

Symposium: Managing Mixed Migration

When Do “Closed Camps” Become Prisons by Another Name?

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There is an inherent tension between the widespread practice of establishing camps to provide temporary housing and humanitarian assistance to migrants and the fundamental human right to freedom of movement. According to the United Nations High Commissioner for Refugees (UNHCR), some degree of limitation on rights—including movement—is “the defining characteristic” of camps. International law permits states to impose some restrictions on the movement of migrants, including temporary confinement in “closed camps,” for lawful purposes, including identity verification and security screening in situations of war, emergency, or other grave and exceptional circumstances. But that permission is subject to important limitations: restrictions must be proportional, non-discriminatory, and time-limited. Closed camps, from which residents are not free to leave because they are suspected of presenting threats including crime, extremism, or disease, are a relatively recent development in the modern migration management regime and have become more common. This trend is likely driven by the increased frequency of subnational conflicts, resulting in high levels of internal displacement and the growing securitization of systems for managing large transnational flows of “mixed migrants.” U.N. agencies have provided some general guidelines on the human rights and humanitarian conditions that must be satisfied in order for closed camps to comply with international law, including access to education, healthcare, documentation, and courts, as well as communication and contact with family. However, in practice, the states and non-state actors that manage closed camps can and have violated these conditions with impunity in the absence of accountability mechanisms to enforce their compliance. This Essay uses a case study of Al-Hol, a closed camp in northeast Syria where more than 56,000 people—mostly children and women—from at least sixty countries have been confined since 2019 on suspicion of having family or other ties to the Islamic State in Iraq and Syria (ISIL), to illustrate how closed camps can become open-air prisons by another name and therefore require close monitoring and further study.

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“I no longer want to live in a tent. I want to live like every normal person.”¹

INTRODUCTION

There is an inherent tension between the widespread practice of establishing camps to provide temporary housing and humanitarian assistance to migrants and the fundamental human right to freedom of movement. According to the United Nations High Commissioner for Refugees (UNHCR), some degree of limitation on rights—including movement—is “the defining characteristic of a camp.”² UNHCR has interpreted international law as permitting states to impose some restrictions on the movement of refugees and internally displaced persons (IDPs), and in some cases “minimal periods in detention may be permissible”³ for lawful purposes, including identity verification and security screening in situations of war, emergency, or other grave and exceptional circumstances,⁴ but with important limitations: restrictions must be proportional, non-discriminatory, and time-limited.⁵ In practice, however, states and non-state actors have increasingly established “closed camps” that in some cases resemble open-air prisons in all but name.

A prominent example is Al-Hol Camp in northeast Syria, where more than 56,000 people from at least sixty different countries—most of them children (sixty-four percent); of the adults, eighty-one percent are women⁶—who have been confined to Al-Hol on suspicion of having family or other ties to ISIL

1. A ten-year-old girl from Tajikistan who has been stranded in Al-Hol, a “closed camp” in northeast Syria, for more than three years, since fleeing there with her mother in February 2019, during the battle to defeat the Islamic State in Iraq and the Levant (ISIL) from its final territorial stronghold. Interviewed by Save the Children staff in northeast Syria in 2021. Daniel Gorevan & Kathryn Achilles, *When Am I Going to Start Living? The Urgent Need to Repatriate Foreign Children Trapped in Al Hol and Roj Camps*, SAVE THE CHILDREN 4 (2021), https://resourcecentre.savethechildren.net/pdf/when_am_i_going_to_start_to_live_final_0.pdf/.

2. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, UNHCR POLICY ON ALTERNATIVES TO CAMPS 12 (2014), (“The defining characteristic of a camp ... is some degree of limitation on the rights and freedoms of refugees, such as their ability to move freely, choose where to live, work or open a business, cultivate land or access protection and services.”).

3. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, A GUIDE TO INTERNATIONAL REFUGEE PROTECTION AND BUILDING STATE ASYLUM SYSTEMS 106 (2017).

4. Convention Relating to the Status of Refugees arts. 9, 31, 26, July 28, 1951, 189 U.N.T.S. 150.

5. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, GUIDELINES ON THE APPLICABLE CRITERIA AND STANDARDS RELATING TO THE DETENTION OF ASYLUM-SEEKERS AND ALTERNATIVES TO DETENTION 14 (2012).

6. *Mercy Corps, Consultant - Strategy on Sustainable Solutions to Al-Hol Camp in North East Syria*, U.N. JOBNET (Dec. 2021), <https://www.unjobnet.org/jobs/detail/35825256>.

members. Residents of the camp have no access to formal education or courts and very limited healthcare. They are also at risk for human rights violations, including gender-based violence, human trafficking, and extra-judicial killings by other camp residents, including known ISIL “sleeper cells,” which are believed to be behind a wave of murders.⁷ The United Nations has warned that conditions in Al-Hol “may amount to cruel or inhuman treatment” and has urged member states to repatriate their nationals from the camp,⁸ but most countries have been slow to do so because of security concerns.

