

Table of Contents

Chapter 1: Introduction	1
A. The elements of encampment	2
B. The role of international law	4
C. Methodology	6
D. Contemporary issues of law and encampment	11
E. The limits of this study	14
 Chapter 2: Population	 17
A. Status of camp inhabitants	18
I. Asylum seekers	19
1. Asylum status and procedure	20
a) Arrival and registration	21
b) Adjudication of the asylum claim	23
c) Appeals procedures	25
d) Exceptional asylum procedures	26
2. Asylum accommodation	28
a) Germany: The AnkER system	28
aa) Initial reception centers	29
bb) Collective accommodation centers	29
cc) AnkER centers	30
b) Greece: EU hotspot system	31
aa) Greek mainland	32

bb) Greek islands	33
cc) EU-Türkiye statement	33
dd) Multi-purpose reception and identification centers	35
3. Asylum seeker protection	36
II. Refugees	37
1. Procedure and status	38
a) Elements of refugee status	39
b) Refugee status determination procedure	40
2. Refugee accommodation	41
a) Jordan: The Zaatari camp system	42
b) Kenya: The Dadaab camp system	44
3. Refugee protection	46
a) Layers of attachment	47
b) Standards of treatment	47
c) Refugee protection beyond the 1951 Refugee Convention	48
III. Immigration detainees	49
1. Immigration detention schemes and procedure	50
a) Immigration detention schemes	50
b) Immigration detention procedure	51
2. Immigration detention infrastructure: USA	53
a) CBP processing centers	55
b) ICE detention centers	55
c) ORR immigration detention shelters	56
3. Immigration detainee protection	57
B. Procedural and family rights	58
I. Refugee identity papers	59
1. Scope of Article 27 Refugee Convention	60
a) Personal scope of Article 27 Refugee Convention	60
b) Substantial scope of Article 27 Refugee Convention	62
2. Interference with Article 27 Refugee Convention	62

3. Justification of interferences with Article 27 Refugee Convention	65
II. Access to courts and legal assistance	66
1. Access to courts	67
a) Personal scope of the right of access to courts	68
b) Substantial scope of Article 14 (1) ICCPR: “suit at law”	69
c) Substantial scope of Article 14 (1) ICCPR: equal access to courts	72
d) Substantial scope of Article 16 (1) Refugee Convention	73
e) Restricted access to the courts in the asylum process	76
2. Assistance with access to courts	76
a) Personal scope of Article 16 (2) Refugee Convention	77
b) Substantial scope of Article 16 (2) Refugee Convention	78
III. Family rights	79
1. Family unity	80
a) Personal scope of family-related rights	81
b) Substantial scope of Article 17 ICCPR: “family”	82
c) “Arbitrary or unlawful interference” with Article 17 ICCPR	83
d) Justification of interferences with Article 17 ICCPR	83
2. Family reunification	84
a) Article 17 ICCPR: affirmative steps to family reunification	85
b) Article 9 Convention on the Rights of the Child: “best interests of the child”	87
C. Status precarity	90
I. The ICCPR and non-citizen issues	92
II. Effects of the concept of citizenship	97

III. Judicial and family protection	99
D. Summary: Personal dimensions of encampment	101
Chapter 3: Segregation	103
A. Camp segregation	104
I. Allocation of land	104
II. Duty of camp residence	107
III. Level of containment	109
1. Open encampment	109
2. Radius containment	111
3. On-site containment	113
B. Liberty and security rights	116
I. Freedom from arbitrary detention	117
1. Personal scope of the right to freedom from arbitrary detention	118
2. Substantial scope of the right to freedom from arbitrary detention	119
3. Interference with the right to freedom from arbitrary detention	120
4. Justification of interferences with the right to freedom from arbitrary detention	121
a) Article 9 (1) ICCPR: principle of legality	122
b) Article 9 (1) ICCPR: non-arbitrariness	122
c) Article 31 (2) Refugee Convention: necessity	130
d) Article 31 (2) Refugee Convention: regularization	133
II. Non-penalization for illegal entry	134
1. Personal scope of Article 31 (1) Refugee Convention	135
2. Substantial scope of Article 31 (1) Refugee Convention	138
3. Interference with Article 31 (1) Refugee Convention	140

