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Japan's Foreign Policy and Human Rights:
The Case of Refugee Policy

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Submitted in partial fulfillment of the
requirements for the degree
of Doctor of Philosophy
in the Graduate School of Arts and Sciences

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ABSTRACT

Japan's Foreign Policy and Human Rights: The Case of Refugee Policy

Ryuji Mukae

This study examines Japan's contemporary refugee policy, both its internal asylum policy and its external policy for refugee assistance from the theoretical perspective of international refugee regimes. Addressing first Japan's 1978 refugee resettlement decision -- a drastic policy departure from the past, it argues that the said decision resulted primarily from Japan's desire not to damage its security alliance with the U.S. by accommodating U.S. pressure to receive Indochinese refugees -- a by-product of the American foreign policy debacle in Vietnam.

Second, it examines Japan's 1981 accession to the UN refugee treaties and argues that Tokyo's accession was aimed at re-establishing sovereign control over its borders and immigration policy, which had been undermined by the refugee resettlement "imposed" from abroad. In other words, Japan joined the international refugee regime in order to institutionalize and recover the autonomy of its asylum policy vis-a-vis other international actors.

Third, after examining Japan's post-accession general asylum policy through case studies, it concludes that despite accession, Tokyo's policy continues to be exceedingly restrictive when compared with that of other advanced industrialized democracies, thus confirming this study's central thesis that Japan has joined the UN refugee treaties fundamentally in order to continue its restrictive refugee policies.

Fourth, it discusses the relationship of Japan's external refugee policy to its domestic refugee policy to argue that these two have reinforced each other in the sense that Tokyo's "generous" funding for multilateral refugee programs has served as a compensatory mechanism for its inadequate refugee resettlement record.

Lastly, it examines the implications of Japan's refugee policy for its overall foreign policy, pointing out that Japan's external refugee policy has in part become a political battlefield in which "multilateral realists" and "neo-pacifists" compete for ideological control over Japan's search for a new appropriate foreign policy in the post-Cold War period.

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PREFACE

This is a study of Japan's refugee policy, both its domestic asylum policy and external refugee assistance policy.

This choice of the refugee issue has resulted from my larger intellectual interest in exploring ways in which Japan's foreign policy has dealt with the issues of humanitarianism and human rights¹. I thought that the refugee issue was most appropriate to undertake such an exploration because it is at once a humanitarian and a human rights issue with increasingly important implications for global peace and human security.

More specifically, an analysis of the refugee issue provides a highly interesting angle from which to study contemporary Japanese foreign policy for the following reasons.

First, it allows us to test the officially proclaimed "three principles" of Japanese foreign policy; that is, Japan as a member of the West; Japan as a member of the Asian community; and United Nations-centered diplomacy².

¹ While it is exceedingly difficult in practice to distinguish between humanitarian and human rights issues, here we will make the following conceptual distinction between the two: human rights issues are those relating to rights which are explicitly codified in international law instruments (e.g., the Universal Declaration of Human Rights; the two International Covenants on Human Rights) and are internationally recognized as such, whereas humanitarian issues are much broader than those of human rights in that the former encompasses the whole range of issues that tend to compel us to address out of solidarity and sympathy/empathy with suffering fellow human beings. In other words, humanitarianism is a moral position which transcends attempts at the protection of human rights, which are political as well as legal.

² See, for example, Sadako Ogata, "The United Nations and Japanese Diplomacy," *Japan Review of International Affairs* (Fall/Winter 1990), pp. 141-165.

In relation to the refugee issue, the first principle dictates that Japan cooperate with other Western nations and receive refugees³. The second provides Japan with special obligations for the protection and assistance of refugees in its Asian region. And the third presupposes that Japan takes particular interest in promoting and in maintaining a UN-centered international refugee regime.

Second, an examination of Japanese asylum policy will provide some insights into Japan's official view of what is the "proper" relationship between the government and the opposition. It will specifically reveal its fundamental thinking about what it really means to protect the lives and rights of foreigners who have fled their native countries to seek refuge in another country. Should Japan grant asylum to such foreigners? If so, on what grounds? Would such protection affect Japanese politics as well as its foreign policy?

Third, an analysis of Japan's asylum policy will tell us something about the relationship between the Japanese concept of ethnic/cultural identity and its foreign policy. Most significantly, to what extent does Japanese ethnic/cultural identity affect its refugee policy, and in what ways?

Finally, examining Japan's external refugee assistance policy will help us understand how the Japanese have been trying to tackle global issues such as the refugee issue at a time when their country gropes for a greater and a more enlightened role in the post-Cold War world. In what ways and to what

³ Strictly speaking, the thesis of "Japan as a member of the West" does not necessarily lead to the argument that Japan should accept a great number of refugees because there are Western states which seem hardly eager to accept immigrants/refugees (e.g., Italy). But the main thrust of the argument here is that since Japan is a self-defined member of the West, it is expected by the international community to shoulder its share of the burden in terms of refugee resettlement.

extent does Japan's overall foreign policy determine its external refugee policy, and vice versa?

The above set of overarching questions and underlying concerns fundamentally informs this study.

Note: regarding Japanese names, this study follows the Japanese usage, i.e., a family name is followed by a given name. To prevent confusion, family names, when appearing for the first time with given names, are capitalized (e.g., Prime Minister FUKUDA Takeo, afterwards simply Prime Minister Fukuda).

INTRODUCTION

This study addresses and is informed by the following concrete questions.

First, what were the determining factors which produced Japan's 1978 decision to allow resettlement of Vietnamese refugees in the country, the first such case in post-WWII Japan?

As Chapter 4 will demonstrate, this resettlement decision fundamentally was a response to strong foreign pressure and criticism, particularly from the U.S. More specifically, it resulted from Japan's wish to maintain its alliance with the U.S. by meeting U.S. pressure to receive Indochinese refugees, the exodus of which eventuated from a U.S. foreign policy debacle. Such extensive *gaiatsu* ("foreign pressure") was necessary for Japan to somewhat change its strictly "isolationist" refugee policy which had lasted from 1952 through the mid-1970s. The subsequent chapters will demonstrate, however, that such an "isolationist" refugee policy, though weakened, has fundamentally been maintained to date.

Second, why did Japan in 1981 accede to the 1951 UN Refugee Convention and its 1967 Protocol¹? Why so late?

An answer to this will be provided in Chapter 5: Japan's 1981 decision to formally join the international refugee regime -- through acceding to the UN refugee treaties -- was a defensive foreign policy move with a view to re-

¹ Subsequently, we will occasionally call this Refugee Convention and its Protocol UN refugee treaties.

establishing national control over its borders and immigration policy, which had been undermined by the above resettlement decision "imposed" from abroad.

In a nutshell, Japan joined the international refugee regime fundamentally in order to maintain its traditional isolationist refugee policy. In doing so, Japan availed itself of one of the two basic functions of international regimes, that is, the protection of its state policy autonomy vis-a-vis other actors. Furthermore, Japan's accession to the UN refugee treaties satisfied a necessary humanitarian qualification of advanced industrial democracies, i.e., the provision of permanent asylum for refugees.

Nevertheless, this Japanese move eventuated in a situation in which Japan had to grapple with the other key function of international regimes, that is, the facilitation of international cooperation. Thus, Japan is expected by the international community to receive much greater numbers of "Convention" refugees to meet its international responsibility for a fair sharing of the global refugee burden.

As for the tardiness of Japan's accession to the refugee treaties, this study will identify a variety of reasons, historical, cultural, and geo-strategic: First, the fact that Japan has historically been a country of out-migration has hindered the emergence of "entrance" regimes therein including a refugee regime. Second, Japan's national cultural myth of being a "mono-ethnic" country as well as its accompanying belief that many of Japan's social and economic strengths have derived from this "mono-ethnicity," has

politically militated against the reception of refugees (and immigrants more generally) from the rest of the world. Finally, the geo-strategic concern (and visceral fear) shared by the Japanese Government as well as the majority of the public that any sign of relaxation in Japanese immigration policy would run the risk of their "small" and resource-less island-nation being inundated by vast masses of poor people from the rest of Asia, particularly from China, has delayed Japanese accession to the refugee treaties.

Our third question is whether or not and in what ways have the above two decisions, i.e., the refugee resettlement decision and the accession to the refugee treaties, changed Japan's subsequent refugee policy in particular and its official treatment of foreign residents in general.

Chapter 6, which deals with Japan's post-accession general asylum policy, will demonstrate that despite its accession, Japan's general asylum policy continues to be exceedingly restrictive when judged by the standards of other advanced industrial democracies. Thus this chapter will provide unambiguous evidence to support our central thesis that Japan has joined the UN refugee treaties fundamentally in order to continue its restrictive refugee policy.

The case studies elaborated in Chapter 7 will amply document the restrictiveness of Japanese asylum policy. A first case will address a refugee family that defected from North Korea and a second will look at Chinese students/asylum-seekers in Japan during the post-1989 Tiananmen Square Massacre period.

Nevertheless, Japan's accession to the Refugee Convention

was not without positive consequences, one of which is that it has produced as a "side-effect" a significant improvement in Japan's legal handling of its foreign residents -- mostly Korean -- particularly in the areas of social security and welfare. To use the words of Puchala and Hopkins, Japan's participation in the international refugee regime -- a "specific" international regime -- has resulted in a significant improvement in Japan's human rights regime -- a "diffuse" domestic regime. This regime "spill-over" took place because the more specific regimes (e.g., the refugee regime) are rooted in the principles and norms of the more diffuse regimes (e.g., the human rights regime)² and thus Japan's participation in the former has forced it to strengthen its commitment to the latter.

Our fourth question is: how do Japan's external refugee policy and its domestic refugee policy relate to each other within the framework of its overall refugee policy? Are there any contradictions between the two? Or do they complement or even strengthen each other?

Chapter 8 will indicate that these two policy components complement and in fact cross-fertilize one another. At the level of external refugee policy, Japan has been a significant financial contributor to the maintenance of the international refugee regime. Given the scarce financial resources allocated to date for the ever-expanding international humanitarian programs, the significance of

² Donald J. Puchala and Raymond F. Hopkins, "International Regimes: Lessons from Inductive Analysis," in Stephen D. Krasner, (ed.), *International Regimes* (Cornell University Press, 1983), pp. 61-91.

Japan's contributions cannot be overestimated. Nevertheless, Chapter 8 will also argue that Japan's "generous" funding for international refugee programs has served as a compensatory mechanism for its grossly inadequate domestic refugee resettlement record. Barring a dramatic change in the predominant Japanese sense of national/cultural identity, Japanese society will continue to be averse to receiving great numbers of refugees, let alone immigrant workers. Therefore, convoluted as it may sound, generous funding for the cause of refugees *outside* Japan -- a useful mechanism of compensating for Japan's meager resettlement record -- will continue in the decades to come regardless of Japan's economic conditions.

Our fifth and final question is: what are the implications of Japan's refugee policy for its overall foreign policy?

