

ASYLUM AND REFUGEE LAW

From responsibility-sharing to responsibility-shifting: the UK's safe third country regime and the erosion of refugee protection

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Introduction: the UK's asylum policy

The United Kingdom's asylum policy since 2020 has been defined by a growing legislative commitment to deterrence that increasingly relies on safe third country (STC) frameworks as the primary mechanism for managing irregular arrivals. An STC framework allows a state to declare an asylum claim inadmissible on the basis that the claimant could, or should, have sought protection in another safe jurisdiction. The asylum seeker is sent to a third country where they can apply for asylum and still be safe. While the broader landscape of UK asylum policy since 2020 includes various enforcement and border security measures, including those introduced by the subsequent Labour administration, this article focuses specifically on the STC architecture codified in ss.80A-80C of the Nationality and Borders Act 2022,¹ and ss.2 and 4 of the Illegal Migration Act (IMA) 2023.² By isolating the STC model, this article examines whether these specific frameworks represent a legitimate exercise of 'responsibility-sharing'³ as envisaged by the Preamble of the 1951 Refugee Convention's drafters, or whether they constitute a systematic 'responsibility-shifting'⁴ designed to delegate and evade protection obligations under the 1951 Refugee Convention.⁵

The central argument put forward by this article is that the UK's approach creates a condition in which asylum seekers are rendered legally invisible through inadmissibility regimes that deny them procedural rights without guaranteeing protection elsewhere. This represents not a legitimate exercise of sovereignty but, arguably, a breach of treaty obligations and the principle of good faith – *pacta sunt servanda*.⁶ The 1951 Refugee Convention presupposes cooperative burden-sharing, which is a principle intended by the drafters to ensure that front-line states were not overwhelmed and that refugees received a 'satisfactory solution'⁷ through international cooperation. Originally, STC arrangements were conceived as mechanisms to facilitate this sharing by allowing states to transfer claims to countries with which asylum seekers had meaningful connections, such as family ties or previous residency.⁸ However, modern STC policies have distorted this logic. Rather than sharing responsibility for protection, states now seek to shift it entirely by using bilateral agreements to deflect asylum seekers without ensuring substantive protection will be secured elsewhere, evidenced in the UK-Rwanda partnership⁹ and formally proven in the case of *AAA*.¹⁰

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¹ Nationality and Borders Act 2022, ss 80A–80C.

² Illegal Migration Act 2023, ss 2, 4.

³ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) Preamble, recital 4; Michelle Foster, 'Responsibility Sharing or Shifting? "Safe" Third Countries and International Law' (2008) 25(2) *Refugee* 64.

⁴ Foster (n 3) 65

⁵ Refugee Convention (n 3).

⁶ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT) art 26.

⁷ Refugee Convention (n 3) Preamble, recital 4.

⁸ UNHCR Executive Committee, 'Conclusion No. 15 (XXX) on Refugees without an Asylum Country' (1979) UN Doc A/AC.96/572, para (h)(iv).

⁹ Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the Provision of an Asylum Partnership Agreement (signed 14 April 2022).

¹⁰ *R (AAA (Syria)) v Secretary of State for the Home Department* [2023] UKSC 42.

This transformation constitutes a breach of the ‘object and purpose’¹¹ of the 1951 Convention. The Refugee Law Initiative’s 2022 Declaration on Safe Third Countries¹² articulates this critique, noting that STC policies that deflect or obstruct access to asylum procedures violate states’ obligations. When states declare claims inadmissible without ensuring another state will examine those claims substantively, they engage in a form of ‘constructive refoulement’¹³. This creates conditions so untenable that they effectively compel self-deportation. This shift reflects a broader trend toward presumptive safety over individual assessment, seen in various international contexts beyond Europe, such as Australia’s offshore processing model.¹⁴ The UNHCR’s 2017 Legal Considerations establish the authoritative standard that STC arrangements must ensure a meaningful connection between the asylum seeker and the proposed third country, as well as the availability of durable solutions.¹⁵ Current state practices fail both tests systematically, often operating in a murky legal area where the ‘duty to remove’¹⁶ overrides the ‘duty to protect.’¹⁷

The Israel-Rwanda ‘voluntary departure’ scheme, operational between 2013 and 2018, provides significant empirical evidence of the failures inherent in responsibility-shifting. Israeli authorities offered asylum seekers a choice between indefinite detention or departure to Rwanda with financial incentives. However, studies revealed that the vast majority left Rwanda within weeks of arrival.¹⁸ This ‘revolving door’ effect occurred because Rwanda lacked the legal infrastructure to provide status or work rights, forcing individuals to use Israeli funds to pay smugglers for onward journeys to Europe. This demonstrates that transferring individuals to states with which they have no meaningful connection, defined by the UNHCR as ties that facilitate integration¹⁹, fails to produce durable protection²⁰. While states argue that such transfers are necessary to disrupt the business model of people smugglers, a central justification provided by the UK government, the Israeli precedent suggests that without meaningful connection, the policy merely fuels secondary displacement.²¹

The UK Supreme Court in *AAA v Secretary of State*²² reinforced this by holding that the practical capacity of a third country to fulfil safety assurances must be scrutinised, rather than relying on the ‘good faith’,²³ of political commitments. Despite the government’s argument that Rwanda’s diplomatic assurances were sufficient to mitigate risk, the Court found the lack of a functioning asylum system created an objective risk of non-refoulement. This judgment highlighted the ‘capacity fallacy’ ‘in modern STC arrangements that safety cannot be legislated or bought; it must be a demonstrable fact.’²⁴

¹¹ VCLT (n 6) art 31(1).

¹² Refugee Law Initiative, ‘Declaration on Externalisation and Safe Third Country Arrangements’ (2022) <https://rli.sas.ac.uk/declaration-on-externalisation> accessed 10 March 2026.

¹³ Tilman Rodenhäuser and Padmaja Menon, ‘Does international law prohibit “constructive refoulement”?’ (EJIL: Talk!, 20 June 2024) <https://www.ejiltalk.org/does-international-law-prohibit-constructive-refoulement/> accessed 11 April 2026.

¹⁴ UNHCR, ‘UNHCR Monitoring Visit to Manus Island, Papua New Guinea 23 to 25 October 2013’ (2013); see also Madeline Gleeson, *Offshore: Behind the Wire on Manus and Nauru* (UNSW Press 2016).

¹⁵ UNHCR, ‘Legal Considerations on the Return of Asylum-Seekers and Refugees to Safe Third Countries’ (2017) paras 5–7.

¹⁶ Illegal Migration Act 2023 (n 2) s 2(1).

¹⁷ Refugee Convention (n 3) arts 1(A)(2) and 33(1).

¹⁸ International Refugee Rights Initiative, ‘“I was forced to leave”: The “voluntary” departure of African asylum seekers from Israel to Rwanda and Uganda’ (IRRI, September 2015) 12–15

¹⁹ UNHCR (n 15) paras 5–7

²⁰ UNHCR Conclusion No. 15 (n 8) para (h)

²¹ Shahar Shoham, Liat Bolzman and Lior Birger, ‘Moving under Threats: The Treacherous Journeys of Refugees who “Voluntary” Departed from Israel to Rwanda and Uganda and Reached Europe’ (Oxford Law Blogs, 12 October 2018) <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/10/moving-under> accessed 3 April 2026.

²² *AAA* (n 10) [56]–[60].

²³ VCLT (n 6) art 26.

²⁴ *AAA* (n 10) [74]–[76].

This article is set out in three sections, structured to demonstrate that current STC frameworks prioritise state convenience over the humanitarian purpose of the 1951 Convention. The first section establishes the normative framework by defining the concepts of safe third countries, non-refoulement, and ‘constructive refoulement.’²⁵ This assesses the legality of STC policies under Article 31 and the principle of good faith to prove that modern deflection tactics are fundamentally incompatible with the Convention’s intended spirit of international cooperation. It delves into the history of ‘refugees in orbit’²⁶ and the safeguards required to make a transfer lawful. The term ‘refugees in orbit’ refers to a legal and humanitarian phenomenon where asylum seekers are shuttled between jurisdictions because no single state acknowledges responsibility for examining their protection claims and we will explore how it fits in with the line of argument.

