCR Advisory Opinion 2007, *supra* note 15
[21] *Id*. ¶ 43
[22] Hirsi Jamaa & Others v. Italy, App. No. 27765/09, ¶¶ 77–82 (Eur. Ct. H.R. Feb. 23, 2012) (Grand Chamber).
[23] *Id*. ¶¶ 136–138.

Thus, the legal position is clear and consistent across treaty bodies, advisory opinions, and regional courts: obligations come with effective control, not geographic presence. A state that boards a vessel, financing a detention center, or exercises operational authority over a processing facility in a third country retains full responsibility for the treatment of those within that facility. All offshore processing schemes explored in the following sections: Rwanda, Albania, and EU's return hubs have been constructed in accordance with this legal framework and have struggled against its constraints.

IV. DEAD ON ARRIVAL: THE UK-RWANDA DEAL

The plan to transfer asylum seekers to Rwanda implemented by the United Kingdom is one of the most expensive and the least effective offshore asylum experiments a democratic government has ever attempted. It cost the government £290 million in public funds, led to the constitutional clash of powers between the parliament and the judiciary, and was called off before it became operational. Four people were relocated to Rwanda under the agreement. All four went voluntarily.

The agreement was made public in April 2022 by the prime minister Boris Johnson as an official reaction to the increasing number of crossing attempts by migrants on small boats. Those arriving in the United Kingdom illegally were to be transferred to Rwanda, where their applications for asylum would be considered and if granted, they would be settled permanently in Kigali, not in the United Kingdom. The logic of deterrence was obvious: if people knew that they would never make it to Britain, the crossings would stop.[24] UNHCR immediately criticized the deal as one not compliant with the 1951 Refugee Convention and warned that it set a dangerous precedent of outsourcing the protection responsibilities in Europe.[25]

The courts intervened before the policy could become operational. In November 2023, the UK Supreme Court ruled against the policy in R (AAA and Others) v Secretary of State for the Home Department.[26] The Court found that there were several systemic and grave deficiencies of the asylum process in Rwanda, which included the previous practice of transferring asylum seekers to other countries as part of the agreement with Israel, which meant that those who were transferred would face a real danger of being forced back to countries where they were

[24] Memorandum of Understanding Between the Government of the United Kingdom and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Arrangement (Apr. 14, 2022).
[25] UNHCR, *UNHCR's Position on the UK-Rwanda Asylum Partnership* (June 2022).
[26] R (AAA & Others) v. Sec'y of State for the Home Dep't [2023] UKSC 42, ¶ 105 (U.K.).

persecuted. This violated Article 3 ECHR and section 6 of the Human Rights Act 1998.[27]

Instead of accepting the decision, Parliament legislated around it. The Safety of Rwanda (Asylum and Immigration) Act 2024 made Rwanda safe by statute, restricted judicial review of deportations based on international law considerations, and operated irrespective of any contradiction with the international obligation.[28] As noted by Goodwin-Gill and Costello, among others, Parliament declared a safe country because of political expediency rather than evidence, making a legislative fiction unprecedented in British constitutional history.[29]

Nothing made any difference. On his first day as Prime Minister in July 2024, Keir Starmer scrapped the deal. Britain had meanwhile already committed £290 million to Kigali.[30] Rwanda then launched an international arbitration proceeding in November 2025, contending that Britain is legally bound to pay as per the treaty, irrespective of decisions of domestic courts. In June 2026, the Permanent Court of Arbitration dismissed all of Rwanda's claims in its verdict by establishing that diplomatic discussions at the end of 2024 amounted to Rwanda agreeing not to demand further payments.[31]

The Rwanda saga represents the essence of the absurdity of offshore processing, a policy that has survived the Supreme Court decision, forced Parliament to legislate in defiance of international law, cost almost a third of a billion pounds, and shifted four individuals.