Again, as Chapter 8 will indicate, in addition to financial contributions, Japan is increasingly expected and is in fact willing to further develop its role as a personnel contributor in the area of multilateral humanitarian work. The problem, however, is that the Japanese Government, using such expectations/pressures both at home and abroad, has sought to "militarize" its human contributions -- i.e., the increased use of the Self Defense Forces (SDF) abroad -- in the area of international humanitarian work, particularly refugee relief. This move constitutes part of the GOJ's increased urge to carry out its own vision as to Japan's greater role in the world -- what we will call "multilateral realism." This new foreign policy ideology -- which significantly relies for the achievement of policy goals on

military force and the use of which is legitimated and sanctioned by multilateral institutions -- has been promoted especially in the area of humanitarian contributions, an area which enjoys widespread support and popularity among the Japanese people.

Nevertheless, this official vision itself has yet to be accepted by the majority of Japanese, who, since the 1990-91 Persian Gulf War, have been inclined towards the vision of what we will call "neo-pacifism." That is: a reconstituted pacifism which seeks to transform a traditional isolationist pacifism into a new philosophy capable of more actively engaging the Japanese in global peace and security issues, broadly defined, through strictly non-military means.

In the foreseeable future, then, such a lack of national consensus as to Japan's appropriate role in post-Cold War global politics, reflected significantly in its external refugee policy, will continue to produce foreign policy zig-zags and shilly-shallying, thus irritating its allies and entailing high diplomatic as well as domestic political costs. These costs are well worth shouldering, however, if Japan is to become a more active and more enlightened actor on the global political stage.

CHAPTER ONE

THEORETICAL CONSIDERATIONS

Japan's refugee policy, like that of many other countries, can conceptually and actually be distinguished at two levels, namely, policy regarding the reception of refugees in its own territory ("domestic" refugee policy), and policy regarding the protection and relief of refugees outside its territory ("external" refugee policy).

This study focuses on three events which took place in the area of "domestic" refugee policy and two events in the realm of "external" refugee policy. These events have been selected on the basis that each event can be judged to represent a significant development -- "turning point" -- in contemporary Japanese refugee policy.

A Brief Outline of Events

In the area of domestic refugee policy, the first thing to note is that Japan's current asylum policy was formulated by and large as a result of its response to the impact of the "mass" -- so it seemed by its past experience -- influx of Indochinese refugees since the end of the Vietnam War in 1975.

Event I: In April 1978 the Japanese Cabinet decided in favor of allowing the resettlement in Japan of Vietnamese refugees who since 1975 had been arriving in the country as "boat people."

This was the first time in the post-WWII period that the Government of Japan (GOJ) ever allowed any refugees to permanently settle in the country. Clearly, it represents a turning point in the evolution of Japanese refugee policy.

This event will raise the following questions: why at that specific time did the GOJ decide to allow refugee resettlement?; what was the driving force behind this decision?; as a background question, what was Japan's post-WWII refugee policy before the influx of Indochinese refugees?

Event II: In October 1981, Japan acceded to the "1951 UN Convention Relating to the Status of Refugees and to its 1967 Protocol."

Japan thus formally accepted the legal obligations that these refugee treaties impose on acceding governments regarding the protection of refugees. The very fact that Japan's accession to the above Convention took place after it had existed for thirty years would warrant a careful analysis of this decision. This event raises the following questions: why did it take Japan so long (thirty years!) to accede to the Convention, the most important UN instrument on refugees?; what were the determinants of this accession?; why did the GOJ accord special treatment to Indochinese refugees?; how did this accession change Japan's subsequent refugee policy?

Event III: In 1989, refugee inflow into Japan reached its peak with approximately 3,500 Indochinese arriving on Japan's shores.

This time the majority were deemed "economic migrants" -- the overwhelming majority of them Chinese nationals -- who were judged as having come to Japan in search of a better economic life, rather than escaping political persecution at home. In the end, the GOJ, on the basis of the decisions reached at the June 1989 Geneva International Conference on Indochinese Refugees, denied these asylum-seekers refuge and returned them to their countries of origin, i.e., China and Vietnam.

The questions which this event raises include: how did the GOJ respond to this large influx of Indochinese refugees?; did this issue influence Japanese asylum policy towards Chinese student/asylum-seekers?; how did this Chinese influx affect Japan's treatment of Chinese students who sought asylum from it after the Tiananmen Square incident of June 1989?

In the domain of eternal refugee policy, Japan's contribution to the international refugee regime in the past has been mostly *financial*. During the 1980s Japan has increased its financial contribution (on a voluntary-basis) to UNHCR -- the core organization of the international refugee regime -- and other refugee-related intergovernmental organizations¹. Most recently, however, Japan has broadened the range of its contribution into the provision of *personnel* for international refugee relief operations.

For our purposes two such events seem relevant, both of

¹ Those IGOs include the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the UN Border Relief Operations (UNBRO) and the International Organization for Migration (IOM).

which took place in the context of the Persian Gulf War of 1990-91.

Event IV: The GOJ sent Japanese Disaster Relief (JDR) teams to Iran and Turkey to join the international effort to assist Kurdish refugees fleeing from Iraq.

The decision to send these JDR teams -- which belong to the Japan International Cooperation Agency (JICA) -- generated little domestic political opposition presumably because its humanitarian mission was unambiguous and it only involved civilian medical personnel.

The questions to be explored include: what motivated the GOJ to send its JDR medical teams?; where did this decision fit in in the whole picture of Japan's response to the Gulf War?; what are the implications of this policy for Japan's future foreign policy as well as refugee policy?

Event V: On the basis of an agreement with the International Organization for Migration (IOM), the GOJ sent commercial aircraft to Egypt to repatriate Asian workers -- mainly Vietnamese and Filipinos -- who had been evacuated from Iraq as well as Kuwait.

This decision to send *commercial* aircraft was made only after repeated and unsuccessful GOJ attempts to send *military* aircraft for the same purpose². Some Japanese groups criticized this refugee rescue operation, claiming that the GOJ was trying to establish a precedent for sending troops abroad -- which is prohibited by the Japanese Constitution -- using refugee relief as a pretext. In tandem with this

² Those unsuccessful GOJ attempts generated heated debates inside and outside of the National Diet.

government effort, some Japanese citizens groups as well as individuals voluntarily campaigned to finance many charter flights to evacuate Asian and Middle Eastern workers from Jordan to Egypt³.

The questions include: what was the Japanese Government's motivation in undertaking that repatriation program?; where did this issue fit in terms of the entire controversy concerning Japan's participation in the Gulf War?; why did Japanese citizens and groups undertake the above spontaneous movement to finance charter flights on behalf of refugees?; what are the policy implications of such a humanitarian effort, both governmental and non-governmental, for Japan's future refugee policy in particular and foreign policy in general?

Theoretical Framework

This study will examine the events described above from the analytical perspective of the "international regime." International regimes in this study mean "social institutions composed of agreed-upon principles, norms, rules, and decision-making procedures that govern the interactions of actors in specific issue areas⁴."

Below we focus our discussion on the following three key points: first, what are the boundaries of a regime? second,

³ Like its official counterpart, this citizen-sponsored rescue program was implemented in coordination with the IOM.

⁴ Oran R. Young and Gail Osherenko, eds., *Polar Politics: Creating International Environment Regimes* (Cornell University Press, 1993), p. 1.

what are its major functions? and finally what are its potential problems when applied to the refugee issue?

Before considering the boundaries of regimes, we need to assume their existence. The assumption throughout is that there is an international regime for human rights⁵ and that there is also an international regime for refugees⁶. Since it is our position that human rights encompass those of refugees, a regime for the former may be called a "diffuse" or "multi-issue" regime, whereas one for the latter may be called a "specific" or "single-issue" regime⁷. As Puchala and Hopkins noted, the principles of "specific" regimes are derived from the principles of more "diffuse" regimes. In other words, "specific" regimes are embedded within more

⁵ For analyses of human rights from the "regime" perspective, see Jack Donnelly, *International Human Rights* (Westview Press, 1993); David Forsythe, "Human Rights and the Organization of American States: A Regime Analysis," in Forsythe, *The Internationalization of Human Rights* (Lexington Books, 1991), pp. 87-118; Stanley Hoffmann, "Reaching for the Most Difficult: Human Rights as a Foreign Policy Goal," *Daedalus* 112, 4 (Fall 1983).

⁶ For analyses of international refugee regimes, see Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (Oxford University Press, 1993); Claudena M. Skran, "The International Refugee Regime: The Historical and Contemporary Context of International Responses to Asylum Problems," *Journal of Policy History*, vol. 4, no. 1, 1992, pp. 8-35; Janina W. Dacyl, "A Time for Perestroika (Restructuring) in the International Refugee Regime?" *Journal of Refugee Studies*, Vol. 3, No. 1 (1990); Gil Loescher, "Refugee Issues in International Relations," in Gil Loescher & Laila Monahan, eds., *Refugees and International Relations* (Oxford University Press, 1989).

⁷ These terms belong to Puchala and Hopkins. See, Donald J. Puchala & Raymond F. Hopkins, "International Regimes: Lessons from Inductive Analysis," in Stephen D. Krasner, ed., *International Regimes* (Cornell University Press, 1983), pp. 61-91.

"diffuse" regimes. Consequently, we can assume that "specific" and "diffuse" regimes in both reality and theory are mutually dependent in that the strengthening (or weakening) of either will strengthen (or weaken) the other.

This analytical distinction between "specific" and "diffuse" regimes within related issue areas has the merit of enabling us to explore such regime interdependence -- between a refugee regime and a human rights regime in our case -- in a specific manner.

Furthermore, we can speak about the presence (or absence) of a human rights regime and a refugee regime at the national level⁸

(Fig. 1).

	(Diffuse)	(Specific)
International	Human Rights Regime	Refugee Regime
Domestic	Human Rights Regime	Refugee Regime

This conception of a regime with a two-level structure -- that is, domestic vs. international -- will allow us to explore the following research agenda on regimes.

⁸ It may seem at first that we should be talking about the degree of strength (or weakness) of a domestic regime, rather than the presence or absence of it since we cannot conceive a situation where a state has no domestic regime for human rights or refugees. But we should still use the words "presence" and "absence" to emphasize the fact that we are addressing only the kinds of domestic regimes that are institutionally as well as normatively embedded in corresponding international regimes.

First, in synchronic terms, it will permit us to explore the interactions between international and domestic regimes. More specifically, (a) how does the international regime affect the domestic regime and vice versa?; and (b) how does the domestic regime of country "A" affect the domestic regime of country "B" through the intermediary of the international regime?

Second, in historical terms, it will provide new insights into the origins and evolution of an international regime to the extent that it relates to the presence (or absence) of powerful national regimes. More specifically, does the emergence of an international regime presuppose the existence of domestic regime(s) in leading nation(s)? In other words, does the creation of an international regime require a hegemonic power equipped with the corresponding domestic regime?⁹

Finally, the distinction between international and domestic regimes will enable us to give more satisfactory answers to the broader questions on regimes, that is, (a) why does an international regime emerge in the first place? and (b) why does a nation participate in an international regime?

The above discussion of regime boundaries leads us to consideration of the functions of regimes. Simply, why do states bother to participate in (and create) international regimes? Since we all know that states are "egotistic"

⁹ For a definition of hegemony, see Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press, 1984), p. 34-5.

entities which seek to maximize their power and perceived national interests, we can safely assume that there must be strong incentives for them to join and create regimes which often limit the range of foreign policy options available to them. The so-called functionalists posit that states participate in (and create) regimes and comply with regime principles and norms as they become aware of the impossibility of achieving their desired policy outcomes by unilateral action. This awareness of the need for policy coordination generates a common interest in creating and maintaining regimes¹⁰. Regimes realize such facilitation of policy coordination by, for example, minimizing transaction and information costs. On the other hand, regimes have binding consequences in that participating states have to comply with a specific set of principles, norms, rules and procedures that often reflect the interests of stronger member states.

