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**Restrictive migration strategies: a study of
externalization**

Taxonomy of policies and impacts on protection seekers and analysis of the
Italy-Albania Agreement

Author: Natalia Ohanian
Supervisor: Paolo Di Stefani

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‘Partir es morir un poco. Llegar nunca es definitivo – Oración del migrante’ⁱ

(Departing is to die a little bit. Arriving in never a certainty. – Migrant’s Prayer)

‘Todo este país, dijo papá, es un enorme cementerio, pero solo a algunas personas les tocan tumbas como dios manda, porque la mayoría de las vidas no importan. La mayoría de las vidas son borradas, se pierden en el torbellino de basura que llamamos historia, dijo’.ⁱⁱ

(All this country, daddy said, is one big cemetery, but only some people get proper graves because most lives don’t matter. He said most lives are erased and get lost in that whirlwind of trash that’s called history.)

Valeria Luiselli.

ⁱ Valeria Luiselli, *Desierto Sonoro*, vol 1 (1st ed, Editorial Sigilo 2019). 11

[Translation done by the author of this thesis]

ⁱⁱ *ibid.* 275

[Translation done by the author of this thesis]

Abstract

In recent years, the externalization of migration management has become an increasingly common practice among Global North states seeking to manage migration flows by relocating aspects of their responsibility for processing asylum claims beyond their territory. Despite its growing relevance, there is no consensus definition of the term. Moreover, the concept is primarily discussed in academic literature, the media, reports by non-governmental organizations, and some international organizations. It is notably absent from governmental discourse and is not formally recognized in either international or domestic legislation, making the phenomenon particularly difficult to define and study.

This thesis addresses this conceptual gap by reviewing the existing literature on externalization with the aim of developing a comprehensive and operational definition of the concept. It then assesses whether Italy's recent attempts to carry out asylum procedures in Albania constitutes or not a form of externalization, by applying the proposed framework to the Italy–Albania Agreement signed in 2023 to determine if it can be classified as an externalization measure.

The findings of this research are twofold. First, the study develops a comprehensive and practical framework for conceptualizing migration externalization. Second, the analysis demonstrates that the Italy–Albania Agreement can indeed be classified as a form of externalization, although it represents a novel variation of the concept. Two distinctive features characterize this model: the instrumentalization of the Safe Country of Origin concept as a filtering and non-entry mechanism, and the reliance on an ambiguous legal framework that weakens procedural safeguards and creates conditions that may ultimately jeopardize substantive rights, including the right to seek asylum.

Key words: Externalization, legal responsibility, asylum processing, Italy-Albania Agreement, safe country of origin, procedural rights.

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Table of relevant abbreviations

(EU) MS.....	(European Union) Member States
UNHCR.....	United Nations High Commissioner of Refugees (Office)
NGO.....	Non-governmental organization
New Pact.....	New Pact on Asylum and Migration of the EU
CoO.....	Country of Origin
DS.....	Destination State
CoT.....	Country of Transit
TC.....	Third Country
RS.....	Return State
IOs.....	International Organizations
SCT.....	Safe Country of Transit
SCO.....	Safe Country of Origin
IOM.....	International Organization for Migration
FRONTEX.....	European Border and Coast Guard Agency
ECtHR.....	European Court of Human Rights
ECHR.....	European Convention of Human Rights
UNCLOS.....	United Nations Convention on the Law of the Sea
APD.....	Asylum Procedures Directive (2013)
IRL.....	International Refugee Law

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CHAPTER 1: Introduction

1.1 Motivations, objectives and research questions

From visa restrictions and carrier sanctions imposed on airlines that transport unauthorized individuals to public media campaigns aimed at discouraging migration and agreements with third countries on immigration management, these are all examples of measures that wealthy and developed countries in the so-called Global North have implemented in order to externalize their international obligations regarding asylum seekers and others seeking protection. Although the term has regained prominence in recent years due to rising numbers of refugees and asylum seekers and the increasing use of such practices by governments in countries such as the United States, Australia, Italy, and other European Union Member States (EU MS), these mechanisms of migration management are far from new. Since their resurgence in the 1990s, however, many governments have progressively hardened and restricted their migration policies while repeatedly seeking to further expand and refine their externalization practices in the fields of migration, asylum, and refugee protection. In this context, the externalization of migration management has increasingly become a common policy trend among developed countries rather than an isolated or widely condemned practice. Moreover, many of these measures appear to be at odds with international legal obligations and pose significant risks to the human rights of individuals seeking international protection.

Almost three years ago, Italy and Albania reached an agreement under which Italy would hold certain asylum seekers in reception centers located on Albanian territory and process their asylum claims there under Italian and applicable EU law. This approach to asylum management is highly novel within the European context, and several EU MS have expressed interest in the arrangement and indicated that they would be open to exploring the implementation of similar mechanisms in the future.

Bearing all this in mind, and in a context where many states are adopting legally and ethically questionable strategies to manage migration flows towards their territories, I consider it of utmost importance to examine what the term ‘externalization’ entails and whether a practice envisaged by Italy—one of the key actors in global migration management and frequently the first country of arrival for migrants seeking to enter the EU—constitutes an expression of the term.

Within this context, I consider it crucial to understand the nature of this migration management strategy so that a critical assessment can be made of an agreement that has attracted considerable international attention and that other EU MS have shown interest in replicating it. The primary motivation for this investigation is then to contribute to the existing literature on externalization by analyzing the academic perspectives of the phenomenon and use that knowledge to examine this agreement. Furthermore, I aim to highlight its potential detrimental effects on international solidarity and on the good-faith processing of asylum claims that should guide states in managing flows of people seeking international protection.

To achieve that goal, the research questions that will guide this thesis study are the following

1. *What does the term 'externalization' mean?*
2. *Can the Italy-Albania Protocol be classified as a form of externalization of migration management?*

1.2 Methodology and outline

To arrive at a comprehensive answer to the research questions, this thesis encompasses three groups of research methodologies: conceptual analysis, theory building, and, lastly, deductive case study research and a theory-guided case study.

The study is divided into these three methodological components. First, I will conduct a conceptual analysis of how the term externalization is understood by scholars and the United Nations High Commissioner for Refugees (UNHCR) in the field of migration management. As will be explained in greater detail later in the analysis, this is a complex and contested concept for which there is no consensus definition. Moreover, the term is primarily used by academics, the media, and some non-governmental organizations (NGOs) rather than by government officials. It is also absent from international legislation and from agreements between states that seek to implement related practices. In fact, externalization measures often operate in a “grey area” of international legal responsibility, making the concept even more difficult to define. Given these challenges, I consider it appropriate to begin this study with a comprehensive review of the academic literature on externalization. As noted above, because the concept remains contested, establishing whether a new real-world situation constitutes externalization requires a clear understanding of its different dimensions and interpretations.

After completing the conceptual analysis, I will move on to the second methodological approach: theory building. Although I do not develop a formal theory, I will construct my own conceptual framework of externalization based on the perspectives identified in the literature review. To arrive at a comprehensive understanding of the phenomenon and, additionally, to place myself in a better position to evaluate the selected case, I will disaggregate and operationalize this definition into a set of dimensions that will allow me to determine whether the case study corresponds to the phenomenon of externalization.

Finally, I will employ a combination of deductive qualitative research and a theory-guided case study. On the one hand, because I seek to assess whether the selected case fits the definition derived from the literature review, the analysis is primarily deductive. On the other hand, since I will apply this definition to a single case study, the research is theory-guided in the sense that the analytical framework I developed will guide both the examination and the evaluation of the case. The data I will use throughout the implementation of these research techniques will be, on the one hand, primarily, as I will analyze the Italy-Albania Protocol as well as official statements of Italy's President Giorgio Napolitano regarding the agreement; and on the other hand, secondary, as I will engage in the study of reports and relevant academic perspectives and NGOs during the testing and analysis of the case.

Another important thing to clarify is that this investigation will be focused, firstly, on determining what externalization is, and, secondly, on the Italy-Albania Agreement and the analysis of the related research question. It will not cover its subsequent legal debates in courts or engage in a debate over how the New Pact on Migration and Asylum of the EU (New Pact) might affect its implementation in the future. This decision is grounded on the fact that those are still recent and under development and their study would be highly speculative and uncertain.

Finally, I would like to clarify something with regards to my use of AI tools. I have only employed ChatGPT for language improvement and proof-reading. The prompt I have used is: "Refine grammar, structure and clarity only when the writing is not clear".

Outline

The structure of the present thesis study will be the following.

In Chapter 1, I will begin by explaining my motivations for engaging in this topic, as well as which will be the guiding research questions that I will seek to answer during this work. After that, this methodological section will follow and later, I will engage in a literature review of the term ‘externalization’. I will study the different perspectives and approaches that across the academic community have guided the debate over its definition.

In Chapter 2, I will start by addressing the first research question and I will present my own definition of externalization based on the knowledge acquired in the previous section. Moreover, I will further structure the definition into four different but interrelated dimensions, which are: specific mechanisms of externalization, actors involved, motivations and nature of legal responsibility. I will end this section by going through the mechanisms that compose the first dimension and link them to the other dimensions proposed.

In Chapter 3, I will introduce the selected case study, that is the Italy-Albania Protocol. Aside from presenting the provisions of the Protocol itself, I will also provide other details in relation to it that will be useful for the testing in the following chapter, such as previous guidelines and legislation in relation to asylum processing in Italy. Later, I will engage in the testing of the Protocol against my framework of externalization. In Chapter 4, I will present a discussion of the results and some considerations on the limitations of the investigation and potential lines of research derived from it. Finally, in Chapter 5, I will summarize my findings and present my conclusions regarding this investigation.

1.3 Literature review: what does the term ‘externalization’ mean?

Throughout the present literature review I will analyze what academia has understood of the concept ‘externalization’; which are the elements that characterize it, the common motivations of countries to engage with it, the possible implications of its implementation, etc. Additionally, I will present the role that Third Countries and other non-state entities play in externalization strategies, as well as briefly analyze some terms that are frequently associated with externalization but that do not necessarily entail the same thing.

1.3.1 Preliminary definitions

Prior to the analysis of the term ‘externalization’ I consider it necessary to delineate certain concepts associated with it to be clear throughout the analysis.

Refugee: According to Article 1 of the 1951 Refugee Convention,

[...] the term “refugee” shall apply to any person who [...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹

Country of Origin (CoO): it refers to the state from which the migrant initiates the journey².

Destination State (DS): it refers to the state which the protection seeker wishes to reach to present its asylum claims³.

Country of transit (CoT): it refers to the state that the protection seeker must go through on its journey to its destination state⁴.

Third country (TC): it can be a CoO or CoT, but this is a broader term that usually refers to a state with which the DS cooperates to implement the externalization of migration⁵.

Asylum seeker (also protection seeker): this term refers to those who are presently seeking to be protected by a certain state under the status of ‘refugee’, but their request for it has not been determined yet. In this respect, it is important to remember that international law considers that the statue of ‘refugee’ is of declaratory nature, which means that a person becomes such from the moment they fulfill the requirements of the 1951 Refugee Convention, not after their claim has been processed and approved by the destination country⁶.

¹ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 1.

² Bill Frelick, Ian M Kysel and Jennifer Podkul, ‘The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants’ (2016) 4 Journal on Migration and Human Security 190 <<https://doi.org/10.1177/233150241600400402>>. 193

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

⁶ Amy Nethery and Asher Hirsch, ‘Externalisation of Migration Control Policies: An Introduction’ (2020) <<https://hdl.handle.net/10536/DRO/DU:30139787>> accessed 3 April 2026. 5

Return State (RS): the term refers to the state to which the migrant whose protection claim was rejected is returned to -after his/her claim was assessed by the DS-. However, some scholars have noted that recent attempts to include additional elements to the definition could not only allow that rejected people are returned to their CoO and CoT (if designated ‘safe’ by the DS), but also to any other state that through an agreement with the DS is designated as a ‘safe’ -it can be a state that the migrant has no connection whatsoever with-.⁷

1.3.2 Definitions of externalization:

When studying externalization in the field of migration management policies, all these terms and actors play an important role. However, the term in question is very broad and encompasses a variety of forms and mechanisms that can be extremely different from one another, but they all share basic characteristics that allow them to be identified as practices of externalization. Consequently, scholars have come up with different sorts of definitions for the phenomenon, going from the general to the specific ones. In this section I will begin by introducing the phenomenon with a generic definition and then move on to the more popular types of definitions and present their characteristics and implications.

Even though most scholars opt for more comprehensive and specific definitions of externalization, Stock, Üstübici and Schultz⁸ analyze externalization from a dual perspective where a broad definition of it coexists with a more detailed one. In their view, externalization is a “set of social mechanisms”, which they conceive as something that is introduced by states in the international community with the objective of preserving or creating new conditions for them. In this case, the authors claim that the ‘preservation or creation of new conditions’ translates into reality in the form of “[production and reinforcement of] relations of inequality in the management of mobility between states, civil society organization, and migrants”⁹.

⁷ Mariana Gkliati, ‘The New Frontier of Externalisation: Safe Third Countries and Return Hubs – Key Changes and Implications’ (*Externalizing Asylum A Compendium of Scientific Knowledge*, 1 April 2016) <<https://externalizingasylum.info/the-new-frontier-of-externalisation-safe-third-countries-and-return-hubs-key-changes-and-implications/>> accessed 1 July 2026.

⁸ Inka Stock, Ayşen Üstübici and Susanne U Schultz, ‘Externalization at Work: Responses to Migration Policies from the Global South’ (2019) 7 *Comparative Migration Studies*. 2

⁹ *ibid* 2

As was mentioned before, many academics prefer to use more specific definitions of externalization when they analyze the phenomenon -where they also include other details such as which are the actors involved, where it occurs and the underlying motivations for it-.

A very popular definition among scholars is the one coined by Crisp that concisely encapsulates the key aspects of externalization practices as all those that fall under this definition:

Measures taken by states in locations beyond their territorial borders to obstruct, deter or otherwise avert the arrival of refugees, asylum seekers and other migrants who do not have prior authorization to enter their intended country of destination¹⁰.

One limitation of this definition is identified by Tan¹¹, who considers it somewhat narrow because it only encompasses externalization measures carried out outside the DS's territory. It excludes situations in which a DS transfers protection seekers who have already reached its territory to another extraterritorial location for processing. In such cases, migration management is still externalized, but only after protection seekers have arrived in the DS. In other words, according to Tan's perspective¹², a measure can be classified as externalization if either the policy is implemented outside the DS's territory or the consequences of the measure are extraterritorial.

Another influential approach to understanding externalization is proposed by FitzGerald¹³. According to him, externalization can be understood as a policy of 'remote control' over irregular migration. This term conceptualizes externalization as an interrelated and interconnected system of political and institutional practices combined with physical infrastructures that serve two purposes. First, they determine who is allowed to cross a border; second, they "identify, monitor, detain, deport, and deter the unwanted through an architecture of repulsion"¹⁴. The author uses the term "architecture of repulsion" to describe the second objective of remote control, which ultimately enables the first: it is through this architecture of repulsion that states are able to determine and filter who is permitted to cross their borders. An

¹⁰ Jeff Crisp, 'Externalization and the Erosion of Refugee Protection' (*Comparative Network on Refugee Externalisation Policies (CONREP)*, 2019) <<https://arts.unimelb.edu.au/school-of-social-and-political-sciences/our-research/comparative-network-on-refugee-externalisation-policies/blog/externalization-and-the-erosion-of-refugee-protection>> accessed 3 April 2026.

¹¹ Nikolas Feith Tan, 'Conceptualising Externalisation: Still Fit for Purpose?' (2021) 68 *Forced Migration Review* 8 <www.fmreview.org/issue70>. 8

¹² *ibid.*

¹³ David Scott FitzGerald, 'Remote Control of Migration: Theorising Territoriality, Shared Coercion, and Deterrence' (2020) 46 *Journal of Ethnic and Migration Studies* 4 <<https://doi.org/10.1080/1369183X.2020.1680115>>. 6

¹⁴ *ibid* 6

important point emphasized by the author at an early definitional stage is the central role that the collection and exchange of migrants' and protection seekers' personal data between countries plays in this process.

Throughout his study, FitzGerald¹⁵ further develops the reasons why remote control is so appealing to states, particularly Western liberal democracies. The main practical reason he identifies relates to the human rights and legal protections that most states are, to a greater or lesser extent, obliged to guarantee within their territorial boundaries. In this context, the extraterritorial management of migration enables states to restrict certain rights and avoid legal liability or public scrutiny by conducting migration control processes outside their traditional territory and jurisdiction, where such rights are generally expected to be respected.

In this regard, FitzGerald¹⁶ notes that many states adopt a strategic position: rather than explicitly prohibiting or refusing to process protection claims, they accept them only when they are made from specific locations -that is, outside their own territory-. At this point, another concept closely related to externalization and remote control emerges: non-entrée (which will be discussed later). This mechanism, which may be regarded as a precursor to FitzGerald's "architecture of repulsion," allows states to selectively close their borders to certain individuals. As a result, states can exert control over protection seekers and migration flows without having those individuals physically present within their territory.

Distancing themselves from the more common academic understandings of externalization, Cantor and others¹⁷ argue that, in its purest form, externalization is not necessarily related to immigration. Rather, it refers to situations in which a state chooses to carry out, totally or partially, outside its own territory, a policy that would normally be implemented within its borders. Within the migration context, the authors identify two distinct state functions that can be externalized: border control management and the administration of the national immigration system. They further argue that these extraterritorial measures may be implemented unilaterally or in cooperation with other states, private actors, or international organizations (IOs). Furthermore, Cantor and others¹⁸ contend that, although states often seek to shift or avoid international legal responsibility through such measures, this is not an essential characteristic

¹⁵ *ibid.* 4

¹⁶ *ibid.* 6

¹⁷ David Cantor and others, 'Externalisation, Access to Territorial Asylum, and International Law' (2022) 34 *International Journal of Refugee Law* 120. 122

¹⁸ *ibid.* 123

of externalization. However, they recognize that when responsibility-shifting is present, it adds an additional layer of complexity to the study of the phenomenon.

Focusing primarily on European experiences of externalization, Moreno-Lax and Lemberg-Pedersen¹⁹ define externalization as a set of mechanisms aimed at complementing, and in some cases substituting, domestic migration-control measures through migration management conducted outside state borders and/or in cooperation with foreign governments and external actors. Furthermore, they identify three key elements that must be present for a practice to be considered a form of externalization²⁰.

First, there is the “spatial dimension,” which refers to the physical distance between, on the one hand, the place where decisions are made and authority is exercised and, on the other, the place where the policies are actually implemented. Second, there is the “relational dimension,” which encompasses all actors involved in the implementation of the policy. Third, there is the “functional and instrumental dimension,” whereby the physical distance between decision-makers and implementation sites creates a perception of diminished accountability and reduced legal and ethical obligations on the part of the DS towards protection seekers²¹.

