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Left Behind and Stateless: The Suffering of Children of ISIS and their Quest for Asylum under International Law

PRATISTHA PRIYADARSHI¹ AND ARUNAV²

ABSTRACT

This commentary delves into the issue of stateless children who are confined at the al-Hol camp in Syria due to their alleged affiliation with ISIS. The main question addressed in this Comment is whether these children, who cannot be charged with terrorist-related crimes and are unable to repatriate, are eligible for asylum under relevant international law, particularly the 1951 Convention on the Status of Refugees and its 1967 Protocol. The Comment argues that the confinement of children at the al-Hol camp violates international human rights law and the rules of war, and that the camp's filthy conditions are not in the best interests of the children. The opposition of Western nations to repatriation leaves these children stateless and ineligible for citizenship. This Comment contends that the foreign children at al-Hol camp meet the criteria for refugee status, as they are being persecuted as a specific social group, defined as "children who lived in the ISIS regime and who do not have the ability to be repatriated to their home country." The Comment concludes by highlighting the ongoing violations of international law at the al-Hol camp, with the children being punished by their home countries, the Syrian government, and the Kurdish administration.

Keywords: *stateless, children, human rights, refugees, ISIS.*

I. INTRODUCTION

In March 2019, ISIS lost its final stronghold in Syria, leading to the defeat of the terrorist organization³. However, there are still thousands of ISIS followers in Syria and Iraq, and over 11,000 male fighters have been incarcerated. Former refugee camps in Syria, Iraq, and Libya have been converted into detention camps for women and children who were affiliated with ISIS⁴. The situation raises legal, political, and ethical questions about what to do with

¹ Author is a student at National University of Law, Ranchi, India.

² Author is a student at National University of Law, Ranchi, India.

³ Rukmini Callimachi, ISIS Caliphate Crumbles as Last Village in Syria Falls, N.Y. Times (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/world/middleeast/isis-syria-caliphate.html>

⁴ Eric Schmitt, Alissa Rubin, and Thomas Gibbons-Neff, *ISIS is Regaining Strength in Iraq and Syria*, N.Y. Times (Aug. 19, 2019), <https://www.nytimes.com/2019/08/19/us/politics/isis-iraq-syria.html>

the thousands of people who had joined ISIS from around the world and now have nowhere to go. The fall of ISIS has also led to a humanitarian crisis in the detention camps housing women and children previously affiliated with ISIS, particularly at al-Hol camp in northern Syria, which is the largest of three camps and has an estimated 63,000 detainees, including 9,000 non-Syrian and non-Iraqi foreigners, and 41,000 children under eighteen, of whom 7,000 are foreign⁵.

The majority of children in al-Hol camp, which includes foreigners from around 50 countries, are under the age of 12. The Kurdish administration has no plans to prosecute the detainees and has urged their home countries to repatriate them. The camp has been in the news due to the lack of humanitarian assistance available to its detainees, resulting in severe malnourishment and limited access to basic resources for women and children. While some detainees have been involved in ISIS-related activities, including women who were avid ISIS followers and children trained by jihadists, not all women and children in the camp were directly involved with ISIS. Some were forced to marry ISIS fighters against their will, while many children had no choice but to follow their parents who joined the group⁶. However, the radicalization of some women and the stigma of the children as terrorists have made repatriation and the delivery of humanitarian aid challenging.

There are various proposed solutions to address the humanitarian crisis at al-Hol camp, including prosecution, citizenship stripping, and repatriation⁷. However, repatriation numbers have been low, leaving foreign women and children effectively stateless and detained indefinitely by the Kurdish administration⁸. This Comment proposes an alternate solution for the detention of foreign children in al-Hol camp, who have the option to repatriate to their home countries. Although this Comment focuses on al-Hol camp due to its international coverage, the proposed solutions apply to other detention camps that house women and children who lived under the ISIS regime. Countries' reluctance to repatriate their citizens makes it difficult to see an end to these detention centres.