As compared with this "manifest" function of regimes, namely, facilitation of policy coordination, another key function of regimes is "latent" and much less apparent. This is the function of enhancing the policy autonomy of states¹¹. The fact that regimes are composed fundamentally of sovereign states significantly determines regime functions: states will not create or participate in regimes which may force participating states to accede to all the instruments of

¹⁰ See, for example, Keohane, *op. cit.*, (1984).

¹¹ See, for example, Mark W. Zacher, "Toward a Theory of International Regimes," *Journal of International Affairs* 44 (1990), pp. 139-57.

international law related to the regime concerned. On the contrary, regimes provide state parties with discretionary power to decide to which instruments to accede to and which derogatable clauses they may choose to derogate. Furthermore, interpretation of regime rules and procedures depends to a significant extent on each participating state, which is subject to national laws. On the other hand, states can justify their own decisions within a regime-governed issue area by reference to the rules and procedures of that regime.

In brief, a regime *jurisdictionally* guarantees state parties policy autonomy as long as they do not deviate from the fundamental principles and norms of that regime¹².

In the case of the refugee regime, the autonomy of sovereign state is provided mainly by the 1951 Refugee Convention which provides signatory states jurisdiction over their own asylum decisions. Additionally, UNHCR's financial dependence on major donor states makes these states feel less constrained by the agency's decisions and expectations, thereby enhancing their policy autonomy in the area of refugees.

On the other hand, states share a strong incentive to join the international refugee regime.

In discussing states' motives for joining economic regimes, Mark Zacher emphasized the following:

¹² When a state party violates such regime principles and norms, it is subjected to regime-sponsored sanctions, ranging from military intervention to moral censure, depending on the nature of the regime as well as on its enforcement capability. For varying degrees of enforcement capability of regimes, see, Donnelly, *op. cit.*, (1989).

When an industry has widespread effects on the economic welfare or autonomy of states, they are likely to agree on international rights and obligations that facilitate state control of that industry¹³.

This argument fundamentally applies to the refugee regime as well given that refugee resettlement constitutes a quintessential component of state sovereignty in that it significantly affects the composition of the state's own membership. Put otherwise, states are compelled to participate in the refugee regime in order to defend their control/autonomy in the area of refugee resettlement¹⁴.

As for the function of policy coordination, the refugee regime emphasizes probably more than any other regime the binding/distributional aspect of coordination or so-called burden-sharing.

First, the refugee regime morally as well as politically obliges states to assume international responsibility of shouldering a fair share of refugee burden in both areas of resettlement and funding. Such international burden-sharing becomes necessary because the central role of the refugee

¹³ *Ibid.*, p. 146.

¹⁴ One may put it further that the international refugee regime has been created by states as a "safety valve" in order to perpetuate a state-centered international system. In this connection, Hedley Bull noted as follows:

The basic compact of coexistence between states, expressed in the exchange of recognition of sovereign jurisdictions, implies a conspiracy of silence entered into by governments about the rights and duties of their respective citizens. This conspiracy is mitigated by the practice of granting rights of asylum to foreign political refugees, (...)

Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (Columbia University Press, 1977), p. 83.

regime to date has been to provide necessary political asylum conceived internationally as a form of international public goods.

Second, international refugee law instruments legally prohibit signatory states from deporting refugees to places where they may experience persecution -- the principle of non-refoulement¹⁵. Essential to the protection of refugees, signatory states cannot formally derogate this obligation, although in reality they often violate it.

Thus when examining the reasons why a state chose to participate in the international refugee regime, we must examine how that state calculated (or miscalculated) the cost of refugee burden sharing as well as the benefits of policy autonomy which stem from its participation in the regime.

Regime theories, when applied to the refugee issue, are not problem-free, however.

First, as we will see in the next chapter, the refugee regime's target phenomena, i.e., refugees, are increasingly difficult to define, with the result that defining the boundaries of the refugee regime itself is becoming more difficult.

There are two key reasons: first, it is becoming increasingly difficult to distinguish among various forms of forced migration. For example, relief needs for refugees and internally displaced people are essentially the same, thereby making the legal distinction between the two meaningless in

¹⁵ Some scholars argue that the principle of non-refoulement has assumed the status of international customary law so that even non-signatory states are obliged to comply with it. For details, see the next chapter.

reality¹⁶. Thus the range of refugee (and "refugee-like") phenomena that can no longer be covered by the original refugee definition contained in the 1951 Refugee Convention is expanding. Second, the fundamental causes of "refugee" movements are increasingly complex and intertwined, thereby making it more difficult to identify the exact causes of each refugee movement which the refugee regime is expected to address both in theory and practice. For example, many of the so-called "environmental refugees" are actually caused by man-made disasters which can be prevented by democratic participation of these would-be victims in the country's environmental decision-making, which in turn can only become possible where human rights are protected. And the protection of human rights is interdependent with environmentally sustainable development.

Accordingly, it is progressively difficult to conceptually differentiate the refugee regime from other regimes such as development, human rights, environmental protection, population, etc. Methodologically, it is becoming more difficult and less meaningful to discuss the refugee regime in isolation from other regimes.

Second, the refugee regime depends significantly on non-governmental organizations (NGOs) for actual implementation of refugee relief and maintenance. Unlike regimes such as disarmament and international trade, the refugee regime will

¹⁶ According to international law, internally displaced people become refugees only after they cross national borders. See, e.g., Charles P. Keely, "Filling a Critical Gap in the Refugee Protection Regime: The Internally Displaced," *World Refugee Survey* (1991), pp. 22-27.

not be able to function for long without cooperation from NGOs, both national and international. Nevertheless, regime theories posit that regimes are composed fundamentally of sovereign states, with NGOs playing a marginalized role, if any, in the regime. Thus, if we are to analyze refugee problems from the regime perspective, we must incorporate this NGO component into our theoretical framework so that we can properly appraise the role of NGOs in the development and functioning of the regime¹⁷. By doing so we will be able to start constructing the theory of international refugee regime change since up till now refugee and refugee-related NGOs' criticisms of the existing regime have greatly helped it to adapt its principles and norms to changing refugee phenomena.

These issues will be elaborated to some extent in the next chapter, although such a discussion may exceed the range of this study whose focus is on a specific national refugee policy.

The Hypotheses

Viewed from the regime perspective, the development of Japan's internal refugee regime can be seen as a case of the formation of a domestic regime through participation in the existing international regime.

More specifically, that specific regime-formation leads us

¹⁷ This equally applies to the international human rights regime in which NGOs have been playing an essential role. See, e.g., Conway Henderson, "Human Rights and Regimes: A Bibliographical Essay," *Human Rights Quarterly* 10, (1988), pp. 525-543.

to formulate the following hypotheses:

Hypothesis I: Confronted with the massive 1979 influx of Indochinese refugees --"a bolt from the blue"--, the GOJ responded on an ad-hoc basis, making several decisions of crucial long-term social, political and economic implications. In an effort (a) to legitimize those decisions concerning refugee intake, (b) to mollify international as well as domestic criticism of its restrictive refugee/immigration policy, (c) to delegitimize and demobilize the existing domestic opposition to refugee admission, (d) to mobilize the existing support, (e) to preclude future criticism from abroad and at home, and (f) to regain control over its own immigration policy, the GOJ acceded to the direction of the UN Convention on Refugees, thus initiating the process of domestic refugee regime formation.

In more general terms, goal (a) is an example of post-factum legitimation of national decisions through participation in an international regime; goals (b), (c), and (d) are examples of utilization of regime authority for domestic as well as international political purposes; and goals (e) and (f) are cases of utilization of a regime to enhance and recover policy autonomy.

Hypothesis II: From the regime perspective, we can argue that Japan's refugee-regime formation experienced such tremendous delay due to (a) the persistence of other domestic regimes which militated against the formation of a domestic refugee

regime and (b) the weakness of the diffuse domestic human rights regime which would have promoted such refugee-regime formation.

For example, one major domestic regime hostile to an emerging refugee regime has been the one for emigration. In considering the development of Japan's refugee policy, it is useful to keep in mind that Japan has traditionally been a country of out-migration, not an immigration country. This emigration regime continued to develop even until the mid-1960s when Japan was emerging as a regional economic power¹⁸. Arguably, such an entrenched emigration (or "exit") regime in Japan has made it more difficult to forge a domestic refugee (or "entrance") regime.

Another major domestic regime which presumably has served as an obstacle to the formation of a refugee regime was the one regarding the treatment of foreign residents in Japan -- the majority of them Korean. Since the UN Refugee Convention calls for, among other things, national (or most-favored-nation) treatment of refugees, accession to this Convention would oblige the GOJ to significantly improve the legal treatment of foreign residents, who have been excluded from various social security benefits. Otherwise, an awkward situation might have arisen where a newly arrived refugee received better legal treatment than a long-time foreign resident. Nevertheless, such improved treatment of foreign residents would call for a significant change in the

¹⁸ As recently as 1963, the government set up the *Kaigai Ijyu Jigyodan* ("the Japan Emigration Service") which was aimed at facilitating emigration by providing loans to prospective emigrants.

established social security system, which suggests political resistance from defenders of the status quo.

The above regime concerning the treatment of foreign residents, in turn, is a sub-regime of a weak, general regime regarding human rights in Japan.

Hypothesis III: The legitimation process, cited in Hypothesis "I," was a reciprocal one in that while Japanese policy decisions were validated retroactively by an international regime, the legitimacy as well as credibility of the international regime itself likely was enhanced as well by Japan's participation in it -- an example of mutual reinforcement between international and domestic regimes. But this study assumes that Japan's overall involvement has been limited to the maintenance of the existing international regime -- no mean feat, though -- rather than contributing innovative ideas and policies to the necessary reforms and improvements of the existing regimes or the formation of new regimes.

Theoretical and Practical Implications

(1) Theoretical Implications

First, most analyses which have explicitly used the concept of international regime are restricted to economic issues. This study thus will join a small group of analyses which have applied this concept to non-economic issues, specifically, human rights issues. This study shares with this group the research interest of testing the analytical utility of the regime concept in the human rights area.

Second, more specifically, since the regime literature dealing with the refugee issue is meager, this study will provide new insights into the utility of regime analysis to the refugee issue. It will also contribute to clarifying the characteristics of the specific (refugee) regime as compared to the diffuse (human rights) regime.

Third, the majority of the literature has viewed international cooperation mainly as the consequence of interstate relations, thus giving insufficient attention to domestic political determinants of international cooperation¹⁹. This study will help fill this hiatus by providing a study which systematically analyzes the domestic political dynamics which led to Japan's participation in the regime. In other words, this study will provide a partial answer to the general question as to why nations cooperate by focusing on why nations join international regimes.

Fourth, this study will strengthen the claim for the theoretical (and practical) utility of regimes by presenting a case in which a state's participation in a regime (and compliance with its principles/norms) can alter national behavior in favor of greater national community welfare. That is, it will demonstrate that Japan's participation in the international refugee regime partly resulted in its improved policy towards Korean residents particularly in the area of social rights.