Building on their analysis of the externalization phenomenon, Moreno-Lax and Lemberg-Pedersen²² examine the implications of the “distance” between where power is held and where it is exercised. They argue that this distance has significant consequences. On the one hand, as the safe and legal migration routes are closed, protection seekers’ lives are put at great risks (because they are tacitly forced to take dangerous routes). On the other hand, cooperation agreements between DS and the governmental authorities or institutions of TC that are widely known for repressive and violent practices can serve to legitimize such conduct. In turn, this contributes to the diminishment of human rights standards internationally.

Proposing a particularly useful conceptualization of externalization, the previously mentioned Stock, Üstübici and Schultz²³ begin their analysis by highlighting the difficulty of reaching a scholarly consensus on its definition. They argue that this difficulty arises because externalization is not tied to a single mechanism, but it is instead expressed through a variety of methods that differ significantly in terms of key elements such as actors, locations, and

¹⁹ Violeta Moreno-Lax and Martin Lemberg-Pedersen, ‘Border-Induced Displacement: The Ethical and Legal Implications of Distance-Creation through Externalization’ (2019) 56 *Questions of International Law* 5. 5

²⁰ *ibid.*

²¹ *ibid.*

²² *ibid.* 6

²³ Stock, Üstübici and Schultz (n 8) 2

modes of implementation. In addition, the authors note that another challenge lies in understanding the implications of externalization for the various actors involved, which requires consideration of economic, political, and social dimensions. Finally, they point to a more fundamental conceptual problem: even the basic idea of externalization as “carrying out policies outside state borders” is contested, as there is no shared understanding of what “borders” are, nor, consequently, of how accountability should be allocated among the actors involved in such practices²⁴.

Tan²⁵ also highlights the difficulties and lack of consensus in reaching a common definition of externalization among scholars and policymakers, particularly given that in recent decades such practices have become increasingly prevalent among Global North states and have involved interdisciplinary and multi-institutional approaches to their implementation. The author identifies two main challenges arising from this lack of definitional consensus. First, in the field of international law, this absence of a clear starting point hinders the identification of which practices violate existing legal frameworks and, where measures are permitted, the extent to which they may lawfully be applied. Second, without a clear definition, assessing the impact of externalization on the individuals affected remains a highly difficult and uncertain task²⁶.

Bearing in mind the complexities inherent in externalization, Stock, Üstübcici and Schultz²⁷ propose a comprehensive definition that operates on two levels. First, as previously noted at the beginning of this section, externalization refers to specific regulations and procedures that produce particular social effects. Second, they expand this understanding by arguing that externalization encompasses a variety of policies, legal and regulatory frameworks, and both governmental and private actors that interact to produce significant effects on migration management.

More specifically, the authors²⁸ suggest that a common implication of externalization is the reproduction and reinforcement of unequal power relations, not only between states but also between individuals. In this way, externalization policies can serve to legitimize such inequalities and sustain social hierarchies, often grounded in racist and aporophobic sentiments or stereotypes associated with migrants. Considering these elements as central to the nature of

²⁴ *ibid.*

²⁵ Tan (n 11) 9

²⁶ *ibid.*

²⁷ Stock, Üstübcici and Schultz (n 8). 3

²⁸ *ibid.*

externalization, it becomes evident that its implementation is at odds with fundamental human rights principles, such as non-discrimination and equality before the law, as well as with key legal instruments, including the Refugee Convention.

Taking a more practical stance, Triandafyllidou²⁹ understands the phenomenon of externalization as consisting of two groups of practices: so-called “gate-keeping policies” and “fencing policies.” The first refers to legal and administrative mechanisms implemented by DS to keep unwanted migrants outside their territory, while the second refers to practical measures at the disposal of those states to deport and detain irregular migrants. Another important point in this author’s perspective is that, for a state to exercise control over its own borders, some form of externalization is always required. Moreover, she argues that only totalitarian regimes can impose total border closure and therefore minimize the deployment of externalization mechanisms. By contrast, states that are usually labelled as democracies with a tradition of civil and political rights tend to employ a more varied set of externalization methods³⁰.

From this perspective, it can be inferred that at least some degree of externalization is always necessary, for the simple reason that the territorial border of a state is one of its three basic components³¹. Externalization, even in its most basic form, is indispensable, as the state, to exist as such, must exert its sovereignty by safeguarding its borders. In this respect, FitzGerald³² argues that, in fact, the function of borders is to exclude those outside and filter those who want to come in.

Additionally, it is important to reflect on why totalitarian states might have less need to implement diverse and complex forms of externalization, in contrast to liberal democracies. First and foremost, authoritarian regimes are not bound by the rule of law and, by their very nature, do not comply with international human rights law; thus, closing their borders and denying entry to unwanted migrants is a feasible measure. Moreover, totalitarian regimes are not typically preferred destinations for protection seekers.

By contrast, liberal democracies are bound by, and committed to, respect, protect, and fulfill certain national and international human rights standards—in this case, those owed to protection seekers. In a context where protection seekers arrive in large numbers in DS (where

²⁹ Anna Triandafyllidou, ‘Multi-Levelling and Externalizing Migration and Asylum: Lessons from the Southern European Islands’ (2014) 9 *Island Studies Journal* 7 <<https://doi.org/10.24043/isj.290>>. 10

³⁰ *ibid.*

³¹ Hans Kelsen, *General Theory of Law and State* (Hans Kelsen and A Javier Treviño eds, 1st ed, Routledge 2005) <<https://doi.org/10.4324/9780203790960>>. 207

³² FitzGerald (n 13). 1

both authorities and a considerable majority of the population may be reluctant to accept them), the “distance” factor previously discussed by Moreno-Lax and Lemberg-Pedersen³³ becomes a key enabler for liberal democracies to implement externalizing migration practices, which are often difficult to reconcile with their human rights commitments. In other words, in such situations, the creation of physical, legal, and ethical distance becomes crucial. This is because not only the authorities of DS would not have to process unwanted protection claims within its own territory (physical distance), but also the legal accountability would become blurred (legal distance), and their citizens and other public entities -that are not directly involved in migration management- would be not bothered morally with what their state is doing extraterritorially (ethical distance).

From an institutional perspective, the UNHCR defined externalization in the field of migration management from a rather different perspective than the ones used by the academics. The organization acknowledges the existence of certain practices that can be classified as ‘international cooperation’ refers to mechanisms of responsibility sharing and combined efforts between States or other actors to better address refugee protection and rights, because of excessive burden of migration processing to certain states. Nevertheless, this positive collaboration is very different from externalization, a mechanism characterized by the UNHCR as “[...] measures or arrangements between States [that] serve in practice to shift, minimize or avoid responsibilities, obstructing rather than facilitating access to international protection [...]”³⁴. Madaline Garlick, the current Chief of Section on Protection Policy and Legal Advice at UNDHR, goes deeper into the distinction between these two approaches³⁵. Even though she acknowledges that both involve transferring responsibility from one country to other/s, she highlights the fact that responsibility sharing does in a manner that respects the international legal framework and protection of human rights of protection seekers. To this end, the UNDHR has provided states on how they should conduct such processes in serious cases where a single State might not be able to handle the situation on its own³⁶.

The UN agency outlines that externalization mechanisms might ultimately undermine the global protection framework and, if in the future it is implemented widely, it could expose

³³ Moreno-Lax and Lemberg-Pedersen (n 19). 6

³⁴ United Nations High Commissioner for Refugees (UNHCR), 'Note on the "Externalization" of International Protection ' (28 May 2021), <https://www.refworld.org/policy/legalguidance/unhcr/2021/121534>, [accessed 10 June 2026]. 1

³⁵ Madeline Garlick, ‘Externalisation of International Protection: UNHCR’s Perspective’ [2021] Forced Migration Review 4 <www.fmreview.org/issue70>. 2

³⁶ *ibid.*

many protection seekers to uncertainty, ill-treatment, or forced return³⁷. Garlick identifies further warnings of externalization measures. Some of the negative implications identified by her are: (1) lack of basic protection for migrants that are relocated during the transfer or at the extraterritorial facilities, (2) detention of protection seekers for indeterminate periods of time, usually in remote places (3) foster prejudices and detrimental stereotypes about protection seekers³⁸.

1.3.3 Role of Third/Transit Countries and non-state actors in externalization

In the previous section, several understandings of externalization were analyzed. While some authors emphasize its implications, others focus on the legal responsibilities of states or on the means through which externalization is implemented. Regardless of the aspect emphasized and even though there is still no consensus over a specific definition of the phenomenon, there appears to be a general unanimity among scholars on the basic notion that externalization is a process through which DS seek to shift the perceived “unwanted migration burden” elsewhere. As will be shown in greater detail in the analysis of each externalization practice, such measures are often carried out in cooperation with either TC/CoO or non-state actors. For this reason, it is important to examine more closely how DS cooperate with these two sets of actors. Doing so helps to better understand the phenomenon of externalization and its implications for the parties involved.

Third/Transit Countries

According to Frelick, Kysel, and Podkul³⁹, cooperation with other parties to manage migration policies beyond the territory of DS is usually characterized by actions aimed at preventing migrants from reaching those states. The public justification for such practices is most often the fight against irregular migration, human trafficking, and international crime. In this regard, the authors point out that many cooperation agreements on migration management also involve assistance from DS to TC in the areas of military and law enforcement, with the aim of combating the trafficking of illegal substances and weapons. However, at the same time, these agreements seek to address these issues through border closures, pushbacks, and deportation

³⁷ UNHCR (n 34). 2

³⁸ *ibid.*

³⁹ Frelick, Kysel and Podkul (n 2). 193

operations, which ultimately lead to a reduction in the rights and protections that should be afforded to asylum seekers⁴⁰. In that line, the authors note that these policies include providing financial, political, and logistical assistance to CoO and TC to discourage migration, strengthen border controls, intercept migrants before they reach destination states, facilitate readmission arrangements, and support detention practices.

Other crucial conceptual elements of the role of TC in externalization are identified by Lavenex⁴¹. According to her view, Western states have increasingly used their economic influence and international leverage to pursue “migration diplomacy,” a strategy that relies on bilateral agreements with TC to deter migration, redirect migrants, and shift responsibilities for migration management onto those states. Alongside these agreements, governments have expanded informal consultation networks to exchange practices on asylum and migration governance, reflecting a form of structural power exercised through economic dominance rather than direct coercion.

Nowadays, a key manifestation of this trend is the growing use of readmission agreements aimed at facilitating the return of irregular migrants to their countries of origin or transit. However, these arrangements frequently face political resistance and limited effectiveness⁴². Consequently, states have increasingly relied on informal mechanisms, including migration partnerships and memoranda of understanding, and have linked migration cooperation to benefits in areas such as trade, security, development aid, etc. These informal arrangements not only support the return of migrants but also seek to prevent the arrival of unwanted migrants in the first place⁴³.

Besides these types of agreements that are focused on the return of irregular migrants back to their CoO or CoT and that also seek to prevent the arrival of migrants into the DS, there is another popular form of cooperation with Third States, known as “safe third country” policies (STC).

The STC concept emerged in response to the phenomenon of “refugees in orbit” during the 1970s and 1980s, when increasingly restrictive asylum policies left many refugees unable to

⁴⁰ *ibid.*

⁴¹ Sandra Lavenex and Frowin Rausis, ‘A Taxonomy of Externalization Policies’ (Université de Geneve, 2024) <<https://archive-ouverte.unige.ch/unige:181537>> accessed 6 June 2026. 5

⁴² *ibid.*

⁴³ *ibid.*

secure protection and forced them to move repeatedly between countries in search of asylum⁴⁴. To address this problem, the 1979 UNHCR Executive Committee Conclusion No. 15 introduced the idea that certain asylum seekers could be returned to third countries deemed safe, thereby seeking to find a solution to the concerns among states about the so-called “asylum shopping” trend from protection seekers and other migrants. However, according to Osso⁴⁵, this approach created a legal tension between two sets of rights: on the one side, the states’ right to refuse asylum and transfer applicants elsewhere and, on the other side, the protection seekers’ to claim asylum in their preferred destination country.

Having that in mind, the concept is based on the principle that asylum seekers should apply for protection in the first country they arrive. In that sense, the STC legal framework allows DS to refuse the processing of claims without really considering the protection seeker’s situation and to transfer him/her to another TC, which has been previously labelled as “safe”⁴⁶. The author points out that, in practice, STC policies are usually implemented as an instrument for limiting access to DS national territories and their asylum systems.

Non-state actors

Within the spectrum of non-state actors, two types of stakeholders can be identified: private actors and IOs. Even though of course other non-state actors might be involved in externalization mechanisms -such as civil society organizations, which can have a role of monitoring and counterweight against the government’s policies-, I consider it appropriate to only bring up these two types as these are the ones that most frequently have direct impact or participation in the implementation of externalization policies. As in the following section I will discuss the term ‘privatization’ -and therefore, what role the private actors involved might play in externalization-, in the present section I will only focus on IOs.

Across the literature, the two IOs that are regarded as the most involved in external migration management of DS are International Organization for Migration (IOM) and the UNHCR. At a

⁴⁴ Berfin Nur Osso, ‘Unpacking the Safe Third Country Concept in the European Union: B/Orders, Legal Spaces, and Asylum in the Shadow of Externalization’ (2023) 35 International Journal of Refugee Law 272 <<https://doi.org/10.1093/ijrl/eead028>>. 279

⁴⁵ *ibid.*

⁴⁶ *ibid.*

very early stage of her analysis of the role of these IOs in externalization policies, Rossi⁴⁷ argues that there is a discrepancy between the aims that IOM and UNHCR have and the messages that they convey and how they act in the field. In that regard, the author notes that these IOs proclaim that international migration is a natural phenomenon. However, numerous times in practice they have cooperated with DS in ‘border-security projects aimed at resisting irregular migration’⁴⁸.

Recognizing the conflicting nature of the IOs, Lavenex⁴⁹ further elaborates on a classification of the roles that IOM and the UNHCR play within this field: first, they might balance the practices of DS in cases where they do not agree with their actions, second, they might adopt the role of ‘subcontractors’ to perform tasks within the broader migration policy, and third, they might act as ‘transmitters’ where they cooperate with DS to convey to the public the objectives and legislation of them.

A key point to understanding the nature of the cooperation between these IOs and DS is that the two sets of actors need something from each other: while DS value the legitimacy (in terms of the authority and perceived neutrality) that the IOs have, IOM and UNHCR most times depend on funding from states for its survival⁵⁰. With regards to this point, Lavenex⁵¹ clarifies the ‘legitimacy’ derives from the capacity of the organization to generate regulation in accordance with its mandate and from how much independence the organization has in relation to those that provide financial support to it.

Bearing that in mind, even though the two organizations might perform some similar tasks, the UNHCR enjoys more legitimacy within the international community than the IOM. This is mainly because the first one has a human rights mandate (associated to the 1951 Refugee Convention) and has been traditionally linked to humanitarian relief of refugees, as opposed to IOM that does not have such a basis and has historically acted as an entity at the service of states in the field of migration management⁵². This last point is further emphasized by Doig

⁴⁷ Rosa Rossi, ‘The Role of the International Organization for Migration and the UNHCR in the EU and Italy: Still Entrapped by a Securitization Approach to Mediterranean Migration?’ (2019) 11 *Contemporary Italian Politics* 369 <<https://doi.org/10.1080/23248823.2019.1685112>>. 370

⁴⁸ Ibid. 370.

⁴⁹ Sandra Lavenex, ‘Multilevelling EU External Governance: The Role of International Organizations in the Diffusion of EU Migration Policies’ (2016) 42 *Journal of Ethnic and Migration Studies* 554 <<https://doi.org/10.1080/1369183X.2015.1102047>>. 2

⁵⁰ Rossi (n 47). 381

⁵¹ Lavenex (n 49). 3

⁵² Antoine Pécoud, ‘What Do We Know about the International Organization for Migration?’ (Routledge, 27 July 2018) 1621 <<https://doi.org/10.1080/1369183X.2017.1354028>>. 1625

and Hirsch⁵³ who brought up that although in recent years IOM has promoted a more benevolent approach to migration, its actions have not been in line with that. They point out to the role fulfilled by the organization in coordination with or at the service of Australia in the territory of Indonesia. Some operations implemented by IOM were related to management of detention centers, policies of return of protection seekers and carrying out public messaging campaigns.

1.3.4 Adjacent terms associated with externalization

To finalize this chapter, I consider it appropriate to briefly mention some terms that refer to practices that often work within the concept of externalization of migration management. These are ‘non-entry’, ‘privatization’ and ‘deterrence’.

Non-entry policies

According to Barlaoura and Orav⁵⁴, the concept of “non-entry” in migration management is a legal fiction employed by DS to prevent migrants and protection seekers from entering or arriving through legal routes into their territory. The authors⁵⁵ explain that this practice is widely applied even when an individual is already physically present within the state's territory. For example, it operates when a migrant arrives at an airport and undergoes a travel document check: under this approach, a TC national is considered to be “legally inside” the DS only after receiving clearance from immigration authorities. In the European context, following the increase in protection claims during 2015–2016, many EU MS began exploring ways to use this approach to prevent asylum seekers from being regarded as having entered their territory, thereby avoiding the international obligations associated with providing them protection⁵⁶.

Privatization policies

⁵³ Asher Hirsch and Cameron Doig, ‘Australia’s Other “Offshore Policy”: Containing Refugees in Indonesia through the International Organisation for Migration’ (CONREP Blog Compendium, 27 November 2019). ⁵⁴

⁵⁴ Anita Orav and Nefeli Barlaoura, ‘Legal Fiction of Non-Entry in EU Asylum Policy’ (2024) <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2024\)760347](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)760347)> accessed 3 June 2026. ²

⁵⁵ *ibid.*

⁵⁶ *ibid.*

The concept of “privatization” in migration management can be understood, as Frelick, Kysel and Podkul⁵⁷ note, as the involvement of private actors in the implementation of migration policies. These actors may assist DS in maintaining security within or outside detention centers, enforce carrier sanctions by requiring airlines to verify whether passengers are authorized to travel to a particular state, and prevent unauthorized individuals from boarding flights, among other functions. Furthermore, Molnar⁵⁸ highlights the growing role of private companies in migration management through the development of artificial intelligence and surveillance technologies. These technologies often support governments in the processing and assessment of asylum claims through the collection and analysis of data.

One last point worth mentioning is that privatization does not mean that those policies previously implemented entirely by states and the responsibility that those entailed are now being executed solely by private actors⁵⁹. According to Menz, with the advent in the 1970s and 1980s of neoliberalism and its subsequent developments migration management went from a field where only the states had competences, to a lucrative field where companies and private companies can invest and implement some policies in accordance with the direction of public authorities⁶⁰.

Deterrence policies

The final concept associated with externalization is “deterrence.” As Jacobsen and Machold⁶¹ explain, deterrence is based on the assumption that sufficiently severe or harsh consequences for a particular action will discourage individuals from engaging in it. In the field of migration policy, DS may implement measures designed to dissuade potential asylum seekers from undertaking journeys to their territory or from taking a certain route to get there⁶². Under this

⁵⁷ Frelick, Kysel and Podkul (n 2). 193

⁵⁸ Petra Molnar, ‘The Rise of the Border Industrial Complex: AI, Surveillance and the Privatisation of Migration Management’ in Sara Vincini, Mike Gartside and Tom Phillips (eds), *Mixed Migration Review 2025. Highlights. Interviews. Essays. Data.* (Mixed Migration Centre 2025) <mixedmigration.org/mixed-migration-review-2025> accessed 3 June 2026.