V. THE EMPTY CENTRES: ITALY'S ALBANIA EXPERIMENT

While the agreement between the UK and Rwanda showed how an offshore asylum procedure could be overturned by the Supreme Court, the Italy-Albania agreement showed something even more troubling- it being struck down repeatedly by multiple courts, relabeled and modified, and continued anyway while the detention centers it had set up remained practically empty, which cost Italy tens of millions of euros on facilities used by nobody.

[27] *Id.* ¶¶ 93, 102, 105
[28] Safety of Rwanda (Asylum and Immigration) Act 2024, ss 2, 4 (U.K.).
[29] Guy S. Goodwin-Gill & Jane McAdam, *The Refugee in International Law 321* (4th ed. 2021).
[30] *International Court Rejects Rwanda's Claim over UK Migration Deal*, Al Jazeera (June 1, 2026).
[31] Permanent Court of Arbitration, Republic of Rwanda v. United Kingdom, Award ¶¶ 47, 50–76 (May 15, 2026).

The Italy-Albania Protocol was signed by Prime Minister Giorgia Meloni and Albanian Prime Minister Edi Rama in November 2023.[32] Italy constructed two detention and processing centers in Albania, located in Shengjin and Gjader, where migrants picked up from the sea by Italian boats in international waters were to be taken for processing of their asylum claims, based on Italian laws and Italian jurisdiction. In spite of being physically located outside Italian territory in a third sovereign country, the centers were considered to be parts of the Italian border zone.[33] According to the plan, up to 36,000 asylum seekers would be processed per year through this system.[34]

However, the arrangement collapsed immediately in front of the judiciary. Between October 2024 and January 2025, national courts of Italy refused to validate the detention of transferred asylum seekers and ordered to bring them back to Italy.[35] The courts ruled that Italy's designation of certain countries which include Bangladesh and Egypt, to be the "safe countries of origin" for asylum-seekers, which was supposed to justify transferring them to Albania, was against EU law, as those designation included exceptions for vulnerable groups like women, LGBT+ people, and minorities, meaning they could not lawfully be declared safe for the entire population.[36]

Rather than accepting these rulings, Italy pivoted. The government used the Albanian centres, which had been established as asylum processing centres, as repatriation centres for those already on Italian territory with existing expulsion orders in March 2025, via Decree-Law No. 37/2025, a structural redesign that avoided the judicial hurdles which had stalled the original scheme.[37]

The most significant legal knockout came on 1 August 2025 when the European Court of Justice held in joined cases C-758/24 (Alace) and C-759/24 (Canpelli) that a country can be declared safe only where it provides sufficient protection to all of its citizens without exceptions and such declarations should be supported by publicly accessible, judicially

[32] Protocol Between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania for the Strengthening of Collaboration in the Management of Migration Flows (Nov. 6, 2023).
[33] MEIG Programme, *Italy-Albania Migration Agreement: Human Rights Implications of Offshore Asylum Processing*, Highlight 47/2025, at 1–2 (Dec. 2025).
[34] *Top EU Court Strikes a Blow Against Italy's Albania Migrant Camps Scheme*, Al Jazeera (Aug. 1, 2025).
[35] Heinrich Böll Stiftung, From *Fast-Track Asylum to Return Hubs: The Italy-Albania Deal on Trial* (Sept. 10, 2025).
[36] *Id.*; Global Detention Project, *European Court Ruling Challenges Italy-Albania Detention Deal* (Aug. 11, 2025).
[37] Heinrich Böll Stiftung, *supra* note 35.

reviewable documents.[38] This decision destroyed the very basis of the legal justification of the transfer programme. Amnesty International declared that the plan "in its entirety breaches Italy's obligations under Italian, international and EU law" adding that its use of automatic detention is arbitrary and illegal under international law irrespective of the safe country problem.[39]

The cost was huge. The Italian Government spent over €74.2 million on the Albania transfer programme while it was estimated that construction costs of the Albanian centers were seven times greater compared to the construction costs of equivalent centres within Italy.[40] As Thomas Gammeltoft-Hansen claims, the externalisation programmes tend to cost more and provide less protection compared to the domestic options but are politically motivated and therefore remain in force.[41]

Italy's Albania experiment is Rwanda's story retold. A government, convinced that the geography could replace the law, found out that it could not. The camps were constructed. The courts emptied them. The bill kept rising.