¹⁹ For an example of the works which recognize this problem, Stephan Haggard and Beth A. Simmons, "Theories of International Regimes," *International Organization* 41, 3, (Summer 1987), pp. 491-517.

(2) Practical Implications

First, the global community of which Japan is a major member is characterized by an increasing number of problems whose resolution requires multilateral cooperation, unprecedented in its magnitude and its variety of forms. Clearly, the problem of refugees belongs to that class of problems, with which Japan has only recently started to grapple. Analysis of Japan's refugee policy then will provide a clarifying example of how it, albeit belatedly, is trying to contribute through its multilateral diplomacy to the resolution of global problems, which would benefit not only Japan but also the entire global community.

Second, an updated and deeper understanding of Japan's refugee policy takes on greater significance given that the traditional immigration/resettlement countries have recently reduced their receptivity to immigrants (and refugees) and their willingness to finance international refugee programs due mainly to the prolonged economic recession. This is not to imply that Japan will soon become a nation of immigration more or less comparable to those countries. The point, however, is to examine whether or not and how Japan has been trying to meet the world community's expectations in the area of refugees.

Third, this study will confirm Japan's characteristic foreign policy behavior, i.e., that the government makes significant policy departures -- otherwise unattainable due to entrenched domestic opposition -- mainly by reacting to the impact of crises/pressure from outside and quickly consolidating those policy departures before that external

impact disappears. While such "reactive politics" is observable in almost any polity to a varying extent, Japanese behavior is a patterned one and discernible in many other issue-areas (above all, foreign trade). In this sense, this study will reconfirm, *mutatis mutandis*, Kent Calder's and others' characterization of Japan as a "reactive state"²⁰.

Finally, Japan's refugee policy has a direct bearing on its future foreign policy not least because its ongoing soul-searching for a most appropriate role in global affairs seems to point towards the issue areas of humanitarianism and human rights. Particularly, Japan's "external" refugee policy, i.e., its human-resource as well as financial contributions to the international refugee regime as well as refugee-related regimes, seem to have the potential of guiding Japan's foreign policy in a new direction which is effective in enhancing global welfare in the post-Cold War era as well as congruent with the expectations of the majority of the Japanese people.

²⁰ Kent E. Calder, *Crisis and Compensation: Public Policy and Political Stability in Japan, 1949-1986* (Princeton University Press, 1988).

CHAPTER TWO

THE INTERNATIONAL REFUGEE REGIME

1. THE CURRENT REGIME

We have already defined regimes as "social institutions composed of agreed-upon principles, norms, rules, and decision-making procedures that govern the interactions of actors in specific issue areas." While this definition refers only to a normative element of regimes, in actuality regimes almost always encompass organizations which seek to enforce norms by monitoring the implementation of rules and procedures by states. The refugee regime is no exception.

The Normative Element

The normative element of the refugee regime, like other regimes, consists of principles, norms, rules and procedures.

The central principle of the refugee regime is that refugees should be protected and assisted in all places at all times. This is the normative bedrock upon which the entire refugee regime rests. Other principles and norms, rules, decision-making procedures are derivative of this principle¹. The other key principle is the provision of so-called "durable solutions" -- that is, voluntary

¹ While it is difficult to differentiate among principles, norms, rules, and procedures, we will do so according to the specificity of concept. That is, the degree of specificity becomes higher as we move successively from principles to norms, rules, and procedures.

repatriation; local integration; and third-country resettlement -- to refugee situations through international cooperation and burden-sharing.

The refugee regime in fact contains several key norms that are intimately related to one another. For example, the norm of *non-refoulement* prohibits returning refugees to places where they may experience persecution. Many lawyers believe that this has acquired the status of international customary law so that even a state which is non-party to the 1951 Refugee Convention (or its 1967 Protocol) would risk its international reputation if it violates this *non-refoulement* norm². Another example is "non-rejection at the frontier." Since states usually limit the application of *non-refoulement* to those who have already entered their territory, those trying to enter their domain are not protected by *non-refoulement*. In addressing this problem, some scholars and refugee advocates have argued that states should not reject asylum-seekers at the frontier, lest they risk their lives or experience persecution. Yet this position has been opposed by governments as well as other scholars fearing that accepting the non-rejection norm would be equal to accepting a state obligation to provide asylum to any asylum-seeker. Thus, this issue does not enjoy a firm international consensus³.

² For a legal treatment of *non-refoulement*, see Guy S. Goodwin-Gill, *The Refugee in International Law* (Oxford University Press, 1983), esp. chap. 4.

³ For example, legal experts on refugees regard the 1977 UN Conference on Territorial Asylum as an abject failure on the part of governments to assume such an obligation. For details of that conference, see Atle Grahl-Madsen, *Territorial Asylum* (Almqvist & Wiksell International, 1980).

The refugee regime's rules and procedures are roughly those contained in the 1951 Refugee Convention. They include: the establishment of national legal codes on refugees in accordance with the Refugee Convention and its Protocol; establishing an agency -- preferably an independent entity -- to determine the refugee eligibility of asylum-seekers; national (or Most-Favored Nation) treatment of resettled refugees in the areas of employment and social services -- primary education, health care, housing, etc.; the provision of travel documents to resettled refugees to facilitate their safe passage (state parties are required to recognize such documents as equivalent to valid passports); the reporting of national refugee situations (refugee statistics, refugee-related legislation, etc.) to UNHCR.

The above principles, norms, rules, and decision-making procedures have been codified in a body of international law including the UN Convention (1951) and Protocol (1967) relating to the status of refugees; the Statutes of UNHCR (1950); statements and decisions of the Executive Committee of UNHCR; the OAU Refugee Convention (1969); the OAS Cartagena Declaration (1985); relevant resolutions of the UN General Assembly; the Geneva Conventions, and so forth.

The Organizational Element

The organizational component of the refugee regime is two-

One important exception to that attitude is the 1969 Organization of African Unity (OAU) Refugee Convention which explicitly prohibits OAU member states from rejecting refugees at the frontier. This will be further discussed below.

layered. One consists of inter-governmental organizations (IGOs), the other international non-governmental organizations (INGOs).

The flagship organization of refugee IGOs is undoubtedly UNHCR. It has triple functions of monitoring the refugee policies of state parties to the Refugee Convention and/or Protocol; promoting durable solutions to refugee problems; and encouraging the accession of states to the Refugee Convention and Protocol. Other refugee IGOs include: the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); the International Organization for Migration (IOM); the International Conference on Assistance for Refugees in Africa (ICARA I & II), and the International Conference on Central American Refugees (CIREFCA)⁴.

There are hosts of refugee-related INGOS which operate most of the time in collaboration with and at times in conflict with UNHCR. Over 200 INGOS work with UNHCR in its relief or legal assistance programs. Among them are: the International Committee of the Red Cross (ICRC); the International Rescue Committee (IRC); Refugee International (RI); OXFAM; Doctors Without Borders (DWB or MSF in French); Caritas Internationalis. For example, in 1991-1992, UNHCR

⁴ Other refugee-related IGOs include: the UN Border Relief Operation (UNBRO); the UN Disaster Relief Coordinator (UNDRO); the World Food Program (WFP: food relief); FAO (food production); UNDP (development assistance); ILO (vocational training); WHO (health care); UNICEF (child welfare); UNESCO (education); the International Fund for Agricultural Development (IFAD: project financing); the World Bank (project financing). UNHCR, *The State of the World's Refugees: The Challenge of Protection* (Penguin Books, 1993), pp. 176-78.

maintained regular contact with roughly 1,000 INGOs involved in refugee work in one way or another⁵. It is no exaggeration to say that there would be no international refugee regime without INGOs.

The organizational element of the refugee regime, therefore, consists of a network of organizations, both governmental and non-governmental, national and international, whose activities are aimed exclusively (or to a significant degree) at the protection and assistance of refugees throughout the world.

The next section will address the question as to how this refugee regime has evolved over the past decades.

2. THE DEVELOPMENT OF THE INTERNATIONAL REFUGEE REGIME

Introduction

This section reviews from the regime perspective the roughly 70-year evolution of organized modern international responses to refugee problems in the world.

The international refugee regime, which started as an ad-hoc international agreement in the 1920s, has evolved into something resembling a universal regime centered around UNHCR and anchored in the norms provided by the 1951 Refugee Convention, its 1967 Protocol and other relevant international instruments. The guiding principle of the regime -- international protection of refugees in all places at all times through asylum and non-refoulement -- has

⁵ *Ibid.*, p. 98.

developed through the regime's teleological adaptation to the expanding refugee phenomenon, geographically, temporally and conceptually within the context of evolving international politics. Currently, seeking to fulfill this principle in the post-Cold War era has compelled the refugee regime to link itself to other regimes such as peacemaking and peacekeeping, human rights and development, thus constituting a new challenge for the refugee regime in the 1990s and beyond.

Below, the normative part of the discussion will address the evolution of the regime's central principle, that is, the protection of the lives and legitimate rights/interests of *refugees in all places at all times* through the provision of asylum and non-refoulement. More specifically, it will focus on the process of the geographical, temporal, and conceptual expansion of the refugee phenomenon and the corresponding expansion of the refugee regime.

The organizational part of discussion will focus on the genealogy of UNHCR while paying sufficient attention to the fact that the refugee regime is composed of INGOs as well as other IGOs.

At the outset, we may as well note several structural problems confronting the current international refugee regime.

First, despite the fact that states' thought and behavior have not necessarily been determined by genuine humanitarianism, the implementation of the above central regime principle depends ultimately and primarily on their willingness and/or capability to do so. As a corollary, UNHCR is governed by its Executive Committee (EXCOM) which is

composed of member states.

Second, the execution of UNHCR's programs in the "field" depends critically on the vigorous activities of numerous INGOs and NGOs, which act as "operational partners" with UNHCR (and other IGOs). In other words, from its inception this state-centric structure of the refugee regime has entailed the possibility of incongruities between regime norms and procedures and state policies and practices. Furthermore, the NGO-dependent structure of refugee regime operations suggests the possibility that UNHCR often finds itself under cross-pressures from humanitarianism-driven NGOs and "national interest" -driven governments.

What follows is an overview of the development of the international refugee regime. Since this draws heavily on existing refugee literature, it may provide little new information on the topic. However, its chief merit resides in the fact that it is cast within regime language that will enable us to systematically examine not only the historical development of the refugee regime but also the increasingly complex linkage between the refugee issue and other transnational issues, a linkage re-emphasized in the post-Cold War period.

Refugee Agencies During the Inter-War Period

The League of Nations High Commission for Refugees (1921-1930)

While refugees existed for many centuries, it was only after World War I that the international community recognized the need for their international protection. That war created

displacements, the enormity of whose scale and duration fundamentally distinguished them from previous ones⁶.

In 1921, the League of Nations, at the urging of the International Committee of the Red Cross (ICRC), created the League of Nations High Commission for Refugees and appointed Fridtjof Nansen, a famous Norwegian explorer, as high commissioner⁷. However, his mandate was highly limited⁸, reflecting the then dominant view shared by the majority of member states: while his office was a creation of member states themselves, they -- particularly overseas resettlement states such as the U.S. -- feared that a strongly-mandated High Commissioner might force them to receive unwanted

⁶ The disintegration of four European multi-ethnic empires resulted in the emergence of ethnic minorities within newly-drawn state borders. Furthermore, new political leaders in the post-WWI era stressed the principle of self-determination, resulting in the persecution of minorities perceived to be obstacles to realizing that principle and hence their large-scale migration abroad. All refugees at that time were not ethnic minorities, however. The 1917 Russian Revolution and its aftermath forced hundreds of thousands of Russians to flee their country because of their close political ties to the old regime and/or their privileged social positions.