The next section evaluates the practical effectiveness of this responsibility-shifting model. Using a dual framework, it examines whether STC arrangements successfully resolve backlogs or deter future arrivals, scrutinising the empirical record of the Israel-Rwanda arrangement alongside the UK’s legislative framework. This includes an analysis of the ‘zombie framework’ created by the Illegal Migration Act 2023, where claims are rendered inadmissible without a functioning destination for removal. The term ‘zombie framework’ can be defined in this article as a state of statutory paralysis where the law mandates the host state to remove an individual and declare their claim inadmissible, yet the framework remains functionally ‘dead’ because there is no viable or lawful destination (safe third country) to facilitate that removal.²⁷ The final section contextualises the UK’s approach within a broader international trend of ‘externalisation.’²⁸ By examining the Italy-Albania processing centres, the EU’s New Pact on Migration and Asylum, and recent US coercive removal policies, this section identifies a global shift away from individualised assessment toward categorical exclusion. Through this three-part analysis, the article demonstrates that STC policies, as currently constituted, represent not a legitimate exercise of state sovereignty but an impermissible erosion of the international legal protections upon which refugee law depends.

This article contends that the UK’s contemporary STC model represents a fundamental departure from the humanitarian underpinnings of the 1951 Convention. By prioritising administrative deflection over substantive protection, the ‘zombie framework’ of the IMA 2023 does not merely manage migration; it risks dismantling the very international legal standards designed to prevent the human suffering of those seeking refuge. To understand the depth of this erosion, it is first necessary to dissect the legal bedrock upon which these policies sit. Accordingly, Section One will follow by establishing the normative framework of STC arrangements, exploring the evolution of the non-refoulement principle and the legal safeguards intended to ensure that international cooperation remains a tool for protection rather than a mechanism for exclusion.

The normative framework

This section establishes the normative benchmarks against which the United Kingdom’s Safe Third Country (STC) architecture must be measured. It begins by dissecting the foundational pillars of international refugee law to illustrate the intended spirit of collective responsibility. The analysis then transitions to the evolution of protective safeguards, specifically examining the ‘meaningful connection’ requirement and the legal mechanisms designed to prevent the creation of ‘refugees in orbit.’ By grounding this study in the intersection of the 1951 Convention and the

²⁵ Rodenhäuser and Menon (n 13).

²⁶ Rossella Pulvirenti, ‘From Solidarity to Exclusion: The “Safe Country” Concept in UK Asylum Law and the Irony of Borders’ (2025) 14(5) *Laws* 63, s.2.2.

²⁷ Eva Doerr and Isaac Ricca-Richardson, ‘Immigration Blog: Section 2 of the Illegal Migration Act – Duty to Remove’ (Garden Court Chambers, 3 January 2024) <https://www.gardencourtchambers.co.uk/news/immigration-blog-section-2-of-the-illegal-migration-act-duty-to-remove> accessed 4 April 2026.

²⁸ Bill Frelick, Ian M Kysel and Jennifer Podkul, ‘The Ethical and Legal Implications of Externalizing Asylum’ (2016) 4 *Journal on Migration and Human Security* 190, 193

Vienna Convention on the Law of Treaties (VCLT), this section provides the legal basis for the critique of ‘constructive refoulement’²⁹ that informs the remainder of this article.

Foundational pillars: non-refoulement and the preamble

To evaluate the legality of modern asylum policies, it is necessary to first establish the fundamental legal standards that govern the protection of refugees. The 1951 Refugee Convention was designed to ensure that individuals fleeing persecution are not left in a state of legal exclusion or bounced between jurisdictions without a determination of their status. This protection system stands on two foundational pillars: the principle of non-refoulement under Article 33³⁰ and the prohibition of penalties under Article 31³¹. Article 33(1) of the 1951 Convention provides the primary legal barrier to the forced return of refugees, stating:

“No Contracting State shall expel or return (‘refouler’) a refugee to ...territories where
his life or freedom would be threatened on account of his race, religion, nationality,
membership of a particular social group or political opinion.”³²

The interpretative debate regarding Article 33(1) centres on whether non-refoulement is a functional or purely territorial obligation. Proponents of the broad view argue that the duty is status-based and customary, applying wherever a state exercises ‘effective control’³³, thereby prohibiting extraterritorial repulsion.³⁴ Conversely, a restrictive reading of the article asserts that states only owe the duty to those who have attained a physical or legal presence within their sovereign territory, a view often used to justify offshore migration control policies.³⁵ While the restrictive view frequently dictates state practice (as will be demonstrated below), the broad interpretation is legally more prevalent, underpinned by the consensus of international tribunals and the UNHCR that the principle follows the exercise of state power rather than geographical borders.³⁶

The UK Supreme Court in *R (AAA (Syria)) v Secretary of State for the Home Department*³⁷ reinforced that non-refoulement is a ‘multifaceted legal foundation.’ The Court emphasised that this is a core rule of international law, reinforced not only by the 1951 Convention but by Article 3 of the European Convention on Human Rights (ECHR),³⁸ and the UN Convention Against Torture (UNCAT).³⁹ In its judgment, the Court did not merely look at the political promises made between the UK and Rwanda; it scrutinised the objective capacity of the Rwandan asylum system to process claims without the risk of ‘chain non-refoulement.’⁴⁰ Which is the risk of a refugee being sent from Rwanda back to their original state of persecution. The Court found that the Rwandan system suffered from systemic deficiencies, including a history of returning refugees

²⁹ Rodenhäuser and Menon (n 13).

³⁰ Refugee Convention (n 3) art 33(1).

³¹ *ibid* art 31(1).

³² *ibid* art 31(1).

³³ Sir Elihu Lauterpacht and Daniel Bethlehem, ‘The Scope and Content of the Principle of Non-Refoulement: Opinion’ in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law* (CUP 2003) 140–164.

³⁴ *Ibid*.

³⁵ Ellen F D’Angelo, ‘Non-Refoulement: The Search for a Consistent Interpretation of Article 33’ (2009) 42 *Vanderbilt Journal of Transnational Law* 279, 281.

³⁶ UNHCR, ‘Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under Article 33 of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol’ (26 January 2007) paras 14–15.

³⁷ *AAA* (n 10) [9].

³⁸ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 3.

³⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (UNCAT) art 3.

⁴⁰ *AAA* (n 10) [22]

to countries where they faced ill-treatment.⁴¹ This established a high legal threshold that safety cannot be a political promise; it must be an observable, evidence-based reality.

Furthermore, the Preamble of the 1951 Convention acknowledges that providing safety is a collective duty. Recital 4 specifically states that a “satisfactory solution” for the problem of refugees ‘cannot... be achieved without international cooperation.’⁴² The placement of this language in the Preamble was a deliberate political compromise among the 1951 delegates. Claire Inder notes that while some delegates argued for a binding obligation to share the burden of asylum, others resisted a rigid quota system. Placing this duty in the Preamble served as a structural anchor, ensuring the entire treaty is interpreted through a lens of international solidarity.⁴³ Under Article 31(1) of the Vienna Convention on the Law of Treaties (VCLT), a treaty must be interpreted in light of its ‘object and purpose,’⁴⁴ for which the Preamble is the primary source. Consequently, when a government implements a safe third country regime that ignores the necessity of cooperation, it undermines the humanitarian objective that gives the Convention its legal effect. By attempting to handle arrivals in isolation, the state fails the test of *pacta sunt servanda* (good faith),⁴⁵ performing its duties in a way that defeats the treaty’s core spirit.

Article 31 and the Judicial Shield: Adimi and B010

Article 31(1) of the Convention provides a shield against the penalisation of refugees:

“The Contracting States shall not impose penalties... on refugees who... enter or are present in their territory without authorisation.”⁴⁶

The legality of the UK’s current policy hinges on whether inadmissibility architecture functions as an unlawful administrative penalty by targeting the mode of arrival. In the landmark case of *R v Secretary of State for the Home Department, ex parte Adimi*,⁴⁷ the High Court dealt with refugees who were prosecuted for using false travel documents. The Crown argued that they were not protected by Article 31 because they had stayed in transit countries such as Italy and France for several days before reaching the UK and thus had not ‘come directly’⁴⁸ from a state of persecution. Simon Brown LJ dismissed this narrow view, ruling that the Convention requires a broad construction that acknowledges the ‘special situation’⁴⁹ of asylum seekers, whose quest for sanctuary reasonably involved breaching domestic law. The Court held that ‘short term stopovers’⁵⁰ are permissible, particularly where a refugee is travelling to a destination where they have meaningful connections, such as family or linguistic ties. Ultimately the court concluded that to prosecute refugees for their mode of arrival would be to ignore the very circumstances that made them refugees in the first place, as irregular travel, often characterised as ‘subterfuge.’⁵¹ is often the only means of escape.⁵²

This principle was further expanded by the Canadian Supreme Court in *B010 v Canada*.⁵³ This case involved individuals who arrived on the ship *Sun Sea* and assisted each other during the

⁴¹ *R (on the application of AAA (Syria) and others) v Secretary of State for the Home Department* [2023] UKSC 42, [50], [102]–[105].