Fear and stigmatization of the population in Al-Hol has been driven in part by overly simplistic and sensational media coverage of the camp, which some local and international outlets have described as a “mini caliphate”⁹ and “emirate.”¹⁰ In reality, the population is much more complex and diverse. It includes not only ISIL supporters and “sleeper cells”¹¹ but also many victims of ISIL’s crimes. Those victims include hundreds of Yazidi and Turkmen women and children who were enslaved by the group,¹² as well as Sunni Muslim women and children who were involuntarily trafficked by their husbands or other male relatives through deception or coercion.¹³ The camp population also includes approximately 10,000 Iraqi refugees who fled to Al-Hol during previous conflicts in Iraq. (The camp was first established in 1991 to receive Iraqi refugees during the Gulf War.)¹⁴ These earlier waves of refugees predated ISIL’s existence and are not believed to have had any links to the group until they were exposed to a massive influx of more than 60,000 people, including many with family or other ties to ISIL, who fled to Al-Hol during the battle for Baghouz in 2019—a development that increased the camp’s population by 680 percent in just a few months.¹⁵

7. See, e.g., Campbell MacDiarmid, *Inside Al-Hol, Where Guards Helpless Against Islamic State Death Squads Preying on Syrian Refugees*, THE TELEGRAPH (Mar. 16, 2021), <https://www.telegraph.co.uk/news/2021/03/16/inside-al-hol-camp-housing-supporters-militia-struggling-maintain/>.

8. U.N. Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, ¶ 116, U.N. Doc. A/HRC/48/70 (Aug. 13, 2021).

9. Isabel Coles and Benoit Faucon, *Refugee Camp for Families of Islamic State Fighters Nourishes Insurgency*, WALL ST. J. (Jul. 9, 2021), <https://www.wsj.com/articles/refugee-camp-for-families-of-islamic-state-fighters-nourishes-insurgency-11623254778>.

10. Hassan al-Qassab, *إمارة الهول: بالقتل والرشى داعش يثدّد فيضته على المخيم (Al-Hol Emirate: By Murder and Bribery, Daesh Strengthens Its Grip on the Camp)*, SYRIA DIRECT (Feb. 1, 2022), <https://bit.ly/3JliZto>.

11. See, e.g., MacDiarmid, *supra* note 7.

12. Estimates of the number of Yazidi women and children living in Al-Hol and other refugee camps in northeast Syria range between 200 and 260. See Tom Westcott, *Iraq’s Yazidi Survivors Fight to Start Over*, THE NEW HUMANITARIAN (Sept. 2, 2019), <https://www.thenewhumanitarian.org/feature/2019/09/02/Iraq-Yazidi-survivors-fight>; Nisan Ahmado, *For Yezidis, Healing Remains a Long Way, Seven Years after IS Genocide*, WILSON CENTER (Aug. 2, 2021), <https://www.wilsoncenter.org/blog-post/yezidis-healing-remains-long-way-seven-years-after-genocide>. Additionally, hundreds of Shia Turkmen women and girls were abducted by ISIL, and some of these are reportedly living in Al-Hol. See Suad Al-Salhy, *The Untold Tragedy of Iraq’s Shia Turkmen Women Abducted by Islamic State*, MIDDLE EAST EYE (Feb. 18, 2021), <https://www.middleeasteye.net/news/iraq-islamic-state-turkmen-women-enslaved-tragedy>.

13. See Jayne Huckerby, *When Terrorists Traffic Their Recruits*, JUST SECURITY (Mar. 15, 2021), <https://www.justsecurity.org/75343/when-terrorists-traffic-their-recruits/>.

14. *History of UNHCR Syria*, UNHCR, <https://www.unhcr.org/sy/history-of-unhcr-syria>.

15. *A Children’s Crisis: Update on Al-Hol Camp and Covid-19 Concerns*, SAVE THE CHILDREN 5 (May 11, 2020), <https://reliefweb.int/report/syrian-arab-republic/childrens-crisis-update-Al-Hol-camp>.

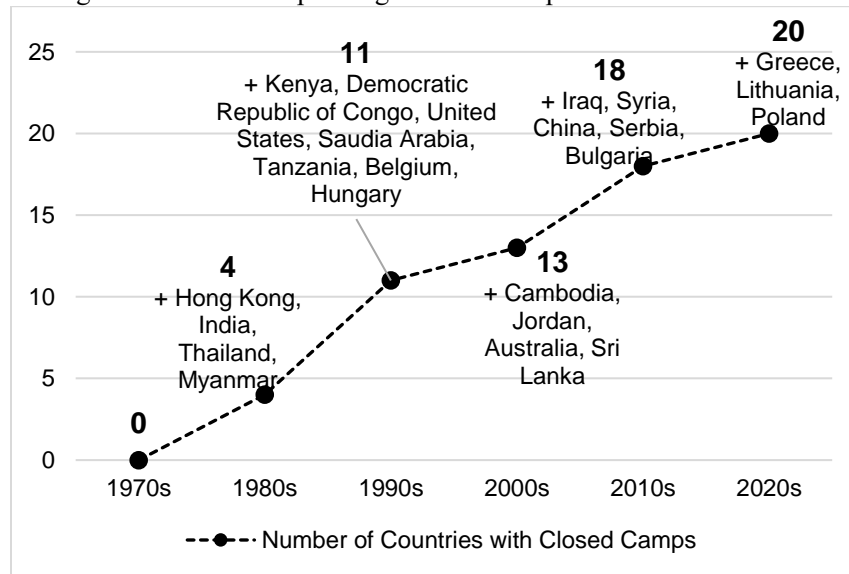
Closed camps like Al-Hol, from which residents are not free to leave because they are suspected of presenting threats including crime, extremism, or disease, are a relatively recent development in the modern migration management regime, which has been regulated by the United Nations since World War II. The first closed camp was established by Hong Kong's government in 1982 to receive migrants and refugees fleeing Vietnam. Since then, the number of countries operating closed camps around the world has grown steadily (Figure 1). Two factors have likely contributed to this trend. The first is the increased frequency of subnational conflicts, particularly in weak and failed states.¹⁶ Such conflicts have become much more common than interstate conflicts since the end of the Cold War and tend to result in high levels of internal displacement.¹⁷ The second factor is the growing securitization of systems and policies for managing large transnational flows of "mixed migrants," a term used to describe diverse populations that may include asylum seekers, economic migrants, victims of human trafficking, and (potentially) criminals.¹⁸

and-covid-19-concerns.