⁷ His official title was the "High Commissioner on Behalf of the League in Connection with the Problem of Russian Refugees in Europe."

⁸ That is, he was able to negotiate only on behalf of Russian refugees with governments for repatriation and resettlement; the League provided no funds for refugee assistance to his office (he had to raise funds from NGOs); and his mandate was to last only ten years (1921-1930), reflecting the then-generalized perception that the refugee problem could be resolved within a definite period of time.

refugees⁹. In this connection, many Western states had introduced immigration controls in the early twentieth century, thus negatively affecting the subsequent international movement of refugees. In other words, from the outset the refugee regime was intimately linked to the migration regime¹⁰.

While Nansen's office was careful not to repatriate Russian refugees against their individual wishes, it did repatriate them and was accused by Western nations not of human rights abuses but of assisting the Bolsheviks through repatriation¹¹. After this, the international community began to recognize the political as well as moral importance of the non-refoulement obligation¹².

On the other hand, Nansen significantly contributed to the strengthening of the legal status of refugees by introducing special travel documents -- "Nansen passports" -- for Russian

⁹ Nansen countered such attitudes by arguing that, aside from its humanitarian significance, the solution of the refugee problem would be beneficial to postwar European reconstruction as well as to the prevention of future refugee problems. Marrus, *op. cit.*, p. 91.

¹⁰ Loescher, *op. cit.*, p. 36.

¹¹ In fact, no international law existed at that time prohibiting forcible returns of refugees.

¹² The first international agreement which contains reference to this obligation is the 1933 Convention relating to the International Status of Refugees (Article 3). G. S. Goodwin-Gill, *The Refugee in International Law* (Oxford University Press, 1983), p. 70.

refugees¹³.

The Nansen International Office for Refugees ("Nansen Office:" 1931-1938)

Nansen's death was followed by the League's 1931 establishment of the International Office for Refugees -- "Nansen Office"¹⁴. Nevertheless, like its predecessor, its authority was limited in several manners. First, the Office was deprived of any duties involving legal protection of refugees. Those duties were relegated to the League Secretariat, indicating that the League gave a low priority to the legal protection of refugees. Second, it was able to deal only with the remaining refugees inherited from the Nansen period¹⁵. Lastly, the Nansen Office closed down in 1938, again revealing the perception prevalent then that the refugee phenomenon was ephemeral.

In hindsight, such an international response would seem strangely weak given that mass outflows of refugees -- predominantly Jews -- from Germany had already been occurring

¹³ The agreement upon which Nansen Passports were based was called "Arrangement with respect to the issue of certificates of identity to Russian Refugees," signed on July 5, 1922, League of Nations, *Treaty Series*, Vol. 13, No. 355.

¹⁴ Resolution of September 30, 1930, League of Nations, *Official Journal*, Special Supplement, No. 84.

¹⁵ For example, Russians, Turks, Armenians. The sole exception were new refugees from the Saar in 1935. Marrus, *op. cit.*, p. 159.

since Hitler's assumption of power in 1933¹⁶. Despite this, the Nansen Office was unable to help these refugees to resettle not least because the League's competence in the matter of German refugees was rejected by Germany itself. Marrus attributes Western delegations' (mainly Britain and France) acquiescence to this German opposition, to the former's concern about not interfering in the domestic politics of member states. Furthermore, they wanted to avoid criticizing German policies too strongly in the hope that Germany would rejoin the League (which it had left in October 1933). But more fundamentally, it seems that Western acquiescence was part of its appeasement towards Nazism, which the West hoped would serve as an antidote to Bolshevik expansionism in Europe. In a nutshell, German (Jewish) refugees were in large part the victims of the West's strategic calculation of balancing off the Soviet Union against the Third Reich.

The High Commission for German Refugees (1933-1938)

Faced with the serious problem of the refugees fleeing Germany, however, the League decided in 1933 to create a new refugee agency, the "High Commission for Refugees (Jewish and

¹⁶ About 150,000 of the approximately half a million Jews in Germany left between 1933 and 1938. An initial major exodus from Germany was composed of political leaders, intellectuals and scientists. While these "elite" refugees experienced little difficulty in finding resettlement overseas, the subsequent outflows of ordinary refugees ended up in neighboring countries (e.g., France, Benelux, Switzerland, and Austria), unable to do the same. Marrus, *op. cit.*, pp. 129-30.

other) Coming from Germany," to specifically address the German refugee issue. Again, the German delegation's opposition to the League's direct refugee work¹⁷ forced the latter to create this new agency *outside* itself, meaning that the agency would not receive instructions or funds from the League -- i.e., it was prohibited from receiving aid from governments and depended on private funds for its financial needs. The low prestige and reduced political authority of this agency kept it from fighting the German refugee problem effectively.

The year 1938 was a particularly important and tragic year in the history of the international refugee regime.

The High Commission for German Refugees (1933-1938) as well as the Nansen Office (1931-1938) suffered from a lack of political authority, serious financial problems, and low social prestige, reflecting the low priority the League of Nations had given to the refugee problem. As the mandate of both refugee agencies neared their ends, Europe's refugee situation deteriorated rapidly. With the Nazi absorption of Austria -- the *Anschluss* -- in March 1938, Austrian Jews -- estimated at 180,000 -- were forced to emigrate. Combined with the ongoing Jewish exodus from Germany proper, this swelled the refugee tide significantly¹⁸. Later that year,

¹⁷ L. W. Holborn, *Refugees: A Problem of Our Time - The Works of the United Nations High Commissioner for Refugees, 1951-1972* (The Scarecrow Press, Inc., 1975), vol. 1, p. 14.

¹⁸ From March 1938 through November 1939, about 126,500 of the 180,000 Jews in Austria fled the country. Marrus, *op. cit.*, p. 168.

another refugee outflow from Czechoslovakia was added to this exodus of German/Austrian Jews. However, the high crest of the refugee wave was produced by the *Kristallnacht* of November 1938 -- the nationwide pogrom of German Jews. After this event, those attempting to flee Nazi Germany and Nazi-occupied territories became frantic.

The League responded to this refugee crisis by creating in early 1939 yet another refugee organization for resettlement by merging the Nansen Office and the High Commission for German refugees¹⁹. Like its two predecessors, however, the weak political and financial commitment of major member states constrained its activities, preventing it from effectively dealing with the growing numbers of European Jewish refugees.

Under such circumstances a new refugee initiative came from outside the League. Prodded by refugee advocacy groups in his own country, U.S. President Franklin D. Roosevelt convened in July 1938 an international conference on refugees in the French resort of Evian-les-Bains. While the conference was aimed at "facilitating the immigration from Germany and presumably Austria of political refugees²⁰," and participated in by as many as thirty-two countries, their delegates were mainly concerned with justifying their existing restrictive immigration policies, offering no additional resettlement

¹⁹ This new agency, "the High Commissioner for Refugees under the Protection of the League of Nations," functioned until after the end of WWII, in 1946.

²⁰ Marrus, *op. cit.*, p. 170.

slots on behalf of persecuted Jews.

Probably the only positive side to the Evian Conference was its establishment of the Inter-Governmental Committee on Refugees (IGCR). The problem with the IGCR, however, was that it focused on German policy rather than the resettlement countries' policies, which remained highly restrictive²¹. Their policies were so restrictive and refugees became so desperate in their search for safe havens that many German and Austrian refugees in fact found their way as far as Shanghai, then controlled by Japan -- the Nazis' ally²².

The events of 1938 indicated that the incipient international refugee regime, developing within and around the League of Nations, was unable to protect European Jewish refugees.

In summary, during the inter-war period, the international community came to realize the need for international protection of refugees and stateless persons. But its target refugees continued to be specific rather than universal. This selective morality stemmed from ideological considerations (e.g., favorable treatment of Russian emigres); strategic considerations (e.g., half-hearted attitudes towards Jewish refugees); or racism (ignoring non-European refugees). Thus the international response to refugee crises was selective

²¹ One reason why resettlement countries did not want to focus on their restrictive policies was their fear that the more than three million Jews in Poland might soon start emigrating because of intensifying anti-semitism in that country. Marrus, *op. cit.*, p. 173.

²² See Chapter 4 for the Jewish refugees in Shanghai.

from the outset. This selectiveness would continue to be a major feature of the international refugee regime in the post-WWII period, as exemplified by "Cold-War" refugees.

Refugee Agencies During and Shortly After WWII

The United Nations Relief and Rehabilitation Administration (UNRRA: 1943-1947)

World War II is estimated to have generated at least thirty million displaced persons in Europe alone²³. In the autumn of 1945, the Allies were caring for almost fourteen million refugees -- about half of all the European refugees generated during the war -- with the Western Allies and the Soviet Allies each taking care of seven million refugees in their respective zones.

U.S.-Soviet negotiations during 1943 to create an international refugee relief organization resulted in the November 1943 agreement among forty-four states -- including the U.S.S.R., establishing the United Nations Relief and Rehabilitation Administration (UNRRA), the first UN agency to deal with refugees and displaced persons. While it was mandated to undertake refugee relief and repatriation (not resettlement), UNRRA was not the central organization for those purposes: it worked as a junior civilian partner with the Supreme Headquarters of the Allied Expeditionary Force (SHAEF). The logistic enormity of assisting millions of refugees in war-devastated Europe as well as its security

²³ E. M. Kulischer, *Europe on the Move: War and Population Changes, 1917-47* (Columbia University Press, 1948), p. 297.

implications had led to the militarization of refugee relief and repatriation. A division of labor existed, by which UNRRA provided technical staff under SHAEF's command while the latter provided logistical and material assistance.

By mid-1945 UNRRA started its refugee work with a 5,000-strong staff of thirty three nationalities, setting up refugee centers in Germany, providing medical personnel for the camps and coordinating the activities of more than sixty voluntary agencies. The U.S. furnished three quarters of its budget and the U.K. provided nearly all the rest. The Soviets' financial contribution was nominal, reflecting their deep-seated distrust of the agency.

In fact, the limits and problems of UNRRA activities resulted to a significant degree from Soviet participation in and distrust of the agency. First, UNRRA's operations were limited to the Western-controlled areas because of Soviet opposition to its operation in their zone²⁴. Second, and more importantly, the Soviets demanded that displaced Soviet citizens be repatriated to the Soviet Union regardless of their individual wishes. The Western Allies accepted such demands on the grounds of the Yalta Agreement of February 1945. Eager to secure Stalin's continued war cooperation, the Western Allies had promised to allow Soviet refugees in Europe to be repatriated to the Soviet Union upon Hitler's

²⁴ Related to this Soviet-imposed limit was the problem that UNRRA's mandate excluded the care of "enemy" citizens, including millions of displaced people of German citizenship or descent (civilians displaced in Germany, expellees from Eastern Europe, former POWs, etc.). For the constitution of UNRRA, see, Holborn, *op. cit.*, pp. 58-61.

surrender. To fulfill this accord, the Western Allies separated Soviet from other refugees and placed them in Russian-run centers to be repatriated irrespective of their wishes. Moscow also claimed that refugees from territories recently absorbed by the U.S.S.R. be repatriated to the Soviet Union as Soviet citizens²⁵. Clearly, Stalin was using refugees as pawns in an emerging Cold War.