VI. LEGAL BLACK HOLES WITH GOOD BRANDING: THE "SAFE THIRD COUNTRY" FICTION

All offshore asylum schemes outlined in this article are based on one legal pivot: the designation of a third country as "safe". Take that away and the whole structure collapses. Which is exactly what the courts continue to do; and which governments continue to rebuild, anyway.

The logic appears straightforward. The primary duty of the state under international refugee law is non-refoulement which means "do not return someone to a place where they face persecution". Beyond that, the governments say that they're not responsible to process a claim when there's a safe alternative. The "safe third country" concept assumes that states' obligations towards refugees do not go beyond non-refoulement; that it is on the discretion of the State, not an individual right[42]. It's also the idea that courts have been challenging for 30 years.

[38] MEIG Programme, *supra* note 33
[39] Amnesty Int'l, Italy: EU Court Ruling on '*Safe Countries of Origin*' *Is a Heavy Blow to Italy-Albania Migration Deal* (Aug. 1, 2025).
[40] Mixed Migration Ctr., *Mixed Migration Review* 2025, at 3 (2025).
[41] Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control 214* (Cambridge Univ. Press 2011).
[42] María-Teresa Gil-Bazo, *The Safe Third Country Concept in International Agreements on Refugee Protection: Implications for the EU-Turkey Statement*, 33 NETH. Q. HUM. RTS. 4 (2015).

The numbers make the stakes concrete. In the years 2021-2023, Greece did not process over 10,000 asylum applications on the grounds that Turkey was a "safe third country[43]." However, there was one issue. No asylum seeker had returned to Turkey from Greece since March 2020[44]. The "safe" classification was a legal fiction that covered for a diplomatic vacuum.

On 4 October 2024, the CJEU intervened. In C-134/23 Elliniko Symvoulio, the Court ruled that member states cannot issue an inadmissibility decision where it has been established that the asylum seeker will not be allowed to enter the designated country's territory[45]. Ten months later, the Court was pushed further by the proceedings of the Italy-Albania protocol. Italy's 2024 legislative act designating Bangladesh as safe failed to specify the sources used for that assessment, which made it impossible to check the lawfulness of the designation by the applicant or the Court[46].

However, in response to these successive judicial corrections, the EU has not taken any steps towards narrowing the use of "safe" designations. It has, in contrast, expanded them. In December 2025, the Council and European Parliament agreed that a meaningful connection between an asylum seeker and a third country would no longer be required, and would be satisfied by merely a transit, or the existence of bilateral agreements[47]. At the same time, the new EU common list of safe countries of origin, which includes Bangladesh, Colombia, Egypt, India, Morocco and Tunisia, will mean that citizens of those countries will be taken through accelerated procedures and presumed not to need protection[48]. Both sets of rules came into effect on 20th June 2026[49].

The Council of Europe's Commissioner for Human Rights has warned that this path risks creating "human rights black holes[50]." He has cause

[43] Greek Asylum Serv., *Annual Report on Asylum Procedures 2021–2023* (Ministry of Migration & Asylum 2024).
[44] UNHCR Greece, *Monitoring Report: Inadmissibility Procedures at the Greek Border* (Mar. 2024).
[45] Case C-134/23, Elliniko Symvoulio gia tous Provlepsimous Prosfyges v. Ypourgos Metanasteysis kai Asylou, ECLI:EU:C:2024:839 (Eur. Ct. Just. Oct. 4, 2024).
[46] Tribunale di Roma, Sezione Specializzata in Materia di Immigrazione, Ordinanza (Oct. 18, 2024) (It.).
[47] Council of the E.U., *Political Agreement on Reform of the Safe Third Country Concept*, Council Doc. 15283/25 (Dec. 2025); Qualification of Beneficiaries of International Protection Regulation (EU) 2024/1347, 2024 O.J. (L) 1347.
[48] Commission Implementing Regulation Establishing a Common EU List of Safe Countries of Origin, C(2025) 8900 final (Dec. 2025).
[49] Safe Country Rules Amendments, 2026 O.J. (L) (June 20, 2026).
[50] Michael O'Flaherty, Comm'r for Human Rights, Council of Eur., *Report on Externalisation of Migration: Human Rights Implications of Offshore Asylum and Return Procedures*, CommDH(2025)18 (Sept. 2025).

