

ASYLUM SEEKERS IN JAPAN: A HARD ROAD

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Abstract

Japan has ratified the 1951 Convention regarding the status of Refugees and the 1967 Protocol relating to the Status of Refugees since 1981 and 1982, yet Japan only accepted an exceptionally low number of refugees in the course 30 years since it ratified the Convention. Japan needs to closely revise and align its national policies with international agreements that it is signatory to. The main framework with which Japan's government still tackles the issue of refugees is tightly restrained by its overall controlling immigration policies in an attempt to remain a homogenous nation. Japan has a long way to go in order to fully comply with the spirit of the Convention, the Protocol, and international instruments relating to the Status of Refugees.

Keywords: *status of refugees convention and protocol, asylum seekers, Japan.*

Intisari

Jepang telah meratifikasi Konvensi Mengenai Status Pengungsi 1951 dan Protokol tentang Kedudukan Pengungsi 1967 sejak tahun 1981 dan 1982, namun Jepang hanya menerima sejumlah kecil pengungsi dalam kurun waktu 30 tahun sejak diratifikasinya konvensi tersebut. Jepang harus meninjau kembali dan memastikan bahwa kebijakan-kebijakan nasional negaranya telah sesuai dengan perjanjian internasional yang telah ditandatangani Jepang. Kerangka kerja pemerintah Jepang dalam menangani isu pengungsi sangat dibatasi oleh berbagai pengetatan kebijakan imigrasi yang dikeluarkan dalam semangat mempertahankan homogenitas bangsa. Jepang memiliki banyak pekerjaan rumah yang harus dilakukan agar dapat memenuhi semangat konvensi, protokol, dan berbagai instrumen internasional terkait status pengungsi.

Kata Kunci: konvensi dan protokol kedudukan pengungsi, pencari suaka, Jepang.

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A. Introduction

Currently, momentous events around the world increasingly involve international migration in different aspects, and a defining feature of the age of migration is most definitely the challenge that it poses to sovereignty of states all around the world.¹

Several theories have come to play when trying to explain the causes and consequences for such people movements, especially considering the way in which some states feel their national identity and control threatened by this inflow of newcomers. But what happens when people flows are not just a matter of choice in movement but are rather provoked by insecurity, persecution or lack of freedom of any sort? In some countries, political instability leading to chaotic governance, authoritarian ruling and even genocide persist, and are main factors in making people leave their own nations. This displacement of people has happened before and the international community has taken steps to safeguard the wellbeing of such people. In this respect, drawing upon the 1948 United Nations Declaration of Human Rights and the overall objective that all human beings are entitled to fundamental rights and freedoms, and based on articles 3 and 14(a), the 1951 Convention regarding the Status of Refugees and the 1967 Protocol on the matter are paramount international regulations to be followed by signatory countries. Among these countries we find Japan, joining the latter both agreements in the early 1980's, after a pressing internal situation affecting Indo-China, the international community exerted Japan to comply in helping Indo-Chinese displaced people due to political revolts in their countries in the 1970's.² This was the first experience Japan had in terms of refugees and they saw the need to regulate

the issue at hand; in 1981 Japan ratified the 1951 Convention related to the Status of Refugees and in 1982 the 1967 Protocol relating to the Status of Refugees.³

Ever since, Japan has only granted refugee status to less than 10% of the number of applicants up until 2005, and there is still some doubts as for the actual number that even get to apply to the status, since Japan upon point of entry immediately deports them without filing their petition.⁴ It is this fact that will be addressed in the development of this paper.

Regarding the structure of the paper itself, in a first instance the Convention and Protocol will be revised in main points of interest. However, its compliance will not be addressed since under the strict law, these provisions are reserved to refugee status holders alone. On a second section, Japan and its history with refugees will be looked upon; within this section, a description of the application process to attain the status of refugee in Japan will be provided, and finally, some conclusions will be drawn concerning their compliance to the accords taking into account both the actual and lawful compliance to them and also if they are aligned with the spirit under which they were created.

B. Discussion

1. 1951 Convention and 1967 Protocol on the Status of Refugees

The 1951 Convention was an international legal instrument conceived by the United Nations in order to tackle the situation of thousands of displaced people after World War II. This instrument entered into force in 1954, and by 1992 had 110 signatory countries worldwide. This instrument was born under the need to con-

¹ Meryll Dean, "Japan: Refugees and Asylum Seekers", <http://www.unhcr.org/refworld/docid/43f4a4b94.html>, retrieved on 5 January 2011.