There was another reason for Western acquiescence with Soviet demands²⁶: the West feared that its refusal to return Soviet refugees might prompt the U.S.S.R. to delay the release of Western POWs in Soviet zones. Nevertheless, even considering the above Western fears as well as the Yalta accord, many of the forcible returns the West undertook were inexcusable. For example, the British handed over to the Soviets many Russian emigres, who had been long-time residents abroad and had never been Soviet citizens, some of them even bearing Nansen passports! Many of these aged "counter-revolutionaries" were executed upon their return.

Towards the end of 1945, however, after having repatriated more than two million individuals to the U.S.S.R., Allied refugee policies finally began to change. Thus the U.S. announced in December 1945 that forced returns would not be undertaken except for Soviet soldiers and known collaborators. This policy change resulted partly from the fact that word had reached the West of the persecution the

²⁵ Marrus, *op. cit.*, pp. 315-19.

²⁶ Marrus, *op. cit.*, p. 315.

deportees had experienced in the Soviet Union²⁷.

With forcible returns of refugees halted, UNRRA was in a dilemma. Since its mandate was the repatriation of refugees and now that their resettlement overseas or integration in host countries was virtually precluded, all it could do was to continue maintaining the remaining refugees in camps. By the beginning of 1946, UNRRA still had some one million refugees remaining.

By the summer of 1946, the U.S. representative to UNRRA was already calling for the end of the agency, reflecting growing dissatisfaction with it back home; both Congress and the Truman Administration regarded UNRRA as Soviet-influenced and insufficiently under Western control. From then on, the U.S. began efforts to replace UNRRA with the western-controlled and resettlement-oriented International Refugee Organization (IRO), thus responding to Stalin with tit for tat, who had already used refugees as a Cold War instrument.

In summary, the UNRRA-centered refugee regime had several serious problems. First, since UNRRA was repatriation-oriented and the Soviets exercised considerable influence on the agency, many cases of flagrant violation of non-refoulement took place²⁸. Second, the regime's scope was hardly universal even within Europe because its activities

²⁷ Marrus, *op. cit.*, p. 317.

²⁸ At that time the West seemed to be so convinced that repatriation was a logical (and perhaps the only) solution for the postwar refugee crisis that it failed to pay sufficient attention to the crucial difference between voluntary repatriation and forced repatriation.

were prohibited in Soviet zones and it failed to care for "enemy" citizens, that is millions of displaced people of German citizenship/descent.

With the establishment of the IRO, the refugee regime would become more universal and de-emphasize repatriation in favor of resettlement.

The International Refugee Organization (IRO: 1947-1951)

In dealing with the legacy of World War II, one of the UN's first tasks was to address the residual human rights and security issue in Europe, i.e., that of the remaining refugees. To this end, the UN established the International Refugee Organization (IRO) to start where UNRRA had left off, i.e., caring for the so-called "last million" refugees in Europe.

After a prolonged and tortuous debate, the UN General Assembly approved the IRO's constitution in December 1946, providing the organization a three-year mandate. This debate directly reflected the East-West confrontation. From the Soviet perspective, the majority of the remaining refugees were "quislings, traitors and war criminals" refusing to return home²⁹. The Soviets insisted that the sole function of a new refugee agency should be to return these people to their native lands. While Western delegates paid lip service to Soviet demands by asserting that the new organization's principal objective was to encourage refugee repatriation, they rejected the kind of forced repatriation undertaken by

²⁹ Marrus, *op. cit.*, p. 340.

UNRRA.

The refugee definition as well reflected this Western compromise with Soviet demands: the IRO constitution regarded as "refugees" those who were outside their country of nationality (or of former habitual residence) and who fell into one of the following categories:

(1) victims of the Nazi and Fascist regimes (including prewar expellees); (2) Spanish Republicans; (3) other prewar refugees exiled for reasons of race, religion, nationality or political opinion; and (4) those who are unable or unwilling to return home as a result of events subsequent to the outbreak of WWII.

"Displaced persons" are those who are outside of their country of nationality (or of former habitual residence) due to deportation or removal for forced labor by the Axis powers³⁰.

Theoretically, those who fall within one of the above five categories would be covered by the IRO's repatriation (and relief) services. Nevertheless, the IRO constitution did set strict conditions under which individuals could refuse repatriation. These conditions were:

(1) Persecution, or fear (based on reasonable grounds) of persecution because of race, religion, nationality or political opinions, provided these opinions are not in conflict with the principles of the U.N.

(2) Objections of a political nature judged by the IRO to be valid³¹.

Such codification of the idea that individuals could refuse repatriation if they had experienced or feared persecution in their own country was of ground-breaking significance; it paved the way for the more general definition subsequently adopted by the Statute of UNHCR as

³⁰ Goodwin-Gill, *op. cit.*, pp. 235-39.

³¹ Goodwin-Gill, *op. cit.*, pp. 237-38.

well as the 1951 Refugee Convention.

The Soviet Union and its Eastern European allies refused to join the IRO. Throughout its life, they resented it as a U.S. tool.

This lack of a universal consensus resulted in the establishment of the IRO *outside* the UN system. Its mandate was conceived of as for no more than three years (actually it existed for four). Hegemonic among its eighteen member states was the U.S., providing over half of its operational funds as well as its executive secretaries successively.

The IRO differed from UNRRA in two important ways: First, while UNRRA operated under military command, the IRO was much more autonomous with its own resources and enjoyed much greater political authority (it could negotiate directly with governments as well as zone military authorities). Second, as the Soviets suspected, the IRO was controlled fundamentally by the U.S.

All told, between 1947 and 1951 the IRO resettled about 1,040,000 persons in the West as compared to roughly 54,000 refugees repatriated to the East. Three-quarters of the resettled refugees went to four Western countries overseas (the U.S., Australia, Israel and Canada)³². Working in cooperation with some sixty voluntary agencies and using a fleet of forty vessels leased from the U.S., IRO officials resettled these refugees, matching their occupational skills with the economic needs of resettlement countries, thus

³² Marrus, *op. cit.*, pp. 342-45.

gaining the epithet of an "international employment agency"³³."

As its mandate neared expiration, the IRO still cared for nearly 180,000 unsettled refugees. In addition to these "residual" refugees, new refugees were flowing into the West from Eastern Europe as the Soviets under Stalin consolidated power in the region; between 1950 and 1953 a yearly average of 220,000 people escaped to the West through Berlin³⁴. Evidently, the eighteen member states constituting the IRO alone would no longer be able to shoulder such an increasing burden. Furthermore, there emerged refugee situations outside Europe such as in the Indian Subcontinent and the Near East³⁵, thus prefiguring the globalization of the refugee problem. As a result, discussions were initiated at the UN for the establishment of a new refugee organization which would institutionalize greater international cooperation for

³³ Marrus, *op. cit.*, p. 344.

³⁴ Marrus, *op. cit.*, p. 353.

³⁵ Large-scale refugee movements among the South Asian countries were caused by the partition of India. Those refugees were not covered by the international refugee regime. See, M. Weiner, ed., *International Migration and Security* (Westview Press, 1993), p. 151.

Other refugee movements covered by the international regime during that period included Palestinian refugees generated by the 1948 Arab-Israeli War, for whom the UN established in 1949 the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); and Koreans displaced by the Korean War, who were cared for by another UN agency, the United Nations Korean Reconstruction Agency (UNKRA). Such differential treatment of refugees by the international regime was based on the extent to which each refugee movement was viewed as geopolitically vital by the Western states, particularly the U.S. See, Loescher, *op. cit.*, pp. 61-62.

assisting and protecting refugees. Accordingly, in 1951, the international community established the United Nations High Commissioner for Refugees (UNHCR) within the UN system, thus finally returning refugee work back to the domain of that global body.

The United Nations High Commissioner for Refugees (UNHCR: 1951-Present)

To date the international refugee regime had covered Europe, except where powerful Western states' geostrategic interests were involved, but their humanitarian concerns remained inside Europe. As a corollary, its refugee definition remained geographically specific rather than universal.

On the other hand, the regime's dominant solution to the refugee problem shifted over the years from repatriation (under UNRRA) towards resettlement (under the IRO) outside Europe as it became apparent that many repatriated refugees to the Soviet zone were persecuted or simply executed.

The globalization of the refugee problem forced the international community to choose from only two alternatives; either to develop the existing Euro-centric refugee regime into a universal one, or to continue focusing on Europe. Instead, the international community forged a compromise from those two alternatives; it created a new refugee agency with a universal mandate, while at the same time concluding a new refugee convention, targeting at specific refugee groups. That is, the convention covered only European refugees created by events that occurred before January 1, 1951. This

statutory contradiction resulted in the emergence of two distinct groups of refugees: one was covered both by UNHCR and by the Refugee Convention (i.e., existing European refugees) and the other was covered only by UNHCR (i.e., post-January 1, 1951 European refugees and all non-European refugees, extant and future). This anomaly existed until 1967 when a significant revision was made to the Refugee Convention, eliminating in theory at least the geographical and time restrictions.

Upon its establishment in 1951, UNHCR inherited from the IRO, 174,000 unsettled people, long-term residents of Europe's refugee camps. Thus its initial task was to settle these remaining victims of WWII in Europe. But in the future, it would have to care for non-European refugees as well as European refugees, both existing and future, and, unlike the *resettlement-oriented* IRO, it would have to undertake *voluntary repatriation* as a preferable solution to refugee problems.

Headquartered in Geneva, UNHCR was established as part of the UN Secretariat, but its budget was minuscule -- \$300,000 in the first year -- and so was its staff -- around 100³⁶. Given its global mandate, such a small entity could not have seemed up to the task, but the rationale was that, unlike its predecessors, UNHCR was supposed to be a "non-operational" agency, meaning that it was not allowed to directly assist refugees in the field. It was expected to act as a humanitarian, non-political guardian of the legal rights of

³⁶ Recall, for example, that UNRRA had a 5,000-strong staff.

refugees. The task of maintaining and settling refugees belonged to its "operational partners," i.e., governments and NGOs. Furthermore, UNHCR would have to solicit voluntary contributions from governments for material assistance because the UN would only pay its administrative expenses, a situation still prevalent today. Furthermore, its mandate was limited to three years, again indicating the international belief that the refugee problem would be resolved quickly (it was extended to five years later on).

Refugees, according to the definition contained in UNHCR's Statutes, included:

- (1) those treated as refugees under previous international legal instruments (e.g., the IRO Constitution).
- (2) "any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had a well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence³⁷."

Three points should be noted regarding refugee determination. First, it was individually-based rather than group-based. Second, it was based fundamentally on the refugee's *subjective* sense of fear of persecution³⁸. Finally and most important, the notion of persecution was never defined despite its core importance to the refugee definition. However, within the context of the intensifying Cold War at the time, "persecution" obviously referred to the

³⁷ Goodwin-Gill, *op. cit.*, pp. 242-43.