16. Stathis N. Kalyvas & Laia Balcells, *International System and Technologies of Rebellion: How the End of the Cold War Shaped Internal Conflict*, 104 AM. POLIT. SCI. REV. 415–429 (2010).

17. Amy Slaughter & Jeff Crisp, *A Surrogate State? The Role of UNHCR in Protracted Refugee Situations*, in PROTRACTED REFUGEE SITUATIONS: POLITICAL, HUMAN RIGHTS AND SECURITY IMPLICATIONS 128 (Gil Loescher et al., eds., 2008) (noting that the inability of internally displaced persons to return to their homes during long-running subnational conflicts has contributed to the institutionalization and semi-permanence of camps), <http://collections.unu.edu/eserv/UNU:2497/pdf/9789280811582.pdf>. See also Nicholas Maple, *Rights at Risk: A Thematic Investigation Into How States Restrict the Freedom of Movement of Refugees on the African Continent*, NEW ISSUES IN REFUGEE RESEARCH PAPER SERIES, UNHCR 11-12 (2016) (noting that "closed camps have become the norm" in response to large waves of mixed migrants triggered by "a combination of new conflicts and the continuation of longstanding civil wars.").

18. The International Organization for Migration defines "mixed migration" as characterized by "the irregular nature of and the multiplicity of factors driving such movements, and the differentiated needs and profiles of the persons involved. Mixed flows have been defined as 'complex population movements including refugees, asylum seekers, economic migrants and other migrants.' Unaccompanied minors, environmental migrants, smuggled persons, victims of trafficking and stranded migrants, among others, may also form part of a mixed flow." *Challenges of Irregular Migration: Addressing Mixed Migration Flows*, INTERNATIONAL ORGANIZATION FOR MIGRATION 2 (Nov. 7, 2008), https://governingbodies.iom.int/system/files/jahia/webdav/shared/shared/mainsite/about_iom/en/council/96/MC_INF_294.pdf.

Figure 1. Countries Operating "Closed Camps" Over Time¹⁹

The U.N. discourages closed camps, but it recognizes that they may sometimes be necessary in contexts such as Syria and Iraq, in which large waves of mixed migrants may include individuals who present legitimate national security threats to states. U.N. agencies have provided some general guidelines on the human rights and humanitarian conditions that must be satisfied in order for closed camps to comply with international law. Those rights and conditions include access to education, healthcare, documentation, and courts, as well as communication and contact with family. However, in the absence of oversight and accountability mechanisms, the states and non-state actors who manage such camps (sometimes with funding or other assistance from the U.N.) can and have violated these conditions with impunity.

This Essay uses a case study of Al-Hol—one of many examples of closed camps that have been established in diverse contexts including the United States (where Guantánamo Bay was used as a closed camp for Haitian refugees with HIV),²⁰ Thailand,²¹ Tanzania,²² and Greece²³—to illustrate how such camps can become open-air prisons by another name, especially in the absence of

19. Figure 1 is based on a work-in-progress dataset on closed camps currently being developed by the author and is not necessarily complete, but nonetheless provides qualitative evidence of an increase in such camps over time.

20. See, e.g., Michael Ratner, *How We Closed the Guantanamo HIV Camp: The Intersection of Politics and Litigation*, 11 HARV. HUM. RTS. J. 187 (1998); Harold Hongju Koh, *America's Offshore Refugee Camps*, 29 U. RICH. L. REV. 139 (1994).

21. See *Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers*, HUMAN RIGHTS WATCH 2 (2012), <https://www.hrw.org/sites/default/files/reports/thailand0912.pdf>.

22. See JAMES C. HATHAWAY, *THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW* 863 (2021).

23. *Greece Inaugurates its First "Closed" Camp for Asylum Seekers*, AGENCE FRANCE-PRESSE (Sept. 18, 2021), <https://www.france24.com/en/live-news/20210918-greece-inaugurates-its-first-closed-camp-for-asylum-seekers>.

accountability mechanisms that enforce their compliance with the U.N.'s guidance on minimum human rights and humanitarian conditions. Closed camps inherently threaten human rights and create conditions that are conducive to criminality and extremism—the very threats they purport to contain—and must be closely monitored and further studied.

THE CRISIS IN AL-HOL CAMP IN NORTHEAST SYRIA

Currently, around ninety-four percent of the total population of 56,000 people in Al-Hol are women and children. More than half are children under the age of twelve, and more than twenty percent are under the age of five, including thousands who were born in the camp.²⁴ Approximately thirty-three percent are Syrian, fifty-two percent are Iraqi, and fifteen percent are nationals of third countries. Many are missing civil identity documents or were born without birth certificates and are therefore at risk for statelessness.²⁵

U.N. officials have repeatedly expressed “grave concern”²⁶ and “deep alarm”²⁷ over “desperate” humanitarian and security conditions in Al-Hol, which some journalists and human rights organizations have described as an “internment camp”²⁸ and “open air prison.”²⁹ At least sixty-two children died over the course of only eight months in 2021 from preventable causes of death, including fires, hypothermia,³⁰ dehydration,³¹ malnutrition,³² and knife attacks and shootings³³ by unidentified armed actors believed to be ISIL “sleepers cells.”³⁴ Camp residents are not allowed to leave the camp unless they have a medical emergency that requires referral to an external hospital. Healthcare services inside the camp are extremely limited,³⁵ so camp residents frequently

24. *Highlights: Syrian Arab Republic*, UNICEF (2021), <https://www.unicef.org/media/88291/file/2021-HAC-Syrian-Arab-Republic.pdf>, p. 2.