⁴² Refugee Convention (n 3) Preamble, recital 4.

⁴³ Claire Inder, ‘The Origins of “Burden Sharing” in the Contemporary Refugee Protection Regime’ (2017) 29(4) *International Journal of Refugee Law* 523, 532.

⁴⁴ VCLT (n 6) art 31(1).

⁴⁵ *Ibid* art 26.

⁴⁶ Refugee Convention (n 3) art 31(1).

⁴⁷ *R v Secretary of State for the Home Department, ex parte Adimi* [2001] QB 667.

⁴⁸ *Ibid* 677–678.

⁴⁹ *Ibid* 679.

⁵⁰ *Ibid* 667, 679.

⁵¹ *Ibid* 667, 673.

⁵² *Ibid* 667, 678.

⁵³ *B010 v Canada (Citizenship and Immigration)* 2015 SCC 58, [2015] 3 SCR 704.

voyage. The government sought to classify this mutual assistance as ‘people smuggling’⁵⁴ to trigger inadmissibility. However, the Court held that ‘penalties’⁵⁵ are not restricted to criminal fines or imprisonment but include any procedural detriment that targets a refugee’s mode of arrival. Crucially, the Court determined that losing the right to have an asylum claim heard on its merits constitutes an administrative penalty.⁵⁶ When ss.2 and 4 of the Illegal Migration Act 2023 render a claim inadmissible solely based on the route of travel, it strips the individual of the right to have rights. This weaponisation of procedure acts as a de facto penalty designed to deter future arrivals, which is fundamentally incompatible with the shield provided by Article 31. This view is supported by Professor Goodwin-Gill, who argues that a ‘decision on the merits’⁵⁷ is essential to avoid breaching Article 31, and by the UNHCR, which classifies the denial of such a hearing as a prohibited ‘procedural detriment’.⁵⁸

The history of refugees in orbit and the evolution of responsibility

The safe third country concept was not originally designed as a tool for exclusion. It emerged in the 1980s to solve the problem of ‘refugees in orbit’⁵⁹. The term referred to individuals who were physically present in Europe but were being shunted from one state to another because no country would take responsibility for their claim.⁶⁰ The original logic was rooted in UNHCR Executive Committee Conclusion No. 15 (1979),⁶¹ a primary source which aimed to ensure that every refugee had access to at least one state that would process their claim and provide a ‘durable solution.’⁶² The goal was responsibility-allocation, intended to prevent individuals from being trapped in a cycle of displacement without legal status.⁶³

This cooperative ideal led to the 1990 Dublin Convention, the predecessor to the current Dublin Regulations. The Dublin system was designed as a mechanism based on a hierarchy of criteria: first, family reunification; second, the possession of a visa; and third, the first country of entry.⁶⁴ While the system was intended to streamline asylum, it became a source of systemic tension between EU member states because the ‘first country of entry’ rule placed a disproportionate administrative and financial burden on frontier states like Greece and Italy.⁶⁵ However, as Michelle Foster argues, modern STC policies have inverted the original logic of international cooperation; instead of ensuring a claim is heard somewhere, states now use the STC label to facilitate ‘responsibility shifting’, ensuring the claim is not heard within their own jurisdiction.⁶⁶ This transformation from a protection tool into a deflection tool represents a breach of the ‘object and purpose’ of the 1951 Convention.⁶⁷ The ‘object’ of the treaty is protection; when the STC concept is used to obstruct that protection, it is a bad-faith application of international law.⁶⁸

⁵⁴ *ibid* [5].

⁵⁵ *ibid* [57], [63].

⁵⁶ *ibid* [102]-[103].

⁵⁷ Guy S Goodwin-Gill, ‘Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection’ (2003) UNHCR Refworld 11.

⁵⁸ UNHCR, ‘Guidelines on International Protection No 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees’ (2024) HCR/GIP/24/14, para 28.

⁵⁹ Pulvirenti (n 26).

⁶⁰ *ibid*.

⁶¹ UNHCR Conclusion No. 15 (n 8) para (h).

⁶² *Ibid*.

⁶³ *Ibid*

⁶⁴ European Parliament, ‘Report on the implementation of the Dublin III Regulation’ (2020) A9-0245/2020, Explanatory Statement s 2.1.2.

⁶⁵ European Parliament, ‘Report on the implementation of the Dublin III Regulation’ (2020) A9-0245/2020, Motion for a Resolution para 1; Explanatory Statement s 1.6.

⁶⁶ Foster (n 3) 64, 65, 67.

⁶⁷ VCLT (n 6) art 31(1).

⁶⁸ UNHCR Conclusion No. 15 (n 8) para (h).

The strain on mutual trust and due diligence

The STC model relies on the principle of ‘mutual trust’⁶⁹, an assumption that all participating states provide an equivalent level of human rights protection. This principle is the foundation of the EU’s Dublin system, where it is treated as immaterial which Member State processes a claim because all are presumed to respect fundamental rights.⁷⁰ This creates what Ciara Smyth describes as a ‘conclusive presumption of safety,’⁷¹ which mandates that the transferring state must assume the receiving country is safe, removing any requirement to verify the actual conditions before a transfer is made. However, this trust is increasingly strained when states prioritise administrative speed over the certainty of safety. This is evidenced when the European Court of Human Rights (ECtHR) intervened in *MSS v Belgium and Greece*,⁷² holding that Belgium violated Article 3 of the ECHR by returning an asylum seeker to Greece. The Court found that Belgium could not rely on ‘mutual trust’⁷³ as a blind legal fiction when there was objective evidence that the Greek asylum system was so deficient that it exposed the individual to inhuman and degrading treatment.

This case proved that states have a ‘positive obligation’⁷⁴ to conduct their own due diligence. They cannot simply point to safe lists or political assurances compiled by the executive; they must prove that the individual will have access to a fair procedure in the third country. As Sílvia Morgades-Gil notes, once a state prioritises the speed of removal over the certainty of safety, ‘the presumption of safety is weakened, and the entire system of shared responsibility ceases to be justified’.⁷⁵ The reliance on safeguards that exist only on paper, without investigating the murky reality of the third country’s capacity, constitutes a failure of the state’s international obligations.

Legislative weaponisation: sections 2 and 4 of the IMA 2023

To see this tension in practice, one must look at the specific wording of the Illegal Migration Act 2023. Section 2(1) of the Act places the Home Secretary under a mandatory duty:

“The Secretary of State must make arrangements for the removal of a person from the United Kingdom if... the person entered or arrived in the United Kingdom in breach of immigration control.”⁷⁶ This is coupled with Section 4(2), which mandates: “Any [asylum] claim... must be declared inadmissible”⁷⁷

By quoting these sections, it becomes clear that the Act does not merely allow for removal; it mandates it regardless of the individual’s protection needs. This duty to remove represents a radical departure from the 1951 Convention’s focus on individual assessment. It attempts to use domestic legislation to extinguish an international right. As Professor Jeff King has argued, by legislating that a country is safe (as seen in the Safety of Rwanda Act 2024), the government attempted to legislate a fact to bypass the factual findings of the Supreme Court.⁷⁸ This creates a

⁶⁹ *Opinion 2/13 (Accession of the Union to the ECHR)* [2014] ECR I-000, [191]

⁷⁰ Ciara Smyth, ‘The Dublin Regulation, mutual trust and fundamental rights: No exceptionality for children?’ (2023) 28(4-6) *European Law Journal* 242, 242.

⁷¹ *Ibid* 243.

⁷² *MSS v Belgium and Greece* (2011) 53 EHRR 2.

⁷³ *Opinion 2/13* (n 69) [191].

⁷⁴ Vladislava Stoyanova, ‘Framing Positive Obligations under the European Convention on Human Rights Law: Mediating between the Abstract and the Concrete’ (2023) 23(3) *Human Rights Law Review* ngad010.