⁵⁹ Georg Menz, ‘The neoliberalized state and the growth of the migration industry’, in Thomas Gammeltoft-Hansen and Ninna Nyberg Sørensen (ed), *The Migration Industry and the Commercialization of International Migration* (1st Edition, Routledge 2013). 112

⁶⁰ *ibid.*

⁶¹ Malene H Jacobsen and Rhys Machold, ‘Refusing Deterrence’ (2025) 51 *Journal of Ethnic and Migration Studies* 2107 <<https://doi.org/10.1080/1369183X.2024.2441604>>. 2110

⁶² Caterina Mazzilli, ‘Migration Deterrence Strategies Are Popular amongst Politicians, but What Do We Know about Their Effectiveness?’ (*ODI Global*, 18 December 2024) <<https://odi.org/en/insights/migration-deterrence-strategies-are-popular-amongst-politicians-but-what-do-we-know-about-their-effectiveness/>> accessed 8 June 2026.

definition, most externalization and restrictive migration policies can be labeled as a form of deterrence. However, Mazzilli questions how effective these strategies are in their goal of containing the flow of unwanted migration intending to arrive at DS. In this line, she brings up a report elaborated by British scholars on the specific effects of deterrence migration policies. They argue that the intended effects of them have not been achieved but rather the results have been an increase in “[i]nduc[ing] people make more dangerous journeys[, v]iolat[ion] the human rights of people on the move[, c]reat[ion of] business opportunities for smugglers[, and l]ead[ing] to greater loss of life in every incidence worldwide that they have been employed”⁶³.

⁶³ Ipek Demir/University of Leeds, Lucy Mayblin/University of Sheffield, Legislative Scrutiny: Illegal Migration Bill (Written evidence submitted to Human Rights (Joint Committee), IMB0032, 21 April 2023) accessed 8 June 2026.

CHAPTER 2: Framing externalization

Over the previous chapter I presented what academia has understood so far when they referred to externalization of migration management. To do that, first I studied several academic perspectives and an institutional one, all of which provided me with knowledge on who are the key actors present and what are their roles, what the motivations for implementing such a thing are and, lastly, what might be the challenges of engaging in its study as well as the practical implications of externalization. Additionally, as was mentioned earlier, this is a concept mainly used by scholars, the media, civil society organizations and the UNHCR, but not by governments or migration policy makers. This last point presents an important challenge for those trying to clearly understand what it means and what the legal responsibility for states might be if the implementation of the measures is not done in accordance with international law.

In this chapter I will address the first research question and coin my own definition of externalization which will be composed of the academic perspectives I have already studied. Additionally, I consider it appropriate to further structure the layers of the definition into different dimensions: 1- Specific practices of externalization, 2- Actors involved or affected by externalization, 3- Motivation of externalization and 4- Nature of management over legal responsibility. This breakdown of the concept into dimensions is something that will methodologically enrich and facilitate the evaluation of whether the Italy-Albania agreement presents elements of externalization or not, and in the case it does, which type of externalization it is.

Lastly, I would like to clarify that even though the last three dimensions are derived from the literature review conducted in the last chapter, the first one (specific practices) is not and is something which I will develop over this chapter.

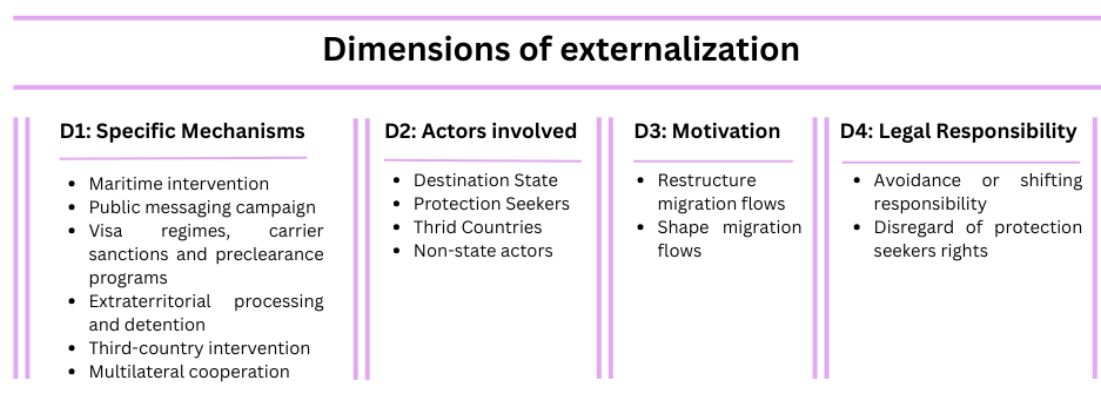
2.1 Own definition of externalization

To address the first research question of this thesis, that was “What does the term ‘externalization’ mean?”, I developed this definition of the phenomenon:

The term ‘externalization’ encompasses a varied set of government-led practices aimed at exercising control over undesired migration flows to shape it to its convenience, by applying these measures either extraterritorially or with extraterritorial effects. Furthermore, it

constitutes a way for countries to intentionally avoid legal responsibility for protecting asylum seekers and other people seeking protection.

From this definition, four specific dimensions can be derived and below are displayed the key points of each one:



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While for the purpose of facilitating the evaluation of the dimensions they will be presented as separate entities, it is important to remember that in practice they work together. In that sense, for a policy to be labelled as ‘externalization’ (according to my definition) all the dimensions must be present. However, one last point regarding the first dimension must be noted.

Although a DS may implement a combination of different mechanisms as part of a broader migration management strategy, this study does not examine such comprehensive approaches. Instead, it assesses whether a specific measure adopted by a state (namely, the Italy-Albania Protocol) can be classified as a form of externalization or not. In that regard, the first dimension can be understood as the one that determines the nature of the other three (number of actors, motivation and nature of legal responsibility).

D1 Specific mechanisms

Even though not expressly stated in the definition, it is mentioned that externalization is composed of a set of practices. These are maritime interventions, public messaging campaigns,

⁶⁴ Figure 1: Dimensions and key points of my definition of externalization. Source: Author's own analysis.

Visa regimes, carrier sanctions and preclearance programs, extraterritorial processing and detention, third-country interception and multilateral cooperation.

D2 Actors involved or affected by externalization

As was explained in the previous sections there are three main types of actors involved or affected by externalization. First, the DS; second, the protection seeker; third, the states with which the DS maintains any sort of agreement or any other form of cooperation during any step of the process of externalization (these ‘states’ can be further divided into CoT, CoO and RS); lastly, the fourth ones are non-state actors, which might be private or IOs. Only when the externalization measures are carried out unilaterally, the only participants involved during the implementation of the measures are usually the DS and the protection seekers. However, for all the other cases, the four types of actors can participate in externalization measures.

As previously mentioned, several actors can be involved in externalization, but in its most basic notion the two participants seem to be DS, that exerts control and imposes the measures, and protection seekers (or can be the overall migration flows when the mechanisms are applied extensively and by a large number of states), which are the ones that are affected by them.

Finally, it is useful to consider that the policies can be categorized into unilateral, bilateral or multilateral practices, depending on the actors involved. The first one happens when the DS works on its own to put them into practice. The second one consists of two states working together – usually the DS collaborates through some kind of agreement with the initially defined CoO, CoT or RS in which they can outsource or shift their responsibilities in terms of migratory flows. Lastly, the third one, multilateral, occurs when several states cooperate to either discuss or convince their peers to strengthen their efforts to contain migratory flows, or to collectively participate in measures of externalization.

D3 Motivation of externalization

As was mentioned, externalization is a government-led set of practices which has its roots on two different motivations that in practice can be intertwined with each other. On the one side, there is the aim of the DS to *restructure* the present state of migration flows that are supposedly directly affecting it. For example, it can be a socio-economic-politic situation of some sort in a

given country, that generates migration flows heading to the DS. At a later point, that state decides to implement externalization measures with the aim of restructuring the current migration flows arriving to its territory. This would be a reactionary measure to a particular situation or trend.

On the other side, there are situations where the DS has the aim of *shaping* migration flows that might potentially affect it. This is the case of when a DS implements measures with a more preventive, comprehensive and long-term approach, as it seeks to have an impact on the overall migration flows that might want to enter its territory, perhaps basing its assumptions on events of the past.

D4 Nature of the management over legal responsibility

The fourth dimension derived from the definition is one concerning the nature of international responsibility regarding protection seekers, and this is a key point of difference between externalization and international cooperation. Bearing in mind that international cooperation in terms of migration management is reached when the previously mentioned conditions established by the UNHCR are met - namely that it involves sharing responsibility for protection seekers when a state is clearly overloaded with migration flows originated by a specific event-, externalization is quite the opposite.

The last one involves evading international legal responsibility for protection seekers and therefore also ignoring the protection of their human rights enshrined in international legislation. Most of the times these practices tend to fall into legal loopholes of extraterritoriality where it is not clear *who* is responsible for *what* because in many cases not even accurate information for such policies is disclosed. In other words, externalization seeks to *intentionally shift international legal responsibility* by denying or increasing complexities on protection seekers to present their claims or to obtain an approval to remain in the DS. Therefore, with these many important uncertainties, it is crucial to examine externalization practices from the perspective of which could be the potential legal instruments at risk.

On the table in the following page are displayed the four dimensions of externalization, where it is shown how they interact with each other:

Measures of externalization of Destination States

	<i>D1.1: Maritime intervention</i>	<i>D1.2: Public messaging campaigns</i>	<i>D1.3: Visa Regimes, Carrier Sanctions and Preclearance Programs</i>	<i>D1.4: Extraterritorial processing and detention</i>	<i>D1.5: Third-Country interception</i>	<i>D1.6: Multilateral Cooperation</i>
<i>D2: Actors involved</i>	Destination States Protection Seekers Third Countries	Destination States Protection Seekers Non-state actors	Destination States Protection Seekers Non-state actors Third Countries	Destination States Protection Seekers Non-state actors Third Countries	Destination States Protection Seekers Third Countries	Destination States Non-state actors Third Countries
<i>D3: Motivation</i>	Restructure migration flows	Restructure and shaping migration flows	Restructure and shaping migration flows	Restructure and shaping migration flows	Restructure and shaping migration flows	Restructure and shaping migration flows
<i>D4: Legal Responsibility</i>	Avoidance or shifting of responsibility Disregard of protection seekers rights	Disregard of protection seekers rights	Avoidance or shifting of responsibility Disregard of protection seekers rights	Avoidance or shifting of responsibility Disregard of protection seekers rights	Avoidance or shifting of responsibility Disregard of protection seekers rights	Disregard of protection seekers rights

2.2 Specific mechanisms of externalization

Externalization is a term that englobes a set of mechanisms. In that sense, besides their categorization and differentiation, it is ultimately important to always remember “that externalization practices must be regarded dynamically in the context of the evolution of the international governance of migration policies”⁶⁶, not considering them as an isolated measure but rather as a part of bigger and more complex set of policies that affects migratory management internationally.

This section will present specific policies related to externalization (D1), incorporating and mentioning the other dimensions as well. However, with regards to the dimension on nature of legal responsibility (D4), due to the high amount of relevant information available, a separate subsection will be presented first. On it, I will analyze some general considerations over legal responsibilities of states apply in all or most cases of externalization. The legal provisions that pertain to only one mechanism will be explained when each mechanism is explained individually.

⁶⁵ Figure 2: Measures of externalization of Destination States. Source: Author's own analysis

⁶⁶ Salvatore Fabio Nicolosi, ‘Externalisation of Migration Controls: A Taxonomy of Practices and Their Implications in International and European Law’ (2024) 71 Netherlands International Law Review 1 <<https://doi.org/10.1007/s40802-024-00253-9>>. 4

2.2.a Legal human rights instruments associated with externalization mechanisms

Before I begin with the analysis of some legal provisions applicable to externalization policies, I consider important to note that while all of them share the same overall goal and characteristics exposed before, most legal instruments usually concern certain methods -such as detention processing centers- and not others -such as visas or public messaging campaigns-, as the latter do not directly prevent the fulfillment of the legal provisions that will be mentioned next. Nevertheless, I will also stress the fact that the implementation of these policies -such as visa restrictions- is potentially detrimental to protection seekers' rights as it could imply the tacit denial or discouragement of the access to asylum and legal and safe routes of migration for them.

As was previously mentioned, legal accountability for what happens when implementing externalization practices is a matter that tends to fall into an unclear grey area, as states usually excuse themselves for human rights violations on the basis that they can only be held fully accountable for what happens within their own borders⁶⁷. Furthermore, Frelick, Kysel and Podkul⁶⁸ claim that externalization of migration policies has resulted in dubious human rights agendas from both DS and TC, where asylum obligations from their part are minimized or ignored as they do not consider that they can be held accountable for what happens when engaging in these practices. However, the authors argue that this 'jurisdictional accountability approach' to human rights violations is not valid and does not exempt states from legal consequences. In that sense, it has been argued that the Refugee Convention applies without territorial limits, meaning that states remain obligated under it even when acting beyond their own borders⁶⁹.

As detailed by Cantor and others⁷⁰, several international law instruments apply when states implement externalization, even though these might vary according to several factors. Considering that in the process of externalization a great variety of actors (each with a different set of legal obligations and responsibilities) play a different role, it is crucial for the determination of international responsibility and jurisdiction to clearly define which legal

⁶⁷ *ibid.* 3

⁶⁸ Frelick, Kysel and Podkul (n 2). 196

⁶⁹ Vincent Chetail, *International Migration Law* (Oxford University Press 2019) <<https://doi.org/10.1093/law/9780199668267.001.0001>>. 188

⁷⁰ Cantor and others (n 17). 124

instruments apply to whom and how are they complying or not with their obligations throughout the implementation of the measure. With regards to jurisdiction and international responsibility for acts committed by a state or an IO, there are two key legal documents issued by the International Law Commission (ILC) to consider: first, with regards to states, there is the 2001 ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)⁷¹, and second, for international organizations (such as the EU, or more specifically in terms of immigration policy, FRONTEX), there are the 2011 ILC Draft Articles on Responsibility of International Organizations (ARIO)⁷².

The first legal instrument that binds ratifying states in relation to externalization practices is the Refugee Convention, which, as was mentioned before, does not exclude them from responsibility on the grounds that the measure did not occur within their borders. As stated by Hathaway⁷³, refugees should be granted certain rights simply because of their condition as such, and these rights must be upheld by states that are party to the Convention unless and until the person's asylum claim is formally rejected. The reason for this is because the refugee status stems from personal circumstances, not from official recognition. Nevertheless, these rights remain incomplete or unrealized until the refugee comes under the legal or practical authority of a state that has joined the Convention.

At this point it is important to keep in mind that the Refugee Convention allows for the mentioned "international cooperation" -in fact as was previously explained the UNDHR has released guidelines on how to properly achieve it- between countries to manage migration flows when there is an overwhelming situation in terms of processing that one single state cannot manage. However, that refers, simply put, to cases of 'responsibility sharing' and not 'responsibility shifting' -as would be the case with externalization. Consequently, as Garlick and Tan argue, "[...] the transfer of a person from one state to another for the purposes of asylum processing is not, in and of itself, a breach of international law; the Refugee Convention is silent on this particular question"⁷⁴. From their perspective, this unclear provision has given room for serious violations of international human rights law, as states have transferred their

⁷¹ See Draft Articles on Responsibility of States for Internationally Wrongful Acts (adopted August 2001) UN Doc A/56/10, annex reproduced in GA Res 56/83

⁷² See Draft articles on the responsibility of international organizations, with commentaries (2011) UNYBILC.

⁷³ James C. Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press 2005). 278

⁷⁴ Madeline Garlick and Nikolas Feith Tan, 'Moving beyond Externalisation? Toward Lawful Cooperation on Asylum' (*Externalizing Asylum A Compendium of Scientific Knowledge*, 8 August 2024) <<https://externalizingasylum.info/moving-beyond-externalisation-toward-lawful-cooperation-on-asylum/>> accessed 8 May 2026.

responsibility of migration management not in accordance with international cooperation, as they are not respectful of refugee rights and individual rights of protection seekers.

As was stated before, the parties to the Convention must respect its provisions even when they are acting beyond their borders, as the jurisdiction of a State in these cases is understood as a combination of *de jure* (legal and visible control, usually within its own borders) and *de facto* control (this dimension contemplates a broader notion of a state's jurisdiction whereby it exercises effective power and authority beyond its own borders)⁷⁵. However, regarding this last point it is important to consider that the European Court of Human Rights (ECtHR) has rather narrower interpretation on this issue ⁷⁶.

Considering case law revolving around the existence or not of state's extraterritorial jurisdiction when human rights violations were committed⁷⁷, the Court manifested its understanding of State's jurisdiction as *de jure* and "primarily jurisdictional". In relation specifically to refugee matters, European states have repeatedly denied any responsibility in assisting refugees outside their own borders, agreeing only to the limited obligation of not returning individuals to places where they could face persecution (which at least would be consistent with the principle of non-refoulment)⁷⁸.

It is in this unclear global context of growing practices of externalization that Hathaway⁷⁹ considers that there seems to be a tendency in this field on the part of governments. He argues that not only is extraterritorial processing increasing but the number of positive resolutions for claims is declining accordingly. He pinpoints that protection seekers are often returned to their home regions or kept detained while waiting for status determination, being only a few granted with refugee status and entitlement of further rights. Even though the author observed this trend in the early-2000s, this pattern seems to still hold true now.

Drawing from the Refugee Convention⁸⁰, there are some basic dimensions of protections that should be respected and guaranteed by states parties when a protection seeker is physically

⁷⁵ United Nations High Commissioner for Refugees (UNHCR), 'Note on the "Externalization" of International Protection ' (28 May 2021), <https://www.refworld.org/policy/legalguidance/unhcr/2021/121534>, [accessed 10 June 2026]. 2

⁷⁶ Alexander Orakhelashvili, 'Restrictive Interpretation of Human Rights Treaties in the Recent Jurisprudence of the European Court of Human Rights' (2003) 14 *European Journal of International Law* 529 <<https://doi.org/https://doi.org/10.1093/ejil/14.3.529>>. 531-532

⁷⁷ See *Al-Adsani v UK* ECHR (2001), 35763/97 and *Bankovic and others v Belgium and others* (2000), 52207/99.