25. Of the more than 30,000 Iraqis in the camp, seventy percent were not in possession of valid documentation. United Nations Office for the Coordination of Humanitarian Affairs, *Syria: Humanitarian Response in Al Hol Camp, Situation Report No. 5* (Jul. 5, 2019), <https://reliefweb.int/sites/reliefweb.int/files/resources/Al%20Hol%20sitrep5%20FINAL.pdf>.

26. See, e.g., *High Commissioner for Refugees Visits Syria, Assesses Humanitarian Needs*, UNHCR (Mar. 7, 2019), <https://www.unhcr.org/news/press/2019/3/5c81221a4/high-commissioner-refugees-visits-syria-assesses-humanitarian-needs.html>.

27. Statement by UNICEF Executive Director Henrietta Fore, *Eight Children Die in Al Hol Camp, Northeastern Syria In Less Than A Week*, UNICEF (Aug. 13, 2020), <https://www.unicefusa.org/press/releases/eight-children-die-al-hol-camp-northeastern-syria-less-week/37558>.

28. *The State of Justice: Syria 2020*, SYRIA JUSTICE AND ACCOUNTABILITY CENTRE 18 (Mar. 2020), https://syriaaccountability.org/wp-content/uploads/02.28_SJS-ENG_pdf_compressed-1.pdf.

29. See Jomana Karadsheh, *CNN Newsroom Transcript Aired September 29, 2020*, CNN (Sept. 29, 2020), <http://edition.cnn.com/TRANSCRIPTS/2009/29/cnr.18.html>.

30. *WHO Concerned Over Critical Health Situation in Al-Hol Camp, Al-Hasakeh*, WORLD HEALTH ORGANIZATION (Jan. 31, 2019), <https://reliefweb.int/report/syrian-arab-republic/who-concerned-over-critical-health-situation-al-hol-camp-al-hasakeh>.

31. UNICEF, *supra* note 27.

32. Gorevan & Achilles, *supra* note 1, at 17.

33. Sirwan Kajjo, *UNICEF Alarmed by Spike in Children's Deaths in Syria's al-Hol Camp*, VOA NEWS (Mar. 25, 2021), https://www.voanews.com/a/extremism-watch_unicef-alarmed-spike-childrens-deaths-syrias-al-hol-camp/6203748.html.

34. See, e.g., MacDiarmid, *supra* note 7.

35. Médecins Sans Frontières (Doctors Without Borders) reported in August 2020 that “almost no healthcare is available [in Al-Hol] and the consequences are devastating.” *Northeast Syria: In Al-Hol*

need such referrals, but the process is time-consuming and requests are routinely denied.³⁶

The security and political dynamics of northeast Syria make it very difficult for the U.N. and other humanitarian organizations to provide assistance and monitor conditions in A-Hol. First, the camp is located within the Autonomous Administration of North and East Syria (AANES, also known as Rojava), an approximately 19,000 square mile territory that shares borders with Turkey and Iraq, where the Syrian Democratic Forces (SDF), a predominantly Kurdish alliance formed during the Syrian Civil War, have established a de facto state and are seeking autonomy from the Syrian government in Damascus.³⁷ Both Syria and neighboring Turkey oppose the establishment of an independent Kurdish state along their borders, and the Syrian government restricts the movement and activities of the U.N. and other humanitarian organizations in opposition-controlled areas to withhold aid as a form of punishment.³⁸ Second, and in addition to these political constraints, security threats to the U.N. and other humanitarian actors operating in northeast Syria have had a chilling effect on their operations. The SDF authorities responsible for maintaining security in Al-Hol have been unable to prevent rising crime and extremism in the camp. Doctors Without Borders was forced to temporarily suspend its operations in Al-Hol in March 2021, after a member of its staff was killed in a wave of murders.³⁹

The U.N. views repatriation of third-country nationals from Al-Hol as “a key responsibility of Member States” and has urged all countries to repatriate their citizens from northeast Syria.⁴⁰ But so far, the pace of returns has been extremely slow. Some countries have started to repatriate significant numbers of their nationals, led by Iraq and Kazakhstan, which have repatriated more than

Camp, Almost No Healthcare is Available, MÉDECINS SANS FRONTIÈRES (Sept. 1, 2020), <https://www.msf-me.org/media-centre/news-and-stories/northeast-syria-al-hol-camp-almost-no-healthcare-available>.

36. See Neil J. Saad, *The Al Hol Camp in Northeast Syria: Health and Humanitarian Challenges*, 5 *BMJ GLOBAL HEALTH* 1-3, 2 (2020).

37. MICHAEL J. SETH, *NOT ON THE MAP: THE PECULIAR HISTORIES OF DE FACTO STATES* 204 (2021).

38. Mouayad Albonni, Maxwell Gardiner & James F. Jeffrey, *Damascus' Weaponization of Humanitarian Aid Should be the Focus of Upcoming U.N. Cross-Border Resolution Debate*, WILSON CENTER (Jul. 8, 2021), <https://www.wilsoncenter.org/article/damascus-weaponization-humanitarian-aid-should-be-focus-upcoming-un-cross-border-resolution>.

39. *Syria: MSF Denounces Unsafe Environment in Al-Hol Camp in Wake of Staff Killing*, MÉDECINS SANS FRONTIÈRES (Mar. 2, 2021), <https://prezly.msf.org.uk/syria-msf-denounces-unsafe-environment-in-al-hol-camp-in-wake-of-staff-killing>.