⁷⁵ Sílvia Morgades-Gil, ‘The “Internal” Dimension of the Safe Country Concept: the Interpretation of the Safe Third Country Concept in the Dublin System by International and Internal Courts’ (2020) 22(1) *European Journal of Migration and Law* 82, 113.

⁷⁶ Illegal Migration Act 2023, s 2(1).

⁷⁷ *Ibid* s 4(2).

⁷⁸ Jeff King, ‘The Safety of Rwanda Bill and the Rule of Law’ (UK Constitutional Law Association, 22 January 2024) <https://ukconstitutionallaw.org/2024/01/22/jeff-king-the-safety-of-rwanda-bill-and-the-rule-of-law/> accessed 23 March 2026.

murky constitutional space where the executive uses its legislative majority to override evidence-based judicial oversight, fundamentally undermining the principle of good faith.

Constitutional tension: sovereignty versus international obligations

The UK's approach highlights a profound tension between Parliamentary Sovereignty and international law. While the UK Parliament has the domestic power to pass any law, including those that breach treaties, the state remains bound by those treaties on the international stage. Under Article 27 of the VCLT, a state may not invoke the provisions of its internal law as justification for its failure to perform a treaty.⁷⁹ When a national law is used to ignore objective evidence of systemic risk, it breaches the principle of good faith.

By prioritising the duty to remove over the duty to assess, the UK's inadmissibility architecture attempts to use domestic sovereignty to extinguish international rights. This use of 'ouster clauses'⁸⁰ to prevent judicial review of safety assurances represents a departure from the rule of law. Paul Linden-Retek suggests that by seeking to truncate the agency of the refugee through these mechanisms, states also inhibit the integrity of their own democratic judgment.⁸¹ Human rights, in this view, are not just about protecting the individual but about preserving the democratic polity's own vision of a responsible political life.

The 1951 Convention is built upon a mandatory foundation of good faith and international cooperation. The evolution of the STC concept from a protection-allocation tool into a tool of exclusion represents a hollowing out of these protections. When a state achieves through administrative misery, what it is prohibited from doing through direct deportation, it engages in 'constructive refoulement,'⁸² by denying rights, work, and status. By rendering individuals invisible through inadmissibility, the state creates a state of permanent 'limbo.'⁸³ This weaponisation of time and uncertainty is the ultimate evidence of a move from responsibility-sharing to a bad-faith model of responsibility-shifting. It demonstrates that the current UK model prioritises political optics over the practical reality of international protection obligations. Having defined these legal standards, Section Two will move to evaluate the practical effectiveness of this model by scrutinising the empirical records of previous STC arrangements, such as the Israel-Rwanda scheme.

The practical effectiveness of responsibility-shifting models

Following the examination of the international legal standards in Section One, the section below evaluates the practical effectiveness of the responsibility-shifting model. Using a dual framework, it examines whether Safe Third Country arrangements successfully resolve backlogs or deter future arrivals by scrutinising the empirical record of the Israel-Rwanda arrangement alongside the UK's current legislative framework. Central to this analysis is the 'zombie framework' created by the Illegal Migration Act 2023. The term 'zombie framework' is defined in this article as a state of statutory paralysis where the law mandates the host state to remove an individual and declare their claim inadmissible, yet the framework remains functionally 'dead' because there is no viable or lawful destination for that removal.⁸⁴ By evaluating the National Audit Office (NAO) data and the loss of the Dublin Regulation infrastructure, this section argues that the shift toward inadmissibility has not managed migration, but has instead institutionalised a state of legal limbo.

⁷⁹ VCLT (n 6) art 27.

⁸⁰ Safety of Rwanda (Asylum and Immigration) Act 2024, s 2(3)-(5).

⁸¹ Paul Linden-Retek, 'The Refugee's Right to Have Rights: Post-Nationalism and the Ethics of Asylum' (2023) 24(1) *German Law Journal* 1, 14.

⁸² Rodenhäuser and Menon (n 13).

⁸³ Anne-Sophie Inno and others, 'The psychology of the "limbo" of asylum seeking: A systematic review and meta-synthesis of the qualitative evidence' (2022) 14(4) *Applied Psychology: Around the World* 544.

⁸⁴ Doerr and Ricca-Richardson (n 27).

The deterrence fallacy and the reality of unauthorised routes

The primary political and legislative justification for the United Kingdom's shift toward an inadmissibility architecture is the perceived necessity of 'breaking the business model of people smugglers.'⁸⁵ The government's core hypothesis posits that by removing the prospect of a domestic asylum determination and replacing it with a mandatory removal to a third country, the pull factor of the UK is neutralised.⁸⁶ However, a rigorous analysis of empirical data and migration patterns suggests that this deterrent logic is fundamentally flawed. Deterrence theory in the context of international protection assumes a 'rational actor' model; an assumption that individuals fleeing persecution perform a calculated cost-benefit analysis of destination state laws before departing.⁸⁷

As research from the Refugee Law Initiative (RLI),⁸⁸ and the Oxford Migration Observatory,⁸⁹ demonstrates, this model fails to account for the desperation inherent in the refugee experience. The deterrence argument ignores the reality that 'push factors' such as active conflict in Sudan, systemic repression in Eritrea, or the collapse of state protection in Afghanistan.⁹⁰ These push factors consistently outweigh the perceived legislative risks of the destination state. Between 2022 and 2024, despite the passage of the Nationality and Borders Act and the Illegal Migration Act, the number of individuals arriving via unauthorised boat crossings reached record highs (28,526 in 2021 to 45,774 in 2022). This suggests that rather than acting as a deterrent, the threat of third-country removal merely encourages individuals to attempt the journey before new barriers are fully operational. By focusing on shifting responsibility to a third country rather than sharing it through safe, legal routes, the state inadvertently strengthens the smuggling networks it seeks to disrupt.⁹¹ When legal pathways are extinguished, the demand for irregular and dangerous transit increases, proving that inadmissibility is a failed administrative tool for border management.

The Israel-Rwanda precedent

To understand the practical consequences of responsibility-shifting, one must examine the Israel-Rwanda Voluntary Departure scheme (2013–2018). This serves as the primary empirical precursor to the UK's policy. The scheme was a secret bilateral arrangement where the Israeli government sought to remove thousands of Eritrean and Sudanese asylum seekers. Israeli authorities presented these individuals with a coercive choice: indefinite detention in the Saharonim prison or voluntary departure to Rwanda (or Uganda) accompanied by a \$3,500 grant.⁹²

The scheme was a humanitarian and administrative disaster. As the arrangement was 'informal,'⁹³ the Rwandan government consistently denied the existence of a binding agreement to provide

⁸⁵ Illegal Migration Act 2023 (Explanatory Notes) para 1.

⁸⁶ Home Office, 'Policy Paper: Illegal Migration Bill: Overarching Factsheet' (Updated 11 July 2023) <https://www.gov.uk/government/publications/illegal-migration-bill-overarching-documents/illegal-migration-bill-overarching-factsheet> accessed 4 April 2026.

⁸⁷ European Asylum Support Office, *The Push and Pull Factors of Asylum-Related Migration: A Literature Review* (EASO 2016) 11–13.

⁸⁸ David Cantor, 'Why the Safety of Rwanda Bill Should be Concerning for us All' (Refugee Law Initiative Blog, 17 January 2024) <https://rli.sas.ac.uk/blog/why-safety-rwanda-bill-should-be-concerning-us-all> accessed 4 April 2026.

⁸⁹ Peter William Walsh and Madeleine Sumption, 'UK policies to deter people from claiming asylum' (The Migration Observatory, 2024) <https://migrationobservatory.ox.ac.uk/resources/commentaries/uk-policies-to-deter-people-from-claiming-asylum/> accessed 10 April 2026.

⁹⁰ *ibid.*

⁹¹ Chatham House, 'What is Externalization and Why is it a Threat to Refugees?' (2020) <https://www.chathamhouse.org/2020/10/what-externalization-and-why-it-threat-refugees> accessed 10 April 2026.

⁹² Global Detention Project, 'The "Voluntary" Departure Scheme for African Asylum Seekers in Israel' (GDP Special Report, 2018) 12–15.