² Jeff Kingston, "Refugees and Japan: Diplomat Rues Tokyo's 'Lack of Humanity' to Asylum-Seekers", <http://search.japantimes.co.jp/cgi-bin/jf20070708x1.html>, retrieved on 12 January 2011.

³ United Nations, "International Migration Report 2006: A Global Assessment", http://www.un.org/esa/population/publications/2006_MigrationRep/Profiles_country.pdf, retrieved on 12 January 2011.

⁴ Meryll Dean, *Loc.cit.*

ceptualize the status of refugees internationally and set out the norms under which they would fall under. The aim was to have a tool which would define, regulate and protect such people in distress. However, this Convention had a deadline for its applicability. It stated that people falling under this categorization were only to be those affected by events before 1 January 1951 in an attempt to limit the responsibilities of signatory countries to the events taking place at the time.⁵ In light of this restriction, the United Nations developed a complementary but independent instrument, the 1967 Protocol relating the Status of Refugees. In this document the provisions for the recognition of the status of refugees leave aside the time constraints affecting the former mentioned Convention and, therefore, enable the recognition and protection of refugees emerging from new world scenarios. The former can be illustrated by the following definition of who qualifies as a refugee, taken from paragraph (2), section A of the General Provisions of Chapter I of the Convention:⁶

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

This serves to prove the need for an additional instrument to include and protect people affected by such kind of events after the deadline exposed in the original Convention. This definition stands in force until this day except for that amendment.

Chapter III of the Convention pertaining to Gainful Employment in its Article 17, paragraphs 1 and 2, state on Wage-earning Employment that:⁷

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions: (a) He has completed three years' residence in the country. (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse; (c) He has one or more children possessing the nationality of the country of residence.

Although this and the following mandates of the Convention exposed in this section of this research paper strictly apply to people that have been granted the status of refugee, the spirit of its creation was to build a sensible environment of protection and facilitation of the fulfillment of the lives of those being persecuted in their homelands. In this sense, the restrictive measures undertaken by the Japanese government hinder this aspect of the lives of those seeking asylum. In the same manner, article 26 of Chapter V on Freedom of Movement states that: "Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances." When referring to asylum

⁵ United Nations, "UNCHR", <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d58e13b4&query=handbook%20on%20procedures%20and%20criteria>, retrieved on 25 November 2010.

⁶ 1951 Convention.

⁷ *Ibid.*

seekers,⁸ this provision is neglected in Japan. Those undergoing the process of recognition of status of refugee are restricted in their movement, even in short distances.⁹

On Chapter V of the Convention, article 31 on Refugees Unlawfully in the Country of Refuge, it states:¹⁰

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Notwithstanding the aforementioned, the Japanese Government, due to its very rigid and controlling immigration policy reserves and exercises its right to detain any illegal foreigner within Japanese territory, even when in the middle of asylum-seeking petition process in any of its stages,¹¹ as it is illustrated in the case of the Iranian national Jamal Saberi and the existence of detention facilities and centers. Saberi has spent a total of two years incarcerated in three separate occasions in immigration detention centers, out of

the ten years that he has been applying for refugee status in Japan. On another matter suffered by the same applicant, before he was issued a “permit for provisional release” -after a high-profile international campaign- he first had to pay ¥500,000 for the bond which has to be renewed every month.¹² This clearly fails to comply with the principle of non-punishment. Once again, the author reminds the readers that in strict rigor, this is a measure that refers to people with the status of refugee.

Another relevant provision to the development of this paper is that concerning article 33 on Prohibition of Expulsion or Return (Refoulement): “1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” According to the aforementioned, Japan complies with the Convention in the strict sense; however, it appears to fail in remaining faithful to the spirit of the article in that the prior process to asylum petitioning is impeded by government officials at ports-of-entry either by neglect or ignorance of the tools available for such purposes.¹³ In order to further detail the noncompliance of the Japanese government of article 33, there are several cases to be exposed. One of them involved the Nagoya District Court and is the case of an applicant from Myanmar, who in a former instance had failed to comply with the 60 days rule to proceed with the refugee petition procedure and was issued a deportation order. The Court declared the ruling to be upheld but also ruled that the man fulfilled the criteria to obtain

⁸ The terms asylum seeker and refugee are two separate concepts, although they are commonly used interchangeably. However, in this paper the difference will be made between them. Asylum seekers will denote the person who is applying to obtain the refugee status, while Refugee will address the person who has already attained this status.

⁹ For more detail please refer to the Japan Times, “Decade-long Wait Takes Toll on Asylum Seeker”, <http://search.japantimes.co.jp/print/f20101005zg.html>, retrieved on 12 January 2011. <http://search.japantimes.co.jp/print/f20101005zg.html>, retrieved on 12 January 2011.