40. *Second United Nations High-Level Conference on Counter-Terrorism*, U.N. OFFICE OF COUNTER-TERRORISM (Jun. 29, 2021), https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/210629_hlcct_session_iv_c_dusg_protecting_repatriating_reintegrating_women_children_with_un_listed_terrorist_groups_links.pdf.

800⁴¹ and more than 700⁴² nationals, respectively.⁴³ But many countries initially refused to take any of their citizens back and have only gradually repatriated some of them, mostly children, under growing pressure from the U.N. and other international organizations. Notably, the countries that have been most resistant to repatriation (France, Sweden, and the Netherlands)⁴⁴ and some that have gone so far as to revoke the citizenship of their nationals in Al-Hol (Australia, Denmark, and the United Kingdom)⁴⁵ are ranked near the top of Freedom House's global index for access to political rights and civil liberties,⁴⁶ while the countries that have been willing to repatriate their citizens from Al-Hol (including Kazakhstan, Iraq, Kosovo, Russia, and Uzbekistan) are near the bottom of that index.⁴⁷ The crisis in Al-Hol illustrates the urgent need for increased scrutiny and clearer guidance on the necessary conditions that such camps must satisfy in order to comply with international law.

THE RISE OF CLOSED CAMPS AND THEIR QUESTIONABLE LEGALITY

Closed camps are a relatively recent development in the modern humanitarian migration management regime, which has been administered primarily by the United Nations High Commissioner for Refugees (UNHCR, which is responsible for refugees) and by the International Organization for Migration (IOM, responsible for "migrants"⁴⁸) since those organizations' establishment after World War II, in 1950 and 1951. The first closed camp to receive support from the U.N. is believed to have been the Chi Ma Wan Closed Centre. The Centre was one of several camps established in Hong Kong, which together received more than 213,000 Vietnamese migrants between 1975 and

41. Zana Omer & Sirwan Kajjo, *Hundreds of Iraqi Nationals Leave al-Hol Refugee Camp in Syria*, VOA NEWS (Sept. 30, 2021), <https://www.voanews.com/a/hundreds-of-iraqi-nationals-leave-al-hol-refugee-camp-in-syria-/6252265.html>.

42. Lila Hassan, *Repatriating ISIS Foreign Fighters Is Key to Stemming Radicalization, Experts Say, but Many Countries Don't Want Their Citizens Back*, FRONTLINE (Apr. 6, 2021), <https://www.pbs.org/wgbh/frontline/article/repatriating-isis-foreign-fighters-key-to-stemming-radicalization-experts-say-but-many-countries-dont-want-citizens-back/>.

43. Asim Kashgarian, *Could Kazakhstan Efforts to Repatriate Foreign Fighters Be a Model?*, VOICE OF AMERICA (Jan. 15, 2021), https://www.voanews.com/a/extremism-watch_could-kazakhstan-efforts-repatriate-foreign-fighters-be-model/6200804.html.

44. Elian Peltier & Constant Méheut, *Europe's Dilemma: Take In ISIS Families, or Leave Them in Syria?*, N.Y. TIMES (May 28, 2021), <https://www.nytimes.com/2021/05/28/world/europe/isis-women-children-repatriation.html>.

45. Sam Mednick, *Inside the Troubled Repatriation of Iraqis from Syria's Al-Hol Camp*, THE NEW HUMANITARIAN (Jun. 7, 2021), <https://www.thenewhumanitarian.org/news-feature/2021/6/7/Iraqi-repatriations-Syria-al-Hol-camp-fear>.

46. See, e.g., *Freedom in the World Report*, FREEDOM HOUSE (2021), <https://freedomhouse.org/countries/freedom-world/scores> (ranking these countries on a scale of from 0, at worst, to 100, at best, for their protection of political rights and civil liberties, as follows: Kazakhstan=23 "not free," Iraq=29 "not free," Kosovo=54 "partly free," Russia=20 "not free," Uzbekistan=11 "not free," France=90 "free," Sweden=100 "free," Netherlands=98 "free," Australia=97 "free," Denmark=97 "free," and the United Kingdom=93 "free").

47. *Thousands of Foreigners Unlawfully Held in NE Syria*, HUMAN RIGHTS WATCH (Mar. 23, 2021), <https://www.hrw.org/node/378299/printable/print>.

48. A refugee is defined in international law as a person who is fleeing persecution or conflict in her or his country of origin. See *Differentiation Between Migrants and Refugees*, U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (Jul. 11, 2016), <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/MigrantsAndRefugees.pdf>.

1990, including refugees seeking asylum (primarily ethnic Chinese fleeing persecution by the Communist regime⁴⁹), economic migrants who arrived by sea (classified by the government as “boat people”⁵⁰), and political asylum-seekers.⁵¹ UNHCR provided assistance to Hong Kong’s government for a school in the camp and developed guidelines for the screening of the population “to determine whether they are *genuine* refugees.”⁵² This concern about the need to differentiate so-called “genuine refugees”⁵³ from alleged criminals, combatants, or terrorists in situations of “mixed migration”⁵⁴ has been a driving force behind the rise of closed camps.

Armed conflicts are one of the primary catalysts for “mixed migration,” along with climate change, natural disasters,⁵⁵ and economic, gender, or racial inequality and discrimination.⁵⁶ Conflicts in which designated foreign terrorist organizations (FTOs)⁵⁷ control territory and govern large civilian populations— as did the Islamic State in Iraq and Syria between 2014 and 2019 and the Revolutionary Armed Forces (FARC) of Colombia between 1964 and 2017— tend to generate a unique pattern of mixed migration, involving large numbers of people with varying degrees of perceived or actual association with a criminalized group. These ties may include family relationships with members of the group and involuntary association due to conscription or trafficking. In other cases, migrants may have had no association at all with the criminalized

49. Fox Butterfield, *Chinese Fleeing Vietnam Report Harassment and Forced Moves*, N.Y. TIMES (May 29, 1978), <https://www.nytimes.com/1978/05/29/archives/chinese-fleeing-vietnam-report-harassment-and-forced-moves-90000.html>.