III. Freedom of internal movement	141
1. Scope of the right to freedom of internal movement	142
a) Personal scope of the right to freedom of internal movement	142
b) Substantial scope of Article 12 (1) ICCPR	144
c) Substantial scope of Article 26 Refugee Convention	144
2. Interference with the right to freedom of internal movement	145
3. Justification of interferences with the right to freedom of movement	146
a) Article 12 (3) ICCPR: permissible purposes	147
b) Article 12 (3) ICCPR: necessity and proportionality	148
c) Article 26 Refugee Convention: aliens generally in the same circumstances	150
d) Article 26 Refugee Convention: principle of equality	151
IV. Right to life	152
1. Scope of the right to life	153
a) Personal scope of Article 6 (1) ICCPR	154
b) Substantial scope of Article 6 (1) ICCPR	154
2. Interference with the right to life	155
3. Justification of interferences with the right to life	155
V. Torture, Cruel, Inhuman, or Degrading Treatment	159
1. Scope of Article 7 ICCPR	160
a) Personal scope of Article 7 ICCPR	160
b) Substantial scope of Article 7 ICCPR	160
2. Interference with Article 7 ICCPR	164
a) Cruel or inhuman treatment or punishment	164
b) Degrading treatment or punishment	168
VI. Right to liberty and security	170
1. Significance of the right to security of person	170

2. Scope of the right to security of person	172
a) Personal scope of Article 9 (1) ICCPR	172
b) Substantial scope of Article 9 (1) ICCPR	173
3. Interference with the right to security of person	173
a) Systematic exposure to physical harm	173
b) Systematic exposure to psychological harm	176
4. Justification of interferences with the right to security of person	177
C. Spatial precarity	179
I. Security rights in the Refugee Convention	180
II. Liberty rights in the Refugee Convention	181
III. Derogation from liberty and security rights in the ICCPR	183
IV. The ICCPR's lawfulness-unlawfulness bias	186
V. The effects of States' territorial jurisdiction	192
D. Summary: Spatial dimensions of encampment	196
Chapter 4: Administration	199
A. Actors of encampment	200
I. Host State	200
II. International Organizations	203
1. Legal status of UNHCR in international law	204
2. Legal character of UNHCR "cooperation agreements"	207
a) UNHCR-host State cooperation	207
b) UNHCR cooperation with other international organizations	208
3. The role of regional organizations	209
III. Non-State actors	211
1. NGO "implementing partners"	212
a) Legal status of NGOs in international law	213
b) Legal character of UNHCR-NGO "partnership agreements"	214

2. Private companies	216
B. Socio-economic rights	218
I. General limitations	219
1. Progressive implementation	220
2. Non-discrimination standard	221
3. “Developing countries” clause	223
II. Adequate shelter	224
1. Scope of the right to adequate shelter	225
a) Personal scope of Article 11 (1) ICESCR	225
b) Substantial scope of Article 11 (1) ICESCR	226
2. Interference with the right to adequate shelter	228
3. Justification of interferences with the right to adequate shelter	230
III. Food and water	233
1. Right to food	233
a) Scope of the right to food	234
aa) Personal scope of Article 11 (1) ICESCR	234
bb) Substantial scope of Article 11 (1) ICESCR	235
b) Interference with the right to food	236
c) Justification of interferences with the right to food	236
2. Right to water	239
a) Scope of the right to water	240
aa) Personal scope of the right to water	240
bb) Substantial scope of the right to water	240
b) Interference with the right to water	241
c) Justification of interferences with the right to water	242
IV. Healthcare	244
1. Scope of the right to healthcare	245
a) Personal scope of Article 12 (1) ICESCR	245
b) Substantial scope of Article 12 (1) ICESCR	246
2. Interference with the right to healthcare	247

3. Justification of interferences with the right to healthcare	251
V. Work and employment	255
1. Access to work	255
a) Scope of the right to access to work	256
aa) Personal scope of the right of access to work	256
bb) Substantial scope of Article 6 ICESCR	258
cc) Substantial scope of Article 17 (1) Refugee Convention	258
dd) Substantial scope of Article 18 Refugee Convention	259
b) Interference with the right to access to work	259
c) Justification of interferences with the right to access to work	260
aa) Justification of interferences with Article 6 (1) ICESCR	261
bb) Justification of interferences with Article 17 (1) Refugee Convention	262
cc) Justification of interferences with Article 18 Refugee Convention	263
2. Fair working conditions	265
a) Scope of the right to fair working conditions	266
aa) Personal scope of the right to fair working conditions	266
bb) Substantial scope of the right to fair working conditions	267
b) Interference with the right to fair working conditions	268
c) Justification of interferences with the right to fair working conditions	269