³⁸ With the condition that such fear be based on some objective facts.

kind of repression dissidents and minorities were experiencing in communist countries in Europe. Thus, a refugee affairs expert noted that such a definition "accommodated the bona fide needs of those people, while at the same time enabling the West to score points in the Cold War's ideological battle by encouraging disaffected elements within the Eastern bloc to 'vote with their feet'³⁹."

Such a "politicized universalism" found in UNHCR's Statutes was further accentuated by the adoption of a more ideologically-colored refugee definition for the 1951 UN Refugee Convention. The Convention definition narrowed the scope of the Statute definition by adding geographical as well as time limitations: the Convention covered only those made refugees "as a result of events occurring *before 1 January 1951*." Moreover, each contracting state was given options regarding the geographical scope of events: events occurring either (1) *in Europe* or (2) *in Europe or elsewhere*⁴⁰. Given that by the end of 1950, all Eastern European nations (with the possible exception of Yugoslavia) were under Soviet control, this definition would allow nearly all the successful escapees from these countries to qualify for refugee status in the West⁴¹.

³⁹ B. Frelick, "Call Them What They Are - Refugees," *World Refugee Survey* (1992), p. 12.

⁴⁰ Goodwin-Gill, *op. cit.*, p. 253.

⁴¹ Cold-War considerations aside, the above definitional gap between the two legal instruments reflected a propensity of sovereign states that, although they were willing to create a new refugee agency with a broad mandate to express their humanitarian concerns, they were hesitant to be bound by equally broad new legal responsibilities themselves, which

Finally, it is noteworthy that despite its ideological bias the Convention did guarantee for refugees the enjoyment of civil rights and the most favored treatment in the areas of employment, social welfare, and basic education in their adopted homes.

Before turning to discussion of the subsequent expansion of the refugee regime, we will briefly look at the important role the U.S. played in the establishment of UNHCR.

A major point of contention in the regime literature concerns the question of whether the formation of an international regime requires a hegemon⁴². The theorists of hegemonic stability have answered that question in the affirmative, while some regime theorists have claimed that a hegemon is not a necessary condition for regime formation⁴³.

In this context, the role which the U.S., an obvious hegemon in the immediate post-WWII years, has played in the formation of the UNHCR-based international refugee regime would seem ambivalent at best. Revealing is the fact that

a broadly-mandated convention would impose.

⁴² A hegemon can be defined as a state with the national capability to advance long-range views of world order by working with the preponderant resources available to itself for the success of institutions charged with that task. See, E. Haas, "Regime Decay: Conflict Management and International Organizations, 1945-1981," *International Organization*, 37 (2), Spring, p. 229.

⁴³ A classic example of the hegemonic stability theory can be found in C. P. Kindleberger, C. P. *The World in Depression, 1929-1939* (University of California Press, 1973). For a critical review of that theory, see, R. O. Keohane *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press, 1984), esp. chap. 3.

during the UN discussions leading up to the establishment of UNHCR as well as of the Refugee Convention, the U.S. sought to narrow the scope not only of their refugee definitions, but also UNHCR's activities⁴⁴. As regards refugee definitions, the U.S., supported by other overseas resettlement countries, insisted that they include the geographical as well as the time limitations cited above.

Such restrictions stemmed from various sources. First, the U.S. as the world's largest resettlement country understandably wanted to avoid the open-ended responsibility of receiving an overflow of refugees from the entire world⁴⁵. Second, they stemmed in part from the fact that since the refugee issue -- particularly refugee intake -- directly concerned a quintessential component of state sovereignty, the U.S. was unwilling to give UNHCR free reign. Third, it was partly because of cost that the U.S., the largest financial contributor to UNHCR, sought to limit its functions to that of legal protection of refugees, denying it costly resettlement & relief duties. In this connection, the U.S. also demanded a temporary mandate -- three years only -- for UNHCR. Fourth, such restrictions on the regime can be

⁴⁴ Holborn, *op. cit.*, chap. 3.

⁴⁵ The Western European states -- led by the U.K. and Belgium -- insisted on broad, universal definitions of refugees presumably because the Western European states, major members of which still owned (or had just freed themselves of) colonial possessions overseas, were concerned with potential refugee outflows from their (ex-) colonies and wished to create an international mechanism by which to internationalize the burden of resettling those potential refugees.

explained as a hegemonic attempt on the part of the U.S. to limit the range of autonomy which the hegemon is generally expected to provide for the regime's decision-making structures⁴⁶.

Lastly but most fundamentally, such a restrictive U.S. attitude vis-vis the fledgling refugee regime reflected its Cold-War strategy. First, since Europe was at the top of the overall U.S. Cold-War strategic agenda, Washington believed that the international refugee regime should also focus on Europe's Cold-War refugees. Second, since the U.S. wished to maximize its control of the refugee issue as a Cold-War instrument, it preferred a non-UN, Western multilateral approach as well as a parallel unilateral one on the issue. On the unilateral front, up to the mid-1950s, the U.S. focused on its own refugee mechanisms⁴⁷ in promoting escapees from the East rather than giving full support to the UNHCR-centered refugee regime⁴⁸. On the non-UN, Western

⁴⁶ The hegemon normally is compelled to grant autonomy to a newly created regime in order to prevent it from appearing a mere extension of itself. Such appearances would deprive the regime of legitimacy in the eyes of other states. S. D. Krasner, *Structural Conflict: The Third World Against Global Liberalism* (University of California Press, 1985), p. 77.

⁴⁷ Such mechanisms included the United States Escapee Program (USEP) of 1952, the Refugee Relief Act of 1953, and the Refugee-Escapee Act of 1957, all of which were aimed by and large at facilitating the resettlement in the U.S. of refugees from behind the Iron Curtain. N. L. Zucker & N. F. Zucker, *The Guarded Gate: The Reality of American Refugee Policy* (Harcourt Brace Jovanovich, Publishers, 1987), pp. 31-35.

⁴⁸ For example, the U.S. refused to grant UNHCR any relief funds until 1955. Gil Loescher and J. A. Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door, 1945 to the Present* (The Free Press, 1986), p. 41. Moreover,

multilateral front, the U.S. took the lead in creating in 1951 the Intergovernmental Committee for European Migration (ICEM) -- currently the International Organization for Migration (IOM) -- to organize the overseas resettlement of European migrants as well as refugees. More specifically, it sought to alleviate the problem of overpopulation in postwar Western Europe -- especially in West Germany and in Italy -- by facilitating the migration of people through the provision of low-cost transport and other migration services⁴⁹. The ICEM had strategic implications; its establishment was in part to alleviate the fear held by anti-communist U.S. Congressmen that the problem of over-population in Western European countries might be exploited by communists⁵⁰. While ICEM maintained close working relations with UNHCR, it remained outside the UN.

In summary, the U.S. as a hegemonic power successfully limited the UNHCR-centered refugee regime in its functional as well as its geographical-temporal scope as it was created, while at the same time taking various refugee-related initiatives, both unilateral and multilateral, to promote the resettlement of European refugees/migrants overseas. While such U.S. behavior was motivated primarily by Cold-War strategy and ethnic affinity with European refugees rather

it did not even become a signatory to the Refugee Convention until 1967.

⁴⁹ Holborn noted some continuity between ICEM and the IRO; ICEM inherited 300 IRO staff and took over twelve of its vessels. Holborn, *op. cit.*, pp. 117-19.

⁵⁰ Loescher & Scanlan, *op. cit.*, (1986), pp. 41-43.

than purely humanitarian concerns, it did facilitate the successful establishment of a universal refugee regime by reducing the overall load it had to shoulder in its early years.

From the regime perspective, the above meant that the case of the UNHCR-U.S. relationship was one in which there existed some degree of incongruity between hegemonic preferences and regime norms. In seeking to synchronize the regime with its own preferences, the U.S. restricted UNHCR's scope while at the same time consolidating other institutions functionally parallel to and complementary with UNHCR.

As will be seen below, the U.S. commitment to the international refugee regime was to be strengthened after it realized that the globally-oriented regime had become less incongruent with its own Cold War strategy as its diplomatic struggle against the Soviets became a continuous and global one.

The Expansion of the UNHCR-centered Refugee Regime

As it sought to tackle refugee problems during the 1950s and the 1960s, the international refugee regime faced triple challenges. Those challenges, arising from East-West rivalry and decolonization, concerned temporal, geographical, and definitional dimensions.

As noted earlier, the refugee definition contained in the 1951 Convention covered only those Europeans made refugees as a result of events occurring before 1 January 1951, while UNHCR's definition was open-ended, both geographically and temporally. Although UNHCR sought to promote protection for refugees worldwide, the fact remained that the actual

protectors were sovereign states, and thus the agency could hardly force the member states of the Convention to address refugee movements outside its scope. The 1956 flight of Hungarian refugees changed this situation, however.

The flight of 200,000 refugees from Hungary into neighboring Austria and Yugoslavia in late 1956⁵¹ posed a significant challenge to the refugee regime not least because they were generated after the Refugee Convention's cutoff date -- 1 January 1951. Responding to an appeal by Austria, UNHCR immediately provided funds to Austria from its Emergency Refugee Fund (UNREF) and appealed to the member governments of its Executive Committee (EXCOM) and other governments for additional funds and at least temporary asylum offers for the Hungarian refugees in Austria. At the same time, ICEM began to contact its member states in preparation for assisting refugees to migrate overseas as well as to other Western European countries. Notably, in both cases, the decisions were made prior to respective executive authorization. Thus, Mr. Auguste Lindt, a then newly appointed High Commissioner, successfully obtained retroactive validation for his decision from EXCOM by stressing the importance of attributing the Hungarian flight not only to the events occurring in Hungary in November 1956, but also to "fundamental political changes" which had

⁵¹ Triggered by the Soviet military invasion and toppling of the anti-Soviet government of Imre Nagy in November 1956, an estimated 180,000 Hungarians fled to Austria and an additional 20,000 entered Yugoslavia in the ensuing four months. Loescher and Scanlan, *op. cit.*, (1986), p. 50.

occurred as a result of WWII⁵². The majority of EXCOM members agreed with Mr. Lindt's argument to let UNHCR care for the Hungarian refugees, in response to the U.S. desire to protect refugees from behind the Iron Curtain. Responding to the appeal made by UNHCR, twenty-five nations pledged about \$10 million in cash and in kind. In Vienna, a coordinating committee was set up under the direction of UNHCR. The care and maintenance of the refugees in camps in Austria was undertaken by the Red Cross, both local and international, while ICEM undertook the large-scale movement of refugees to other Western European countries and overseas⁵³. The West was highly receptive to the Hungarian refugees with the U.S., Canada and U.K. receiving 38,000, 38,000 and 21,000 respectively⁵⁴. By January 1958, the number of Hungarian refugees remaining in Austria had been reduced to 19,000 and by that time, the problem of the Hungarian refugees in Yugoslavia had been completely resolved.

In summary, the case of Hungarian refugees represented a resounding success for the refugee regime as it responded to a major Cold-War refugee crisis in Europe. One indication of this success was that it prompted the U.S. to start

⁵² Mr. Lindt's statement before EXCOM on 17 January 1957. Holborn, *op. cit.*, p. 394.

⁵³ Technically, ICEM's constitution would not have allowed it to operate on behalf of the Hungarian refugees in Austria in the absence of agreements between Austria and overseas resettlement countries on which ICEM could act. Still, like UNHCR, ICEM responded flexibly to the situation, undertaking a large-scale resettlement operation. Holborn, *op. cit.*, pp. 398-400.