50. Barbara Basler, *Hong Kong Journal; Boat People Now Face Tide of Chinese Prejudice*, N.Y. TIMES (Sept. 12, 1988), <https://www.nytimes.com/1988/09/12/world/hong-kong-journal-boat-people-now-face-tide-of-chinese-prejudice.html>.

51. According to one estimate, around twenty percent were classified as refugees, twenty percent as not refugees, and sixty percent were waiting to be screened. JOSEPH Y. S. CHENG & PAUL C. K. KWONG, *THE OTHER HONG KONG REPORT* 111-112 (1992).

52. *Hong Kong to Abolish Closed Camps*, ASSOCIATED PRESS (Sept. 20, 1988), <https://apnews.com/article/2e5144826faef1683b5db4fc65fbd9c6> (emphasis added).

53. In the Hong Kong context, local media outlets have frequently described migrants and refugees from Vietnam as “fake refugees.” See Isabella Ng, Sharice Fungyee Choi & Alex Lihshing Chan, *Framing the Issue of Asylum Seekers and Refugees for Tougher Refugee Policy—A Study of the Media’s Portrayal in Post-Colonial Hong Kong*, 20 J. INT. MIGR. INTEGR. 593, 593 (2019).

54. IOM, *supra* note 22.

55. Papa Sow, Elina Marmer & Jürgen Scheffran, *Between the Heat and the Hardships. Climate Change and Mixed Migration Flows in Morocco*, 5 MIGR. DEV. 293 (2016).

56. *MMC’s Understanding and Use of the Term Mixed Migration*, MIXED MIGRATION CENTRE (2018) (identifying several interconnected drivers of mixed migration, including “persecution and conflict, poverty, discrimination, lack of access to rights, including education and health, lack of access to decent work, violence, gender inequality, the wide-ranging consequences of climate change and environmental degradation, separation from family.”). See also Nunu Kidane, *The Need to Link Migrant Rights with Racial Justice*, FRIEDRICH EBERT STIFTUNG (Apr. 12, 2020), <https://www.fes.de/en/stiftung/international-work/articles-international-work/the-need-to-link-migrant-rights-with-racial-justice>.

57. I use the term “terrorism” in this Essay for consistency with the large body of domestic and international legal frameworks that criminalize “terrorist” acts or groups, while acknowledging that the term is problematic because it lacks a universally accepted definition. See U.N. Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism on the Role of Measures to Address Terrorism and Violent Extremism on Closing Civic Space and Violating the Rights of Civil Society Actors and Human Rights Defenders, U.N. Doc. A/HRC/40/52 10 ¶ 33 (Mar. 1, 2019), https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/52.

group until they were caught up in a wave of displacement.

A problematic concept—the “migration-terrorism nexus”—has emerged to describe this particular form of conflict-driven mixed migration. The notion has been associated with xenophobic and Islamophobic political movements, particularly in Europe, which seek to bar the entry of immigrants and refugees, often with empirically unsupported claims of a causal link between migration and crime.⁵⁸ Studies have consistently found no evidence that immigration has a causal effect on levels of crime or terrorism⁵⁹ and the evidence of correlation is almost as weak: some cross-national studies have found that migrant inflows are actually associated with lower levels of terrorist attacks and crime.⁶⁰ Nonetheless, migrants continue to be perceived as a threat to national security in public opinion polls.⁶¹

When state authorities are faced with the challenge of determining the identities and possible criminal liabilities of large numbers of “mixed migrants” who are presumed to include victims of FTOs as well as perpetrators (and many people who are both),⁶² they have tended to respond with collective and overbroad measures that indiscriminately restrict the movement of entire populations. Such measures often include closed or partially closed camps that restrict freedom of movement to varying extents. Some closed camps allow limited freedom of movement into and out of the camp. For example, Tanzanian law allows refugees to leave camps, but only without a radius of four

58. See, e.g., Vincenzo Bove & Tobias Böhmelt, *Does Immigration Induce Terrorism?*, 78 J. POLIT. 572 (2016) (finding that in 145 countries between 1970-2000, an increase in migrant inflows was associated with a decrease in terrorist attacks).

59. For a summary of recent studies, see Anna Flagg, *Is There a Connection Between Undocumented Immigrants and Crime?*, THE MARSHALL PROJECT (May 13, 2019), <https://www.themarshallproject.org/2019/05/13/is-there-a-connection-between-undocumented-immigrants-and-crime> (“Preliminary findings indicate that other socioeconomic factors like unemployment rates, housing instability and measures of economic hardship all predict higher rates of different types of crime, while undocumented immigrant populations do not. Many studies have established that immigrants commit crimes at consistently lower rates than native-born Americans.”).

60. See, e.g., Bove & Böhmelt, *supra* note 58 (finding that in 145 countries between 1970 and 2000, an increase in migrant inflows was associated with a decrease in terrorist attacks); Caglar Ozden, Mauro Testaverde & Mathis Wagner, *How and Why Does Immigration Affect Crime? Evidence from Malaysia*, 32 WORLD BANK ECON. REV. 183, 183 (2018) (finding, in the context of Malaysia, that immigration was associated with a decrease in the rates of both property crime and violent crime between 2003-2010); Tim Wadsworth, *Is Immigration Responsible for the Crime Drop? An Assessment of the Influence of Immigration on Changes in Violent Crime Between 1990 and 2000*, 91 SOC. SCI. Q. 531, 531 (2010) (finding that the American “cities with the largest increase in immigration between 1990 and 2000 experienced the largest decreases in homicide and robbery during the same time period.”).