¹⁰ 1951 Convention.

¹¹ The major stages in the asylum-seeking process are: first instance “Application” or Shinsei; second instance “Appeal” or Igemushitate and finally, the “Administrative Litigation” or Saiban. For more detailed information on the process’ structure please refer to UNCHR Representation in Japan and their information for Asylum-Seekers in Japan, dated December 2005 at the following website: www.unchr.or.jp/protect/seekers/index.e.html.

¹² The Japan Times, *Loc.cit.*

¹³ Meryll Dean, *Loc.cit.*; United States Committee for Refugees and Immigrants, “World Refugee Survey 2004, Country Report”, www.refugees.org/countryreports.aspx?subm=&ssm=&cid=123, retrieved on 12 January 2011.

the status of refugee, stating that to deport him would have been a noncompliance of article 33 of the Convention, revoking his deportation.¹⁴ This is to show the lack of legal cohesion among the different state parties involved in the refugee status process, and the particular eagerness of terminating the processes before they even start.¹⁵ On another cases, a very controversial and internationally known case was that of two UNHCR “mandated” refugees in 2005. Until January of that year, Japan had complied with this article under the legal provisions exposed in the Convention. However, the Japanese government deported two Kurdish asylum seekers on that date appealing to the differences in conferring asylum held between the Japanese government and UNHCR, positing that they were not in breach of international law. UNHCR appealed to the humanitarian nature of the Japanese government exposed in the readily and frequent humanitarian assistance provided by Japan to countries and peoples in need, but the deportation was upheld.¹⁶ Even before that, in 2004 Japan failed to protect other asylum seekers from Turkey by means of sending an investigative committee to Turkey and the region from which many asylum seekers came from, submitting their report to the Tokyo District Court, and as a result, they endangered the wellbeing of the petitioners and their families as they were exposed to Turkish authorities.¹⁷ Although it is stated in the Convention that all parties have the sovereignty to assess the petition of an asylum seeker and the UNCHR has no formal role in the determination process, it is also stated that all State parties should work in effective cooperation with the United Nations High Commissioner for Refugees in that it is charged with the task of supervising international

conventions for the protection of refugees, as exposed in the preamble of the Convention.

On article 34 regarding Naturalization, the Convention states that:¹⁸

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

On this issue Japan has gradually changed its naturalization laws insight of the aging and decreasing population. In fact, Japan grants citizenship rather easier than conferring permanent residence status. Still, Japan maintains a very rigid incorporation laws based on the myth of mono-ethnic notions of their race.

In revising further instruments available related to the Convention and the Protocol, a handbook created by UNHCR states the following. According to Mousalli, former Director of International Protection of the Office of the United Nations High Commissioner for Refugees and the handbook developed by the United Nations pertaining Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, both accords are based on three main provisions:¹⁹

- (i) Provisions giving the basic definition of who is (and who is not) a refugee and who, having been a refugee, has ceased to be one.
- (ii) Provisions that define the legal status of refugees and their rights and duties in their country of refuge. -It is stated that although not influencing the process of determination of the status of refugee, the entrusted authority should be aware of such provisions since the decision taken may have far-reach

¹⁴ *Ibid.*

¹⁵ For more cases reviews please refer to a 1993 report of the Amnesty International: Amnesty International, “Japan: Inadequate Protection for Refugees and Asylum-seekers”, *International Journal of Refugee Law*, Vol. 5, No. 2, pp. 205-239.

¹⁶ Meryll Dean, *Loc.cit.*

¹⁷ *Ibid.*, For further detail on this, please also refer to an online article of the Japan Times, also mentioned in Dean’s analysis: Masami Ito, 9 April 2005, “Tokyo Told Turkish Cops about Kurd Now in Detention”, <http://www.japantimes.co.jp/text/nn20050409b2.html>, retrieved on 12 January 2011.

¹⁸ 1951 Convention.

¹⁹ United Nations, *Loc.cit.*

effects on the lives of the applicant and his/her family.-

(iii) Other provisions dealing with the implementation of the instruments from the administrative and diplomatic standpoint.

In light of this assessment this instrument provides the notions related to the tools at hand to reach a comprehensive and integral understanding of the Convention and the Protocol addressed in this paper. This handbook was created with the intention of further deepening the knowledge and reaches of these instruments on the part of the officials involved in the process of acquiring refugee status.