This Comment suggests a new interpretation of the existing international law, specifically the 1951 Convention on the Status of Refugees and its 1967 Protocol, to determine if stateless

⁵ Ben Hubbard, Charlie Savage, Eric Schmitt, & Patrick Kingsley, *Abandoned by U.S. in Syria, Kurds Find New Ally in American Foe*, N.Y. Times (Oct. 13, 2019), <https://www.nytimes.com/2019/10/13/world/middleeast/syria-turkey-invasion-isis.html>

⁶ Louisa Loveluck & Souad Mekhennet, *At a Sprawling Tent Camp in Syria, ISIS Women Impose a Brutal Rule*, Wash. Post (Sep. 3, 2019), https://www.washingtonpost.com/world/at-a-sprawling-tent-camp-in-syria-isis-women-impose-a-brutal-rule/2019/09/03/3fcdfd14-c4ea-11e9-8bf7-cde2d9e09055_story.html

⁷ Syria: Dire Conditions for ISIS Suspects' Families, Human Rights Watch (June 23, 2021), <https://www.hrw.org/news/2021/07/23/syria-dire-conditions-isis-suspects-families>

⁸ Id.

children who lived under the ISIS regime and cannot be charged with a terrorist-related crime are eligible for asylum. The aim is to provide an alternative way for these children to gain residency in a foreign country and to end foreign child detention in camps. The focus of this Comment is on children because of the international commitment to protecting their rights. The United Nations has given children special status and protection, considering them a particularly vulnerable group treated with special concern. Therefore, the conclusions of this Comment would be relevant in any country that has ratified the 1951 Convention or its 1967 Protocol.

II. THE AL-HOL CAMP: A HUMANITARIAN CRISIS FOR STATELESS CHILDREN

In this section, the focus is on the detainees of the al-Hol camp, which consists of women and children who were previously living under the ISIS regime. The section highlights the abysmal living conditions at the camp, such as the absence of international aid and organizational presence. The proposed solutions to the situation at the al-Hol camp, including repatriation, prosecution of the detainees, and citizenship stripping, are also discussed. The section emphasizes that the detainees at the camp are victims of a significant

(A) The Detainees

Al-Hol camp in Syria became a detention centre for women and children affiliated with ISIS after the terrorist group's fall in March 2019. The population at the camp increased from around 9,000 people in December 2018 to over 70,000 by March 2019, overwhelming the local camp administration and creating a need for urgent humanitarian assistance. As of January 2020, an estimated 63,000 women and children are detained at the camp, with approximately 9,000 non-Iraqi and non-Syrian women and children housed in a foreigners' annex⁹. The detainees are not allowed to leave the camp freely due to perceived dangerousness, and many women are considered national security threats because of their involvement with ISIS. While some women joined the terrorist group voluntarily, others were coerced.

Many of the children in the camp are orphans who have witnessed and been taught violence. Some children were even employed by ISIS as scouts, spies, cooks, and even suicide bombers. However, a majority of the children had no choice but to live under ISIS, and many were even born into the regime. **The foreign children detained at al-Hol camp likely fall into four categories: those brought by their parents into the ISIS regime, those born**

⁹ Supra 4

into the regime to foreign-born parents, those involuntarily trafficked or forced to be part of ISIS, and those who voluntarily travelled to the regime without their parents. Refugee designation may be available to any child in the first three groups, while the fourth group is at the highest risk of being denied refugee status. The focus of this comment is on the child detainees in the foreigners' annex because foreigners are entitled to citizenship and residence in countries other than Syria and Iraq. The local Kurdish administration is demanding that Western states repatriate their citizens, but determining the nationality of the detainees can be challenging due to their lack of identification and the use of fake identities¹⁰.

(B) Conditions in the camp

The al-Hol camp is facing a shortage of essential supplies, including medicine, food, clean water, and proper sanitation, making conditions unliveable¹¹. The camp is overcrowded, and the foreigners' annex, where foreign women and children are kept, is in worse condition than the rest of the camp. Foreigners face limited mobility, lack of access to medical services and sustenance, and are not allowed to have cell phones or make purchases with internal camp currency. Many children have died due to preventable diseases and malnutrition. The lack of schooling makes children vulnerable to extremist ideologies, and experts worry that the camp could become a breeding ground for terrorism. The presence of ISIS followers in the camp further exacerbates the situation, and unjust punishment could spark an insurgency movement¹². If detainees are not taken back by their countries, there is a fear that women may be further radicalized or absorbed into what remains of ISIS, taking their children along with them. The detention camps are seen as ticking time bombs that need a secure and humane resolution.