for concern. Safe does not necessarily describe what is actually safe. It is a political label imposed by states that have interests only in expanding them and no mechanism forcing them to defend it[51]. When a case reaches the CJEU, usually many years have passed and the individual involved has already spent years in limbo. That difference between the rule of law and political practice is not a fault in the system. It's the system for many governments.

VII. OFFSHORING IS A TREND, NOT AN ABERRATION: THE GLOBAL CONTAGION

Consider the geography of ambition. Negotiations between Italy and Albania. Netherlands signing a letter of intent with Uganda. Denmark joining in a coalition with Austria, Germany and Greece. Nordic Ministerial Council meeting in Helsinki. The European Parliament voting to authorise offshore return hubs. Australia renewing its contract with Nauru, again. These are not parallel accidents. They're the coordinates of one speeding policy consensus: rich countries processing asylum claims elsewhere.

Offshoring asylum, which Australia first introduced in 2001, and was first suggested in 1986 by Denmark, jumped significantly in 2023, 2024 and 2025 and appears to be gaining momentum, with a normalization of the "Australian model" in the cards[52]. The reason the model became a template was because it appeared to work, at least politically, not legally, not morally, but politically. Arrivals dropped. The governments remained in power. The human cost had to be borne by the asylum seekers located beyond any political and media scrutiny of the states who implemented the scheme[53].

The costs, however, remained at home. Since 2012, Australia has been spending more than AUD$12 billion on off-shore processing[54]. In 2024-25 alone, the Department of Home Affairs was spending around AU$560mn on offshore processing, a programme, that at the end of 2024, had only around 100 individuals on Nauru[55].

Now, the European Union has increasingly adopted the same reasoning.

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[51] Cathryn Costello & Itamar Mann, *Border Justice*, in The Cambridge Handbook of the Law of Migration (Cambridge Univ. Press 2023).
[52] Mixed Migration Ctr., *How Offshore Asylum Processing and Migration Management Went Global* in 2025, MMR Thematic Focus (Jan. 26, 2026).
[53] Madeline Gleeson & Natasha Yacoub, *Offshore Processing in Australia*, in Externalizing Asylum (Kaldor Ctr. for Int'l Refugee L., Univ. of New South Wales Apr. 2026).
[54] Austl. Dep't of Home Affairs, *Portfolio Budget Statements* 2024–25: *Home Affairs Portfolio* (Commonwealth of Austl. 2024).
[55] Mixed Migration Ctr., *supra* note 52.

The new EU rules apply to return orders i.e. they will be recognized across the entire EU by July 2027, which would mean that any rejected asylum claim in Greece will automatically lead to enforcement across all member states, which will enable swift transfers to offshore return hubs[56]. There are no indications of how the human rights guarantees in this context will be enforced[57].

The list of prospective host nations looks like a map more of diplomatic leverage than safety. EU talks have apparently narrowed down to a dozen possible partner countries, including Rwanda, Ethiopia, Uganda, Libya, Mauritania, Tunisia, and several others, including some designated by the UN as unsafe for asylum-seekers[58]. Finland's Interior Minister, after Nordic ministers met to coordinate, said that only three percent of those who were ordered to return to Somalia actually returned, citing offshore hubs as the most effective way to do the job[59]. Political logic is the same in all capitals; the issue is not that states are denying protection. The issue is that returns are not coming quick enough.