With all the aforementioned legally binding provisions exposed in the Convention and the Protocol that were addressed in this section, we now move forward to depicting the historical process undertaken by Japan before and after its accession to both instruments relating to the status of refugees. The objective is to set the grounds for a comprehensive understanding of the course of action taken by Japan regarding this matter.

2. Japan and Asylum Seekers

Japan has always have been perceived as a closed country. Without going any further it remained closed for two centuries as a protective measure against the outside world before the Meiji Restoration.

The late accession to the Convention and Protocol has its roots in that Japan had historically been a country of emigration. This, along with the fact that in Japan one of the most protected and passed-on notions is one of homogeneity and mono-ethnic conceptions among its people, shaping the Japanese government and society into perceiving the incoming of outsiders as representing a major threat to its construction and as such it remains to be used by the government until nowadays.

Notwithstanding the above, Japan did have a period of expansionism that took place before World War II. Even under this period of “conquest”, Japan remained to have a considerably low number of foreign nationals so insignificant that the government did not feel the need to address the issue, let alone even consider the matter of refugees.²⁰ Even under the event of the Convention, Japan felt that this had been created to tackle a very specific situation affecting only Europe and felt no part in it.

However, in the 1970’s the situation in the Asian region changed due to political instability in Vietnam, Laos and Cambodia -Indo-China-. This environment generated a number of refugees coming from this area to Japan. The government’s position was to address the issue as futile one, thinking that these displaced people were only on transit to third destinations. Nonetheless, this shed light into the fact that Japan didn’t have a policy in place to address the situation. Under this scenario and due to international pressures Japan developed a policy based action to tackle the entrance of the displaced Indo-Chinese people, creating CAP –Comprehensive Plan of Action-. Under this political umbrella Japan accepted 10.941 Indo-Chinese refugees since 1978 until 2002 that do not directly refer to refugees as recognized by the Convention but rather fall into the political categorization of CAP.²¹ Consequently, Japan only acceded the Convention in 1981. It is important to say that the Japanese government has provided durable policies and measures to ensure the wellbeing of a large number of Indo-Chinese, and that until this date it has a Division specially dealing with their situations in Japan, as a result, in 1982, the Japanese Immigration Act was revised to implement the Refugee Convention, being again revised in 2004.²² The changes mainly involved

²⁰ Most of the foreign nationals mentioned to in this section refer to Koreans and Chinese, forcibly taken to Japan. See Meryll Dean, *Loc. cit.*

²¹ *Ibid.*

²² Japan Association for Refugees, “Refugee Protection in the New Era”, <http://www.refugee.or.jp/library/InternationalSymposiumEn09.pdf>, retrieved on 12 January 2011.

lifting the “60 days rule”, the introduction of the “provisional permit to stay” and “independent counsellors”

In the next section, the procedures for determining the status of refugee in Japan will be generally described to provide deeper understanding of the process as a whole.

In the first instance, the procedure starts with an Application to the Immigration Bureau of the Japanese Ministry of Justice and Asylum Seekers can apply to the Refugee Status in one of four ways noted below: a) at the port of entry applying for landing permission as a temporary refugee, b) declaring themselves asylum seekers upon arrival at the immigration counter, c) once at the point of entry and being declared as liable of deportation they may claim to be asylum seekers, and lastly, d) after obtaining a visa to enter the country they can file for refugee status within Japan.²³ Under the first three scenarios, the transparency or basis of the process are not clear, since it largely relies on immigration personnel criteria on the subject. In Japan, most of the recorded refugee status applications are made from within Japanese territory under the revised law of 2004; this casts doubts on the beginning of the process and its fairness, since many potential asylum seekers are impeded to file their applications, as mentioned before.

The following part of the procedure arises with the First Instance Decision, based on the estimations made by Refugee Inquirers appointed by the Ministry of Justice among its Immigration Inspectors. These inquirers perform an interview but asylum seekers are not entitled to have a legal representation or advisory, only an interpreter.²⁴ The final decision of this instance is taken by the Refugee Recognition Section of the Immigration Bureau in Tokyo.

If the application is denied, the applicant has seven days to Appeal Against the Refusal (Objection Procedure) under the responsibility of the Adjudications Division of the Ministry of Justice. At this stage the asylum seeker may have legal advisory present –limiting his participation to that of an observer- and further interviews may take place. Nonetheless this is not a judicial proceeding but an internal review. However, the proceedings are carried out under the same authorities that rejected the first instance application in the first place in practice, since there is only a small amount of personnel assigned to this division. A panel of Examination Counsellors will forward its conclusions, but these are in no way bind to the outcome of the revision, rather the final decision still rests on the Immigration Bureau, the original authority. In this sense, these proceedings are looked upon as lacking transparency and independent review power.