(C) International aid and organizations

The fear of providing aid to detainees in al-Hol camp is fuelled by the stigma attached to them as terrorists. Many international donors are reluctant to help due to concerns that they will be seen as supporting terrorist organizations. In addition, some countries have laws that criminalize financial support to individuals linked with terrorist groups. The Assad government's history of weaponizing humanitarian assistance also contributes to aid hold-

¹⁰ *Id.*

¹¹ Vivian Yee, *Guns, Filth and ISIS: Syrian Camp Is 'Disaster in the Making'*, N.Y. Times (Sept. 3, 2019), <http://perma.cc/3E5A-9MP3>.

¹² Nick Cumming-Bruce, *Horrid Conditions in Syria Camp Where ISIS Families Fled Risk Fostering Extremism*, N.Y. Times (Sept. 11, 2021), <https://www.nytimes.com/2021/09/11/world/middleeast/syria-camp-isis-families-islamic-state-extremism.html>

up, with fears that it may exploit the dire conditions in al-Hol camp to pressure Kurdish forces to hand over control. As a result, the lack of humanitarian assistance exacerbates the suffering of the detainees, especially the children. The UNHCR was temporarily blocked from delivering aid to al-Hol camp in early 2019, leaving many residents without shelter for several weeks¹³. Such inhumane conditions in the camp make it a potential breeding ground for radicalization, further exacerbating the situation.

(D) Repatriation efforts

The majority of countries where women and children from al-Hol camp come from have refused to repatriate them due to security threats, complications of nationality certifications, and logistical difficulties. Recently, **India also has refused to allow return of 4 Kerala women who joined Islamic state**¹⁴. Kazakhstan and Kosovo have been willing to repatriate their citizens, but the total number of children repatriated from the camps holding ISIS women and children in northeast Syria remains low. France, Belgium, Germany, Sweden, Norway, the Netherlands, and the US have repatriated some of their citizens but have left many more behind. The withdrawal of the US forces from the Kurdish region in Syria in 2019, followed by Turkey's encroachment into Syrian territory, has added an obstacle to home governments' involvement in repatriating their citizens. Legal challenges have recently arisen in various countries, with detainees and their families challenging their detention in their respective courts¹⁵. A Brussels court ordered the Belgian government to bring back ten children from al-Hol camp within six weeks¹⁶. However, an appeals court in the Hague ruled that the Netherlands is not required to take back approximately ninety children from ISIS. France has rejected the appeals of cases that claimed a right to repatriation.

(E) Prosecution at home

Prosecution at home, under the nationality doctrine of prescriptive jurisdiction, has been proposed as a solution to detention camps, but there are major challenges associated with this approach. Short sentences for those convicted of terrorism in many European countries make it an unpopular solution, and evidence may be hard to find in battlefields, making

¹³ Rigging the System: Government Policies Co-Opt Aid and Reconstruction Funding in Syria, Human Rights Watch (June 28, 2022), <http://perma.cc/8WAH-J92N>.

¹⁴ Suhasini Haider, India unlikely to allow return of 4 Kerala women who joined Islamic State, *The Hindu* (June 11, 2019), <https://www.thehindu.com/news/national/india-unlikely-to-allow-4-kerala-women-who-joined-is-to-return/article60677651.ece>

¹⁵ Letta Tayler, Western Europe Must Repatriate Its ISIS Fighters and Families, *Al Jazeera* (June 21, 2019), <http://perma.cc/HQ6L-VJEH>.

¹⁶ Marine Strauss, Belgium Ordered to Take in 10 Children Born to IS Fighters, *Reuters* (Dec. 12, 2019), <http://perma.cc/KHY7-2F2B>.

prosecution difficult. Additionally, admissibility rules regarding evidence may prevent it from being used in court. Imprisonment may also pose a potential difficulty, as prisons are often an incubator of radicalization¹⁷. Because home prosecutions may be difficult and distrusted, countries seem unwilling to rely on this process to provide meaningful redress for women and children in detention camps like al-Hol.

(F) Stripping of citizenship

Some countries, including the UK and Denmark, have proposed¹⁸ or implemented the stripping of citizenship from nationals or children born to jihadist parents. Critics argue that this practice leaves individuals stateless and without protection, making international cooperation challenging, and eliminates the possibility of rehabilitation, reintegration, and prosecution in their country of citizenship. As of now, there are no documented instances of children being stripped of citizenship, but the potential for this action in the future increases the risk of leaving children without a nationality.