The speed of institutional adoption is what makes it a contagion and not a coincidence. What Italy tried bilaterally in 2024, the EU did it together by 2026. Europe has codified what Australia fought for in the courts for 20 years. Offshore impulse has transitioned from exception to infrastructure. The issue now, is not whether states will try to outsource their duty to host refugees. It is if there is anything legal, institutional or political that can stop them.

VIII. COURTS SAY NO; GOVERNMENTS SAY WATCH ME: THE ENFORCEMENT GAP

The question lying underneath every section of this article needs to be answered directly: if these policies are repeatedly found illegal, why do governments continue to construct them? It's not about incompetence or stubbornness. It is calculation.

These offshore deterrence strategies appeal to all politicians, not just the right. In May 2024, a group of 15 EU Member States, across the political spectrum, expressed a common view that the EU's migration and asylum policy ought to be outsourced[60]. European Commission President Ursula

[56] Regulation (EU) 2026/XXX of the European Parliament and of the Council on the Mutual Recognition of Return Decisions and the Facilitation of Returns, 2026 O.J. (L).
[57] O'Flaherty, *supra* note 50, at 47–52.
[58] Nat'l Immigrant Justice Ctr. & Fwd.us, *Pushing Back Protection: How Offshoring and Externalization Imperil the Right to Asylum* 22–24 (2025).
[59] Finnish Ministry of the Interior, Press Release, *Nordic Ministers Discuss Return Hubs* (Feb. 14, 2026).
[60] Council of the E.U., *Joint Letter from Fifteen Member States on the Externalisation of EU*

von der Leyen described Italy and Albania's deal as "innovative". Language of innovation is a tell. These ideas are neither new nor untested. They are still neither legitimate, nor very effective. They are continued, however, for political reasons: signalling resolve to a growing nationalist electorate and a message of deterrence to potential migrants[61].

This is an electoral push that cannot be denied. Many countries saw far-right parties gaining ground in the numerous elections held in 2024 at the local, national and European level. Germany's AfD party received 20.8% of the national vote in February 2025[62]. In September 2024, Austria's Freedom Party was elected with a majority, its highest percentage ever[63]. Far-right parties are in power or are part of a power-sharing government in Italy, Hungary, Finland, the Netherlands, Slovakia and Croatia. Mainstream parties have been losing votes to the parties who base their policy on halting migration and in response, the mainstream parties have taken the policy up, rather than challenging it[64].

The issue is that the evidence on which these policies are based is practically non-existent. Contrary to public claims, there was no evidence that any deterrent effect took place for asylum seekers attempting to come to Australia[65]. In reality, numbers have risen during the peak period of offshore processing. The University of Newcastle research showed that individuals detained offshore had 20 times the risk of developing PTSD as those detained onshore who were there for less than six months, symptoms which remained for years after their release[66].

And yet the lawsuits go on with no repercussions. The UK Supreme Court's declared Rwanda unsafe; the Parliament just legislated around it[67]. Italian courts blocked Albania transfers; Rome rewrote the designation criteria[68]. The Albania centres were denounced for rights violations, but were still politically popular and had support from both the left and the right. When deterrence works electorally, it need not

Migration and Asylum Policy (May 2024).

[61] Hanne Beirens, *Migration Deterrence Strategies Are Popular Amongst Politicians, But What Do We Know About Their Effectiveness?,* ODI Global (Dec. 18, 2024).

[62] *A Rising Far Right Is Reshaping Europe's Political Landscape*, Al Majalla (Nov. 20, 2025.

[63] *Id.*

[64] Liana Fix & Sophia Winograd, *How Far-Right Election Gains Are Changing Europe*, Council on Foreign Rel. (Oct. 15, 2024).

[65] Gleeson & Yacoub, *supra* note 53.

[66] Phillipa Specker et al., *Risk of PTSD 20 Times Higher for People Held in Offshore Detention*, Brit. J. Psychiatry (Oct. 2024).

[67] R (AAA & Others) v. Sec'y of State for the Home Dep't [2023] UKSC 42; Safety of Rwanda (Asylum and Immigration) Act 2024, c. 8 (U.K.), *repealed by* Border Security, Asylum and Immigration Act 2025, c. 15 (U.K.).