61. See, e.g., Richard Wike, Bruce Stokes & Kate Simmons, *Europeans Fear Wave of Refugees Will Mean More Terrorism, Fewer Jobs*, PEW RESEARCH CENTER (Jul. 11, 2016), <https://www.pewresearch.org/global/2016/07/11/europeans-fear-wave-of-refugees-will-mean-more-terrorism-fewer-jobs/> (noting that in eight of the ten European countries surveyed by Pew in 2016, “half or more believe incoming refugees increase the likelihood of terrorism in their country.”).

62. Many scholars of international criminal law and transitional justice have criticized overly simplistic accounts that posit false dichotomies between innocence and guilt or between victims and perpetrators. See, e.g., Shana Tabak, *False Dichotomies of Transitional Justice: Gender, Conflict and Combatants in Colombia*, 44 N. Y. UNIV. J. INT. LAW POLIT. 103 (2011) (noting that many individuals are both victims and perpetrators and cannot be easily classified as one or the other); Trudy Govier & Wilhelm Verwoerd, *How Not to Polarize “Victims” and “Perpetrators,”* 16 PEACE REV. 371–377, 371 (2004) (noting that “the labeling of a person as either a ‘victim’ or a ‘perpetrator’ is often an oversimplification” and may counter-productively undermine the objective of post-conflict reconciliation by encouraging “polarized thinking.”).

kilometers.⁶³ Other closed camps, such as Al-Hol, impose severe restrictions on freedom of movement, approaching de facto detention. At the most restrictive end of the spectrum are migration detention centers, which are generally distinguished from closed camps by their reliance on administrative detention (usually ordered by an administrative or judicial authority);⁶⁴ closed camps, on the other hand, confine migrants in conditions that can amount to de facto detention but often lack a legal or administrative basis.

Closed camps are not well-defined or regulated by international law or U.N. policy, and their legality has increasingly been called into question. In 1995, a report by the U.N. Economic and Social Council (ECOSOC) cautioned that “the preconditions of lawful detention of internally displaced persons in closed camps remain unclear” and identified this as “a clear gap in international law.”⁶⁵ The report recommended a “future international instrument” to provide guidance on closed camps. Individual U.N. agencies, particularly UNHCR and IOM, have made some recommendations on the requirements for closed camps under international law, but to date, there is no U.N.-wide guidance on the minimum conditions that closed camps must meet in order to comply with international human rights law or to receive U.N. assistance.

UNHCR interprets international refugee law as allowing states to restrict the freedom of movement of migrants in times of war, emergency, or other grave and exceptional circumstances,⁶⁶ but with some important limitations. According to UNHCR, restrictions on movement must be proportional, non-discriminatory, and time-limited,⁶⁷ although international law does not specify a particular time limit.⁶⁸ International law and U.N. policy also regulate conditions of confinement in closed camps. The International Covenant on Civil and Political Rights (ICCPR) requires that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁶⁹ IOM has advised that migration detention centers, including closed camps, “should not bear similarities to prison-like facilities.”⁷⁰ Furthermore, migrants confined to closed camps are entitled to protection from violence;⁷¹ access to courts, legal

63. HATHAWAY, *supra* note 22, at 863.

64. INTERNATIONAL ORGANIZATION FOR MIGRATION, INTERNATIONAL MIGRATION LAW GLOSSARY ON MIGRATION, 48-49 (2019).

65. U.N. Economic and Social Council, Internally displaced persons, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1995/57, Compilation and analysis of legal norms, U.N. Doc. E/CN.4/1996/52/Add.2 ¶ 156.

66. Convention Relating to the Status of Refugees, *supra* note 4, at arts. 9, 31, 26.

67. UNHCR, *supra* note 5.

68. Sarah Deardoff, “How long is too long? Questioning the legality of long-term encampment through a human rights lens,” Refugee Studies Centre Working Paper No. 54 (2009), <https://www.rsc.ox.ac.uk/files/files-1/wp54-how-long-too-long-2009.pdf> (recommending that the U.N. place specific time limits on long-term encampment to ensure that it is “truly a temporary response to an emergency, rather than a care and maintenance operation that continues for years on end”).

69. International Covenant on Civil and Political Rights, art. 10, Dec. 16, 1966, 999 U.N.T.S. 171.

70. INTERNATIONAL ORGANIZATION FOR MIGRATION, *supra* note 64, at 49 (also noting that “authorities in charge of these facilities should not be security forces; the officials working in these types of facilities should be trained in human rights ... and women should be separated from men.”).

71. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, HANDBOOK FOR THE PROTECTION

assistance,⁷² and grievance procedure to submit complaints to camp authorities;⁷³ the right to identification and personal status documents;⁷⁴ the maintenance of the “civilian nature” of camps by excluding or limiting the presence of security forces;⁷⁵ and the ability to have regular contact with family, friends, religious leaders, and non-governmental organizations by phone, internet, or in-person visits.⁷⁶

Authorities generally justify the establishment of closed camps as necessary to confine large groups of mixed migrants believed to include people who may have a criminal history or present a security risk. In theory, the period of confinement should be temporary, lasting only until authorities complete a “security screening” to identify individuals who may require additional treatment measures, including further investigation, prosecution, or rehabilitation.⁷⁷ Over the course of the screening process, migrants for whom no evidence of criminal liability or security risks can be found should be allowed to leave the camp. However, in the absence of clear international or domestic legal frameworks regulating closed camps, and given the practical challenges of screening large groups of migrants, confinement often continues for months or years, under conditions that amount to de facto indefinite detention.