⁷⁸ Hathaway (n 73). 299

⁷⁹ *ibid.* 297

⁸⁰ Refugee Convention 1951 (n 1).

present within the de jure or de facto jurisdiction of a state (even though this might be conflicting with the ECtHR approach to states' jurisdiction), some of which are particularly relevant when implementing externalization mechanisms:

[...] persons who claim to be refugees are generally entitled to enter and remain in the territory of a state party until and unless they are found not to be Convention refugees. [...] they should not be arbitrarily detained or otherwise penalized for seeking protection [...] basic human dignity ought to be respected, including by respect property and related rights, preservation of family unity [...] asylum-seekers must have access to a meaningful remedy to enforce their rights, including to seek a remedy for breach of any of those rights⁸¹

Notwithstanding all these provisions, which primarily concern the physical and legal conditions of protection seekers while they await the resolution of their claims, it is equally important in the context of externalization to recognize that, where cooperation occurs between states or with non-state actors that may not have ratified the Convention (such as externalization agreements involving EU Member States -or the EU or its agencies-, and non-ratifying countries), all these actors are nevertheless bound by the prohibition of refoulement, as set out in Article 33(1) of the Convention. This is because the principle of non-refoulment is widely recognized as a rule of customary international law.

On top of the specific provisions of the 1951 Refugee Convention, there are universal human rights treaties that apply⁸² and bind States whether they are acting within their own territory or abroad, as it is considered that a state/non-state actor might have jurisdiction – and therefore obligations- when it “exercises ‘effective control’ over a territory or ‘authority and control’ over a person”⁸³. On top of that element, Cantor and others⁸⁴ argue that another method to identify applicable jurisdiction is to test if the state knew that an extraterritorial violation of rights was a foreseeable result of its conduct. Some rights or international provisions that might be breached while implementing externalization measures are the prohibition of collective expulsion, prohibition of torture and ill-treatment, right to due process and fair trial and treatment as well as the prohibition of non-discrimination (among others).

⁸¹ Hathaway (n 73). 279

⁸² These specific provisions will be duly mentioned when the types of externalization are explained later on in this section.

⁸³ Cantor and others (n 17). 128

⁸⁴ *ibid.*

The last relevant element to consider throughout the analysis of this dimension is very interesting as its existence makes the international liability of states in relation to this phenomenon all the more difficult to address. This refers to the fact that even though externalization practices have existed for a long time, state authorities and governmental policy makers rarely -if ever- refer to it as such and, consequently, is never labeled that way in legal documents. Importantly so, neither binding international law instruments mention it.

In other words, the term ‘externalization’ and the conceptualization presented in the previous section does not have a place in governmental and international legislation. Over the years, only the academia, the media and NGO seem to accept the existence of such practices with the characteristics presented above. This very particular element is not widely mentioned or studied extensively by the consulted scholars, only briefly by Garlick and Tan⁸⁵ and by Tan⁸⁶, when they call for an inclusion of externalization in international law so accountability for it and its effects can be more easily attributed.

I will now proceed with the study of each externalization practice, examining through the lenses of the categories presented before.

2.2.1 Maritime interventions

This is a procedure in which a DS launches military operations to avert protection seekers coming by sea to disembark at their shore. In practice, specific measures that fall into it are denying port access to boats transporting migrants, monitoring sea routes and intercepting and turning vessels around⁸⁷.

The first expressions of this mechanism were implemented during the 1930s when vessels transporting Jews that were escaping from the horrors of Nazi Germany were denied access to disembarking at coastal states such as Cuba, the US, Canada and, during this time, organized policies of this sort were implemented by the British colonizers in Palestine, in order to keep the fleeing Jews away from that territory⁸⁸. Later, throughout the 1980s the US maritime

⁸⁵ Garlick and Tan (n 74).

⁸⁶ Tan (n 11). 9

⁸⁷ Amy Netherly, Azadeh Dastyari and Asher Hirsch ‘Examining refugee externalization policies: a comparative study of Europe and Australia’ in Amy Netherly, Azadeh Dastyari and Asher Hirsch (ed), *Refugee externalization policies* (1st, Routledge 2023). 5

⁸⁸ FitzGerald (n 13). 5

intervention policies became more frequent and more systematized towards specific protection seekers coming from countries in Central America, even reaching a point where a US president questioned the applicability of the ‘principle of non-refoulment’ at sea⁸⁹.

The implementation of this mechanism by EU MS has had a rather different development throughout the years, mainly considering that the states have, to a certain extent, externalized their migration management duties to the EU. In that sense, FitzGerald⁹⁰ distinguishes two peculiarities of the European’s maritime interventions processes: on the one hand, there is the MS cooperation with FRONTEX, the European Border and Coast Guard Agency; on the other hand, the states have to comply with the ECtHR (an organism not part of the EU), which has issued in the past judgements in relation to EU MS carrying out maritime interventions processes not in compliance with the rights provided by the European Convention of Human Rights (ECHR)⁹¹.

Maritime interventions can be further subcategorized into pushbacks and pullbacks⁹². The first one refers to a practice done by the DS where it stops boats carrying migrants and redirects them away from their territory, something that might happen either on international waters or within their maritime zone⁹³ – this practice can also occur in a similar way not at sea but in land, for example using fences or walls that physically prevent migrants from crossing the borders-. The second subcategory, ‘pullbacks’, refers to the involvement of a TC that, in accordance with the DS, intercepts migrant vessels and takes them back to their territory, usually for processing or detention⁹⁴.

In terms of the number of actors involved, as was just explained, from the term ‘maritime interventions’ many different practices can be drawn. In that sense, depending on the case, the actors cooperating with the DS will vary. In theory – and for some countries in practice too-, pushbacks are carried out unilaterally, as it is usually a costal DS that repels or denies access to its ports to potential protection seekers. However, in reality for EU MS this process occurs

⁸⁹ See Executive Order 12807, Interdiction of Illegal Aliens, 57 Fed. Reg. 23133-34 (June 1, 1992): <https://www.presidency.ucsb.edu/documents/executive-order-12807-interdiction-illegal-aliens>

⁹⁰ FitzGerald (n 13). 10

⁹¹ See European Convention on Human Rights (ECHR) (1950) 213 UNTS 222.

⁹² Cantor and others (n 17). 132

⁹³ Emilie McDonnell and Mariana Gkliati, ‘Policy Brief on Externalisation: What Is Externalisation?’ (2025) <https://rli.sas.ac.uk/sites/default/files/RLI%20Policy%20Brief-%20What%20is%20Externalisation_%20%28Updated%2011.08.25%29.pdf> accessed 12 May 2026.

⁹⁴ *ibid*.

in a bilateral way. This is because most of the times these states cooperate and engage in joint operations with FRONTEX, to carry out such maritime processes⁹⁵.

On the other side, when considering pullbacks, the DS must cooperate with another state that is the one that in fact pulls back migrants' vessels back to their mainland. Lastly, putting up fences and constructing walls to physically deny access to migrants and protection seek at land borders can be classified as a unilateral measure because the state does not have to collaborate with anyone to achieve it.

Moving on to the potential legal standards at risk of violation, the first relevant instrument of international law to consider is United Nations Convention on the Law of the Sea, which concerns all externalization methods that are carried out at sea.

The mentioned treaty imposes several obligations, being the most important one in relation to these practices, the duty to rescue individuals when they are in danger at sea and to bring them to a safe location⁹⁶. This is another obligation regarded by the international community both as customary law and as a general principle of law⁹⁷. This duty imposes two kinds of obligations to states: on the one side, states parties must ensure that vessels having their national flag save those who might be in danger adrift at sea, and on the other side, those state parties that have an open seacoast carry regular search and rescue operations (SAR). As claimed by Papanicolopulu⁹⁸, this obligation is mentioned throughout several other international legal documents, namely the International Convention on Maritime Search and Rescue (SAR Convention)⁹⁹, the Convention for the Safety of Life at Sea (SOLAS Convention)¹⁰⁰ and the International Convention on Salvage¹⁰¹.

There are some important implications in practice to the duty to rescue at sea as the obvious consequence of such obligation is to disembark those in distress in a safe place. However, as has been mentioned throughout this study, given the recent global dispositions of states to

⁹⁵ EU MS particular externalization process will be explained with greater detail later in the following chapter.

⁹⁶ *United Nations Convention on the Law of the Sea* (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 art 98.

⁹⁷ Irini Papanicolopulu, 'The Duty to Rescue at Sea, in Peacetime and in War: A General Overview' (International Review of the Red Cross, 1 August 2016) 491 <<https://doi.org/10.1017/S1816383117000406>>. 494

⁹⁸ *ibid.* 493-494

⁹⁹ *See International Convention on Maritime Search and Rescue* (adopted 27 April 1979, entered into force 22 June 1985) 1405 UNTS 118

¹⁰⁰ *See International Convention for the Safety of Life at Sea* (adopted 1 November 1974, entered into force 25 May 1980) 1184 UNTS 3

¹⁰¹ *See International Convention on Salvage* (adopted 28 April 1989, entered into force 14 July 1996) 1953 UNTS 193 (Salvage Convention).

restrict the entrance into their territory of asylum-seekers, there is in practice a growing trend of states banning or discouraging private vessels to take rescued people to their shore when their ultimate aim is to claim protection (this has been the case in recent years prominently in Italy¹⁰²). Papanicolopulu¹⁰³ argues that there are two conflicting dimensions contained in the concept of disembarkation. First, there is the already explained prohibition of refoulment. Second, is the sovereignty and right of the coastal state to refuse entry as sees fit¹⁰⁴. In this respect, some states consider that there is an overburden on them to accept big numbers of asylum seekers into their territory -because of their geographic position -and disagree -and many times disregard completely -on their duty to rescue, as stated by the Convention¹⁰⁵.

2.2.2 Public messaging campaigns

The second policy is called public messaging campaign, which is carried out unilaterally by the DS or in cooperation mostly with other non-state agents. These very elaborate campaigns develop narratives where migration is depicted with very negative connotations. By dehumanizing, criminalizing and depicting migrants as “nameless ‘invaders’, outsiders and objects of fear”¹⁰⁶, the public campaigns seek to install fear: first, on both the prospective migrants – by criminalizing migration, the apply deterrence measures-, and, secondly, on the local population of the DS itself¹⁰⁷. According to FitzGerald¹⁰⁸, most Global North countries, either in the past or in the present, have engaged in such practices.

With regards to nationals of the DS, the goal of the public campaigns is to justify and legitimize the strengthening of external borders and inspire rejection towards asylum seekers by, additionally, classifying them in black and white terms, where some migrants are escaping from a dangerous context but others are simply looking to improve their economic condition,

¹⁰² Sukanya Sengupta, ‘Special Rapporteurs Communication to Italy on Search and Rescue Operations in the Central Mediterranean’ (*Università di Padova - Centro di Ateneo per i Diritti Umani ‘Antonio Papisca’*, 10 August 2024) <<https://unipd-centrodirittiumani.it/en/topics/special-rapporteurs-communication-to-italy-on-search-and-rescue-operations-in-the-central-mediterranean>> accessed 1 July 2026.

¹⁰³ Papanicolopulu (n 97). 500

¹⁰⁴ *ibid.*

¹⁰⁵ Tamara Tubakovic, ‘Race Against Responsibility: Why Conflict over Migrant Disembarkation Is an EU Problem’ (12 March 2019) <<https://theglobepost.com/2019/03/13/eu-migrant-disembarkation/>> accessed 12 April 2026.

¹⁰⁶ Pierluigi Musarò and Melissa Moralli, ‘De-Bordering Narratives on Tourism and Migration. A Participatory Action-Research on Two Innovative Italian Practices’ (2019) 11 *Italian Journal of Sociology of Education* 147. 148

¹⁰⁷ Netherly, Dastyari and Hirsch (n 87). 7

¹⁰⁸ FitzGerald (n 13). 8

therefore not worthy of asylum protection¹⁰⁹. Furthermore, Musarò and Hirsch claim that firstly, the rhetoric used and encouraged by DS is rooted on the unclear differentiation between the migrant types and does not help to solve or target the real underlying problematics that actually lead people to migrate¹¹⁰. Moreover, these mechanisms have the purpose of disincentivizing locals that might provide assistance to migrants.

Engaging in a deeper analysis of public information campaigns, Cham and Trauner¹¹¹ identified two main types of campaigns aimed at discouraging and keeping at home would-be protection seekers. Firstly, there is the one carried out through traditional information media, such as print media (newspapers, billboards, leaflets, etc.), TV, cinema and radio programs. Included in this dimension are also displays of print-media or discussion of the topic at theaters, concerts or workshops.

Secondly, in recent years, with the advent of new technological innovations, there are campaigns implemented through social media, where different actors intervene (such as governments, IOM, civil society, etc.), given the relatively easiness and low costs of utilizing these methods in comparison to the first¹¹². According to the authors, many IOM information campaigns in Africa include hiring returned protection seekers to discourage others by telling their story and appealing to their emotions and, in that way the campaign has a chance of increasing perception of risks of the journey to Europe and eliminating their plan of engaging in irregular migratory routes.

Lastly, Cham and Trauner¹¹³ place special importance on the participation of so-called “local development actors” in the campaigns, which are deployed in places where people who could migrate would be, and they engage in activities where they “provide training and income-generating activities for potential migrants and facilitate awareness-raising campaigns.”¹¹⁴.

¹⁰⁹ Pierluigi Musarò and Asher Hirsch, ‘The Symbolic Frontiers of Border Externalisation: Interceptions, Information Campaigns, and Refugee Policies’ (Comparative Network on Refugee Externalisation Policies (CONREP), 25 June 2019) <<https://arts.unimelb.edu.au/school-of-social-and-political-sciences/our-research/comparative-network-on-refugee-externalisation-policies/blog/symbolic-frontiers>> accessed 3 April 2026. 1

¹¹⁰ Musarò and Moralli (n 106). 149

¹¹¹ Omar N Cham and Florian Trauner, ‘Migration Information Campaigns: How to Analyse Their Impact?’ (2023) 61 *International Migration* 47 <<https://doi.org/10.1111/imig.13142>>. 48

¹¹² *ibid.* 49

¹¹³ *ibid.*

¹¹⁴ *ibid.* 50

2.2.3 Visa regimes, carrier sanctions and preclearance programs

The third group of measures that I will consider are visa regimes, carrier sanctions, and pre-clearance programs. The first one works as a preventive ‘check-list control’ to determine who is fit to enter the country and therefore keep those unqualified outside. Overtime, the latter two came to be implemented with the aim of ensuring that only migrants considered fit to enter the DS can actually board the airplanes: first, through carrier-sanctions DS oblige airlines to carry out border control functions of passengers so there is no risk of people not having the necessary documentation reaching the territory¹¹⁵, and second, through pre-clearance programs DS place their own immigration officers at foreign airports to conduct checks on people boarding planes to their country¹¹⁶.

From a historical perspective, according to Ryan¹¹⁷ European countries introduced the requirement for foreign visitors to obtain a visa in the late 19th century, in the form of endorsement of travel documents. Soon after, when the First World War came to an end and the passport became the standard type of travel document, the notion of visa was transformed into the one valid today: no longer an endorsement, but a stamp certifying that an individual was appropriate and met certain requirements to be able to enter a country¹¹⁸. At an institutional level, two legal documents, which demanded airline personnel control of passports of those that wanted to board, were approved: in 1944, Convention on International Civil Aviation, and in 2000, UN Anti-Smuggling Protocol¹¹⁹. With the advent and generalization of usage of visas worldwide, so it did the storage and maintenance of personal biometric data of travelers. Keeping in mind FitzGerald’s¹²⁰ concept of “remote control” this form of data management enabled states, over time, to better exert this control by linking biometric data and biographical and political data of people to determine who to let in and who to not.

Additionally, according to Cintra and Nabuco Martuscelli¹²¹, the implementation of visas has had a triggering effect on other states to do the same and, since its origins, most countries in the Global North have systematically used them against less-developed and poorer countries

¹¹⁵ Nicolosi (n 66). 4

¹¹⁶ McDonnell and Gkliati (n 93).

¹¹⁷ Bernard Ryan, *Extraterritorial Immigration Control*, vol 21 (Bernard Ryan and Valsamis Mitsilegas eds, Brill | Nijhoff 2010) <<https://doi.org/10.1163/ej.9789004172333.i-441>>. 4

¹¹⁸ *ibid.*

¹¹⁹ FitzGerald (n 13). 8

¹²⁰ *ibid.* 6

¹²¹ Natalia Cintra and Patrícia Nabuco Martuscelli, ‘Wall of Visas: How Race Impacts the Externalization of (Forced) Migration Control in South-South Migration Corridors’ [2025] *Ethnic and Racial Studies* <<https://doi.org/10.1080/01419870.2025.2484410>>. 2

to discourage and deny the tool that would allow migrants to arrive to their country legally. In relation to this phenomenon, FitzGerald mentions an alarming fact: “In 2019 the top ten source countries of refugees were all among the world’s thirty most restricted nationalities. At the extremes, Afghans and Iraqis could access only 30 countries without a visa, while Japanese, South Koreans, and Singaporeans could access 189 countries”¹²².

When discussing the number of actors involved in the policies and their legality, distinctions must be made between the three types of externalization (visas, carrier sanctions and preclearance controls). First, visas are a unilateral action from the DS and there is no mention among the scholars of a risk of illegality from its implementation. Second, with carrier sanctions a similar thing happens; is unilateral, because DS imposes the checking of travel documents and visas with no involvement of other States or IO. Third, preclearance controls by immigration officers in airports or seaports differ from the others on the two dimensions: on the one side, they are bilateral, because there has to be some kind of agreement between the DS and the state where the immigration officer is going to be placed, on the other side, the legal dimension of the placement of these officers is not completely clear as not many in the academia have gone deeper over this matter.

2.2.4 Extraterritorial processing and detention

The fourth measure is one called ‘extraterritorial processing and detention’. This procedure involves a bilateral agreement between the DS and a TC where the latter agrees to host detention centers for those migrants waiting for their approval to enter the DS. In most cases, migrants are kept in dubious human rights conditions¹²³. A variation of this mechanism is mentioned by Tan¹²⁴ when he explains that even though the majority of the externalization mechanisms seek to prevent migrants from ever reaching their territory, it can happen that the DS externalizes its duties to process claims after they have arrived. In such a case the state might send the protection seekers to an extraterritorial detention center while they are waiting for their resolution.

¹²² FitzGerald (n 13). 7

¹²³ Netherly, Dastyari and Hirsch (n 87). 6

¹²⁴ Tan (n 11). 8

According to FitzGerald¹²⁵, extraterritorial processing centers were first proposed by European states in the 1980s to be able to send protection seekers that they rescued from sea, but the idea was rejected and could never be properly implemented. In later years, Global North states established refugee camps after wars in Yugoslavia and Iraq to stop them from traveling to their countries¹²⁶. In recent times, DS have worked together with UN agencies such as UNHCR and IOM in the establishment and maintenance of detention centers for refugees. However, even though over the years the actors and operational characteristics have changed, one thing has not and is that these centers are usually the result of agreements between Global North and Global South countries, in which the latter agrees to detain protection seekers and prevent them from ever reaching the DS. In exchange for this, Global North countries usually provide economic assistance to the others¹²⁷.

Despite throughout recent years, some Global North countries have managed to establish facilities of the sort – as has been the case of the US in Guantanamo Bay or Australia in Papua New Guinea and Nauru-, it has not been that way for EU MS ¹²⁸. However, with the coming into action of the EU New Pact, this might change.