III. INTERNATIONAL LAW AND THE PROTECTION OF STATELESS INDIVIDUALS: ENSURING CITIZENSHIP AND HUMAN RIGHTS

In this section, we will explore the international legal frameworks that pertain to the rights of children, detention, statelessness, and repatriation. By examining relevant laws, we will highlight how the confinement of ISIS children in al-Hol camp and other similar facilities contradicts international law, including significant human rights treaties.

(A) Children under international law

The **Convention on the rights of child** is a treaty that provides comprehensive protection for children worldwide, with 196 states party to it. It defines a child as anyone under the age of eighteen¹⁹ and is based on four principles: non-discrimination, the best interest of the child, the right to life, survival, and development, and the right to be heard. The Convention guarantees various fundamental rights such as protection from abuse, exploitation, and neglect, education, and adequate food and health. The principle of the best interest of the child is the cornerstone of children's rights in international law²⁰. It states that in all actions concerning children, their best interests must be the primary consideration. This principle

¹⁷ Supra 5

¹⁸ Lizzie Dearden, Shamima Begum: Number of People Stripped of UK Citizenship Soars by 600% in a Year, *The Independent* (Feb. 20, 2019), <https://www.independent.co.uk/news/uk/home-news/shamima-begum-uk-citizenship-stripped-home-office-sajid-javid-a8788301.html>

¹⁹ CRC, at art. 1 (“A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”)

²⁰ Jane McAdam, *Complementary Protection in International Refugee Law* 173 (2017)

applies to all children, whether they live in their country of origin or not. The Committee on the Rights of the Child explains that this principle is a substantive right, a legal principle, and a rule of procedure.

The CRC includes provisions for children affected by armed conflict, particularly those used in combat. Article 39 and 40 state that states must support the recovery and social reintegration of child victims of armed conflict in a way that fosters their health, self-respect, and dignity. The CRC also outlines the rights of children involved in armed conflict who are facing prosecution, including the presumption of innocence until proven guilty, the right to have the matter determined by an independent and impartial authority in a timely and fair manner, and the right to privacy. The children at al-Hol camp are vulnerable due to their association with ISIS, either by birth, choice, or influence of their parents. The U.N. recognizes that the exploitation of children by terrorist groups is a severe form of violence against children and is concerned about the welfare of these children.

The children recruited or born into extremist groups like ISIS should be treated as victims according to international law, and children under a certain age are generally not considered capable of making meaningful choices. However, labelling these children as terrorists puts them at risk of being ostracized by their communities. The children at al-Hol camp are already victims due to the international community's failure to remove them from their detention camps.

The U.N. believes that it is justified to recognize children who participated in armed conflict as victims instead of combatants. Doing so would give them access to specific rights that victims of crime are entitled to, such as reparations and rehabilitation. This recognition would also facilitate their reintegration process. The U.N. has emphasized that children should be treated primarily as victims and that there should be a presumption against their prosecution²¹. Even in cases where children are accused of crimes related to terrorist organizations, non-judicial measures, rehabilitation, and reintegration should be prioritized to protect their best interests. If the international community recognized these children as victims instead of terrorists, it could fundamentally change how the world perceives and responds to their situation.

As of 2022, the children of ISIS in al-Hol camp are being denied the four fundamental rights guaranteed to all children worldwide by the CRC. The principle of non-discrimination is not being upheld as foreign children are being discriminated against when compared to Iraqi and

²¹ Supra 14

Syrian children who have greater access to resources in the camp. The right to survival and development is being ignored with a high number of preventable child deaths. The children's right to be heard is being disregarded as they have had little success in appealing their detention. Detention in a squalid camp without education and increased risks of radicalization cannot be regarded as being in the best interest of any child. The camps in al-Hol violate other rights of children such as the right to protection from abuse, exploitation, and neglect, the right to education, and the right to adequate food and health.

