

Japan's Refugee Policy

From Post-World War II to Present Day

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Looking back on Japan's Refugee Policy immediately after World War II is meaningful not only from the chronological aspect, but also from the standpoint of its formation, which has been influenced by the new Japanese Constitution. The significance lies in the relation between the spirit of refugee protection and principles of the Constitution.

The protection of refugees, which is declared in the Universal Declaration of Human Rights and the Convention relating to the Status of Refugees, has been closely related to this principle of respect for human rights. It is necessary to discuss further details of relevance between refugee protection and respect for human rights.

Refugee protection can be defined as a safeguard for those who fled into other countries because they have been in imminent danger of being persecuted or deprived of freedom in their homelands. They are entitled to access protection outside their countries where no obligation exists.

Although refugee protection and human rights protection are not exactly the same, their similarities and connections can help the human rights protection to come to completion. Using this point, it is understandable that refugee protection is linked with the principle of human rights protection connected to the new Japanese Constitution enacted after World War II. Therefore, it is right to assert that a refugee policy or system, which had never been stipulated in the new Japanese Constitution, should have been legitimized in order to protect refugees. However, in reality, the principle regarding the protection of refugees was not ever explicated,

nor was the policy proposed.

In general, Japanese people have been the least likely to be aware of refugee issues. Only a small number of Japanese showed interest in the 1951 UN Refugee Convention. The indifference toward refugee affairs continued in Japanese society until May 1975, when the arrival of Vietnamese asylum seekers was reported. Today, the Japanese attitude toward refugee protection still remains passive, which has affected the implementation of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugee within Japan.

Historically, the government of Japan has taken a relatively restricted approach to the protection of refugees. In fact, the government refused to accept Russian asylum seekers who fled the Russian Revolution of 1917 and who were under Russian refugee protection policy, the first international coordination on refugee affairs. Moreover, at the end of the 1930s, many Jewish people left their countries because of oppression from the Nazi regime. Some of them, who were safeguarded by the international protection policy, escaped to Japan, but their application for refugee status was denied.

A few exceptions were asylum seekers given refugee status in Japan because of a governmental plot: the government wanted financial aid from Jewish financial cliques for invading foreign lands to promote Japanese colonization. It was extremely rare, but some political activists from Asian countries received refugee status from the Emperor of Japan by his imperial prerogative

A Chronological Table: Japan and Refugees

- 1917:
Due to the Russian Revolution, many White Russians fled into other countries, including Japan.
- At the end of 1930s:
A great number of Jewish asylum seekers crossed international borders in order to escape from being persecuted by Nazi Germany. Some of them came to Japan.
- 1951:
The UN Convention Relating to the Status of Refugees was adopted.
- 1975:
Vietnamese asylum seekers arrived in Japan.
- 1978:
Japan established refugee policy to accept Indochinese refugees for political reasons.
- 1981:
The government of Japan signed the UN Convention Relating to the Status of Refugees, and revised the Immigration Control Law.
- 1982:
In accordance with the UN Convention, Japan decided to provide both a child allowance and National Pension Plan, regardless of nationality.
- 2001:
In the aftermath of 9/11, many Afghan refugees were detained. Some committed suicide.
- 2002:
In May, television news reported the incident of North Koreans who sought asylum in the Japanese Consulate General in Shenyang but were taken into custody by Chinese police.
- 2003:
Kurdish refugees held a 72-day sit-in protest in front of the United Nations University in order to ask for recognition of refugee status.
- 2004:
In the 2004 revision of the Law on Refugee Recognition, Permission for Provisional Stay and a new Panel of refugee examination counselors were introduced.

— for political reasons. It was a time when individual rights were ruled by the Emperor under the old Japanese Constitution. That is, establishing refugee protection policy based on the principle of respect for human rights was unreasonable for the Japanese government. Although the guarantee of fundamental human rights by the new Japanese Constitution came into effect after World War II, the Japanese government continuously showed slight intention to systemize refugee protection policy.

Why has Japan kept refugee issues at a distance? Traditionally, public awareness of human rights has remained very low in Japanese society. Many Japanese people have been unsympathetic toward human rights, especially the rights of foreigners living in Japan. This is a reasonable explanation: the society's unawareness of human rights has resulted in the persistent unresponsive manner of the Japanese government.

The incident of Vietnamese asylum seekers arriving in Japan in 1975 provided the Japanese government with incentives to move into the policy-making phase for refugees. It brought about a crucial sequence of refugee affairs.

Right from the start, this was not a spontaneous demeanor; the government set out the system for Indochinese refugees in response to strategic demands from the US and requests from the United Nations High Commissioner for Refugees (UNHCR). In the beginning, a limited number of refugees were accepted, but the total of admissions grew yearly as the control was relaxed. In the end, 10,000 refugees were approved. Nevertheless, the system had some loopholes: Japan considered the Indochinese refugees as not meeting the criteria of the 1951 Convention and the 1967 Protocol, but were qualified as refugees by Cabinet approval. Their status determination was doomed at the administration's discretion.

