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EDITED AND REVIEWED BY
Jane Freedman,
Université Paris 8, France

*CORRESPONDENCE
James C. Simeon
✉ jcsimeon@yorku.ca
Sorpong Peou
✉ speou@torontomu.ca

RECEIVED 13 May 2025
ACCEPTED 14 May 2025
PUBLISHED 02 June 2025

CITATION
Simeon JC and Peou S (2025) Editorial: War
and asylum. *Front. Hum. Dyn.* 7:1628167.
doi: 10.3389/fhumd.2025.1628167

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Editorial: War and asylum

James C. Simeon^{1*} and Sorpong Peou^{2*}

¹School of Public Policy and Administration, Faculty of Liberal Arts and Professional Studies,
McLaughlin College, York University, Toronto, ON, Canada, ²Department of Public Policy and
Administration, Toronto Metropolitan University, Toronto, ON, Canada

KEYWORDS

war, armed conflict, asylum, refugees, international law, international humanitarian law,
international criminal law, international refugee law

Editorial on the Research Topic War and asylum

Although much has been written about the plight of refugees and legal means or mechanisms designed for their protection, the question remains: Why has the number of refugees worldwide continued to rise, and have they enjoyed better protection? There are no easy answers. This Research Topic, thus, gives close attention to the relationship between war and asylum. This topic still requires further exploration regarding how best to protect refugees in wartime.

Undoubtedly, the Research Topic of “*War and asylum*” is still most relevant today, as it directly impacts both global and international communities at their core. All those seeking any semblance of international justice must consider the question of the relationship between these two significant subjects, “war” and “asylum.” Keeping in mind, of course, that the use of force, at least *de jure*, is strictly limited under the *United Nations Charter*.¹ And that one of our most fundamental human rights is to be able to seek asylum from persecution.² Indeed, it is also worth noting that “war” itself, has been illegal in international law since 1928.³

Still, one of the most significant challenges to humanity today is how to end and prevent organized political violence that contributes to the ever-growing tidal wave of refugees. Some argue that much of the success in ending political violence in the form of mass atrocity has less to do with the hand of justice and more to do with the use of force. However, history shows that reliance on force alone is not the best answer, since this coercive method carries many risks.⁴

1 United Nations, *Charter of the United Nations*, October 24, 1945, 1 UTS XVI. <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> (accessed May 5, 2025), see Articles 1(1), 2(3), (4), (5), 6, 39, 51 (see Wood, 2013).

2 General Assembly, United Nations, (1948), *Universal Declaration of Human Rights*, Resolution, A/RES/217(III). Article 14(1), “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

3 Kellogg-Brand Pact 1928, The Avalon Project, Yale Law School, Lillian Goldman Law Library, https://avalon.law.yale.edu/20th_century/kbpact.asp (accessed May 5, 2025); US Department of State, Office of the Historian, “The Kellogg-Brand Pact, 1928,” <https://history.state.gov/milestones/1921-1936/kellogg> (accessed May 5, 2025).

4 Peou (2025, 2022).

Efforts to end the wars of our time and build peace prove elusive. While the relationship between war and asylum may be obvious, it is worth bearing in mind that some 56 armed conflicts are taking place worldwide today, the most since the end of the Second World War.⁵ At the same time, the worldwide levels of forced displacement also hit new highs.⁶ The estimated number of those forcibly displaced by the United Nations High Commissioner for Refugees (UNHCR) was 122.6 million at the end of June 2024.⁷ These figures have been increasing year-over-year for the last dozen years.⁸ The obvious conclusion to be drawn here is that as the number of armed conflicts and wars increases, so too will the number of those who will be forcibly displaced. War and armed conflict are, undeniably, the primary drivers of asylum.⁹

5 Vision of Humanity, "Global Peace Index, "Highest number of countries engaged in conflict since World War II," undated, <https://www.visionofhumanity.org/highest-number-of-countries-engaged-in-conflict-since-world-war-ii/> (accessed May 4, 2025). The distinction between war and armed conflict is important and relevant. Armed Conflict is the broader term that is used in International Humanitarian Law (IHL). See the International Committee of the Red Cross (ICRC), *How is the Term "Armed Conflict" Defined in International Humanitarian Law?* International Committee of the Red Cross Report, Opinion Article, 2024, Chapter 1, Introduction, p. 5. https://www.icrc.org/sites/default/files/document_new/file_list/armed_conflict_defined_in_ihl.pdf (accessed May 9, 2025). "Declarations of war" are seemingly antiquated and rarely, if ever, used today for reasons that are outlined below. Both terms are employed here for thoroughness and comprehensiveness.

6 United Nations, UN News, Global perspective on Human stories, "Worldwide levels of forced displacement hit new high: UNHCR," June 12, 2024, <https://news.un.org/en/story/2024/06/1150981> (accessed May 4, 2025).

