

BEYOND GUANTÁNAMO: RESTORING THE RULE OF LAW TO THE LAW OF WAR

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Background

- The facility opened in 2003, housing indefinite law-of-war detainees
- The facility was designed to house suspected terrorists without affording them the legal protections offered by U.S. domestic law
- UN Special Rapporteur conducted an independent investigation of Guantánamo, finding that detainees are held indefinitely and experience human rights violations such as torture
- Of the detainees that have been charged, most have been in pretrial hearings for over a decade. Three detainees have never been charged with a crime, but are not approved to be transferred or released.

Key Research Findings

- The detainee population has decreased in recent years (from nearly 800 to 30)
- A lack of changes in domestic laws (such as the NDAA) make closure of the facility extremely difficult
- Current discourse focuses largely on the deteriorating health conditions of detainees and the legacy of the torture program enacted by the U.S. government
- Our research focused in particular on the legality of indefinite detention, identifying violation of domestic and international law perpetrated by the U.S. government at the facility
- We also worked to identify international standards for lawful detention

Conclusions

- Roadblocks still remain in the form of defense spending laws that prevent closure of the facility
- Ethics issues arise for those charged through military commissions
- Pursuing plea bargains with remaining detainees likely offers the best path forward for achieving convictions and resolving indefinite detention
- The Biden administration should pursue widespread declassification relating to the RDI program and detainee treatment.
- Uncharged detainees should be either charged or transferred