Two issues regarding children in al-Hol camp are child-sensitive age assessment and cross-border cases. Due to the Syrian civil war and lack of documentation, it is difficult to determine the age of children in the absence of a birth certificate. This may lead to states trying children as adults rather than presuming they are under eighteen and trying them as minors. However, the U.N. recommends that serious efforts should be made to determine the age of children while respecting their dignity. In cases where there is no conclusive determination by a judge, public officials should treat the young person as a child if they claim or appear to be younger than eighteen. The CRC is violated by detaining children of ISIS, current detention conditions, and the lack of return possibilities.

(B) The legal basis of detention

This passage discusses the international legal basis for detention, specifically regarding the detention of women and children at al-Hol camp in Syria due to their perceived connection to ISIS. During peacetime, international human rights law allows detention when it is necessary to protect national security, public order, public health or morals, or the rights and freedoms of others²². However, the detention of children at al-Hol camp violates international human rights law, specifically the International Covenant on Civil and Political Rights, as detention of children should be a measure of last resort and for the shortest period possible. The law of armed conflict, which applies during wartime, allows states to detain those reasonably suspected of threatening state security, without affording them judicial guarantees. Although the Kurdish administration claims that the detention of women and children is lawful preventive detention because the detainees are a national security threat, the U.N. Human Rights Committee has explained that in situations where the law of armed conflict applies, international human rights law acts as a complement to it. Thus, even if international armed conflict law is used to rationalize al-Hol camp, national security

²² U.N. Human Rights Comm., General Comment No. 35 on Article 9 (Liberty and Security of the Person), U.N. Doc.

concerns do not invalidate ICCPR guarantees.

During peacetime, international human rights law allows detention for reasons such as protecting national security or public order, but it must not be arbitrary and must respect the rule of law²³. Detention should only be carried out on an individual basis and with all basic rights of the detained upheld, including judicial review. The Kurdish administration's claim that detaining women and children at al-Hol camp is necessary for national security may be considered lawful preventive detention, but international human rights law prohibits detaining family members of an alleged criminal who have not been accused of wrongdoing. Therefore, the detention of children at al-Hol camp violates international law, specifically the ICCPR.

During wartime, the law of armed conflict permits states to detain individuals reasonably suspected of posing a security threat without judicial guarantees. The War on Terror, although not an international armed conflict as defined by the Geneva Convention, has been used as a basis for creating detention centres where the international law of armed conflict applies. This law allows states to detain anyone reasonably suspected of posing a security threat until the circumstance justifying detention ceases to exist or until the end of hostilities. The Kurdish administration can claim that the detention of foreign women and children at al-Hol camp is lawful under the international law of armed conflict until hostilities with ISIS end. However, the U.N. Human Rights Committee has explained that international human rights law acts as a complement to the law of armed conflict, and the two cannot openly disregard each other. Although the relationship between the two bodies of law is unclear, it is evident that international armed conflict law must not ignore the requirements of major international human rights treaties, such as the ICCPR.

National security concerns do not override the guarantees provided by the ICCPR, even if international armed conflict law is invoked to justify the detention at al-Hol camp. Unfortunately, detaining children due to security concerns has become a common practice. However, according to **Article 37 of the CRC**, detention of children should only be used as a last resort and for the shortest possible period. Children in detention should have access to facilities that promote their health and dignity. The limited use of detention is crucial due to the negative impact it has on children's development, which includes an increased risk of exposure to violence, stigmatization, and a negative effect on their overall wellbeing.

²³ Monica Hakimi, *International Standards for Detaining Terrorism Suspects: Moving Beyond the Armed Conflict-Criminal Divide*, 33 *Yale J. Int'l L.* 369, 370 (2008).

According to international law, child detention should be a last resort and should be respectful of the dignity and special needs of the child. Even when detention is necessary, not all children have the capacity to commit crimes, and there is no requirement to criminalize association with a terrorist group. The detention of children at al-Hol camp violates international norms on the proper way to detain children, and the squalid conditions at the camp demonstrate that the children are not being treated with dignity and respect. Syria claims that its detention camps are used to incapacitate those who pose a threat to national security and not as punishment, but preventing families from leaving the camps is considered collective punishment and violates the laws of war. Therefore, the situation at al-Hol camp must be remedied, as national security concerns do not override the guarantees set out in the ICCPR and CRC, and the negative effects of detention on children's development are well-established.