Another additional element many times present when implementing the previously presented measure is the use ‘safe third country clauses’, where some of the following outcomes can happen¹²⁹. Either the CoT is designated by the DS as ‘safe’ – and therefore those that receive a positive resolution for their asylum claims have to remain there, not in the DS- or within the agreement there is a list of countries already considered ‘safe’ – hence, those asylum seekers coming from countries included in the list will most probably receive a negative resolution on their asylum claim and ultimately end up being deported to where they came from-¹³⁰. .

In terms of the number of actors involved, this is a bilateral measure as it is usually established by a formal agreement between the DS and either the CoT or CoO. However, in terms of the risk of compliance with international legislation, the situation is not so straightforward. There are some rights of protection seekers or migrants that could be endangered during the implementation of this policy:

¹²⁵ FitzGerald (n 13). 7

¹²⁶ *ibid.*

¹²⁷ *ibid.*

¹²⁸ *ibid.*

¹²⁹ Cantor and others (n 17). 142

¹³⁰ *ibid.*

The first one is the right to liberty¹³¹, enacted both at the previously examined 1951 Refugee Convention -that on its article 31 mentions that states must not penalize protection seekers that arrive irregularly on their territory¹³² - and on the International Covenant on Civil and Political Rights (ICCPR) -that on article 9 mentions the prohibition of “arbitrary arrest or detention” except when there is a lawful justification, and on article 12 mentions the right to “leave any country, including [its] own”-¹³³. Having into account these provisions, detention of protection seekers and migrants should only happen if it meets certain standards of necessity, proportionality and legal justification. Moreover, this detention under no circumstances can be indefinite¹³⁴.

The second right to be discussed is the right to effective legal remedy, which can be found in Article 2 of the ICCPR¹³⁵. Amnesty International¹³⁶ has claimed that most human rights violations of protection seekers in detention centers are almost never legally assessed because of two main reasons: first, the extraterritorial nature of these detention centers entails a very complex legal debate of jurisdiction and responsibility -which was mentioned in the beginning of this section-, and, secondly, the fact that most times bilateral agreements between states for the establishment of these centers is usually not done transparently and publicly¹³⁷. Another additional challenge that obstructs accountability is how far away and, most often, how securitized these detention centers are, considering that they are not dealing with criminal offenders. This last point makes it incredibly difficult for civil society and public scrutiny to actually know and monitor states’ detention centers of the sort.

The third and last right, associated with this policy is freedom from torture and ill-treatment¹³⁸, which is contained in Article 2 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)¹³⁹. Although ‘torture’ is not usual in most detention centers managed by DS, it is important to note that the context in which their function (where secrecy and lack of transparency are common, and the right to effective remedy and

¹³¹ Amnesty International, ‘THE HUMAN RIGHTS RISKS OF EXTERNAL MIGRATION POLICIES’ (2017) <<https://www.amnesty.org/fr/wp-content/uploads/2021/05/POL3062002017ENGLISH.pdf>> accessed 12 May 2026. 9

¹³² Refugee Convention 1951 (n 1) art 31.

¹³³ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 9 and 12. (ICCPR 1976)

¹³⁴ Amnesty International (n 131). 9

¹³⁵ ICCPR (n 133), art 2.

¹³⁶ Amnesty International (n 131). 10

¹³⁷ *ibid.*

¹³⁸ *ibid.* 11

¹³⁹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (opened for signature 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

right to liberty are also at risk), might enable the violation of this freedom. Aside from that, another point to bear in mind is that even though torture per se is the most serious thing contained in the provision of this right, there are other types of acts that might amount to be considered ‘ill-treatment’ or ‘inhumane treatment’, as was the case in Australia’s detention centers in Papua New Guinea and Nauru¹⁴⁰.

2.2.5 Third-country interception

The fifth policy is ‘third-country interception’. This particular measure involves a process by which the DS agrees to invest in certain areas of migration management of the transit country – such as technical knowledge on law enforcement, assistance to immigration authority bodies and material support relevant to migration control-, with the objective of providing the necessary tools for it to be capable of deporting, identifying and hold in detention irregular migrants (regardless of if they are asylum seekers or not)¹⁴¹.

Across the literature there is a distinction between this form of externalization, and another one, rather similar in practice, called ‘bilateral cooperation’¹⁴². The last one usually refers to cooperation in the areas of information-sharing, providing development aid and providing training and equipment from the destination to the transit state¹⁴³.

2.2.6 Multilateral cooperation

The sixth and final measure differs from the previous ones in that it is implemented through multilateral cooperation rather than bilateral arrangements. It typically involves collaboration among several states, often within regional forums, and may also include the participation of non-state actors such as international organizations. To ensure that nearby countries treat migration management as an important issue, some DS create or join regional forums to convey the idea that irregular migration poses numerous security and danger risks. When effective, this approach can encourage TC to see value in tightening their own border controls, increasing detention and deportation migrants, and collaborating more closely with DS¹⁴⁴. While what

¹⁴⁰ Amnesty International (n 131). 11

¹⁴¹ Emma Haddad, ‘The External Dimension of EU Refugee Policy: A New Approach to Asylum?’ (2008) 43 *Government and Opposition* 190 <<https://doi.org/10.1111/j.1477-7053.2007.00250.x>>. 194

¹⁴² Netherly and Hirsch (n 6). 8

¹⁴³ Netherly, Dastyari and Hirsch (n 87). 9

¹⁴⁴ *ibid.*

was mentioned above are the main characteristics of multilateral cooperation between States and non-state actors, there is a wide variety of multilateral forums.

In 2010, IOM proposed a taxonomy of these policies by dividing them into: Regional Consultative Processes on Migration, Global Process on Migration and Interregional forums on migration¹⁴⁵. Broadly speaking, while the first one occurs within a specific region, the last two involve many countries from everywhere in the world and two regions or more, respectively. These arrangements are usually state-led forums where governments cooperate by sharing knowledge, coordinating policies, building consensus, and developing common approaches to migration and governance. They are generally non-binding and advisory, serving as platforms for consultation and collaboration rather than creating legally enforceable obligations¹⁴⁶.

According to IOM's website¹⁴⁷, there are more than 20 inter-state consultation mechanisms on migration. Some examples of them are: African Union Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants, International Technical Meeting on Human Mobility of Venezuelan Citizens in the Region and the Pacific Immigration Development Community.

¹⁴⁵ Paul Fawcett, 'Metagovernance of Migration Policy in the Asia Pacific Region: An Analysis of Policy Tools' (2021) 40 *Policy and Society* 431 <<https://doi.org/10.1080/14494035.2021.1955486>>. 432

¹⁴⁶ IOM, 'Inter-State Consultation Mechanisms on Migration' (*IOM UN Migration*) <<https://www.iom.int/inter-state-consultation-mechanisms-migration>> accessed 11 June 2026.

¹⁴⁷ *ibid.*

CHAPTER 3: Is the Italy-Albania agreement a case of externalization?

In the first chapter of this thesis, I conducted a literature review on the phenomenon of externalization in migration management. In doing so, I analyzed the views of respected scholars and academics, with the aim of understanding the conditions that make externalization possible; its implications, the actors involved, and its main characteristics. The knowledge acquired in Chapter 1 laid the foundation for Chapter 2, in which I addressed the first research question by developing my own framework of externalization. I then broke this definition down into four distinct but interconnected dimensions.

The present chapter aims to examine the case of the Italy–Albania Protocol and assess whether it can be classified as an example of the externalization of migration management by Italy. To do so, the analysis is structured as follows.

First, I will introduce the relevant legislation and procedures governing the treatment of protection seekers and the processing of their claims within the territory of an EU MS, before the latest developments in EU asylum law regarding the New Pact. Second, I will present the Italy–Albania Agreement, according to official statements, the Protocol and the ratifying law. Third, I will test whether the agreement could be considered a form of externalization or not, according to the definition proposed in Chapter 2.

3.1 Relevant legislation and procedures for dealing with protection seekers claims in the territory of an EU MS

Before presenting a study of the Italy–Albania Agreement and assessing whether it exhibits characteristics of externalization, it is important to consider the existing legislation and procedures applicable to the processing of asylum claims. This section provides an overview of the evolution of the legal framework regarding asylum processing within the EU, with particular attention to the Italian context. Aside from briefly mentioning how the regular procedure for protection claims works in this context, I will focus on two policies relevant to the Protocol in terms of EU law -considering the applicable legislation at the time of the Agreement-: accelerated procedures and the Safe Country of Origin (SCO) strategy.

The processing of asylum claims by an EU MS is governed by a range of legal instruments, including international, European, and national law. As noted by Broerse¹⁴⁸, asylum procedures must be conducted in accordance with EU law, the ECHR, and the 1951 Refugee Convention, which is referenced throughout European asylum legislation and to which Italy is a party.

However, while the ECHR establishes the fundamental rights and freedoms that must be guaranteed to individuals under the jurisdiction of its contracting states -including asylum seekers-, EU legislation regulates the more specific procedural and operational aspects of asylum policy and claim processing within Member State¹⁴⁹.

Evolution of EU legislation concerning asylum

In terms of relevant EU legislation regarding asylum processing, the starting point can be traced back to 1999, when the European Council, during the Tampere meeting, initiated the development of the Common European Asylum System (CEAS) with the aim of unifying standards and procedures of asylum processing across EU MS. Over the following years, several key legal frameworks were adopted¹⁵⁰:

The first was the Asylum Procedures Directive (APD)¹⁵¹, which establishes the basic procedures that Member States must follow when processing asylum applications. The second was the Reception Conditions Directive¹⁵², which sets out the minimum reception standards that MS must provide to asylum seekers, including accommodation, food, and other essential services.

¹⁴⁸ Inga Broerse, 'The Italy-Albania Agreement: Externalising Asylum Procedures in Violation of Human Rights' [2024] ACMRL Migration Law Series <ACMRL-MLS-26_Broerse_The-Italy-Albania-Agreement> accessed 19 June 2026. 7

¹⁴⁹ *ibid.*

¹⁵⁰ European Commission, 'Asylum in the EU' (*Migration and Home Affairs*, 11 June 2026) <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/asylum-eu_en#evolution-of-eu-legislation-on-asylum> accessed 22 June 2026.

¹⁵¹ See Parliament and Council Directive (EU) 2013/32 of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) [2013] OJ L180/60. (APD 2013)

¹⁵² See Parliament and Council Directive (EU) 2013/33 of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) [2013] OJ L180/96.

The third was the Dublin III Regulation¹⁵³, which determines which Member State is responsible for examining an asylum application. The fourth was the Qualification Directive¹⁵⁴, which defines the requirements that individuals must meet to qualify for refugee status or other forms of international protection. Finally, the Eurodac Regulation¹⁵⁵ established a database for storing biometric data of asylum seekers and certain categories of third-country nationals.

During the years following the implementation of these legal instruments (2008–2013), additional measures had to be implemented as it became evident that asylum processing systems still varied greatly across Member States¹⁵⁶. In this context, the European Commission introduced the Policy Plan on Asylum in 2008, which laid the groundwork for a more uniform system of protection, and established the European Asylum Support Office in 2013. The latter was tasked, among other responsibilities, with assisting Member States in the implementation of EU legislation in terms of asylum.

In the mid-2010s, EU MS, particularly Mediterranean coastal states, began experiencing a significant increase in the number of migrants arriving mainly from Africa. In response, a more restrictive narrative and regulatory approach towards migration and asylum started to emerge among both MS and EU institutions¹⁵⁷. Although several reforms to the previously mentioned directives and regulations were proposed by the Council in 2016 and 2017, no agreement on their adoption was reached with the European Parliament. However, in 2020, the two institutions reached an agreement on a set of reforms and revisions to the existing legislation governing asylum protection.

The key regulations proposed were the following¹⁵⁸: 1. Asylum Migration Management Regulation (constitutes a reform of the Dublin System and introduces a new solidarity system of asylum processing responsibility among EU MS)¹⁵⁹, 2. Asylum Procedures Regulation

¹⁵³ See Parliament and Council Regulation (EU) 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application... (recast) [2013] OJ L180/31.

¹⁵⁴ See Parliament and Council Directive (EU) 2011/95 of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, ... (recast) [2011] OJ L337/9.

¹⁵⁵ See Parliament and Council Regulation (EU) 603/2013 of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints... [2013] OJ L180/1.

¹⁵⁶ European Commission (n 152).

¹⁵⁷ *ibid.*

¹⁵⁸ *ibid.*

¹⁵⁹ See Parliament and Council Regulation (EU) 2024/1351 of 14 May 2024 on asylum and migration management [2024] OJ L1351/1.

(establishing quicker and effective return and border procedures)¹⁶⁰, 3. Eurodac Regulation (reform to the previous system to make it more precise in countering irregular migration)¹⁶¹, 4. Screening regulation (implies stricter identification of TC nationals arriving in EU territory)¹⁶², 5. Crisis and Force majeure Regulation (to help the EU MS in their handling and preparedness when an unexpected migration crisis occurs)¹⁶³.

Finally, in 2024, a group of ten legal instruments were adopted by the European Parliament, known as the New Pact on Migration and Asylum. These instruments are organized into four pillars: 1. Secure External Borders, 2. Fast and Efficient Procedures, 3. Solidarity and Responsibility, and 4. Embedding migration in international partnerships¹⁶⁴. Later that year, the New Pact entered into force, and as of June 2026, it is now being applied.

Relevant provisions on asylum claims processing in Italy

As mentioned previously, the EU legislation concerning asylum processing has evolved over the years to ensure and establish a common framework for asylum procedures across MS. However, it is important to note that, although MS generally comply with EU Directives in terms of Asylum, there remains a degree of flexibility in its implementation due to differing national legal and political contexts¹⁶⁵. Considering national legislation, it is important to mention that in the Italian context, the right to asylum is enshrined in Article 10 of the Constitution¹⁶⁶. Apart from that, another key piece of legislation to bear in mind is a principle that all MS are bound by and may never violate, as it is established in both European and international law, is the principle of non-refoulement¹⁶⁷.

There are specific provisions governing the rights and conditions of protection seekers accommodated in reception centers. In these facilities, applicants are entitled to dignified living

¹⁶⁰ See Parliament and Council Regulation (EU) 2024/1348 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.

¹⁶¹ See Regulation (EU) 2024/1358 of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data ... [2024] OJ L1358/1.

¹⁶² See Parliament and Council Regulation (EU) 2024/1356 of 14 May 2024 introducing the screening of third-country nationals at the external borders [2024] OJ L2024/1356.

¹⁶³ See Parliament and Council Regulation (EU) 2024/1359 of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 [2024] OJ L2024/1359.

¹⁶⁴ European Commission (n 150).

¹⁶⁵ Broerse (n 148). 8

¹⁶⁶ See Constitution of the Italian Republic 1948, art 10.

¹⁶⁷ Broerse (n 148). 8

conditions, adequate food and clothing, access to healthcare, and information regarding Italian laws and regulations, among other forms of assistance. Additionally, applicants have the right to receive visits from family members, legal representatives, and representatives of the UNHCR¹⁶⁸.

Accelerated and border procedures

As it will be described in greater detail in the next sections, one of the strategies involved in the Italy-Albania Agreement is accelerated procedures of asylum claims.

According to Article 31 (8) of the former APD¹⁶⁹, there are some cases where the MS is allowed to carry out the asylum procedure through an accelerated manner, providing that all the guarantees of the process are ensured to the applicant. The Directive states that it can only be applied either when the claim is ‘manifestly unfounded’ or among other reasons, when the protection seeker comes from a SCO.

On the other side, border procedures are defined in Article 43 of the former APD, which states that MS “may provide for procedures [...] in order to decide at the border or transit zones of the Member State on: (a) the admissibility of an application, pursuant to Article 33, made at such locations; and/o (b) the substance of an application in a procedure pursuant to Article 31(8).”¹⁷⁰

In both cases the Directive notes that the shorter timeframes, given that they should be established by each MS, should be reasonable and allow for a fair and due process of asylum applications.

Safe Country of Origin concept as understood by EU law

The concept of SCO can be found in Articles 36 and 37 of the former APD¹⁷¹. The Directive dictates that to fit the “safe” criteria, MS must consider that some sociopolitical elements of a country are met, such as the rule of law and the legal system, as well as democratic

¹⁶⁸ See APD 2013 (151) and for more information on the regular asylum procedure in Italy see Ministero dell’Interno, *Practical Guide for Asylum Seeker in Italy* (2024).

¹⁶⁹ APD 2013 (n 151) art. 31 (8).

¹⁷⁰ APD 2013 (n 151) art. 43.

¹⁷¹ APD 2013 (n 151) art. 36, 37.

institutionality, among others. Furthermore, Brandl specifies that the SCO must be one where “that it can be shown that there is generally and consistently no persecution as, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.”¹⁷²

Importantly enough, in the Directive is provided that protection seekers, even when they come from a designated SCO, ought to receive the chance of proving that their CoO is not safe in their particular case¹⁷³.

3.2 Italy-Albania Agreement

The ‘Protocol between the Government of the Italian Republic and the Council of Ministers of the Albanian Republic’ (from now on referred to as the ‘Protocol’ or ‘Agreement’) was signed on 6 November 2023. In this document, the establishment of three facilities in Albanian territory that would retain migrants trying to reach Italy by sea was provided, where they would be subject to Italian jurisdiction while their protection claims are processed¹⁷⁴. As per the Protocol, the facilities would be located in the Albanian cities of Shengjin and Gjader, where a maximum of 3,000 people could be accommodated between the centers. Later, on the 21 February 2024, Italy ratified the Protocol under Law No. 14/24¹⁷⁵.

A key point about this initiative is its novelty as a migration management mechanism. It represents one of the first cases where an EU MS has agreed to process protection claims inside the territory of a TC while retaining jurisdiction and applying its national and EU law. De Leo¹⁷⁶ argues that this novelty is grounded in Article 3 of the EU APD¹⁷⁷, which requires EU MS to examine protection claims inside their territory only when they are made within their territory—at the border, in transit zones, or in territorial waters. One interpretation of this article

¹⁷² Ulrike Brandl, ‘How to Determine the Safety in a Country of Origin: The Concept of Safe Country of Origin in the Procedures Directive as Interpreted by the CJEU in the Alace and Canpelli Judgment’ [2025] Eurojus <<https://rivista.eurojus.it/how-to-determine-the-safety-in-a-country-of-origin-the-concept-of-safe-country-of-origin-in-the-procedures-directive-as-interpreted-by-the-cjeu-in-the-alace-and-canpelli-judgment/>> accessed 2 July 2026.

¹⁷³ *ibid.*

¹⁷⁴ *Protocollo tra il Governo della Repubblica Italiana e il Consiglio dei Ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria* (Italy – Albania) (6 Nov 2023)

¹⁷⁵ See Law 14/24 (Italy).

¹⁷⁶ Andreina De Leo, ‘On the Incompatibility of the Italy-Albania Protocol with EU Asylum Law’ (*SIDI Blog*, 15 November 2023) <<https://www.sidiblog.org/2023/11/15/on-the-incompatibility-of-the-italy-albania-protocol-with-eu-asylum-law/>> accessed 22 June 2026.