Again, if in this stage too, the asylum seeker is denied with the status of refugee, the applicant may move forward to file for a Judicial Review at the District Court to be submitted within three months of the second refusal.²⁵ This process’ only objective is to determine the legality of the Ministry of Justice decision, not to revise all fact or legal issues comprised in the allegation at the time it was made, not after.

If the asylum petition is granted, the procedure moves on to the Post Recognition Status. When an asylum seeker becomes a refugee the Minister of Justice shall also provide the refugee with Long Term Residence, if the refugee complies with two requirements:²⁶

- (i) in the absence of “unavoidable circumstances” they must have applied for asylum within six months of arrival or knowledge of events relevant to the grant of refugee status, and
- (ii) they must have come “directly from a territory where their life, physical being or

²³ Meryll Dean, *Loc.cit.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

physical freedom was likely to be persecuted” due to reasons set out in Article 1A(2) of the Convention”.²⁷

On a different level, there is another legal figure, the Humanitarian Status conducting to a Special Permission to Remain that could be granted by the Minister of Justice at his discretion, facing for instance an asylum seeker that has got his application denied, although it is not strictly reserved for such people. In Japan, the number of Special Permission to Remain exceeds the number of refugee status recognitions. This has its roots in that those granted with such permission are more vulnerable than those holding the status of refugee. This permit is approved on a yearly basis and must be renewed as such; leaving open the possibility that this permit can be revoked under those parameters.

After the revision of the different instruments adhered by the Japanese government relating to the status of refugee and a review of their proceedings and procedures regarding the matter, we move on to the conclusions of this paper concerning the overall situation of asylum seekers, refugees and people under humanitarian status in Japan.

C. Conclusion

Japan is recognized worldwide by its endeavours in providing readily assistance to countries and peoples in need through becoming a major donor in the contribution to international refugee aid and assistance programs financially. However, in accordance to its low levels of accepting and recognizing refugees in proportion to its means, there is concern among the national and international community addressing these issues.

As of the year 2008 the numbers of people applying to obtain refugee status in Japan were

near 7,000 from which only 500 succeed and were recognized as such, while little less than 900 were permitted to stay under humanitarian grounds.²⁸ These numbers are far from the optimal expected for a country that holds the second biggest industrial economy in the world.

Besides the acceptance ratio, issues of policy, implementation, compliance and transparency remain to be a matter of concern in the further development of a protective state of the lives of those that have been displaced from their homelands, according to the provisions stated under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

Of special concern to the international community stakeholders are the extensive long periods of time involved in the procedures for asylum seekers, their legal limbo during this time, the non-compliance of Article 33 on refoulement -specially upon point on entry-, the detention measures applicable as a rule and not an exception, the impossibility of working and the restriction on movements suffered by asylum seekers in Japan.²⁹

Japan needs to closely revise and align its national policies with those international agreements that is signatory to. The main framework with which Japan’s government still tackles the issue of refugees is tightly restrained by its overall controlling immigration policies in an attempt to remain a homogenous nation. Within the process, UNHCR in general, and particularly UNHCR Japan, along with national NGOs are crucial in providing first hand assistance to asylum seekers in Japan, as well as becoming change promoters within governmental policies and procedures relating applicants to the refugee status.

On Japan’s favour, the Cabinet approved a quota of 30 refugees per year through third

²⁷ This provision only entered into force after the revision of the 2004 Immigration and Refugee Recognition Act. Before that, Judges were not obliged to grant Long Term Residence. A separate procedure was needed for the refugee to obtain such permit.

²⁸ Japan Association for Refugees, *Loc.cit.*

²⁹ Meryll Dean, *Loc.cit.*; Japan Association for Refugees, *Loc.cit.*; The Japan Times, *Loc.cit.*; United Nations, *Loc.cit.*

country resettlement in 2009, with the purpose of commencing a pilot program in this direction for three years starting on 2010. However, the ratio is still very low, and now further information on outcome reports was found at the time of this paper.

Japan has a long way to go in order to fully comply with the spirit of the Convention and the Protocol and also with the international laws agreed to when acceding these international

instruments relating to the Status of Refugees. To be humanitarian cannot simply be reduced to provide financial assistance (however necessary and crucial) but to embrace human beings as equals, using every mean available to secure their protection and fulfillment. The road for asylum seekers in Japan is a rocky one that could only change with a change in the government and society's paradigm in regards to the "other".

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C. Regulation

1951 Convention.