The Kurdish administration has stated that they will not prosecute the foreign children in al-Hol camp, who are being held indefinitely without any future trials. The reality is that some of these children, who are regarded as victims by the U.N., are being detained without posing a threat to national security. Detaining children for political reasons violates both international human rights and the law of armed conflict. The detention of children shows a disregard for their rights and illegitimate national security goals.

(C) Stateless persons law/right to nationality

Stateless persons are among the most vulnerable and oppressed people in the world. **The right to a nationality is a basic human right guaranteed to all under the Universal Declaration of Human Rights (UDHR)²⁴, the ICCPR²⁵, and the CRC²⁶. Furthermore, the 1954 Convention Relating to the Status of Stateless Persons²⁷ and the 1961 Convention on the Reduction of Statelessness²⁸ expounds rights for stateless people and seeks to limit state practices that leave someone stateless (for example, stripping citizenship from someone who is not a dual citizen). The detainees at al-Hol camp in Syria are at risk of becoming stateless, either de jure or de facto, if their home countries formally strip them of citizenship or prevent their return. While countries have the authority to determine a person's nationality, their decision must comply with human rights obligations, including the**

²⁴ Universal Declaration of Human Rights, art. 15,

²⁵ CCPR, at art. 12 (“[N]o one shall be arbitrarily deprived of the right to enter his own country.”).

²⁶ CRC, at art. 7 (asserting that children have a right to nationality)

²⁷ Convention Relating to the Status of Stateless Persons, June 6, 1960,

²⁸ Convention on the Reduction of Statelessness,

prohibition of arbitrary deprivation of nationality²⁹. However, many countries argue that national security concerns justify the de facto statelessness of children born to ISIS parents. Nonetheless, international law treats these children as victims and not terrorists, so denying them their right to nationality violates the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the 1961 Statelessness Convention. The Convention recommends treating de facto stateless persons as de jure stateless wherever possible to enable them to acquire an effective nationality. Western governments must do more to prevent statelessness and ensure that the children of al-Hol camp are not denied their right to nationality.

(D) Repatriation

International law, including **Article 13 of the Universal Declaration of Human Rights**, **Article 12 of the International Covenant on Civil and Political Rights**, and the **1951 Refugee Convention**, recognizes the right to repatriation or the right to return. This principle obligates governments to allow their citizens to return home, and the UN Human Rights Committee has stated that deprivation of this right is rarely justifiable. **Repatriation is also recognized under customary international law, particularly in the context of human rights**³⁰. The obligation to protect the right to return applies equally to children, as outlined in **Articles 7 and 8 of the Convention on the Rights of the Child**. The duty to protect the right to nationality is not being fulfilled by states with citizens at al-Hol camp, particularly with respect to the speediness required to prevent statelessness. While repatriation would end the humanitarian crisis for foreign children at al-Hol camp, the slow response of states to repatriate children necessitates the exploration of alternative solutions. One potential solution is to consider the children of ISIS for asylum under international refugee law.

IV. FROM CAMPS TO SAFETY: PROTECTING CHILDREN OF ISIS UNDER INTERNATIONAL REFUGEE LAW

This section discusses how international refugee law, particularly the 1951 Refugee Convention, can offer protection to foreign children at al-Hol camp. It argues that these children meet the criteria for asylum because they are being persecuted as a particular social group, namely "children who lived in the ISIS regime and who do not have the ability to be repatriated

²⁹ Supra

³⁰ Akram & Rempel, The Right to Return Under International Law Following Mass Dislocation: The Bosnia Precedent?, 19 Mich. J. Int'l L. 1091, 1121 (1998).

to their home country". The refusal of their home countries to repatriate them and the mistreatment they experience in the detention camp means they are eligible for refugee status under international law, even though repatriation would be the preferred solution.

(A) The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol

The 1951 Refugee Convention Relating to the Status of Refugees is the most important international treaty regarding refugee protection. This Convention defines the term "refugee," establishes the right to non-refoulement, and addresses government responsibilities towards the protection of refugees. The 1967 Protocol is foundational to refugee rights as it removes the temporal and geographic limitations present in the original 1951 Refugee Convention. As of 2015, 145 countries were parties to the 1951 Refugee Convention, 146 to the Protocol, and 142 to both the Convention and the Protocol. Regional mechanisms also exist that provide various refugee protections in different parts of the world.