¹⁷⁷ APD 2013 (n 151) art. 3.

serves as the legal justification for the Protocol: if claims for international protection are made in international waters (and not on the previously mentioned areas), then Italy would be allowed to process them in transit or border areas subject to Italian and EU law, even if those areas lie outside Italian territory.

To operationalize this arrangement, Italy passed Law No. 14/24, designating the facilities in Shengjin and Gjader as "border areas". In practical terms, this means migrants are legally considered to be in Italy, even though they are physically on Albanian territory¹⁷⁸.

General Structure of the agreement and provisions of the Protocol

The overall goal of the agreement is to establish cooperation between Italy and Albania in the field of migration management, particularly in combating irregular migration flows. The document states at an early stage the intention of both parties to strengthen their relations, taking into account Albania's interest in joining the EU in the future. This section examines the most relevant provisions of the Protocol.

The first two articles of the Protocol are introductory and definitional¹⁷⁹. Article 1 identifies the actors and areas involved in the operations. The actors include the Albanian and Italian governments, migrants, and Italian personnel, while the areas consist of an identification and entry facility at the Port of Shengjin and two centers located in Shengjin and Gjader. Article 2 sets out the purposes and objectives of the agreement, which, in general terms, are to strengthen cooperation between the two countries in the field of migration management¹⁸⁰.

Articles 3, 4, and 6 introduce the establishment of the facilities in Albanian territory and outline the key features governing their operation. First, for as long as the Protocol remains in force, Albania grants Italy the use of the designated "areas" free of charge and for the purposes established by the Protocol¹⁸¹. Second, several important characteristics of these facilities should be noted. First, the total number of protection seekers accommodated in the two "areas" cannot exceed 3,000. Second, the centers are subject to European and Italian law. Third, Albania authorizes protection seekers to remain in the centers located on its territory solely for

¹⁷⁸ De Leo (n 176).

¹⁷⁹ (Italy – Albania) *Protocollo...* (n 174)

¹⁸⁰ Camera dei deputati. (8 Mar 2024). *Protocollo Italia-Albania in materia migratoria (Temi dell'attività parlamentare)*. <https://www.camera.it/temiap/documentazione/temi/pdf/1418055.pdf>

¹⁸¹ (Italy – Albania) *Protocollo...* (n 174)

the purposes of carrying out border and return procedures, for the duration of the Protocol. Fourth, protection seekers are transferred into the facilities by Italy. Fifth, Italy is responsible for covering the expenses arising from the establishment and operation of the centers in Albania¹⁸². Article 6 regulates the management of the facilities' internal and external security. While order within the centers is maintained by Italian personnel, responsibility for security outside their perimeter lies with Albanian authorities¹⁸³.

Article 9 is particularly important, as it establishes key provisions regarding the detention of protection seekers within the facilities¹⁸⁴. On the one hand, individuals may be held there only for the periods permitted under Italian law and, once the relevant procedures have been completed, if the resolution for claims turns out negative, Italy is responsible for carrying out their deportation¹⁸⁵. On the other hand, both countries agree to grant access to lawyers, personnel from EU agencies, and representatives of IO in order to safeguard the right of defense of protection seekers held in the centers.

Articles 5, 7, and 8 focus on the operational and logistical aspects of the functioning of the centers¹⁸⁶. Finally, the remaining articles regulate payments, reimbursements, and reparations associated with the implementation of the Protocol, its termination—which is set to occur after five years—and the mechanisms for resolving disputes between the two countries arising from the application of the Protocol.

Besides analyzing the provisions established in the Protocol, it is also necessary to consider aspects that are not explicitly mentioned in the text. According to statements made by Italian Prime Minister Meloni in November 2023 following the approval of the Protocol, individuals considered to be in a vulnerable situation—such as minors, pregnant women, and other unspecified vulnerable persons—would not be transferred to the centers¹⁸⁷. However, as noted by Broerse¹⁸⁸, this exemption is not mentioned anywhere in the Protocol.

Regarding the specific functions of the centers, Prime Minister Meloni explained that the facility at the Port of Shengjin would be dedicated to receiving and identifying migrants

¹⁸² Camera dei deputati (n 180)

¹⁸³ Ibid.

¹⁸⁴ (Italy – Albania) *Protocollo...* (n 174)

¹⁸⁵ Camera dei deputati (n 180)

¹⁸⁶ Ibid.

¹⁸⁷ Presidency of the Council of Ministers, 'President Meloni's Press Statement with the Prime Minister of Albania' (6 November 2023) <<https://www.governo.it/en/articolo/president-meloni-s-press-statement-prime-minister-albania/24195>> accessed 22 June 2026.

¹⁸⁸ Broerse (n 148). 17

intercepted at sea by Italian vessels¹⁸⁹. Further inland, a second facility would be established in Shengjin, operating in a manner similar to the Centri di Permanenza per il Rimpatrio (CPRs) located in Italy. Furthermore, Lacchei and Scissa¹⁹⁰ provide additional details on the functions of the third center, located in Gjader. This facility would have the largest capacity of the three and would function as a detention center for protection seekers awaiting a decision on their asylum claims by the Italian authorities. The authors emphasize that these claims would be processed under the “accelerated border procedure” established by Law No. 50/2023¹⁹¹. This procedure applies to protection seekers whose CoO is classified as “safe” by Italy and who have either been intercepted while attempting to enter the country irregularly or have sought to evade border controls.

3.3 Is the Italy/Albania Protocol a form of externalization? Testing and analysis of the selected case

In the previous chapter, I introduced my own definition of externalization based on the conceptual analysis conducted in the first chapter of this investigation. I then divided this definition into four interrelated dimensions, with a two-fold aim: firstly, to comprehensively examine externalization practices and, secondly, to further enrich the debate surrounding the second research question of this thesis, that is “Can the Italy-Albania Protocol be classified as a form of externalization of migration management?”

The previously mentioned dimensions are: first, the specific mechanisms employed; second, the actors involved; third, the motivation; and fourth, the legal responsibility. To assess whether the Italy–Albania Protocol can be categorized as a measure of externalization, this section examines the Protocol according to each of these dimensions. To carry out this analysis, I will examine only the Protocol itself, the ratifying Law 14/24 and a selection of governmental statements and declarations to gather data relating to the different dimensions, without drawing conclusions about their broader implications. Those conclusions will be addressed in the following section, where I analyze and discuss the results and review data extracted from secondary sources, such as reports and relevant academic perspectives on the matter.

¹⁸⁹ *ibid.*

¹⁹⁰ Alice Lacchei and Chiara Scissa, ‘The Italy-Albania Protocol: Curbing Migration At All Costs’ (*Refugee Law Initiative - School of Advanced Study | University of London*, 2024) <<https://cris.unibo.it/handle/11585/996917?mode=simple>> accessed 22 June 2026.

¹⁹¹ See Law 50/2024 (Italy).

1st dimension: Specific mechanisms

This Protocol provides for the establishment of three centers managed exclusively by Italy, where Italian and EU law are to be applied, within Albanian territory¹⁹². As mentioned previously, the facilities are designed to accommodate up to 3,000 individuals in total. The two centers located in Shengjin are intended to serve different functions: one as a reception point and the other for the identification and registration of migrants' asylum applications. The center in Gjader has a larger capacity and is intended to house individuals while their protection claims are being processed, as well as those who have already received a negative decision and are awaiting return procedures. Another important feature of these centers would be their autonomy, as they are designed to provide all the necessary services to ensure acceptable living conditions for the migrants accommodated there, including medical care.

The final remarks concerning this dimension of the policy are as follows. First, although the agreement does not explicitly state that migrants transferred to the centers will be subject to detention or imprisonment, it does provide that if an individual undergoing assessment of their protection claim leaves the facilities, their application will be automatically rejected. Second, as mentioned previously, the agreement allows lawyers, as well as personnel from international organizations and EU institutions, to access the facilities to ensure that the rights of the individuals held there are protected.

2nd dimension: Actors involved

According to the Article 1 of the Protocol¹⁹³, the actors involved in this policy are four: the Council of Ministers of the Republic of Albania, the Government of the Italian Republic, the migrants, and, finally, the Italian personnel. While not stated in the Protocol, the UNHCR would also participate as a monitoring actor, to ensure that what is stipulated under the 1951 Refugee Convention is applied¹⁹⁴.

¹⁹² (Italy – Albania) *Protocollo...* (n 174)

¹⁹³ *ibid*

¹⁹⁴ UNHCR, 'Italy-Albania Protocol: UNHCR to Undertake Monitoring Activities to Safeguard and Promote Fundamental Human Rights' (14 August 2024) <<https://www.unhcr.org/it/notizie/comunicati-stampa/italy-albania-protocol-unhcr-undertake-monitoring-activities-safeguard>> accessed 22 June 2026.

3rd dimension: Motivation

According to President Meloni's declarations in 2023, the objectives of this policy are threefold: "[...] to fight human trafficking, to prevent illegal migration flows and to only take in those who truly have the right to international protection."¹⁹⁵ Furthermore, the facilities would carry out immigration management duties, namely process protection claims and, if those turn out to be negative, then return and repatriation procedures. Additionally, the aim would be to process claims and through accelerated procedures, which should not take more than 28 days.

Another very important point raised by the President is the characterization of this cooperation agreement as a "European agreement". This is a noteworthy statement, as it may imply that the bilateral arrangement is intended not only to achieve the objectives explicitly set out in the Protocol but also to serve as a precedent for similar practices that could be adopted in the future by other EU MS.

Finally, the Protocol expresses the willingness of both countries to strengthen their bilateral relations in broader terms and explicitly refers to Albania's aspiration to join the EU in the future¹⁹⁶. This may represent an important incentive for Albania's participation in the agreement, as hosting the facilities on its territory could be viewed as a favorable trade-off if it contributes to stronger political support from Italy for Albania's future accession to the EU¹⁹⁷.

4th dimension: Nature of legal Responsibility

According to the Protocol¹⁹⁸, the legal framework applicable within the facilities would be Italian and EU law. In addition, it specifies that all procedures carried out there must comply with the relevant rules of international law. Regarding the migrants transferred to the facilities, they would always remain under jurisdiction of the Italian authorities -from their interception or rescue at sea, through their stay in the centers, and, depending on the outcome of the proceedings, until either their transfer to Italy or their removal to another country-.

This is a particularly significant feature of the Protocol: although migrants would be transferred to processing centers located on Albanian territory, the applicable legal jurisdiction would

¹⁹⁵ Presidency of the Council of Ministers (n 187).

¹⁹⁶ (Italy – Albania) *Protocollo...* (n 174)

¹⁹⁷ Ibid.

¹⁹⁸ *ibid.*

remain Italian. However, the Protocol provides for certain exceptions¹⁹⁹. First, Albanian personnel would be responsible for maintaining security outside the facilities. Second, Albanian jurisdiction would apply only if a member of the Italian personnel infringes the rights of Albanian citizens or undermines the rights or sovereignty of the Albanian state. Apart from this exception, the Protocol states that Italian personnel carrying out official duties in Albania are exempt from arrest or detention by Albanian authorities.

Testing and analysis of the agreement

Dimension 1: Specific mechanisms

This dimension deals with the specific mechanisms whereby externalization of migration management is put in practice. More specifically, the definition proposed in the last chapter specifies that these mechanisms “are government led practices [...] that are applied either extraterritorially or with extraterritorial effects”. Furthermore, these practices could be categorized into six different ones -which were explained in detail in the previous chapter.

Moving on now to the case study, I consider that two different mechanisms can be associated with the Italy-Albania agreement: maritime interventions and extraterritorial processing and detention. I will now justify why I consider the policy to fit these two categories and then analyze whether they also meet the definitional criteria associated with this dimension.

The first strategy provided by the Agreement is the interception by Italian authorities of individuals travelling with the aim of reaching Italy in international waters. As was mentioned in the last chapter, when maritime interventions are implemented, if the aim is indeed to ‘rescue’ migrants in distress at sea, international law clearly states that individuals should be taken to the nearest safe location, which Amnesty International argues that it would be the shores of Italy, not that of Albanian centers²⁰⁰ -a decision that prolongs the travel time for those individuals not considered vulnerable during the first screening-. Having said that, I consider that the maritime interventions proposed by Italy for this policy can be labeled as “pushbacks”,

¹⁹⁹ *ibid.*

²⁰⁰ AMNESTY INTERNATIONAL, ‘THE ITALY-ALBANIA AGREEMENT ON MIGRATION: PUSHING BOUNDARIES, THREATENING RIGHTS’ (2024) accessed 13 June 2026. In their report they claim that “the vast majority of rescues in the central Mediterranean take place between Libya, Tunisia, Sicily and Malta. From there, the places of safety that can be reached most promptly are often Lampedusa, Sicily and Malta” (pp. 5) and that “port of Shengjin [...] is located over 500 nautical miles (or 926 km) from the area where rescues are most frequently carried out.” (pp. 6)

because, as was mentioned in the previous chapter, this category involves stopping boats carrying migrants and redirecting them away from their territory²⁰¹. That is in fact what happens in this case-study, as Italian authorities intercept migrants' vessels and then transport the passengers to the Albanian centers.

When considering the second strategy involved in this bilateral policy, that is the facilities located in Albania, the reasoning is not so straightforward.

On the one hand, in the previous chapter was mentioned that there are some key elements that distinguish extraterritorial asylum processing and detention centers: they are bilateral agreements where TC agree to host migrants that are waiting for the outcome of their asylum resolution, sometimes with the aim of preventing them from ever reaching the DS.

If only these elements were considered, then it could be inferred that the Italo-Albano strategy corresponds to the definition presented before: the centers in Shengjin and Gjader are a result of a bilateral agreement between the DS (Italy) and a TC (Albania), established for the purpose of hosting certain migrants while they wait for the outcome of their asylum resolution. Additionally, if we consider that the migrants who are transferred to the facilities are only those to whom the accelerated procedure would be applicable, given the designation of their CoO as SCO, then it could also be inferred that the aim would be of preventing them from ever reaching the Italian territory.

On the other hand, the fact that these facilities are not designated neither by the Protocol nor the ratifying law or the Italian authorities, as 'detention' centers constitutes a difficulty when examining them. In this respect, NGO coalition TAI's report provides the following arguments in favor of the detention nature of the facilities²⁰². First, it refers to Article 6 (5) of the Protocol, which states that "the competent Italian authorities will adopt the necessary measures to ensure that the migrants remain within the Areas, preventing them from leaving without authorization into the territory of the Albanian Republic [...]"²⁰³ that according to the organization, without any doubts demonstrates that the Italian personnel holds de jure and de facto the power over the migrants and the centers. Second, they argue that there is an additional "restrictive nature"

²⁰¹ Cantor and others (n 17). 136

²⁰² National Asylum and Immigration Platform, 'Beyond the Border. The Italy Albania Agreement between Propaganda and the Suspension of Rights' (2025) accessed 22 June 2026.

²⁰³ (Italy – Albania) *Protocollo...* (n 174) art. 6 (5).

as the centers are guarded by police officers in Shengjin and in Gjader it is also present the Penitentiary Police²⁰⁴.

The report also mentions that the Constitutional Court of Italy, in its ruling No. 105/2001, established that to categorize a situation as detention or a restriction to the personal liberties of the individual, the substantial conditions of it must be examined, not only the formal or legal statements²⁰⁵. On the same line, the EctHR on its guide on Article 5 of the ECHR-Right to liberty and security-, expressed that the criteria to be applied in order to determine if there is a deprivation of liberty or not, “[r]elevant objective factors to be considered include the possibility to leave the restricted area, the degree of supervision and control over the person’s movements, the extent of isolation and the availability of social contacts”²⁰⁶.

If the substantive facts are considered in terms of the criteria proposed by the EctHR, then the facilities established by the Protocol can be classified as detention centers, as the migrants would not have the possibility of leaving the centers, they would be fully supervised by the Italian authorities and importantly enough, they would be placed in centers in Albania. The situation is further aggravated by the confiscation of mobile phones and the severe limitations on communication²⁰⁷. Individuals held in the centers would be unable to establish meaningful contact with family members, friends, or other personal connections they may have in Italy or elsewhere in Europe -therefore blocking their right to family reunification, under the Dublin III regulation-. In addition, their lawyers would face considerable difficulties in meeting them in person. As a result, the isolation experienced by those transferred to the facilities may have significant negative consequences for both their well-being and the effective exercise of their rights.

To summarize the study of this dimension, the two specific mechanisms identified within this case-study of the Italy-Albania Agreement on migration are two: maritime intervention and processing and detention centers.

²⁰⁴ Tavolo asilo e immigrazione (TAI), ‘IL PROTOCOLLO ITALIA ALBANIA È IL LEGITTIMO E VA REVOCATO’ (2023) accessed 22 June 2026.

²⁰⁵ Ibid and see Ruling 105/2001 [2001] Italian Constitutional Court 105, 2001

²⁰⁶ Council of Europe: European Court of Human Rights, Guide on Article 5 of the Convention: Right to Liberty and Security (ECtHR, February 2026) https://ks.echr.coe.int/documents/d/echr_ks/guide_art_5_eng 9

²⁰⁷ Ibid.

Dimension 2: Actors involved

First, the Italian government can clearly be identified as the DS for two main reasons. The migrants intended to be transferred to the facilities located in Albanian territory are those intercepted or rescued by Italian authorities in international waters; therefore, it can be inferred that Italy or the EU constituted their intended destination. Furthermore, the construction, operation, and overall management of the facilities are financed and overseen by Italy.

The second actor identified in this policy is the protection seeker. According to the Protocol, migrants intercepted or rescued at sea are to be transferred to the facilities in Albania, where their applications for international protection will be processed. The next actor is the TC, which in this case is Albania. This actor is easily identifiable, as the migration management and asylum procedures would take place on its territory, specifically in the facilities located in Shëngjin and Gjadër.

Finally, while before it was mentioned the monitoring role of UNHCR, it was noted by the UN Agency that they did not participate during the negotiation of the agreement or implementation of the policy. Therefore, I do not think that it should be considered as a party of the overall strategy.

Dimension 3: motivation

As was mentioned in the previous chapter, this dimension deals with what the DS hopes to achieve by the implementation of this strategy. In that sense, it was argued that externalization policies seek to exert their influence over undesired migration flows with the aim of restructuring or shaping them as convenient to a country.

While it is important to keep President Meloni's statements on the goals of the Agreement in mind, I consider that, to understand the underlying motivations of these agreements, it is necessary to go a little deeper into the analysis. According to both the Protocol and its ratifying Law 14/24²⁰⁸, the objectives of the policy can be summarized as follows: first, to process certain asylum claims outside Italian territory and, second, to do so through accelerated procedures. I will argue that these two interrelated objectives correspond to what, according to my definition, externalization practices are intended to achieve.

²⁰⁸ (Italy – Albania) *Protocollo...* (n 174) and *Law 14/24* (Italy)

Bearing in mind that the definition of externalization proposed in the previous chapter describes its objective as “exercising control over undesired migration flows to shape them to [the DS’s] convenience,” this general motivation can be divided into two components: exercising control over undesired migration flows and shaping those flows to the state's convenience.