7 UNHCR, The UN Refugee Agency, "Figures at a glance." <https://www.unhcr.org/about-unhcr/overview/figures-glance#:~:text=How%20many%20refugees%20are%20there,more%20important%20than%20ever%20before> (accessed May 4, 2025).

8 UNHCR, Global Trends, June 2024, <https://www.unhcr.org/global-trends> (accessed May 4, 2025).

9 UNHCR, Press Releases, "UNHCR: Forced displacement continues to grow as conflicts escalate," 25 October 2023, <https://www.unhcr.org/news/unhcr-forced-displacement-continues-grow-conflicts-escalate> (accessed May 5, 2025); European Commission, European Civil Protection and Humanitarian Aid Operations, "Forced Displacement: Refugees, asylum seekers, and internally displaced persons (IDPs)," undated, https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/forced-displacement_en (accessed May 5, 2025). Wherein it states, "Almost three in four refugees (73%) originated from just five countries: Afghanistan, Venezuela, Syria, Ukraine, and Sudan." All of these countries have been embroiled in war and armed conflict for years, save Venezuela which is a special case. See Christopher Sabatini, "Don't call what is happening in Venezuela a civil war. Citizens are rising up against an oppressive government, not against one another." *FP*, August 2, 2024, <https://foreignpolicy.com/2024/08/02/venezuela-election-dispute-maduro-opposition-protests/#:~:text=Venezuela%20has%20been%20polarized%20almost,popular%20presidential%20candidate%2C%20Edmundo%20Gonz%C3%A1lez> (accessed May 5, 2025).

What is also apparent is that wars and armed conflicts give rise to gross human rights violations that amount to grave international crimes such as war crimes, crimes against humanity, genocide, ethnic cleansing, torture, and the crime of aggression, just to name some of the most prominent international crimes.¹⁰ These gravest human rights violations, which amount to serious international crimes, are the triggers for mass forced displacement from active war zones and/or areas of armed conflict. It is relevant and significant to point out that 90 percent of those killed in wars and armed conflicts are civilian non-combatants.¹¹ People flee wars and armed conflicts for the most obvious reasons: to save their lives, find liberty, and ensure personal security.¹²

The four articles published on this Frontiers' Research Topic examine this topic from various perspectives and at different angles. They range from an analysis of the application of the principles of international criminal law to international refugee law, the impact of the war in Ukraine on EU migration, the use and abuse of forced displacement and migration as a weapon of war, to the protection of civilians in the data-driven and digitized battlespace. The articles are diverse and explore the Research Topic in novel ways and from interdisciplinary and multidisciplinary vantage points such as law, philosophy, war studies, international relations, sociology, labor studies, political science, global studies, and refugees and forced migration studies. A brief synopsis of these four articles that cover this vitally important Research Topic follows.

The first article, "*The use and abuse of forced migration and displacement as a weapon of war*," by Simeon, lays a conceptual framework for this Research Topic, establishing a relationship between war and asylum. The author examines how contemporary warfare has utilized forced displacement to advance military objectives. Three case studies on genocide are examined: Bosnia, Rwanda, and the Syrian Civil War, with the Sieges at Homs and

10 Amnesty International, "Armed Conflict," undated, <https://www.amnesty.org/en/what-we-do/armed-conflict/> (accessed May 4, 2025). While ethnic cleansing is not recognized formally in international criminal law *per se*, and is subsumed, typically, under war crimes, crimes against humanity, and genocide. It is still found generally in public international law and, indeed, is included, famously, within the UN's official Responsibility to Protect (R2P) doctrine. United Nations, Office on Genocide Prevention and Responsibility to Protect, "Definitions of Genocide and Related Crimes," <https://www.un.org/en/genocide-prevention/definition#:~:text=Ethnic%20Cleansing-,Background,Croatian%20expression%20E2%80%9Cetni%C4%8Dko%20%C4%8Di%C5%A1%C4%87enje%20%9D> (accessed May 9, 2025). In addition, see the European Commission, Migration and Home Affairs, "ethnic cleansing," https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/ethnic-cleansing_en (accessed May 9, 2025).

11 United Nations, Meetings Coverage and Press Releases, Security Council, "Ninety Per Cent of War-Time Casualties are Civilians, Speakers Stress, Pressing Security Council to Fulfil Responsibility, Protect Innocent People in Conflict." SC/14904, 25 May 2022, <https://press.un.org/en/2022/sc14904.doc.htm> (accessed May 4, 2025).

12 World Vision, From the Field, Sevil Omer, "Forced to flee: Top countries refugees are coming from," June 21, 2024, <https://www.worldvision.org/refugees-news-stories/forced-to-flee-top-countries-refugees-coming-from> (accessed May 5, 2025).