The 1951 Refugee Convention sets obligations for countries to determine refugee status and to provide protection if it is feasible. **In non-signatory countries, UNHCR often conducts Refugee Status Determination through its mandate "to address protection gaps."**³¹ International human rights law, international humanitarian law, and international criminal law also provide complementary protection to refugees worldwide. Relevant treaties include the UDHR, the Convention Against Torture, the CRC, the ICCPR, the International Covenant on Economic, Social, and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women. The 1951 Refugee Convention defines a refugee as someone who is unable or unwilling to return to their country of origin, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. UNHCR's Executive Committee Conclusion No. 107 emphasizes the importance of protecting the fundamental rights of children and recommends various steps to uphold these rights.

The 1951 Refugee Convention provides a distinction between refugees with a nationality and those that are stateless. Internally displaced persons (IDPs) do not meet the definition of refugees. UNHCR strongly recommends states to treat foreign refugee children within their jurisdiction in a way that upholds these international protections. The 1951 Refugee Convention does not disadvantage stateless people from becoming refugees just because they do not have a nationality. It differentiates the standard for refugees and stateless people, allowing both to qualify as refugees.

³¹ U.N. High Comm'r for Refugees, UNHCR Resettlement Handbook 76 (2011), <http://perma.cc/RMG2-LQBT>

For stateless people, a well-founded fear of persecution (linked to any of the five convention grounds) is what must be present, no matter if it is in the state of nationality or if it is in the state where the stateless person is residing. For the children at al-Hol camp, who are de facto stateless, one of the two types of persecution they face is not in their home country but rather at the hands of their home country. Therefore, the 1951 Refugee Convention does not disadvantage stateless people from becoming refugees just because they do not have a nationality.

V. APPLYING INTERNATIONAL REFUGEE LAW TO THE CHILDREN AT ALHOL CAMP

Although rendering children stateless or refugee designation may not be the best solution for the humanitarian crisis, when countries fail to repatriate their children and leave them with no means of return, it may be necessary to consider such actions. It is unacceptable to allow political stigmas to endanger vulnerable children.

(A) The refugee definition outside his or her country of origin

The Convention requires refugee status to be residing outside of one's country of origin, and the foreign children at alHol camp meet this standard. The children are located in Syria, which is where they would make their claim of asylum, even if Syria does not have the capabilities to provide safe refuge. In such a case, third-country resettlement can be done by UNHCR, allowing refugees to avail themselves of the protection they are entitled to.

(B) The refugee definition well founded fear

To demonstrate a well-founded fear of persecution for asylum, refugees must show an objective and subjective standard. For children in al-Hol camp, the objective criteria for persecution come from their home countries' failure to withdraw them and the Kurdish administration's violation of international law by detaining them without fair trials. The subjective criteria are hard to quantify but is likely met by children's experiences of violence and discrimination, inadequate living standards, and the realization that they are unwanted by their home countries³². Thus, the children of ISIS are experiencing a well-founded fear of persecution.

(C) The refugee definition: persecution

The definition of persecution is not specifically defined in the 1951 Refugee Convention, but the Council of the E.U. provided a non-exhaustive list of acts that can be considered persecution. Persecution can be committed by state or non-state actors, and it is regarded as the sustained or systemic denial of basic human rights that demonstrate a failure of state

³² James C. Hathaway & Michelle Foster, *The Law of Refugee Status* 91 (2d ed. 2014).

protection. The children of ISIS face persecution from their home countries, which render them stateless and put them at a higher risk of persecution. The Kurdish administration and Syrian government are also persecuting the children by implementing unlawful administrative detention centres in a discriminatory manner, violating international detention standards and failing to meet the three benchmarks for lawful detention. As a result, the detention by the Kurdish administration amounts to persecution.

(D) Article 1(F) exceptions

Article 1(F) states that the Refugee Convention: *shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he/she committed a crime against peace, a war crime, or a crime against humanity . . . (b) he/she has committed a serious non-political crime outside the country of refuge . . . (c) he/she has been guilty of acts contrary to the purposes and principles of the U.N.*²⁷⁴.