When analyzing the provisions of the Protocol, it can be inferred that, with regards to the first component of the definition -exercising control-, the migrants transferred to the Albanian facilities are those coming from countries included on Italy’s list of SCO²⁰⁹, and are therefore eligible for accelerated asylum procedures. This list includes countries such as Egypt and Bangladesh, which have consistently been among the main countries of origin of asylum seekers arriving in Italy²¹⁰.

The second component of externalization practices, that is shaping migration flows to the state's convenience, also appears to align with the objectives of this policy. Since the Mediterranean migration crisis of the mid-2010s, Italy has been one of the European countries facing the greatest challenges in managing asylum applications²¹¹. Regardless of the underlying causes of these difficulties, the reality is that asylum procedures tend to be lengthy, reception centers are often overcrowded, and, most importantly for the purposes of this case study, there is a persistent gap between the rejection of protection claims and the actual return of unsuccessful applicants²¹². In this regard, it should be noted that Italy has historically had a relatively low recognition rate for international protection claims, despite receiving one of the highest numbers of asylum applications in the EU. According to the research center ISMO, this is largely because many applicants originate from countries whose nationals have low chances of obtaining protection²¹³.

Bearing that in mind, it could be inferred that Italy seeks to reduce the number of arrivals from individuals originating from countries whose nationals are unlikely to be granted international protection. At this point, the SCO strategy becomes particularly relevant, as it allows the application of accelerated procedures that can be completed in less than one month.

²⁰⁹ See *Law 158/24* (Italy)

²¹⁰ Ufficio stampa ISMU, ‘In 2024, Asylum Applications Increased in Italy but Recognitions Decreased: Only 7.6% Granted Refugee Status’ (*Fondazione Iniziative e Studi sulla Mobilità Umana*, 2025) <<https://www.ismu.org/en/in-2024-asylum-applications-increased-in-italy-but-recognitions-decreased-only-7-6-granted-refugee-status-press-release-2025/>> accessed 22 June 2026.

²¹¹ Tavolo asilo e immigrazione (TAI) (n 204).

²¹² Ufficio stampa ISMU (n 210).

²¹³ *ibid.*

To conclude the analysis of this dimension, it is useful to return to part of Meloni's statement regarding the motivations behind the agreement, as these can be linked to its more practical objectives. In her declaration, she stated that the aim was to "only grant protection to those who need it"²¹⁴. Through the legislation adopted by her government, this objective appears to be fulfilled, as the SCO strategy becomes a convenient mechanism for restructuring migration flows arriving in Italy.

In practice, the SCO concept ultimately functions as a filtering tool that determines who may enter Italian territory and who will instead be subjected to an accelerated procedure outside Italy based on their CoO. This non-entry effect, which is triggered by the applicant's nationality, results in the processing of these individuals outside Italian territory—a consequence with significant human rights legal implications that will be examined in the next section-.

In other words, Italy would be able to process certain migration flows that, according to its legislation should only be granted accelerated procedures, outside its territory. In that way, these protection claims could be processed rapidly in external hubs and, finally, return unsuccessful applicants.

In conclusion, I believe that there appears to be a link between the designation of certain SCO -some of which could contradict the mentioned 'safe' criteria set out in the APD but at the same time are countries with low chances of recognition-, the fact that this designation allows for the application of accelerated asylum procedures and, lastly, the establishment of extraterritorial processing and return centers.

Dimension 4: nature of legal responsibility

To analyze this dimension, it is useful to recall a passage from the definition of externalization proposed in the previous chapter, where the nature of legal responsibility is described: "[...] it constitutes a way for countries to intentionally avoid responsibility for protecting asylum seekers and others seeking protection." The element of this definition that I consider most crucial is the notion of intentionality, as it highlights the idea that the DS is aware of its

²¹⁴ Presidency of the Council of Ministers (n 187).

international responsibilities towards protection seekers but nevertheless deliberately adopts mechanisms designed to avoid them.

In order to determine whether this is the case with Italy's implementation of the policy, I believe it is important to consider the following question: if the main strategies envisaged are, broadly speaking, first, the accelerated processing of asylum claims (because the migrants concerned come from SCO) and, second, the implementation of return operations, why does Italy choose to locate the facilities outside its territory? In other words, if the Protocol provides that Italian jurisdiction will apply within the centers, that EU law will govern the procedures, and that the relevant mechanisms already exist under EU legal frameworks, why implement the policy outside the territory rather than within it?

Through these questions, I seek to demonstrate that there is an element of intentionality behind the decision to carry out the procedures outside Italian territory, given that, in principle, the same procedures could be implemented within Italy. In this sense, choosing a location outside Italian territory—even though Law 14/24 designates the centers as “border zones”—has legal implications that allow us to infer that this choice may facilitate the avoidance of certain international responsibilities towards asylum seekers and others seeking protection. I will now examine two aspects in which this potential avoidance of responsibility becomes apparent.

First, there are significant doubts regarding the applicability of EU law outside the territory of EU MS. According to a report issued by the NGO Famimove²¹⁵, two competing interpretations exist. On the one hand, it is argued that EU law could not apply within the facilities in Albania. This position is based on the fact that EU asylum law generally applies when an application for international protection is lodged within the territory of a MS, at its borders, in its territorial waters, or in transit zones. As mentioned previously, De Leo²¹⁶ argues that in principle Italy would not violate the APD if asylum applications were submitted directly from the centers in Albania rather than while migrants are on Italian rescue vessels in international waters.

In relation to this point, a report issued by the NGO coalition Tavolo Asilo e Immigrazione (TAI)²¹⁷, which monitored the transfer procedures and observed the facilities, indicates that asylum applications are indeed submitted only after migrants have arrived in Albanian territory.

²¹⁵ Marta Ramat, ‘First Remarks on the Protocol on Strengthening the Cooperation in Migration Matters between Italy and Albania’ (*Famimove*, 10 November 2023) <<https://famimove.unimib.it/first-remarks-on-the-protocol-on-strengthening-the-cooperation-in-migration-matters-between-italy-and-albania/>> accessed 22 June 2026.

²¹⁶ De Leo (n 176).

²¹⁷ Tavolo asilo e immigrazione (TAI) (n 204).

While the Protocol explicitly states that EU law will apply throughout the entire process, several aspects of this claim remain unclear. However, given the uncertainty surrounding last point, the NGO Famimove²¹⁸ has argued that Italy could selectively apply certain aspects of EU asylum law while avoiding others, thereby potentially breaching procedural and related obligations. According to the organization, examples of potentially affected provisions include “rules that broadly define family members, protect family unity, and guarantee privacy and family cohesion for detained families”. Furthermore, Famimove notes that, if EU asylum law were ultimately found not to apply within the centers, the legal instruments to protect applicants would only be the Constitution of Italy and the ECHR²¹⁹.

The second aspect concerns the potential breaches of international refugee law (IRL) that may arise from the implementation of the Protocol. These potential violations can be grouped into two categories: first, issues relating to vulnerable individuals and possible breaches of SAR obligations; and second, the risk of violating the principle of non-refoulement.

Regarding the first category, it is important to emphasize that neither Law 14/24 nor the Protocol contains specific provisions concerning the identification, assessment, or protection of vulnerable migrants. This issue was addressed only in political statements by Italian authorities and was later confirmed in a report issued by TAI²²⁰. According to their report, the initial vulnerability screening of migrants rescued at sea is conducted on board the rescue vessels by Italian authorities. During this process, authorities determine which individuals qualify as vulnerable and which do not. Following this assessment—which TAI describes as “superficial and rapid”—those identified as vulnerable are disembarked in Italy, while the remaining individuals stay on board and continue their journey to the facilities in Albania²²¹.

At this point, it is important to consider the potential breaches of the mentioned duty to rescue²²². These concerns arise from the obligation of the rescuing state to disembark rescued individuals at the nearest place of safety. In this regard, Bocchini argues that the measure is inconsistent with international law because “[...] a search and rescue operation is considered to terminate in a place of safety. This means that before disembarkation, all rescued people are

²¹⁸ Ramat (n 215).

²¹⁹ *ibid.*

²²⁰ Tavolo asilo e immigrazione (TAI) (n 204).

²²¹ *ibid.*

²²² UNICLOS (n 96), art 98.

equally vulnerable as survivors of a distress case.”²²³ According to the author, the implementation of such practices may have detrimental effects on individuals rescued at sea. The transfer of rescued people to distant ports prolongs their time at sea, potentially exacerbating existing trauma and health conditions. Furthermore, the extended journey delays access to essential medical and psychological care²²⁴.

On the other hand, the policy also risks breaching the two core rights enshrined in the 1951 Refugee Convention. First, there is the potential breach of Article 33 on the prohibition of refoulement. In that respect, through a legislative reform, Italy expanded its list of SCO ²²⁵, whose nationals may be transferred to Albania—provided they are not identified as vulnerable—and subjected to accelerated asylum procedures. The risk of refoulement arises because some of these newly designated “safe” countries have been criticized for their poor human rights records, as is the case with countries such as Egypt and Bangladesh²²⁶. Consequently, returning protection seekers to such countries could result in violations of the principle of non-refoulement.

Second, the application of accelerated asylum procedures outside Italian territory, combined with the objective of carrying out return operations within very short timeframes, may constitute a broader infringement of, or at least a significant limitation on, the right to seek asylum. The main reasons supporting this argument are the following:

(1) The right to defense of applicants is jeopardized. This results from two main features of the policy. First, as provided by Law 14/24, asylum claims submitted by individuals transferred to Albania are processed through an accelerated procedure. Consequently, the timeframes for examining applications are extremely short. As noted by De Leo and Celoria²²⁷, the procedure itself lasts only seven days, during which the applicant is interviewed, and the authorities reach a decision. In the event of a negative outcome, the appeal procedure is also subject to a seven-day deadline.

²²³ Francesca Bocchini, ‘ITALY-ALBANIA PROTOCOL: A NEW ATTEMPT OF BORDER EXTERNALISATION’ (2024) <<https://civilmrcc.eu/legal-fragment/italy-albania-protocol-a-new-attempt-of-border-externalisation/>> accessed 22 June 2026.

²²⁴ *ibid.*

²²⁵ *See* Law No 187/24 (Italy).

²²⁶ Bocchini (n 223).

²²⁷ Andreina De Leo and Eleonora Celoria, ‘The Italy–Albania Protocol: A New Model of Border-Shifting within the EU and Its Compatibility with Union Law’ (2024) 31 *Maastricht Journal of European and Comparative Law* 595 <<https://doi.org/10.1177/1023263X241309601>>. 613

The second aspect of the policy that undermines both the right to seek asylum and the right to defense is the fact that interviews, as well as communication between applicants and their legal representatives, are conducted remotely. Given the very short procedural deadlines, the location of the applicants in a third country, and the reliance on remote interviews and legal assistance, De Leo and Celoria²²⁸ argue that the rights to defense and due process are significantly constrained.

Additional concerns have been raised by the NGO ASGI. According to its report²²⁹, even if lawyers wished to attend the proceedings in person, they would be unable to meet applicants before the hearings, which are typically scheduled only one day in advance. This difficulty is aggravated by the geographical distance between Italy and the centers in Albania. ASGI further argues that reliance on remote communication hinders the effective preparation of cases, as legal representatives may be unable to identify vulnerabilities that were overlooked during the initial screening process²³⁰. This is particularly important because the identification of vulnerabilities may be decisive in determining whether the application of accelerated procedures is appropriate for the individual.

(2) The lack of clear accountability mechanisms for Italian authorities managing the procedures also raises significant concerns.

(3) Although neither the Protocol nor its ratifying Law 14/24 formally defines the centers in Albania as detention facilities, the conditions surrounding their operation seem to make them detention centers in practice. This issue will be examined in greater detail in the analysis of the following dimension. Such a situation could potentially conflict with Article 31 of the 1951 Refugee Convention, which provides that states should not “impose penalties, on account of their illegal entry or presence, on refugees who [...] enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”²³¹

In other words, where safe and legal pathways to reach a state are limited or effectively inaccessible, individuals seeking protection should not be penalized for resorting to irregular

²²⁸ *ibid.*

²²⁹ ASGI, ‘La Commissione Europea Monitora Il Protocollo-Albania, Ma l’interferenza Con Il Diritto UE è Già’ (2025) <https://www.asgi.it/wp-content/uploads/2025/03/Italia_Albania_Linterferenza-con-il-diritto-UE.pdf> accessed 22 June 2026.

²³⁰ *ibid.*

²³¹ Refugee Convention 1951 (n 1) art 31

means of entry. More broadly, the provision reflects the principle that asylum seekers should not be punished simply for exercising their right to seek international protection.

As has been claimed by several NGOs²³², the fact that individuals—except those identified as vulnerable—would be automatically transferred from rescue points to the facilities in Albania may constitute a form of *de facto* detention without a judicial order, as well as a potential violation of the right to due process.

Moreover, although this point does not correspond to a specific breach of a single international legal provision, the fact that procedures are carried out outside Italian territory may negatively affect the capacity of independent monitoring bodies, such as NGOs, journalists, and European and national institutions. This is due not only to the geographical distance from the centers, but also to the practical and logistical difficulties involved in accessing them. As a result, this limitation may further exacerbate risks to due process rights, since weaker monitoring and oversight mechanisms—combined with the uncertainties regarding applicable jurisdiction and the immunity granted to Italian personnel—could increase the likelihood of rights violations affecting migrants and asylum seekers in the centers.

To summarize, the key issue in this dimension is whether the nature of legal responsibility under this agreement corresponds to that typically found in externalization policies, which depends on whether there is an intention on the part of the DS to avoid legal responsibility for the protection of asylum seekers and others seeking protection. In other words, the question is whether the state seeks to shift responsibility or to avoid the effective protection of rights. While the presence of such intention cannot be proven, in this case it could be inferred that it is present.

This assumption is based on the argument that the two main procedures Italy seeks to implement through this policy could, in principle, be carried out within its own territory, but are instead being conducted outside its borders. However, it is important to stress that Italy is not formally shifting or avoiding responsibility for processing asylum applications. As noted in the previous sections, the state has consistently emphasized that Italian authorities will remain responsible for all stages of the processing of individuals transferred to Albania, in contrast to more explicit forms of externalization in which a DS might fully transfer the processing burden to another country.

²³² National Asylum and Immigration Platform (n 202).

What Italy appears to be doing, instead, is formally framing the policy as an extension of its own territory, where both Italian law and EU law would continue to apply. However, in practice, it is evident that the applicable jurisdiction within the centers remains unclear, and that, as a result, the procedural rights guaranteed under EU and Italian law may be significantly weakened or compromised. In conclusion, the opacity and ambiguity surrounding the legal framework and procedural safeguards applicable to asylum processing within these facilities create a substantial risk of undermining the right to seek asylum in a fair and effective manner.

CHAPTER 4: Discussion of results and final considerations on the case-study

The aim of this thesis has been to study the phenomenon of externalization of migration management. To do so, throughout the first two chapters, I first analyzed the existing literature on the topic and later developed my own framework to encapsulate the concept. In the previous chapter I studied the Italy-Albania Agreement to determine if my previously mentioned understanding of externalization could be applied to it or not. This section will discuss and analyze those findings. More particularly, I will first present my interpretation of the findings as well as assess the research questions that guides this thesis. Finally, I will conclude by presenting the limitations of the investigation and suggesting future directions for this study.

4.1 Interpretation of findings

In Chapter 1 I laid out the two research questions of this thesis, which were “What does the term ‘externalization’ mean?” and “Can the Italy-Albania Protocol be classified as a form of externalization of migration management?” To answer them I first developed the following definition of externalization, relying on the various academic and institutional approaches to the phenomenon:

The term ‘externalization’ encompasses a varied set of government-led practices aimed at exercising control over undesired migration flows to shape it to its convenience, by applying these measures either extraterritorially or with extraterritorial effects. Furthermore, it constitutes a way for countries to intentionally avoid legal responsibility for protecting asylum seekers and other people seeking protection.

This conceptualization made it possible to derive four dimensions of the phenomenon that were naturally different from each other but, despite that, interrelated. Those dimensions were: Specific Mechanisms, Actors involved, Motivation and Nature of legal responsibility. Furthermore, I consider that the value of the proposed conceptual framework is grounded in two elements. First, because it is derived from the existing literature, its components are based on well-established academic perspectives. Second, I consider that the resulting dimensions contribute to the practical and operational nature of the definition. This latter element is crucial, as it grounds the definition in more realistic terms and facilitates the assessment of whether a specific practice constitutes externalization.

In the previous section I presented the Italy-Albania Agreement and analyzed it through the lenses of the dimensions. I will now assess the second research question considering my findings.

Having tested the Italy-Albania against my definition of externalization it is my understanding that it does constitute a form of externalization of migration management. However, I believe that this is not a typical manifestation of the phenomenon, but rather that it exhibits several unique elements that distinguish it from the models studied previously.

I have arrived at this conclusion after considering the study of the dimensions analyzed in the last chapter:

In the first dimension studied, Specific Mechanisms, I was able to identify in the policy two of the mechanisms involved in this dimension: maritime intervention and extraterritorial detention processing centers.

When it comes to the actors involved, I found that Italy could be considered as the DS, Albania as the TC and, finally, the so called “migrants” were the individuals coming from designated SCO whose claims were going to be processed in the facilities located in Albania.

In terms of the third dimension -the motivation for implementing the policy- the study was more complex. I argued that the Protocol and ratifying law suggest that what Italy seeks is to restructure migration flows seeking to reach its territory by applying on them a filtering non-entry tool: those who come from designated SCO would be processed in centers in Albania and the rest (including vulnerable people) would be taken to Italy for processing. As has been mentioned, the fact that Italy chose to carry out this policy outside its territory, seems to ultimately lead to the exercise of control over who enters the country -and who does not-, operate in the field of asylum processing in a dubious legal context and, lastly, to reduce the arrival of protection seekers that are unlikely to receive the protection status anyways.

When considering the last dimension, nature of legal responsibility, many factors and perspectives need to be considered. What is most important to highlight about the study of this dimension is that, even though the intention of Italy of avoiding legal responsibility for protecting asylum seekers, cannot be proved, it can be inferred. Despite that, the reality is the Agreement provides that the procedures -border and return- are implemented outside Italian territory, when, in theory and broadly speaking, they could be carried out in Italy -or its

previous border zones-. This fact suggests that there are underlying elements associated with this extraterritorial processing that could be linked to the avoidance and breaches of international obligations owed to protection seekers. At this point it is very important to remember that Italy is in no way discharging the responsibility for processing but rather from potentially avoiding its obligations in terms of procedural and substantial rights to protection seekers.

The careful examination of each dimension previously summarized allowed me to arrive at a positive answer to the second research question. Nevertheless, while conducting the study, I came across peculiarities and subtleties embedded in the Italy-Albania Agreement that led me to believe that this is not a typical form of externalization.