⁹³ Amnesty International UK, 'Israel: Secret deal over deporting African migrants reckless and illegal' (Amnesty.org.uk, 2 February 2018) <https://www.amnesty.org.uk/knowledge-hub/all-resources/israel-secret-deal-over-deporting-african-migrants-reckless-and-illegal/> accessed 4 April 2026.

protection. Consequently, upon arrival, refugees were provided with no legal status, no work permits, and none of the integration safeguards promised by Israeli officials.⁹⁴ Research by Dirk Kohnert revealed a revolving door effect: of the approximately 4,000 individuals sent to Rwanda, the vast majority left the country within days or weeks.⁹⁵ Lacking any durable solution or legal security, they used their Israeli grant money to pay smugglers for a secondary irregular journey through Libya and across the Mediterranean toward Europe.⁹⁶ This proves that transferring individuals to states with which they have no meaningful connection does not manage migration; it simply fuels secondary displacement. The Israeli experience serves as a direct rebuttal to the claim that STC arrangements provide a satisfactory solution, highlighting the reality that safety cannot be purchased through political assurances alone.

The UK's Zombie Framework: analysing the IMA 2023

The UK's current landscape is defined by what this article terms a 'zombie framework', a statutory engine for removal that lacks a functioning destination. This architecture is codified in the Illegal Migration Act 2023 (IMA). Section 2(1) of the IMA 2023 places the Home Secretary under a mandatory duty to 'make arrangements for the removal' of any person who arrived unlawfully after the Act's passing and failed to arrive 'directly... from a country in which their life and liberty were threatened.'⁹⁷

This is coupled with s.4(2),⁹⁸ which mandates that any asylum or human rights claim made by a person falling within s.2 'must be declared inadmissible.'⁹⁹ By examining the text of the legislation, it is clear that the Act attempts to automate exclusion. It removes the executive's discretion to assess the merits of a claim, replacing it with a duty to remove. However, following the 2024/2025 political shifts and the Supreme Court's ruling in *AAA*, the UK found itself with a statutory duty to remove but no safe third country willing to accept those arrivals.

As the Institute for Public Policy Research (IPPR) has warned, the UK has effectively created a 'perma-backlog' of individuals stuck in legal limbo.¹⁰⁰ Between January 2021 and December 2023, Home Office statistics reveal that over 77,000 individuals were identified for potential consideration on inadmissibility grounds.¹⁰¹ Yet as the Oxford Migration Observatory notes, only a negligible fraction have actually been removed,¹⁰² leaving the vast majority trapped in the 'zombie framework' of the British asylum system. This is because there are no LARGE functioning return agreements with European neighbours. While a small formal 'one-in, one-out' returns agreement with France was established in August 2025,¹⁰³ its practical impact has been negligible; as of February 2026, only 305 individuals had been returned under the scheme, representing less than 1 per cent of the total small boat arrivals for 2025.¹⁰⁴ And the Rwanda

⁹⁴ International Refugee Rights Initiative, "I Was Left with Nothing": "Voluntary" departures of asylum seekers from Israel to Rwanda and Uganda' (IRRI 2015) 3, 20-21.

⁹⁵ Dirk Kohnert, 'The impact of Israel's Sub-Saharan relations on African migrants in Israel' (2023) MPRA Paper No 118992, 22 <https://mpra.ub.uni-muenchen.de/118992/> accessed 4 April 2026.

⁹⁶ Global Detention Project, 'Rwanda: Covid-19 and Detention' (Global Detention Project, 25 May 2020) <https://www.globaldetentionproject.org/countries/africa/rwanda#covid-19-and-detention> accessed 23 March 2026.

⁹⁷ Illegal Migration Act 2023 (n 2) s 2(1).

⁹⁸ Ibid s.4(2).

⁹⁹ Ibid s.2(1).

¹⁰⁰ Marley Morris, 'The asylum backlog: Job done?' (IPPR, 28 February 2024) <https://www.ippr.org/articles/the-asylum-backlog-job-done> accessed 23 March 2026.

¹⁰¹ Home Office, 'How many people do we grant protection to?' (Statistical Release, 29 February 2024) <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2023/how-many-people-do-we-grant-protection-to> accessed 23 March 2026.

¹⁰² Peter Walsh, 'The UK's asylum backlog' (The Migration Observatory, 28 April 2025) <https://migrationobservatory.ox.ac.uk/resources/briefings/the-uks-asylum-backlog/> accessed 23 March 2026.

¹⁰³ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic on the Prevention of Dangerous Journeys (signed 30 July 2025, entered into force 6 August 2025) CP 1377.

¹⁰⁴ Melanie Gower, 'Unauthorised migration: UK-France border cooperation' (Research Briefing CBP-9681, House of Commons Library 2026) 4.

scheme was cancelled so these individuals are trapped in a legal vacuum. Hence, they cannot pursue their asylum claim in the UK because of the statutory bar in Section 4, which dictates that the Secretary of State ‘must declare an asylum claim or a human rights claim... inadmissible’¹⁰⁵ if a person meets the removal criteria, further specifying that such a claim ‘must not be considered’¹⁰⁶ by the government. Yet, they cannot be removed. This represents the ultimate failure of responsibility-shifting; the state has extinguished the refugee’s right to have rights while keeping them indefinitely present in its own territory.

Scrutinising the National Audit Office (NAO) data

The responsibility-shifting model is not only legally questionable but fiscally extravagant. A March 2024 National Audit Office (NAO) report provided the first detailed breakdown of the costs associated with the UK-Rwanda partnership. The report revealed that the government had already paid £220 million to the Economic Transformation and Integration Fund (ETIF) before a single flight had departed. Furthermore, the NAO estimated that sending the first 300 asylum seekers would cost the taxpayer over £500 million.¹⁰⁷ The breakdown of these costs is staggering: £370 million in fixed payments to Rwanda over five years, plus £151,000 per individual for integration and processing, and approximately £11,000 per person for flight costs.¹⁰⁸ When compared to the cost of domestic asylum processing estimated by the IPPR,¹⁰⁹ and the Home Office,¹¹⁰ to be between £26,000 and £79,000 per person. The STC model is revealed as a form of performative governance.¹¹¹ The government was willing to pay a hefty premium to avoid its protection duties. As Jacqueline Lewis argues, wealthy states are effectively ‘buying their way out of the Convention,’¹¹² yet the NAO figures prove that this is a poor investment. The policy could only be cost-effective if it produced a significant deterrent effect, yet as established in section 2.1, arrivals continued to rise despite the spending. It remains a matter of debate whether the STC model could have achieved its goal of deterrence, as the policy was never fully operationalised. It can be argued that the deterrent effect cannot be conclusively judged as a failure because the mechanism was never allowed to function as intended. However, while the UK’s specific model remains untested in practice, the failure of the Israel-Rwanda precursor provides a compelling basis to infer that the UK’s model would have struggled with similar structural ineffectiveness and secondary displacement. The STC model thus diverts limited resources away from the domestic asylum infrastructure and into a high-cost, low-yield mechanism of exclusion.

The efficiency gap: Dublin regulation versus post-Brexit returns

A critical measure of the UK’s current failure is the loss of the Dublin Regulation infrastructure. Prior to Brexit, the UK was a party to the Dublin system, which was a responsibility-allocation mechanism based on a hierarchy of criteria: first, family reunification; second, the possession of a visa; and third, the ‘first country of entry.’¹¹³ While the Dublin system was criticised for placing an unfair burden on border states like Greece and Italy, it was built on a foundation of reciprocal readmission

¹⁰⁵ Illegal Migration Act 2023 (n 2) s 5(2).

¹⁰⁶ *ibid* s 5(3)(a).

¹⁰⁷ National Audit Office, *Investigation into the costs of the UK–Rwanda Partnership* (HC 2023-24, 577) 7–9.

¹⁰⁸ *Ibid* 6–7.

¹⁰⁹ Marley Morris, ‘Costing the Rwanda plan’ (IPPR, 18 March 2024) <https://www.ippr.org/articles/costing-the-rwanda-plan> accessed 23 March 2026.

¹¹⁰ Home Office, ‘Illegal Migration Bill: Economic Impact Assessment’ (26 June 2023) 24–26.

¹¹¹ Michael Collyer and Uttara Shahani, ‘The Rwanda–UK Migration and Economic Development Partnership as a colonial power play’ (2023) 12(8) *Social Sciences* 443.

¹¹² Jacqueline Lewis, ‘Buying Your Way Out of the Convention: Examining Three Decades of Safe Third Country Agreements in Practice’ (2021) 35 *Georgetown Immigration Law Journal* 881.