Although some of the foreign children at the al-Hol camp may have been involved with ISIS, they may still qualify for refugee status under the 1951 Refugee Convention. The Convention states that refugee status can be denied for those who have committed terrorist-related crimes, but there are exceptions for former combatants and children who committed crimes before reaching the age of criminal responsibility and with the **necessary mental capacity**. The younger the child, the less likely they are to have had the necessary mental capacity. The international community treats children who were part of terrorist organizations as victims rather than perpetrators. **Former combatants who have permanently renounced military activities can also apply for asylum**. It is unclear if any children at the al-Hol camp would need to demonstrate that they do not qualify for the Article 1(F) exception in order to gain refugee status, as no mention of children pledging allegiance to ISIS has been reported.

(E) Article 33(2) exception

The majority of foreign children detained in al-Hol camp are eligible for refugee status, even under Article 1(F) exceptions. States may argue that it is unsafe to take in children associated with ISIS, but they cannot use a blanket policy to deny all detained children the right to asylum without individual assessments of their situations. International duty to uphold children's rights outweighs state security interests unless it is demonstrably proven that a child poses a danger to the country's security. If children are not charged as terrorists through a fair trial, they should be presumed as victims entitled to international protection as refugees. Resettlement logistics are not discussed, but *Article 33 allows states to divest themselves of protection obligations in cases of safety and security concerns*.

(F) Family separation

While granting refugee status to children of ISIS may have negative consequences, such as family separation, it is important to consider the best interests of the child. The CRC recognizes the right of a child not to be separated from their parents against their will, except when it is in the child's best interests. **The argument that relocating a child without considering the legal status of their mother may violate the CRC is weak**, as it implies that any time a child and mother are detained for an indefinite time, family separation would be a lawful option to protect the child. A stronger response would be to consider **Articles 20 and 22 of the CRC**. These articles address the right to "special protection and assistance" for children who are temporarily or permanently deprived of their family environment or cannot remain in it due to their best interests. The conditions at al-Hol camp pose severe health risks, lack of education, and constant exposure to ISIS followers, even if the mother is innocent. Alternative care, such as foster placement or placement in suitable institutions, is allowed when a child's present environment is not conducive to their best interest. Article 22 mandates states with refugee children to trace the child's parents or any family members that may be found. The CRC provides a helpful avenue for once a child receives refugee status. Every state in the world except the U.S. is required to attempt family reunification for refugee children, so granting refugee status to al-Hol camp children would provide a way for them to leave the camp and potentially reunite with family members.

VI. CONCLUSION

The al-Hol camp in Syria is the largest of the detention camps where women and children associated with ISIS are being held after the group's territorial defeat in 2019. The conditions at the camp have led to international outcry due to the lack of basic resources like food, water, and medicine. The Kurdish administration, which runs the camp, has no intention of prosecuting the detainees and has repeatedly asked their home countries to repatriate them. However, most Western countries have either repatriated only a few detainees or denied repatriation due to national security concerns, leaving thousands of children detained indefinitely.

This situation violates both the law of armed conflict and international human rights law, as children are being detained solely because of their perceived link to ISIS. This is a violation of their rights and a sacrifice of their well-being in favour of illegitimate national security goals³³. Furthermore, the lack of repatriation is preventing the children from exercising their

³³ Supra 24.

right to nationality and their right to return, leaving them de facto stateless.

The 1951 Refugee Convention grants protection to people who have a nationality and to the stateless. The children of ISIS who are de facto stateless are eligible for asylum under international law when their home countries refuse to repatriate them. These children are being persecuted as a particular social group by their home countries who refuse to repatriate them, and by the Syrian government and the Kurdish administration.

Even though family separation might seem like a shortcoming of the proposed solution, the CRC specifically allows for states to find alternate care when a child's environment is not conducive to their best interests. The uninhabitable conditions, lack of education, constant exposure to extremist views, and indefinite detention at al-Hol demonstrate that children's best interests are not being met at the camp. However, the CRC mandates that states must try to reunify children with other family members if they are relocated or separated from their parents, so qualifying as a refugee would be a way for children to leave al-Hol and be reunited with their families.

Granting refugee status to children who qualify under international standards would provide them with a way to gain residency in another country and escape indefinite detention in squalid conditions. This proposed solution offers an alternative to the problems presented by al-Hol camp, which is acting as an illegal collective punishment for children associated with ISIS.