VI. Education	271
1. Primary education	272
a) Scope of the right to primary education	273
aa) Personal scope of the right to primary education	273
bb) Substantial scope of Article 13 (2) (a) ICESCR	274
cc) Substantial scope of Article 22 (1) Refugee Convention	275
b) Interference with the right to primary education	276
c) Justification of interferences with the right to primary education	278
aa) Justification of interferences with Article 13 (2) (a) ICESCR	278
bb) Justification of interference with Article 22 (1) Refugee Convention	279
2. Secondary and other education	280
a) Scope of the right to secondary and other education	282
aa) Personal scope of the right to secondary and other education	282
bb) Substantial scope of Article 13 (2) (b)–(d) ICESCR	282
cc) Substantial scope of Article 22 (2) Refugee Convention	284
b) Interference with the right to secondary and other education	284
c) Justification of interferences with the right to secondary and other education	285
C. Administrative responsibility	287
I. Accountability of host States	288
1. Applicability of the general ASR rules	289

2. Attribution of conduct to the host State	292
a) State organs	293
b) Para-Statal entities	294
c) Ultra vires conduct	296
d) Private persons	297
3. Breach of an international obligation	298
a) Minimum standard of international aliens law	299
b) International human rights and refugee law	303
4. Circumstances precluding wrongfulness	305
a) Force majeure	305
b) Distress	307
c) Necessity	308
5. Consequences of State responsibility	309
II. Accountability of international organizations	311
1. Applicability of the general ARIO rules	312
2. Attribution of conduct to the organization	313
a) Organs and agents of the organization	314
b) Seconded organs or agents	316
c) Ultra vires conduct	316
3. Breach of an international obligation	318
a) Minimum standard of international aliens law	319
b) International human rights and refugee law	320
c) Rules of the organization (UNHCR Statute)	322
4. Circumstances precluding wrongfulness	324
5. Consequences of organizational responsibility	327
III. Accountability of non-State actors	330
D. Socio-economic precarity	331
I. Implementation of the ICESCR	332
II. The ICESCR and non-citizens	336
III. Socio-economic safeguards in the Refugee Convention	337
IV. Effectiveness of the responsibility regime	342
E. Summary: Administrative dimensions of encampment	343

Chapter 5: Duration	349
A. Length of encampment	350
I. Termination of encampment	350
II. Protraction of encampment	353
III. Solutions to encampment	357
1. “Voluntary repatriation” schemes	357
2. “Local integration” efforts	361
3. “Resettlement” programs	364
B. Solution-related rights	367
I. Right to return	368
1. Scope of the right to return	368
a) Personal scope of Article 12 (4) ICCPR	369
b) Substantial scope of Article 12 (4) ICCPR	371
2. Interference with the right to return	371
3. Justification of interferences with the right to return	372
II. Non-Refoulement	374
1. Scope of the duty of non-refoulement	376
a) Personal scope of the duty of non-refoulement	376
b) Substantial scope of Articles 6 and 7 ICCPR	377
c) Substantial scope of Article 33 (1) Refugee Convention	378
2. Interference with the duty of non-refoulement	381
3. Justification of interferences with the duty of non-refoulement	386
a) No justification of interferences with non-refoulement under the ICCPR	386
b) Justification of interferences with non-refoulement in the 1951 Convention	387
aa) Article 33 (2): Danger to security of the country	387

bb) Article 33 (2): Conviction of a particular serious crime	391
III. Cessation clauses	393
1. Repatriation	394
2. Voluntary re-establishment	399
3. Naturalization	402
4. Resettlement	405
C. Temporal precarity	409
I. The ICCPR and solution-related rights	410
II. Cessation rules in the Refugee Convention	411
III. Effects of external State sovereignty	414
IV. Solution-related protection	421
D. Summary: Temporal dimensions of encampment	422
Chapter 6: Final summary and outlook	425
A. Core findings of the study	425
B. Outlook: alternatives to encampment	435
Bibliography	447