¹¹³ Melanie Gower and CJ McKinney, ‘The UK’s exit from the EU and the Dublin Regulation’ (House of Commons Library Research Briefing 9031, 16 October 2020) 7.

Since leaving the EU, the UK has lost the legal power to return asylum seekers to the member states they transited through. The ‘inadmissibility’ rules in the Nationality and Borders Act 2022 and the IMA 2023 are an attempt to replicate Dublin outcomes without the Dublin infrastructure. However, without any big formal readmission treaties, these notices of ‘inadmissibility’ are functionally toothless. Data from the Oxford Migration Observatory shows that between 2021 and 2024, only a tiny fraction (less than 1 per cent) of those served with inadmissibility notices were actually returned to a third country.¹¹⁴ This administrative dead end is the direct result of prioritising the appearance of border sovereignty over the practical necessity of international cooperation. By declaring claims inadmissible without a removal destination, the UK has not managed its backlog; it has merely frozen it in a state of permanent uncertainty.

The humanitarian toll: mental health and constructive refoulement

The most profound impact of the responsibility-shifting model is the humanitarian toll on the individuals caught in the ‘limbo’ of inadmissibility. By rendering individuals legally ‘invisible,’ the state inflicts a form of administrative trauma that destroys the possibility of future integration. Recent studies by King’s College London¹¹⁵ and the Refugee Council highlight that asylum seekers trapped in legal uncertainty are five times more likely to suffer from severe mental health conditions, including PTSD and depression.¹¹⁶

The condition of ‘living in limbo,’¹¹⁷ denied the right to work, restricted to contingency accommodation like hotels, and stripped of the security of a determination functions as a form of constructive refoulement.¹¹⁸ As Tilman Rodenhäuser and Padmaja Menon argue, such conditions create a ‘coercive environment’¹¹⁹ through material destitution, effectively forcing individuals to abandon their claims and return to danger.¹²⁰ The state creates domestic conditions so untenable that they effectively compel the individual to self-deport back to a country of danger. This weaponisation of time and uncertainty is the ultimate evidence of a move from responsibility-sharing to a bad-faith model of responsibility-shifting. The humanitarian cost is not merely a byproduct of the policy; it is the intended mechanism of deterrence, representing a fundamental breach of the 1951 Convention’s spirit.

The empirical evidence, from the ‘revolving door’ of the Israel-Rwanda scheme to the zombie framework of the UK’s 2023 Illegal Migration Act, demonstrates that these policies fail to stop arrivals or resolve backlogs. Instead, they create a cycle of secondary displacement, legal invisibility, and administrative stagnation, supported by staggering financial costs and a profound humanitarian toll. The ‘capacity fallacy’ identified in the *AAA* judgment exposes the core flaw; safety and responsibility cannot be legislated or bought; they must be practiced through cooperation. Having established that these frameworks are both legally questionable and practically ineffective, the next section will move to contextualise the UK’s trajectory within a broader international trend of externalisation, examining how other states attempt to bypass their human rights obligations through similar mechanisms of categorical exclusion.

Externalisation and the global erosion of individualised assessment

The UK’s STC architecture does not exist in isolation; rather, it is a prominent symptom of a global trend toward ‘externalisation’. This section contextualises the British experience within a

¹¹⁴ Walsh, ‘The UK’s asylum backlog’ (n 102).

¹¹⁵ Hanna Kienzler and others, ‘The importance of meaningful integration for the mental health of asylum seekers and refugees’ (King’s College London, 20 June 2023) <https://www.kcl.ac.uk/the-importance-of-meaningful-integration-for-the-mental-health-of-asylum-seekers-and-refugees> accessed 23 March 2026.

¹¹⁶ Refugee Council, *Living in Limbo: A decade of delays in the UK asylum system* (July 2021) 12; see also Refugee Council, ‘The Truth About Asylum’ (July 2022).

¹¹⁷ Refugee Council, *Living in Limbo* (n 116) <https://www.refugeecouncil.org.uk/documents/221/Living-in-Limbo-A-decade-of-delays-in-the-UK-Asylum-system-July-2021.pdf> accessed 23 March 2026.

¹¹⁸ Rodenhäuser and Menon (n 13).

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

broad international movement to shift border controls and asylum processing beyond the territorial frontiers of the state. By examining the Italy-Albania Protocol, the EU's New Pact on Migration and Asylum, and the United States' safe third country detours, this part demonstrates that the erosion of individual assessment in favour of categorical exclusion is a parallel effort by Western states to circumvent the obligations that arise from an asylum seeker's presence. Through this comparative analysis, it becomes evident that the UK's zombie framework is not an isolated policy failure, but part of a wider systemic shift that prioritises transactional containment over the spirit of international responsibility-sharing.

The concept of externalisation: shifting jurisdictional responsibility

Externalisation refers to a suite of legal and administrative measures designed to shift border controls and asylum processing outside the state's domestic jurisdiction.¹²¹ By moving the physical site of migration management beyond its territorial limits, the state seeks to pre-empt the legal obligations that are usually triggered upon an asylum seeker's arrival. Bill Frelick, Ian Kysel, and Jennifer Podkul define this as 'extraterritorial state actions' intended to prevent migrants from entering a state's legal jurisdiction or rendering them 'legally inadmissible' without an individual consideration of their claims.¹²²

The primary objective of externalisation is to bypass the territoriality principle: the established legal concept that a state's obligations under the 1951 Convention are fully engaged once a person is within its territory or at its borders.¹²³ By establishing processing sites in third countries, the host state creates a buffer zone between the refugee and its own domestic legal infrastructure. As Moreno-Lax identifies, the evolution from 'contactless control'¹²⁴, such as visa restrictions, to coercive removal through third-country processing sites creates a deliberate 'buffer zone'¹²⁵ between the refugee and domestic legal infrastructure. This shift is not merely a policy change but a fundamental challenge to the principle of 'pacta sunt servanda',¹²⁶ as it represents a strategic attempt to circumvent the 'object and purpose' of the 1951 Convention.¹²⁷

The Italy-Albania protocol: extraterritorial administrative hubs

The 2023 Italy-Albania Protocol represents a technically sophisticated evolution of the externalisation model. Unlike the UK's attempt under the IMA 2023 to transfer protection responsibility entirely to a third state, the Italian model involves Italy maintaining jurisdictional responsibility while physically relocating the asylum procedure to Albanian soil. As noted by legal analysts at EU Law Analysis (2025), the selection of migrants for this procedure is conducted via a 'hub vessel,' with processing occurring at centres in Shengjin and Gjader.¹²⁸ This creates a jurisdictional arrangement where, as Gammeltoft-Hansen identifies, the host state's sovereign prerogative to control entry may be asserted 'without the constraints ordinarily posed by refugee and human rights law.'¹²⁹

By establishing Italian-run centres in Albania, the state attempts to decouple its duty to process claims from the territorial presence of the asylum seeker. This mirrors the logic of the UK's framework by prioritising administrative convenience over individual assessment. As argued

¹²¹ Frelick, Kysel and Podkul (n 28) 193.

¹²² *ibid.*

¹²³ UNHCR Advisory Opinion (n 36) para 9.

¹²⁴ Violeta Moreno-Lax, 'The Architecture of Functional Jurisdiction: Unpacking Contactless Control-On Public Powers, S.S. and Others v Italy' (2020) 21(3) *German Law Journal* 385.

¹²⁵ Thomas Gammeltoft-Hansen, 'Access to Asylum: International Refugee Law and the Offshoring and Outsourcing of Migration Control' (PhD thesis, Aarhus University 2009) 163.

¹²⁶ VCLT (n 6) art 26.

¹²⁷ Refugee Convention (n 3) Preamble, recitals 2 and 4.

¹²⁸ 'The Italy-Albania protocol before the Court of Justice of the European Union – hearing of the CJEU' (EU Law Analysis, 19 March 2025) <http://eulawanalysis.blogspot.com/2025/03/the-italy-albania-protocol-before-court.html> accessed 5 April 2026.

¹²⁹ Gammeltoft-Hansen (n 125) 177.

before the CJEU in 2025, such arrangements trigger an ‘accelerated procedure’ that may bear critical consequences for the right to an effective remedy.¹³⁰ In practice, this model functions as a parallel, yet distinct version of the UK model, seeking to fulfil the letter of the law through an extraterritorial detour while avoiding the long-term settlement obligations that usually follow arrival on sovereign soil.