[68] Tribunale di Roma, *supra* note 46.

work legally or practically.

This is the enforcement vacuum at its finest: the space between what international law bans and domestic law rewards, wide enough to construct detention centres in. The speed of litigation is the speed of courts. Elections are held on a 4-year cycle. So, governments have discovered that losing in court is something they can afford. Political dividends come before the legal bill does.

IX. THE 1951 CONVENTION IN THE DOCK: IS THE REFUGEE FRAMEWORK ITSELF BREAKING DOWN?

The 1951 Refugee Convention was drafted by the states that saw Jews being turned away at borders and sent back to their deaths, and were influenced by this precedent of the Holocaust. The drafters understood that the right to seek asylum should be safeguarded against political considerations. Now, 75 years later, those walls of insulation are coming crumbling down, not as a result of rogue authoritarian states, but by treaty signatories through their own legislatures.

The UK was the starkest example. The UK Supreme Court in November 2023, in the case of R (AAA and Others) v Secretary of State for the Home Department [2023], unanimously ruled that Rwanda was not, by itself, a safe country, but rather that Rwanda had systemic failures[69]. In Rwanda, 100% of people from war-zone countries were rejected, while the same nationalities were almost always recognized as refugees in UK (98% in Afghanistan, 99% in Syria)[70]. Parliament responded by creating legislation around it. In 2024, the Safety of Rwanda Act was passed by Parliament, which declared Rwanda safe by fiat, and which set aside key provisions of the Human Rights Act, while instructing courts and tribunals to give effect to Parliament's "sovereign conclusion" regarding Rwanda's status as a safe country[71]. The Northern Ireland Human Rights Commission has asked the Government to withdraw the Act, as it would "deliberately evade its obligations under the 1951 Refugee Convention and put at risk the international protection regime"[72]. The Act came into force on 25 April 2024. It was abandoned in December 2025, not due to international pressure, but because it was never worked[73].

[69] R (AAA & Others) v. Sec'y of State for the Home Dep't, supra note 26.
[70] *Id.* at ¶ 50.
[71] Safety of Rwanda (Asylum and Immigration) Act 2024, *supra* note 28.
[72] N. Ir. Human Rts. Comm'n, Advice on the Safety of Rwanda (Asylum and Immigration) Bill, at 5, 14 (Jan. 2024), https://nihrc.org/assets/uploads/publications/NIHRC-Advice-on-Rwanda-Bill-January-2024.pdf.
[73] Border Security, Asylum and Immigration Act 2025, c. 15, § 1 (U.K.); Permanent Court of Arbitration, *supra* note 31.

The Rwanda Act was not something unique. It was a signal. The challenge to the refugee framework is not limited to externalization. It increasingly includes direct political criticism of the asylum regime itself. In September 2025, the US Deputy Secretary of State Christopher Landau labelled the international asylum system as "a huge loophole in our migration laws" and urged its revision in the UN General Assembly as "a top international priority"[74]. The concept note for the US-led side event titled: *The Global Refugee and Asylum System: What Went Wrong and How to Fix It*, did not mention non-refoulement. The administration's principles included ensuring the absolute right of States to regulate their borders, refusal of the right to seek asylum in any State of their choice, and the idea that the refugee status should be temporary in nature[75]. Trump capped the number of refugees allowed into the United States for 2026 at 7,500, the lowest in American history and a significant drop from Biden's 125,000, with priority given to white South Africans[76].

At of the end of 2025, 149 States were signatories to the 1951 Convention or its 1967 Protocol. However, 44 per cent of contracting states have reservations limiting the refugees' rights to decent work, freedom of movement and access to basic services[77]. While the UN called for $47.4 billion, humanitarian funding has fallen in 2024 as the US, EU and Germany, all cut spending, affecting 305 million people in need of support[78].