Aleppo. The article is drawn from Mary Kaldor's "new war" thesis and Kelly Greenhill's conceptual notion and study of "coercive engineered migrations" that one State employs to gain advantage and pressure target States. Simeon's examination of these three case studies leads to a formulation of the theoretical proposition of an "endless cycle of war" that is premised on the assertion that the three largest organized international criminal activities: smuggling and trafficking in drugs, arms, and people, are dependent and a byproduct of war and armed conflict. Accordingly, any prospect of achieving "sustainable peace" would be contingent on the simultaneous addressing of not only an end to armed conflicts and wars but also these highly lucrative international criminal activities.

The Research Topic offers some insight into how victims of war, most notably refugees, are protected without allowing their victimizers to enjoy any refugee protection status. Two key legal principles under discussion that mark the intersection between international criminal law and international refugee law—extended liability and exclusion provisions—first come to mind. Extended liability refers to individuals who commit serious international crimes, such as war crimes or crimes against humanity, who can be held liable for crimes beyond their direct actions. In international refugee law, exclusion provisions prevent serious international criminals from obtaining refugee status.

Rikhof's article, "The influence of international criminal law on refugee law," highlights the two legal principles or concepts. Rikhof analyzes the interplay of the concepts developed in International Criminal Law (ICL) on war crimes and crimes against humanity and the two concepts that play a crucial role in international refugee law, specifically, the 1951 *Convention relating to the Status of Refugees*. Article 1F, the so-called exclusion clauses, of the 1951 Refugee Convention requires the application of international instruments in defining "a crime against peace, war crimes, and crimes against humanity."¹³ Rikhof concludes that these ICL concepts only became prominent after the emergence of the United Nations international criminal tribunals and the International Criminal Court and the adoption of the 1998 *Rome Statute*.¹⁴ This led Common Law countries to adopt a new test for exclusion, "voluntary, personal, and significant contribution," followed by a factor approach. In contrast, Civil Law countries had developed their unique test for extended liability with little reference to ICL.

This Research Topic further deals with refugee protection during wartime. Guild and Groenendijk provide an in-depth analysis of "The impact of the war in Ukraine on EU migration." The focus of their article is on the EU's special protection scheme for Ukrainians and non-Ukrainians who were resident in the country when the Russian Federation invaded Ukraine on February 24, 2022. The legal basis of this scheme was the 2001 Temporary Protection (TP) directive. The article examines the status rights of the TP beneficiaries and the challenges that will arise for them and the EU as the war continues. Guild and Groenendijk reach positive

conclusions concerning the EU application of the TP directive, noting that the EU has demonstrated its capacity to receive millions of refugees in a single year. While secondary movement has been a concern under the EU's Common European Asylum System (CEAS), it has been set aside in this instance, with the surprising result that few TP beneficiaries have moved to other EU States. The outstanding concern remains, given the protracted nature of the Russian aggression against Ukraine, how to provide TP beneficiaries with long-term protection and security of residence.

This Research Topic offers additional insight into how civilian non-combatants can be better protected in a world where war is also waged by digital means. Professors Fitz-Gerald and Hennebry consider advancing the "Protection of civilians in a data-driven and digitized battlespace: toward a baseline humanitarian technology infrastructure." The thesis advanced in this article is that today's wars and armed conflicts are driven by "rising trends of hybrid threats and irregular warfare which employ emerging technologies supported by digital and data-driven processes." The net effect of these developments is to widen the battlefield and increase the number of civilian non-combatants caught in conflicts. While humanitarian agencies have adopted these technologies to protect civilian non-combatants, the international community has yet to address the challenges of formulating the necessary data protection standards and using emerging digital technologies to protect civilians caught in the conflict zones.

What is called for is the development of "supporting guidelines for a 'minimum basic technology infrastructure' for humanitarian operations and protecting civilians," premised on a three-pillared approach of "technology, regulation, and digital literacy and education." The UN has a vital role to play in supporting States in the development of domestic legislation compatible with their treaty obligations and with the implementation of the "Global Digital Compact (2024)" that supports International Humanitarian Law by way of promoting responsible digital governance and ensuring the ethical application of technological means in conflict and crises.

In short, these four articles provide valuable insight into the relationship between war and asylum, which is established in emerging academic literature and still requires further exploration to ensure that genuine refugees receive proper and adequate protection. We are confident that this Research Topic will be informative to the public and to policymakers and contribute meaningfully to further stimulating the academic and policy debate on this critically important Research Topic.

Author contributions

JS: Writing – original draft, Writing – review & editing. SP: Writing – review & editing.

Conflict of interest

The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

¹³ *Convention relating to the Status of Refugees*, Geneva, 28 July 1951, in force 22 April 1954, 1989 UNTS 137. See Article 1F (a), (b), and (c).

¹⁴ UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), ISBN No. 92-9227-227-6, UN General Assembly, 17 July 1998, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> (accessed May 5, 2025).

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