According to scholars like Sergio Carrera and Giuseppe Campesi, the Italy-Albania deal is a ‘worst practice.’¹³¹ Their main academic argument is the idea of ‘portable justice.’ They argue that when a country like Italy manages a migration centre in another country like Albania, its legal responsibilities do not disappear at the border. Instead, those responsibilities are ‘portable’, they travel with the state’s power. Because Italian officials have ‘effective control’ over the people in the centres, they are still legally ‘on the hook’ for any human rights violations. They call this a ‘nationalistic and unilateral arrangement’ because it ignores shared European standards in favour of a solo political move.¹³²

Alice Lacchei and Chiara Scissa focus on the human rights cost and the logic of the centres. They argue that the Protocol leads to ‘automatic detention.’ In a normal system, detention is supposed to be a last resort, but in Albania, it is the only option. They also argue that the policy is more about propaganda than real management. They point out that the centres can only hold 3,000 people, which is a tiny fraction (approximately 2 per cent) of the people arriving in Italy. Because it costs €500 per day to hold someone in Albania compared to €35 in Italy, they view it as an ‘unreasonable expense’ designed to look tough rather than to work effectively.¹³³

The EU new pact on migration and asylum: a regulated buffer zone

While the UK has moved toward a system of absolute statutory paralysis, the European Union’s New Pact on Migration and Asylum (specifically the Asylum Procedure Regulation 2024)¹³⁴ represents a different, more regulated form of externalisation. This section argues that while the EU Pact utilises similar tools of ‘non-entry’¹³⁵ to those seen in the UK, it operates under a more rigid judicial framework that, at least in theory, prevents the creation of a permanent legal zombie framework.

A central pillar of the New Pact is the Mandatory Border Procedure, which relies on the ‘fiction of non-entry.’¹³⁶ Under this rule, individuals arriving at the EU’s external borders are physically present on the territory but are legally considered to have not yet entered the Member State. As Thomas Gammeltoft-Hansen observes, such intermediate spaces are attractive to states because they allow for the exercise of sovereign power ‘without the constraints ordinarily posed by refugee and human rights law.’¹³⁷ In the EU context, this fiction is used to conduct rapid admissibility screenings, specifically to see if a person can be deflected to a safe third country before they can access the full procedural rights of a ‘legally entered’ applicant.¹³⁸

¹³⁰ EU Law Analysis (n 128).

¹³¹ Sergio Carrera, Giuseppe Campesi and Davide Colombi, ‘The 2023 Italy-Albania Protocol on Extraterritorial Migration Management: A Worst Practice in Migration and Asylum Policies’ (CEPS Paper on Liberty and Security in Europe, 2023) 2.

¹³² Ibid.

¹³³ Alice Lacchei and Chiara Scissa, ‘The Italy-Albania Protocol: Curbing Migration At All Costs’ (Refugee Law Initiative Blog, 19 November 2024) <https://rli.blogs.sas.ac.uk/2024/11/19/the-italy-albania-protocol-curbing-migration-at-all-costs/> accessed 6 April 2026.

¹³⁴ Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU [2024] OJ L 2024/1348.

¹³⁵ Anja Radjenovic, ‘Legal fiction of non-entry in EU asylum policy’ (EPRS Briefing, European Parliament 2024) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/760347/EPRS_BRI\(2024\)760347_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/760347/EPRS_BRI(2024)760347_EN.pdf) accessed 5 April 2026.

¹³⁶ Ibid.

¹³⁷ Gammeltoft-Hansen (n 125) 177.

¹³⁸ Radjenovic (n 135) 2.

However, the EU model differs from the UK's zombie framework in one critical respect: it includes a mandatory return to the regular procedure if removal fails. In the UK, the IMA 2023 creates a state of permanent statutory paralysis where a claim is inadmissible regardless of whether the person can actually be removed. By contrast, the CJEU has established that a Member State cannot reject an application as inadmissible under the STC rule if it is already clear that the third country in question will not actually (re)admit the person.¹³⁹

Consequently, the EU Pact functions not as a permanent dead-end, but as a mechanism to ensure applicants are eventually 'channelled into the regular procedure'¹⁴⁰ if externalisation fails. Under Article 59(9), where a third country does not admit or readmit an individual, the applicant 'shall have access to the procedure'¹⁴¹ within the Member State, effectively ending the 'non-entry'¹⁴² fiction and requiring an assessment on the merits. This represents a parallel yet distinct evolution from the British experience: while the UK model risks creating a growing population of legal ghosts, the EU model attempts to use externalisation as a front-end filter, while maintaining a safety valve that triggers domestic responsibility if the external detour fails.

Despite these judicial safeguards, the Pact still moves toward what critics call 'categorical exclusion.'¹⁴³ By introducing accelerated border procedures for anyone originating from a country with a statistical asylum success rate of 20 per cent or lower, the Union is moving away from purely individualised assessment. The European Council on Refugees and Exiles (ECRE) notes that this statistical 'blunt tool'¹⁴⁴ risks ignoring personal vulnerabilities in favour of administrative speed. While the EU system avoids the total paralysis of the UK's zombie framework, it nonetheless replicates the same underlying shift: prioritising the categorical deflection of arrivals over the spirit of individualised protection intended by the 1951 Convention.

United States detours: the expansion of safe third country barriers

The global trend toward externalisation is further demonstrated by the United States' reliance on bilateral cooperation to prevent asylum seekers from accessing its domestic legal infrastructure. A primary example of this is the Safe Third Country Agreement (STCA) between the United States and Canada. In March 2023, this agreement was expanded to apply not only at official ports of entry but across the entire 5,500-mile land border, including internal waterways. This expansion represents a move toward what legal scholars identify as 'remote border control,'¹⁴⁵ a system designed to select or deflect migrants before they can reach a space where they might trigger full constitutional or statutory protections.

The logic of the STCA mirrors the UK's STC architecture by prioritising categorical exclusion over individualised assessment. Under this framework, the US and Canada essentially treat one another as an 'appropriate partner with which the responsibility for considering refugee claims can be shared.'¹⁴⁶ However, this assumption of safety is often applied as a blanket rule that ignores the specific risks an individual might face. Amnesty International argues that the US system frequently fails victims of gender-based persecution and subjects returnees to detention conditions that violate international standards, including 'staggering rates of sexual assault' and

¹³⁹ Commission, 'Review of the safe third country concept' (Staff Working Document) SWD (2025) 600 final.

¹⁴⁰ Regulation (EU) 2024/1348 (n 134) recital 58.

¹⁴¹ *ibid* art 59(9)

¹⁴² Radjenovic (n 135).

¹⁴³ 'Relying on a Fiction: New Amendments to the Asylum Procedures Regulation' (ECRE Policy Note 29, 2020) 2 <https://ecre.org/wp-content/uploads/2020/12/Policy-Note-29.pdf> accessed 6 April 2026.

¹⁴⁴ *ibid*.

¹⁴⁵ David Scott FitzGerald, 'Remote Control of Asylum Seekers' (Public Seminar, 17 December 2019) <https://publicseminar.org/essays/remote-control-of-asylum-seekers/> accessed 6 April 2026.

¹⁴⁶ Supreme Court of Canada, 'Case in Brief: Canadian Council for Refugees v Canada (Citizenship and Immigration)' (16 June 2023) <https://www.scc-csc.ca/judgments-jugements/cb/2023/39749/> accessed 6 April 2026.

solitary confinement.¹⁴⁷ Furthermore, Amala Karri notes that procedural requirements like the US ‘one-year’ bar effectively disqualify many claimants before they can even present their case.¹⁴⁸ Consequently, the STCA prioritises transactional border control over the individualised assessment required to ensure genuine safety.

In its 2023 ruling on the agreement in *Canadian Council for Refugees v Canada*,¹⁴⁹ the Supreme Court of Canada acknowledged that while the agreement was technically valid, it created significant risks for those turned back. The Court specifically highlighted the ‘risk of detention upon being returned’¹⁵⁰ to the United States, where asylum seekers often face conditions that may threaten their liberty and security. By expanding this agreement, the US has effectively moved the territorial trigger of the 1951 Convention away from the physical act of crossing the border and into a transactional arrangement with a neighbouring state. This North American detour confirms that the UK’s commitment to transactional containment is part of a convergent trend among Western states. As Gammeltoft-Hansen (2009) argues, states find it attractive to shift migration control into these cooperative frameworks because it allows them to assert their sovereign power while seeking to ‘shift or deconstruct legal responsibilities otherwise owed by reference to law itself.’¹⁵¹ Just as the UK uses the STC model to render claims inadmissible, the US uses the STCA to ensure that the responsibility for a refugee’s protection is shifted before a claim is ever formally lodged in its system. While the US does not currently face the same zombie paralysis as the UK (because Canada, unlike Rwanda, is a willing and functional recipient), the underlying motive is identical: to create a geographical and legal buffer that prevents the asylum seeker from ever encountering the domestic legal infrastructure of the host state.