As was mentioned throughout the literature review, most agreements between DS and TC work on the basis of some kind of tradeoff where the TC agrees to manage in some form migration flows seeking to arrive at the DS. In exchange, the latter provides the other with something in return -which might be financial aid, technical support in certain areas, among others. In any way there always seems to be, to a lesser or greater extent, the involvement of the TC in keeping outside certain migration flows away from the DS, and consequently, a visible outsourcing of legal responsibility for the processing of asylum claims.

However, the bilateral agreement of Italy and Albania does not share those features. In fact, under the provisions of the Protocol, Albanian personnel and authorities do not have any type of contact with the protection seekers transferred to its territory. Their involvement in the policy consists of providing the terrain and administrative permits for construction and maintaining the exterior security of the facilities. No other role is held by the TC in the implementation of this policy. Indeed, it is the DS -Italy- the one in charge of making all decisions -as they apply their national legislation and retain jurisdiction within the facilities- and, importantly enough, process all asylum claims itself. Furthermore, Italy acknowledges the applicability of EU law within the centers and to the procedures carried out there. It later enacted Law 14/24, which designates the centers in Shengjin and Gjader as Italian border zones, thereby enabling the application of the relevant asylum and return procedures.

Bearing all those elements in mind, it could be argued that Italy is not externalizing responsibility for migration management but rather it is doing it outside its territory. However, that is not the case when the following is considered: first, based on which characteristics are migrants selected to be taken to the centers in Albania and, second, the way the procedures are

carried out there. This last point raises the question of how the nature of legal responsibility in externalization strategies should be evaluated: only in relation to what is stated in legal or other types of cooperation agreements? Or should the responsibility of states be broader and involve the study of how they effectively manage their obligations to protect asylum seekers?

When those aspects of the implementation of the Italy-Albania Agreement are addressed, it becomes clear that Italy is avoiding its responsibility to protect. As previously stated, there seems to be numerous irregularities related to the right to defense and due process which could ultimately lead to breaches on the prohibition of refoulement and the right to seek asylum. In that regard it is important to notice that the decision to locate the centers outside of Italy (and outside the EU) makes these procedural irregularities possible. Some examples of those can be remote legal assistance, online asylum interviews, very short timeframes – because the protection seekers come from designated SCO- and superficial vulnerabilities assessments that do not assure that the accelerated procedures are rightly applied. Finally, another important element is the isolation conditions that have two main results: first, the impossibility to receive family visits or claim for the right to reunification and, second, on the difficult conditions and accessibility of NGOs and monitoring bodies to visit the centers.

Another important aspect needs to be considered at this point in the discussion and that is the role that the SCO concept plays in the implementation of this strategy. As was explained before, only migrants rescued in international waters who come from a newly established list of SCO and are not deemed vulnerable at the first screenings would be taken to the centers in Albania. In there they would be subject to a second vulnerability assessment and then border procedures -which results in accelerated procedures given that they come from SCO- and, if their claim is not recognized, then return procedures.

Regarding the SCO concept, it is necessary to briefly reiterate that some of the countries included in Italy's 2024 list were highly controversial due to concerns about their human rights records²³³. These countries also happened to have low recognition rates in asylum procedures. As argued in the previous chapter, this suggests an instrumentalization of the SCO concept by Italy. The extraterritorial processing of protection claims submitted by individuals from designated SCO created a framework in which applicants from countries considered unlikely to qualify for refugee status were subjected to accelerated procedures, often accompanied by

²³³ As was mentioned in the previous chapter, the former APD established the criteria for EU MS to designate their SCO lists. These criteria had a strong emphasis on human rights considerations, as well as to the political and democratic system of the country in question.

weaker procedural guarantees, and could subsequently be returned from the processing facilities. Moreover, where an application was rejected, the individual could be returned without ever entering Italian territory.

Bearing that in mind, I consider that the ‘instrumentalization’ and the use of the SCO concept as a ‘filtering tool’ to determine who can enter the territory of the state or not constitutes an additional layer to the proposed concept of externalization. This is because Italy is implementing a strategy in which there is no formal outsourcing of responsibility for processing asylum claims, nor does it appear to be taking advantage of conducting asylum procedures within the jurisdiction of a country with lower human rights standards or weaker legal safeguards.

Conversely, Italy appears to rely on an ambiguous legal framework. First, the instrumentalization of the SCO concept allows for the transfer of protection seekers to what are legally designated as border zones—the centers in Albania—for the purpose of conducting border procedures. Second, once protection seekers are transferred to Albania, although the Protocol and related legal instruments establish that Italian jurisdiction applies and that EU law will be implemented “where applicable,” the actual legal framework governing the centers remains far from clear. This uncertainty creates room for procedural irregularities that make it extremely difficult for applicants to effectively present their asylum claims, imposing barriers that may significantly reduce their chances of obtaining refugee status and, consequently, entering Italian territory.

4.2 Importance of results and contextualization of the agreement within EU migration governance

As previously mentioned, the term externalization and its implications for migration flows and protection seekers around the world are not commonly discussed at governmental or policymaking levels. Rather, analysis of the phenomenon appears to be largely confined to academic and media debates. In this sense, it is important to shed light on the implications that agreements such as the one examined in this study have for protection seekers, as well as on the broader consequences they may have for IRL, a legal framework that seems to be currently facing a crisis of compliance.

While this investigation focused on determining what externalization is and whether the strategy embodied in the Italy–Albania Agreement constitutes a form of externalization, it did not examine the subsequent evolution of the Agreement or how its operation may be affected by the recent entry into force of the New Pact. This decision was based on two main considerations. First, the objective of the research was to assess whether externalization is an appropriate concept for characterizing the Agreement, rather than to engage in legal debates concerning its validity or compliance with EU law. Second, given the recent adoption of the New Pact, it would have been premature to evaluate its broader effects on the external migration management policies of the European Union, its MS, or on pre-existing agreements that may have encountered difficulties due to their incompatibility with the previous EU asylum framework.

Nevertheless, it is important to provide a brief overview of why the Italy–Albania Agreement has not fully achieved the objectives initially proposed, as well as to highlight certain features of the New Pact that are relevant to the Agreement and its future development.

In relation to the current state of the Agreement, the policy could not operate as it was originally planned in the Protocol and other implementing legislations. While during the months that followed the completion of construction of the facilities some transfers of protection seekers occurred²³⁴, the procedures were halted mainly by national Italian courts who raised questions to the ECJ on the fact that asylum processing is matter of EU competence and therefore could not be carried out in the territory of a non-EU MS²³⁵. Additionally, the courts questioned whether some countries designated by Italy as SCO could actually be considered safe according to the EU legislation. These important setbacks resulted in the apparent ‘failure’ of the policy. As of now, the centers located in Albania are being used as return hubs for those who received a negative resolution for their asylum claims²³⁶

²³⁴ Simone De La Feld, ‘Italy-Albania Protocol Is Still a Flop. EU Court of Justice Reveals Critical Flaws in Safe Countries Decree’ (*EUNews*, 10 April 2025) <<https://www.eunews.it/en/2025/04/10/italy-albania-protocol-is-still-a-flop-eu-court-of-justice-reveals-critical-flaws-in-safe-countries-decree/>> accessed 24 June 2026.

²³⁵ Eleonora Celoria, Andreina De Leo and Marcella Ferri, ‘Testing the Applicability of EU Law Abroad: The Italy–Albania Protocol in the Comeri, Sidilli, and Sedrata Hearings’ (*EU Law Analysis*, 17 April 2026) <<https://eulawanalysis.blogspot.com/2026/04/testing-applicability-of-eu-law-abroad.html>> accessed 24 June 2026.

²³⁶ Mixed Migration Centre, ‘How Offshore Asylum Processing and Migration Management Went Global in 2025’ (*Mixed Migration Centre*, 25 November 2025) <<https://mixedmigration.org/publications/mmr/2025/offshore-asylum-processing-and-migration-management/>> accessed 24 June 2026.

According to Pettrachin and Bassoli²³⁷, three different outcomes of the Agreement could be expected in the future. Firstly, asylum processing and return procedures are implemented as initially foreseen by the Protocol. This would only happen if the national courts and ECJ judicial restraints were overcome in the future. However, the authors argue that the protection seekers that could be potentially processed under the provisions of the Agreement would still be a small fraction of the total numbers of protection-related arrivals in Italy as well as it would not have a significant deterring effect on those planning on seeking protection in the country.

The second possibility is that the centers continue to work as return hubs if the judicial constraints cannot be unblocked in the future²³⁸. This situation could be used by right-wing politicians to keep the “irregular” migration topic on the public agenda and, additionally, put the fault on the judiciary for supporting the arrival of migration flows. Lastly, the third option consists of Italy giving up with the implementation of the whole strategy²³⁹. It is claimed that this could be the least viable option as it could only happen in the unlikely case where the composition of the Council of Ministers changes and someone like Matteo Salvini -who holds a different approach to migration management than the current one, more combat-oriented towards SAR NGOs in the Mediterranean- is designated Minister of Interior.

In relation to the New Pact, as was mentioned in the last chapter, consists of ten legal instruments that aim to achieve “strong and secure external borders, that people's rights are guaranteed and that no EU country is left alone to deal with migratory pressure. It also firmly embeds migration into international partnerships, helping to prevent irregular departures and combat migrant smuggling”²⁴⁰.

While keeping in mind that the New Pact has just been implemented so no conclusive thoughts can be projected into the future of how its implementation is going to work, there are some potential risks related to procedural and other refugee-related issues that are worthwhile considering as they are relevant for this study.

²³⁷ Andrea Pettrachin and Matteo Bassoli, ‘The Italy-Albania Migration Deal – a Policy Failure?’ (*London School of Economics*, 7 February 2025) <<https://blogs.lse.ac.uk/euoppblog/2025/02/07/the-italy-albania-migration-deal-a-policy-failure/>> accessed 24 June 2026.

²³⁸ *ibid.*

²³⁹ *ibid.*

²⁴⁰ European Council, ‘Pact on Migration and Asylum’ (*European Council*, 12 June 2026) <<https://www.consilium.europa.eu/en/policies/eu-pact-migration-asylum/>> accessed 24 June 2026.

According to Human Rights Watch (HRW)²⁴¹, the New Pact would establish a system where migrants could be detained for a maximum of six months during which their identity would be verified, their protection claims would be assessed and, finally, if that were the case, face return procedures. The nature of these strategies would have many similarities to those already established as hotspots in Italy and Greece, which over the years have been criticized for its irregularities concerning human rights standards.

Another important feature is that border procedures -together with appeals- should last no more than 3 months and during that time it is most probable that protection seekers would remain in detention²⁴². Even though it is provided that MS must ensure the right to due process of applicants, HRW argues that no minimum standards are established to ensure it. This could potentially result in disparities in implementation of procedures, risking breaching the right to defense and due process.

Another important aspect of the New Pact is that emphasis is placed on the promotion of cooperation with TC on the area of migration control²⁴³. Concerning this cooperation, the goal is to put a stop to human trafficking, ensure legal routes for migrants and, lastly to make return procedures more effective.

Lastly, I consider it important to mention that accelerated procedures will now be applied to any person coming from: a SCO -even unaccompanied children- or a state with low EU recognition rate -of 20% or lower-, among other cases²⁴⁴. Furthermore, the EU has adopted its own SCO list, to which Member States may add additional countries. This list includes states such as Egypt, Bangladesh, and India, whose human rights records have been subject to criticism. In this regard, HRW argues that these measures create an

arbitrary threshold that creates a presumption that asylum seekers from particular countries are not likely to need protection. It undermines the principle that each asylum seeker is entitled to an individual assessment and imposes a higher burden of proof on those against whom the presumption works²⁴⁵.

²⁴¹ Human Rights Watch, 'Questions and Answers: The EU Pact on Migration and Asylum' (*Human Rights Watch*, 10 June 2026) <<https://www.hrw.org/news/2026/06/10/questions-and-answers-the-eu-pact-on-migration-and-asylum>> accessed 24 June 2026.

²⁴² *ibid.*

²⁴³ Directorate-General for Migration and Home Affairs, 'Pact on Migration and Asylum' (*European Commission*, 24 May 2024) <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en> accessed 30 June 2026.

²⁴⁴ Human Rights Watch (n 241).

²⁴⁵ *ibid.*

While this is a highly general overview of the implications of the New Pact, it is important to highlight that many of its provisions bear significant resemblance to the Italy–Albania Agreement. In this regard, the new EU regulations on migration and asylum not only appear to move away from protection-oriented approaches to asylum management but also seem to encourage—and in some cases mandate—procedures for MS that are similar to those established under the Italy–Albania Agreement.

4.3 Limitations and future research directions

While the investigation conducted through this thesis provided valuable results and understandings of the phenomenon of externalization, I consider that the study had its methodological limitations.

Firstly, I will acknowledge that the answer to the second research question related to the Italy-Albania Agreement largely depends on my own conceptualization of what externalization means -even though it was entirely based on the knowledge acquired during the literature review. In that sense, the categorization of the agreement might change if a researcher employs a conceptualization different than mine.

Secondly, the investigation is limited by the study of one single case, something that challenges the generalization of conclusions and implications of the phenomenon in real-life situations.

Thirdly, I believe that the fact that the Italy-Albania agreement is still having repercussions today diffculted the study of the implications for the broader migration management policy of Italy and how it might affect that of other EU MS that showed interest in the past in engaging in similar strategies. Moreover, many questions regarding legal jurisdiction are still open, therefore one might encounter several contrasting perspectives regarding one single issue.

In the same line, recent implementation of the New Pact could potentially have effects on the current state of the policy, but it is still too recent to be able to draw any conclusions regarding that.

Fourthly, I consider that while the results have been interesting and valuable for understanding the externalization phenomenon, the deductive nature of the testing implies that the results and conclusions remain speculative and cannot be conclusive. This is a result of both the choice to base my study on secondary sources -such as academic perspectives and institutional and NGO

reports- and the nature of my definition itself, of which some of the dimensions contain elements that cannot be scientifically proved -such as the motivation and if they seek to avoid legal responsibility owed to protection seekers. In spite of the last point, I think it would have been valuable to include interviews of Italian policymakers or migrants, to have a broader and comprehensive understanding of the policy in practice. That would have allowed me to, while the methodology still being deductive, based my results on a larger number of sources, including primary ones.

The identification of the main limitations of this investigation allows the identification of potential research directions in which would be worthwhile engaging.

One future research line emerging from this investigation would be to conduct further study on the evolution of the SCO concept. In particular, it would be relevant to examine whether the concept has shifted from a procedural mechanism based on clear criteria for determination to a more operational tool embedded within migration management policies.

Within the European context, further research should also assess whether, once the New EU Pact is fully implemented, new cooperation agreements with third countries in the field of migration management emerge. In this regard, studies could examine whether the key features identified in the Agreement analyzed in this thesis are replicated or further developed, or whether entirely new migration management techniques are introduced. Moreover, it would be valuable to investigate whether such strategies can still be classified as externalization, whether they represent additional layers within the proposed definition, or whether they fall outside the concept altogether.

CHAPTER 5: General conclusions and further remarks

The aim of this thesis has been to examine externalization practices that states may employ in the context of migration management and to determine whether the controversial Italy–Albania Agreement on migration can be classified as a form of externalization. The two research questions guiding this study were: “What does the term ‘externalization’ mean” and “Can the Italy–Albania Protocol be classified as a form of externalization of migration management?”

To carry out this analysis, I adopted a methodology combining conceptual analysis, theory-building, deductive qualitative analysis, and a theory-guided case study. Although certain limitations emerged throughout the research process, I consider that these approaches enabled me to develop a sufficient basis to address the research questions.

In Chapter 1, I conducted a literature review of how the concept of externalization is understood in academia. While it is broadly acknowledged that externalization functions as an umbrella term describing a range of migration management policies, there is still no clear consensus on its precise meaning. This resulted in a wide variety of definitions and perspectives: some focusing on its legal implications, others on the interaction between the actors involved, and others on its specific mechanisms of implementation. This diversity of approaches proved both enriching and analytically significant.

The development of a conceptual analysis enabled the realization of Chapter 2, where I developed my own conceptual framework of what externalization means and answered the first research question. This definition was subsequently disaggregated into four analytical dimensions, which were used as a methodological tool to assess whether a given policy fits within the concept of externalization.

Later, in Chapter 3 I focused on the study of the Italy-Albania Agreement. First, I examined the provisions of the Agreement and then I analyze it considering the four dimensions of the externalization framework. In Chapter 4, I discussed the results of this analysis, answered the second research question, and concluded by outlining the methodological limitations of the study as well as potential avenues for future research.

In terms of findings, I conclude that while the Italy–Albania Agreement can be classified as a form of externalization of migration management, it also introduces a new layer to the concept. This is because the policy encompasses some peculiarities that were novel to the European context. In that sense, I highlighted the importance of two important features that characterize

the Agreement. In particular, two elements are especially significant. First, the strategic use of the SCO concept as a filtering mechanism enabling non-entry and the application of accelerated procedures to individuals from designated countries. Second, the legal uncertainty surrounding applicable jurisdiction resulting from the location of the centers outside Italian territory, which appears to create conditions that may undermine the procedural rights of protection seekers.

One of the key takeaways of this research is that externalization remains a vague and contested concept, as there is still no consensus regarding its definition. Nevertheless, a recurring pattern can be identified in the attempts of EU MSs to reduce or relocate their responsibility for asylum processing. In this regard, not only the Italy–Albania Agreement but also the New Pact suggest a growing tendency to implement migration management strategies that seek to limit the responsibilities associated with receiving and processing asylum seekers. Examples include the increased emphasis on return procedures, cooperation with TC in migration management, and administrative mechanisms that may hinder access to protection.

Finally, I reiterate that the Italy–Albania Agreement adds a new layer to the concept of externalization and raises significant concerns regarding the potential erosion of human rights standards and IRL. In this sense, the Agreement establishes a framework that may weaken some of the fundamental guarantees owed to individuals seeking international protection. The rights most at risk can be grouped into two categories: procedural rights and substantive rights.

In relation to the first one, the Agreement largely endangers the right to due process and to defense. This is achieved by remote legal assistance, the asylum interviews carried out online, the effective detention of applicants in isolation -where they cannot receive family visits and where it is hard for NGOs and monitoring bodies to visit-, superficial vulnerabilities assessment and lastly the very short timeframes.

The multiplicity of procedural irregularities increases the risk of violations of substantive rights. In particular, it may undermine the right to seek asylum and the principle of non-refoulement. By imposing numerous obstacles on protection seekers throughout the asylum process, the likelihood of negative decisions may increase. Consequently, individuals may be returned to their countries of origin despite not having had a genuine opportunity to present their claims. This raises the risk of indirect refoulement, especially considering that some countries designated by Italy as SCO have been criticized for not fully meeting the criteria previously established under EU asylum legislation. In such circumstances, applicants may be returned to states where human rights are inadequately protected or where they may face

persecution. Importantly, these outcomes may be linked not only to the merits of the claims themselves but also to procedural deficiencies that prevent applicants from effectively exercising their rights and receiving a fair assessment of their applications.

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