CONCLUSION

Some residents of Al-Hol have likely committed crimes for which they should be held accountable, and others may present real threats to peace and security. SDF authorities claim to have arrested known and wanted ISIL officials in Al-Hol,⁷⁸ and other unidentified armed actors still at large in the camp have committed numerous murders, arson attacks, and other violent crimes.⁷⁹ But the mass confinement of mixed migrants in closed camps on the basis that some individuals—perhaps a small minority of the total population—may have committed crimes is very difficult to reconcile with the requirements of international law.

In addition to their uncertain legality, closed camps may worsen the security risks that they seek to contain. When migrants are collectively

OF INTERNALLY DISPLACED PERSONS 475 <https://www.unhcr.org/4c2355229.pdf>.

72. U.N. General Assembly, Recommended Principles and Guidelines on Human Rights at International Borders: Conference room paper, U.N. Doc. A/69/CRP.1 19 (July 23, 2014) <https://www.refworld.org/docid/54b8f58b4.html>.

73. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 5, at 31.

74. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 71, at 479.

75. U.N. DEPARTMENT OF PEACEKEEPING OPERATIONS, THE PROTECTION OF CIVILIANS IN UNITED NATIONS PEACEKEEPING HANDBOOK 129, 166 (2020), https://peacekeeping.un.org/sites/default/files/dpo_poc_handbook_final_as_printed.pdf.

76. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 5, at 30.

77. AFRICAN UNION, PILLAR PAPER FOR SCREENING, PROSECUTION, REHABILITATION, AND REINTEGRATION: LAKE CHAD BASIN REGION (2018), <https://www.peaceau.org/uploads/annex-3-lcbc-strategy-pillar-paper-screening-prosecution-rehabilitation-and-reintegration.pdf>.

78. See, e.g., Haya al-Tahrir, *قَسَد تَعْلَن عَر إِقَاء الْقَبْض عَلَى قَاضِي دَاعِشِي فِي مَخِيم الْهَوْل (SDF Announces Arrest Daesh Judge in Al-Hol Camp)*, Deir Ezzor 24 (Mar. 31, 2021), <https://bit.ly/3DGFxrT>; Sura Ali, *SDF arrest Iraqi ‘assassination squad’ in Al-Hol*, RUDAW (Jun. 21, 2021), <https://www.rudaw.net/english/middleeast/syria/21062021>.

79. See *supra* text accompanying note 7.

stigmatized and treated as security threats on the basis of their perceived (but not necessarily actual) association with a criminal group—rather than on the basis of individual liability—under prison-like conditions, in which migrants’ basic humanitarian needs are unmet and their dignity and human rights are regularly violated, the resulting grievances increase the likelihood of criminality and extremism, in a kind of negative feedback loop.

Closed camps raise a number of questions and concerns that are beyond the scope of this Essay, but which would benefit from further study. Although purportedly temporary, closed camps have several features that contribute to their long-term persistence. Some residents of closed camps are unable or unwilling to return to their areas of origin, for reasons including lack of documentation or fear of prosecution; children are being born in closed camps without birth certificates or proof of citizenship, putting them at risk for statelessness; and countries of origin may oppose the repatriation of their citizens. Historically, closed camps were usually intended to serve as transit sites for screening and verifying the identities of migrants in preparation for onward movement, whether repatriation to their countries of origin or application for asylum in the receiving state. But Al-Hol is an example of a closed camp that serves a contrary purpose: containing or “warehousing”⁸⁰ migrants who have nowhere else to go.

Since the ECOSOC called for clarification and regulation of the minimum conditions for lawful confinement in closed camps in 1995, closed camps have become even more common (Figure 1). Although the U.N. has provided some guidance on minimum requirements—including education, healthcare, documentation, and courts, as well as communication and contact with family—these conditions are in practice difficult or impossible to achieve in contexts like Al-Hol, where the U.N. has limited ability to monitor the compliance of camp authorities and has no formal mechanism to hold them accountable for violations. There is a risk that the U.N.’s previous guidance on minimum conditions, if not enforced in camps where the U.N. provides humanitarian assistance, could legitimize indefinite detention and other violations of international law.

Although the closed camp model is fundamentally flawed, there is a spectrum of compliance with the requirements of international law and previous U.N. guidance, and some camps are better than others. In contrast with Al-Hol, which violates almost all of the requirements noted above, a different closed camp in neighboring Iraq, Jeddah 1, which is administered by the Iraqi government with U.N. support to receive Iraqi nationals who have been authorized to return voluntarily from Al-Hol after passing a security screening, comes much closer to complying with these minimum conditions. Jeddah 1 allows for family visits, and its humanitarian nature of the camp has been preserved.⁸¹

80. Merrill Smith, *Warehousing Refugees: A Denial of Rights, a Waste of Humanity*, WORLD REFUGEE SURVEY 38, 38 (2004).

81. U.S. DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF STATE & U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, OPERATION INHERENT RESOLVE LEAD INSPECTOR GENERAL REPORT

Closed camps have become an increasingly common response to mixed migration and are unlikely to be abolished in the near future. Given this reality, the U.N. has an important role to play in monitoring the authorities who administer such camps and advocating for their adherence to minimum human rights and humanitarian requirements. Although there is no formal enforcement mechanism to hold camp authorities accountable, the U.N. can incentivize compliance by imposing conditionalities on assistance to closed camps, as well as by privately and publicly expressing concerns about violations.