This demonstrates that the UK’s STC architecture is not an isolated policy experiment, but a prominent symptom of a global shift toward externalised exclusion. Whether through Italy’s extraterritorial hubs in Albania, the EU’s ‘fiction of non-entry,’¹⁵² or the United States’ expanded safe third country barriers, the objective remains consistent across jurisdictions: to decouple the ‘duty to process’¹⁵³ from the ‘territorial presence’¹⁵⁴ of the asylum seeker. These frameworks prioritise administrative efficiency and categorical rejection over the humanitarian spirit of individualised assessment intended by the 1951 Convention. As Thomas Gammeltoft-Hansen concludes, these strategies represent a form of ‘politics through law,’¹⁵⁵ where states strategically use the structures of international law to avoid the responsibilities that law imposes. By replacing individual human stories with statistical or geographical categories, Western states have created a parallel system of exclusion that risks rendering the most vulnerable people legally invisible at the very moment they seek protection.

Conclusions

This article sought to evaluate the transformative shift within the United Kingdom’s asylum policy, specifically moving from a traditional understanding of international responsibility-sharing toward a modern architecture of responsibility-shifting. By examining the legislative frameworks of the Nationality and Borders Act 2022 and the Illegal Migration Act 2023, this study has demonstrated that the UK’s safe third country model does not merely refine existing border controls but fundamentally reconfigures the state’s relationship with the 1951 Refugee

¹⁴⁷ Amnesty International, ‘Canada: Human Rights in Peril’ (Submission to the 44th Session of the UPR, November 2023) 8.

¹⁴⁸ Amala Karri, ‘The U.S.-Canada Safe Third Country Agreement & Gender-Based Discrimination’ (Refugee Law Initiative Blog, 8 November 2023) <https://rli.blogs.sas.ac.uk/2023/11/08/the-u-s-canada-safe-third-country-agreement-gender-based-discrimination/> accessed 4 April 2026.

¹⁴⁹ *Canadian Council for Refugees v Canada (Citizenship and Immigration)* 2023 SCC 17.

¹⁵⁰ *Ibid* [101].

¹⁵¹ Gammeltoft-Hansen (n 125) 317.

¹⁵² Radjenovic (n 135).

¹⁵³ Gammeltoft-Hansen (n 125) 12, 177.

¹⁵⁴ *Ibid* 12.

¹⁵⁵ *Ibid*.

Convention.¹⁵⁶ The central argument throughout this work has been that by prioritising administrative inadmissibility and categorical exclusion, the UK has created a system where the asylum seeker is rendered legally invisible, effectively hollowing out the substantive protections intended by international law.

The normative findings of this research suggest a profound erosion of the humanitarian spirit that originally informed the 1951 Convention,¹⁵⁷ While the government often justifies these measures as a necessary exercise of state sovereignty to discourage irregular entry, a close analysis of Article 31¹⁵⁸ and Article 33¹⁵⁹ reveals a significant legal disconnect. The Convention is built upon a foundation of positive duties and merit-based assessments¹⁶⁰, yet the current system replaces it with a two-step block designed to shut the door on asylum seekers. It does this by passing laws¹⁶¹ that force the courts to pretend a country is safe even when it isn't, and by setting rules that automatically reject a person's claim before it can even be looked at.¹⁶² This process allows the state to legislate a factual conclusion of safety, most notably seen in the Rwanda policy,¹⁶³ without requiring a demonstrated, individualised reality of protection. By decoupling the legal duty to process from the physical act of arrival, the UK is engaging in what has been termed 'constructive refoulement',¹⁶⁴ where the procedural act of shifting a claimant becomes more important than the validity of their protection claim.

Building upon these normative concerns, the empirical evidence gathered in this study highlights the recurring failure of the deterrence-based logic that underpins the STC architecture. The examination of the Israel-Rwanda precursor provided a stark warning of the revolving door effect,¹⁶⁵ where externalisation does not stop migration but instead fuels secondary displacement and undocumented vulnerability.¹⁶⁶ In the UK context, this has manifested as a zombie framework, a state of legislative paralysis where the duty to remove is mandatory, but the ability to do so is legally and practically impossible. The result is not a more efficient system, but a state of 'limbo' for thousands of individuals who are trapped in a legal vacuum, denied both the right to a claim and the certainty of a destination.¹⁶⁷ This reality directly contradicts the government's stated aim of 'breaking the business model'¹⁶⁸ of smugglers, as it fails to account for the powerful global push factors that consistently outweigh the perceived risks of restrictive domestic legislation.¹⁶⁹

In a broader global context, the UK's trajectory is reflective of a wider trend toward externalised exclusion. The comparative analysis of Italy's extraterritorial hubs in Albania and the US-Canada Safe Third Country Agreement reveals a shared objective among Western states to move the 'territorial trigger',¹⁷⁰ of protection duties. Scholars such as Thomas Gammeltoft-Hansen correctly identify this as a strategic effort to ensure that a state's legal responsibilities are never

¹⁵⁶ Refugee Convention (n 3).

¹⁵⁷ Ibid.

¹⁵⁸ Ibid art 31.

¹⁵⁹ Ibid, art 33.

¹⁶⁰ Ibid.

¹⁶¹ Safety of Rwanda (Asylum and Immigration) Act 2024, s 2.

¹⁶² Nationality and Borders Act 2022, s 80B, Illegal Migration Act 2023, s.4.

¹⁶³ Safety of Rwanda Act 2024 (n 161) s 2.

¹⁶⁴ Rodenhäuser and Menon (n 13).

¹⁶⁵ Kohnert (n 95).

¹⁶⁶ Global Detention Project (n 96).

¹⁶⁷ Refugee Council, *Living in Limbo* (n 116).

¹⁶⁸ IMA 2023 (n 2) (Explanatory Notes) para 1.

¹⁶⁹ Peter William Walsh and Madeleine Sumption, 'UK policies to deter people from claiming asylum' (The Migration Observatory, 2024) <https://migrationobservatory.ox.ac.uk/resources/commentaries/uk-policies-to-deter-people-from-claiming-asylum/> accessed 10 April 2026.

¹⁷⁰ Dana Schmalz, 'The Role of Proximity for States' Obligations toward Persons Seeking Protection' in Seyla Benhabib and Ayelet Shachar (eds), *Lawless Zones, Rightless Subjects: Migration, Asylum, and Shifting Borders* (CUP 2025) 75.

officially activated by physical arrival.¹⁷¹ However, as the critiques from Amnesty International and academic observers like Amala Karri show, these transactional arrangements often mask deep systemic risks. Whether through the ‘procedural traps’ of the US one-year bar¹⁷² or the ‘staggering rates of sexual assault’ documented in American detention centres,¹⁷³ the assumption of safety is frequently a political fiction that ignores the specific, individualised dangers faced by vulnerable groups, particularly survivors of gender-based persecution.

Ultimately, the UK’s inadmissibility architecture represents a definitive shift toward the evasion of international duties. The answer to the primary research question is that these frameworks constitute responsibility-shifting rather than a legitimate exercise of sharing. By replacing individual human stories with geographical categories and transactional detours, the state has prioritised the closure of its borders over the survival of the protection regime. To continue on this path is to institutionalise the crisis of ‘refugees in orbit’¹⁷⁴ and to dismantle the very legal infrastructure that was built to ensure no human being is ever again rendered invisible in their search for sanctuary. The integrity of the international asylum system depends not on how effectively states can shift their burdens, but on how faithfully they adhere to the principle of ‘pacta sunt servanda,’¹⁷⁵ and the shared responsibility of providing genuine refuge.

¹⁷¹ Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (CUP 2011).

¹⁷² Karri (n 148).

¹⁷³ Amnesty International, ‘Human Rights in Peril’ (n 147).

¹⁷⁴ Pulvirenti (n 26).

¹⁷⁵ VCLT (n 6) art 26.