The 1951 Convention is not being violated when the UK Parliament legislatively deems Rwanda safe despite judicial findings to the contrary; or when the US fails to include non-refoulement as a principle of asylums; or when the EU relaxes safe country principles the day after courts tighten the standards; etc. It is being vacated. The text remains. The obligation is being hollowed from the inside.

X. WHAT NEEDS TO CHANGE AND WHO NEEDS TO DO IT

The problem is not that governments lack solutions. It is that the solutions they keep choosing are designed to look like action while avoiding accountability. At some point, the question stops being whether

[74] Christopher Landau, Deputy Sec'y of State, Remarks at U.N. General Assembly High-Level Week (Sept. 25, 2025).
[75] *Id.*; *see also* Mixed Migration Ctr., *Trump Targets the Refugee Convention: A Fundamental Shift in Asylum Norms*, MMR Thematic Focus (Jan. 26, 2026).
[76] *Trump Announces Lowest Refugee Admission Cap in US History at 7,500*, Al Jazeera (Oct. 30, 2025).
[77] *Id.*
[78] Rice Univ. Baker Inst. for Pub. Pol'y, *The Weakening Foundation of International Protection* (Feb. 4, 2026).

offshoring works, and starts being why governments keep doing it. The answer to that question is also where the fix has to start.

Close the enforcement gap. Courts keep ruling. Governments keep building. This is not a failure of legal reasoning on either side. It is a calculation: losing in court is affordable when the political dividend arrives first. That calculation only changes if non-compliance carries an immediate cost. The EU needs a mechanism that suspends structural funds to member states found in active breach of judicial rulings on asylum transfers, not at the end of a multi-year infringement procedure, but within months.

Fix the safe country designation before it loses all meaning. The legal fiction holding every offshore scheme together is the claim that a third country is safe when the evidence says otherwise. Greece declared Turkey safe while no asylum seeker had returned there since March 2020. Italy designated Bangladesh safe without citing a single source. The EU responded to two successive CJEU rulings demanding evidential rigour by expanding its safe country list anyway. Designations need to be evidence-based, publicly documented, annually reviewed, and automatically suspended when a court finds them unsupported. The burden of proof belongs on the state making the claim, not on the asylum seeker challenging it years later from a detention centre abroad.

Put the real numbers in front of voters. The political case for offshoring rests on the assumption that it is cheaper and tougher than the alternative. Neither holds. Italy's Albanian centres cost seven times more per unit than equivalent facilities on Italian soil. Australia spent AUD$560 million in a single year to house roughly 100 people. These figures exist in government budgets. They are simply never placed honestly next to the domestic alternative. Every offshore processing proposal should require a mandatory, independently verified cost comparison before it can proceed. Not as a hurdle, but because the public paying for it deserves to know what they are actually buying.

Invest in processing, not deterrence. There is no serious evidence that offshoring stops people from coming. What reduces pressure on asylum systems is speed and fairness inside them. Countries with well-resourced, timely domestic procedures face less political backlash than those with multi-year backlogs and no clear pathway to a decision. The backlog is the crisis. The offshore centre is the most expensive and least effective response to it, and it makes the backlog worse by pulling resources and political attention away from the only fix that works.

Defend the Convention like it still means something. The 1951 Refugee Convention is not failing because it is outdated. It is failing because the

states that wrote it have stopped defending it publicly while continuing to invoke it legally. The US dropped non-refoulement from its asylum principles entirely. The EU loosens safe country rules the week after courts tighten them. The text of the Convention survives. The commitment behind it does not. Governments willing to make the honest public argument that border management and refugee protection are not opposites are rare right now. They need to become more common, because a legal framework built in direct response to the Holocaust does not get to be quietly legislated around for electoral convenience without consequence. The consequence just takes longer to arrive than the next election cycle. That is the whole problem.

None of this is technically complicated. The core legal principles are established. The evidence is in. What offshore processing has exposed, more than anything else, is that the gap between what international law requires and what domestic politics rewards is now wide enough to serve as migration policy. Closing that gap is not a legal problem. It is a political one. And political problems have political solutions, if anyone is willing to reach for them.