In a second development, various problems emerged when Japan became a signatory to the 1951 Convention and the

1967 Protocol in 1981 and put these into operation in the following year due to intense foreign pressure. The treaty urged Japan to provide social security benefits and administrative treatment for refugees. The treatment was more favorable than that for Zainichi Koreans and Chinese, most of whom were descendants of those who had no choice but to migrate to Japan from the then Japan-colonized Korean Peninsula and Chinese Continent. Thus, the government was driven to boost fair treatment for the foreigners living in Japan as much as possible.

Thirdly, the operation of refugee protection needs interdisciplinary teamwork, but Japanese administrative offices have conventionally had a hierarchical structure; that is, each office was practicing refugee protection procedures inconsistently and independently. This is illustrated by the case of the Justice Ministry: the Ministry was solely responsible for recognition of refugee status and immigration control, not for other arenas, including social welfare for refugees. The tasks were allotted by the Immigration Control and the Refugee Recognition Act early in 1982 in accordance with adaptation of the 1951 Convention and the 1967 Protocol.

In carrying out the Act, there were some concerns regarding the new duties of recognizing refugees being assigned to the Immigration Bureau of the Ministry of Justice. This office had mainly been in charge of regulating illegal immigrants and overstayed visas, not of recognizing refugee status, which requires a thorough comprehension in terms of human rights protection of arrivals. For this reason, society was apprehensive that the office was becoming too strict in authorizing refugee status of refugee because of its emphasis on immigration control.

The misgivings came to a reality: the refugee status determination system in Japan was excessively restricted in its process and criterions. The system aimed at expelling unlawful newcomers rather than protecting them. Applications for refugee status were

never accepted after the deadline, and those who did not turn in their applications were mercilessly sentenced to deportation. Even though illegal arrivals applied for recognition as refugees, they were still treated as unlawful entrants. In those conditions, deportation procedures were started parallel to their application for refugee status; many were forced into exile while awaiting the Ministry's decision. With notification of a rejection, they were allowed to file an objection. However, chances of a successful claim appeared very slim because the system had authorized the Minister of Justice, who rejected the first application for refugee status, to examine the appeal. The system was apparently ineffective in terms of the function of protecting refugees. Courts recognized the fact, but often approved a decision on person's status based on the inquiry by the Immigration Bureau.

In 2004, the Immigration Control and the Refugee Recognition Act was amended resulting from mounting public criticism of its legalistic approach. However, substantial defects have remained intact in the 2004 revision. The Immigration Bureau still has the initial authority to recognize refugee status. The new system has not been changed to adopt the highly skilled experts needed to improve refugee status recognition procedures; as of today, inexperienced or untrained general officers at the Immigration Bureau have been managing the system. The UNHCR has offered guidelines regarding refugee status determination, based on its own experiences, to governments; both the Immigration Bureau and courts in Japan have turned their backs on the UNHCR advice and clung to the Japan's conventional restricted system standards.

The fundamental function of the Justice Minister having prerogative to determine whether to grant refugee status in response to an objection filed by an applicant against the rejection of the refugee status, has not been altered. Yet there is a slight progress in the current system from the perspective

that a new refugee examination counselor has been introduced to go over objections and to advise the Justice Minister on refugee status determination. Counselors of the panel must be appointed from other administrative agencies, including the Justice Ministry. For proper election of the panel members, who ought to be profoundly professional, the Diet decided to ask the UNHCR or NGOs supporting refugees for assistance in the course of revising the system in 2004. Yet the request has not been enforced.

Currently, the panel has to rely on data which was collected by refugee inquirers in the first screening process and which brought about the disapproval of refugee status in the first place. Otherwise, each counselor needs to make a judgment based on her/his knowledge. Furthermore, because the panel has consisted of three professionals, it is crucial to elucidate how the Minister of Justice hands down a final decision when there are discrepancies over the refugee status determination among counselors.

The Permission for Provisional Stay was introduced under the revised Immigration Control and the Refugee Recognition Act to provide asylum seekers with temporary legal

status if they apply for refugee status. In this system, they are allowed to stay, at the very least, until the final decision is made. While the outcome of their asylum application is pending, all deportation procedures can be suspended. The system is absolutely necessary to secure human rights as a precondition of refugee status determination procedures. This seemingly brought progress, but there still are some gray areas, including work permits for those who are granted the Permission for Provisional Stay.

The Justice Minister is now able to give protection through Special Resident Permission on humanitarian grounds to those who did not meet the refugee criteria, as well as general foreigners. We can foresee that the present system will possibly become more flexible to protect a wide range of people, but on the other hand, we need to realize that there is the downside: the Justice Minister has the sole right and discretion to determine the grant of Special Resident Permission. It is essential to monitor very closely how the Minister exercises her/his authority in the system.

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