⁵⁴ Holborn, *op. cit.*, p. 418.

supporting UNHCR as Washington realized the agency's usefulness in its fight against communism⁵⁵. At the same time, the Hungarian case represented the temporal expansion of the refugee regime in that it eroded the time limit claim contained in the Refugee Convention. Such temporal expansion was further consolidated as the regime responded to subsequent refugee crises and in fact this response was retroactively ratified by the international community.

Of equal significance was the fact that the refugee regime's *temporal* expansion was coterminous with its *geographical* expansion simply because most of the subsequent refugee crises which compelled it to react, occurred outside Europe. Moreover, the international community supported the regime's dual expansion by devising the idea of a "good-offices" function for UNHCR.

Two major refugee movements which were instrumental in this development of the above "good-offices" function were the Chinese refugees in Hong Kong in 1957 and the Algerian refugees in Morocco and in Tunisia in the latter half of the 1950s⁵⁶.

⁵⁵ As a result of the Hungarian crisis, the Migration and Refugee Assistance Act (MRAA) was passed by Washington in 1962. In addition to domestic assistance programs for refugees, it provided for annual contributions to UNHCR and ICEM. N. L. Zucker and N. F. Zucker, "From Immigration to Refugee Redefinition: A History of Refugee and Asylum Policy in the United States." in *Refugees and the Asylum Dilemma in the West*. (ed.) by G. Loescher (Pennsylvania State University Press, 1992), pp. 59-60.

⁵⁶ Another major refugee movement which helped expand the international refugee regime beyond Europe concerned Palestinian refugees generated by the 1948 Arab-Israeli War.

The problem of Chinese refugees fleeing the People's Republic of China (PRC) to Hong Kong had been recognized by the international community since the establishment of UNHCR mainly thanks to the campaign by the Republic of China (ROC)⁵⁷. By 1957, however, the problem had become a crisis due to a lack of funds. At the request of UNHCR's EXCOM, the UN General Assembly (UNGA) in the same year decided to pass a significant resolution to authorize the High Commissioner to "use his good offices to encourage arrangements for contributions" to assist the Chinese refugees in Hong Kong (the UNGA Resolution 1167 [XII], 26 November 1957). Notably, this resolution did not deal with the legal status of the Hong Kong refugees since UNGA wished to avoid getting entangled with the highly controversial issue of the two Chinas⁵⁸. Such involvement would have jeopardized the achievement of its real purpose, that is, swift assistance to Chinese refugees in Hong Kong.

Similarly, UNHCR's assistance to the post-1954 Algerian refugees⁵⁹ was clearly outside the scope of the Refugee Convention since that particular refugee flight occurred

⁵⁷ The ROC appealed for greater resettlement overseas for Chinese refugees as well as financial assistance for their integration into the Hong Kong community. The ROC expressed willingness to accept any Chinese refugee who wished to come to Taiwan, but the actual number of refugees resettled there was small. Holborn, *op. cit.*, p. 687.

⁵⁸ For details, see, Holborn, *op. cit.*, pp. 435-36 & 690-91.

⁵⁹ They had left Algeria to escape from the aftermath of the 1954 pro-independence revolt and had resided in Morocco and in Tunisia since then.

outside Europe and after 1951. Accordingly, assistance was validated retroactively by UNGA in 1958 with reference to the agency's "good-offices" function. The use of the "good-offices" function was necessary not only because of the refugee crisis but also because of a potential diplomatic problem: defining those Algerian refugees as statutory refugees would have meant officially that France, a permanent member of the UN Security Council and a historical advocate of human rights, was engaged in the persecution of its own colonial citizens -- a highly embarrassing situation not only for France but also for the UN itself⁶⁰. Later, UNHCR's "good-offices" function was formalized by the UNGA Resolution 1673 (December 18, 1961), in which UNGA requested the High Commissioner "to pursue his activities on behalf of refugees within his mandate or those for whom he extends his good offices."

In summary, the refugee regime, by devising the concept of the "good-offices" function, pragmatically adapted itself to new refugee situations developing outside Europe. At the same time, it should not be overlooked that the "good-offices" concept was used by the refugee regime as well to bypass the provision of persecution in order to be able to assist such non-Cold War refugees as the Algerians. In other words, the then prevalent Cold-War definition of persecution was becoming an obstacle to international responses to a growing number of non-Cold War refugee situations around the world.

As the 1960s wore on, new refugee situations emerged

⁶⁰ Holborn, *op. cit.*, pp. 438-9.

increasingly in Africa during decolonization. Now a definitional expansion was urgently required by the refugee regime.

Such a *definitional* expansion culminated in the 1969 adoption by the Organization of African Unity (OAU) of its Refugee Convention. The 1969 "OAU Convention Governing the Specific Aspects of Refugee Problems in Africa" adds to the UNHCR Statutory definition as follows:

Every person who, owing to external aggression, occupation, foreign domination or events *seriously disturbing public order* in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality⁶¹ (emphasis added).

This refugee definition, whose drafting was greatly assisted by UNHCR lawyers, remains to date the most inclusive of all definitions because it explicitly encompasses victims of civil and international war, political disorder and natural disasters, as well as of persecution.

At least two major characteristics of the OAU Refugee Convention should be noted. First, unlike the UN Refugee Convention, it stipulates both the prohibition of rejection at the frontier and the non-refoulement obligation (Article II-3). It seems that in post-colonial Africa where the Cold War was not yet salient such a stipulation was diplomatically more feasible than in Europe because refugee movements in Africa were expected to be of a relatively short duration. As a corollary, the OAU Convention emphasizes voluntary repatriation rather than resettlement or local integration

⁶¹ See, e.g., Goodwin-Gill, *op. cit.*, pp. 280-86, for a full text.

(Article V-1). Second, a provision was made by which refugees were prohibited from engaging in subversive activities against any member state of the OAU (Article III-1). This was aimed at preventing intra-regional diplomatic problems because "subversive" activities by refugees would likely cause tensions between the host government and the refugee-producing government.

The OAU Refugee Convention has had a significant impact on the larger international refugee regime in three ways. First, other parts of the Third World have subsequently adopted broader refugee definitions similar to that of the OAU Convention. The Cartagena Declaration adopted in 1985 by the Organization of American States (OAS) uses an almost identical definition. In addition to the causes of refugee flight contained in the OAU Convention, the declaration extends protection to refugees who are victims of massive violations of human rights⁶². Second, currently, UNHCR, when operating in Latin America and Africa, uses those regional refugee instruments, extending protection to victims of violence, both natural and manmade. Third, the OAU's initiative in the 1960s to fashion its own refugee convention spurred UNHCR to eliminate time restrictions (1 January 1951) from the UN Refugee Convention⁶³.

⁶² Frelick, *op. cit.*, pp. 12-3.

⁶³ Such a move by UNHCR was motivated by a mix of corporate self-interest and humanitarian concern: the agency feared that the emergence of a refugee instrument competing with the UN Convention might detract from the universal appeal of the UN instrument, as well as its own authority, the designated guardian of the instrument; the agency was concerned that if an OAU convention contained refugee

In sum, the definitional expansion of the refugee regime was initiated not by the Western states, including the U.S., but by African states which were concerned about non-Cold War refugee phenomena in their own region. Nevertheless, this normative change was subsequently incorporated into the international regime at large⁶⁴ since the West, led by the U.S., believed that such expansion was also useful in pursuing its Cold-War strategy by permitting it to deal with refugees stemming from the globalization of the Cold War.

Back to the Norm: Who is a Refugee?

Will the above argument permit us to conclude that currently there exists a truly universal refugee regime which guarantees international protection for *refugees in all places at all times*? Unfortunately, the answer is "no" for the following reasons.

First of all, no firm worldwide consensus exists as to who is a refugee. A more inclusive refugee definition such as

standards lower than those of the UN Convention -- a strong possibility at the time --, African refugees would become "second-class" refugees, enjoying less protection than their counterparts elsewhere. To avoid this, UNHCR accelerated the plan to remove the 1 January 1951 restriction from the Refugee Convention, and to that end, the New York Protocol to the 1951 Geneva Refugee Convention was adopted in December 1966 (it went into force in October 1967). The U.S., concerned with the globalization of the Cold War, became a party to the said protocol after this removal of temporal limits.

⁶⁴ This is an important example where states of the South were able to use international organizations -- the OAU in this case -- to introduce new norms into the international regime, on which Southern states, when acting individually or disjointedly, could exert little influence.

that of the OAU and OAS can hardly be said to currently enjoy universal acceptance; it is accepted by refugee-producing Third World countries⁶⁵, but not by the refugee-receiving wealthy nations of the West. More specifically, refugee-producing underdeveloped countries tend to adopt a wider definition and seek its global acceptance to press the West to receive greater numbers of their refugees. On the other hand, while refugee-receiving Western countries are usually willing to use the wider definition when undertaking humanitarian assistance to refugees overseas, they will opt for the narrower definition (i.e., victims of persecution) when determining the eligibility of asylum-seekers for resettlement⁶⁶. Looking ahead, in the West which has been experiencing prolonged economic recession and concomitant high rates of unemployment, nativist feelings and xenophobic attitudes have been on the rise, thereby providing little incentive for their governments to liberalize their immigration and refugee policies by, among other things, adopting the more inclusive refugee definition -- people

⁶⁵ This is true to the extent that Third World countries themselves do not become countries of first asylum (or of resettlement). For example, the ASEAN member states extended first asylum even to non-refugees, i.e., "externally displaced persons" from Indochina, but it was contingent strictly upon their eventual resettlement in the West.

⁶⁶ For example, Jonathan Moore, the US Coordinator for Refugee Affairs and Director of Refugee Programs, admitted in an interview with *Refugees* magazine that "(...) we have a broader authority to provide assistance, and a narrower definition when we're admitting refugees." UNHCR, *Refugees* (May 1988), p. 43.

fleeing generalized violence.

Secondly, the majority of refugee-receiving countries do not provide asylum to those who have left their countries *presumably* because of the lack of economic opportunities at home. Such a policy is based on the traditional distinction between "political refugees" and "economic migrants," a distinction increasingly tenuous and often irrelevant in reality. This is so because all too often the lack of economic opportunities experienced by whole groups of citizens in an underdeveloped country is a direct result of government policies to exclude them from the benefits of economic development in order to perpetuate their poverty and powerlessness so that the government and its allies can retain power. In other words, economic migrants often are a product of the repressive political system itself.

Facing this problem of economic/political refugees, the governments of the wealthy North have tended to choose a rather easy way out -- determining refugee eligibility on the basis of asylum-seekers' country of origin; if asylum-seekers are from a country whose government is judged repressive by the government of a receiving country, they will be granted access to asylum procedures (the converse is true)⁶⁷. Obviously, such judgements by governments are likely to be politicized and arbitrary, thereby resulting in situations

⁶⁷ A prime example is Germany's newly revised immigration law which places a higher burden of proof on asylum-seekers from countries designated (by the German Government) as "persecution-free." See, e.g., J. Fijalkowski, "Aggressive Nationalism, Immigration Pressure, and Asylum Policy Disputes in Contemporary Germany," *International Migration Review*, 27, Winter, 1993, pp. 850-69.

where bona fide refugees are denied asylum procedures in the West.

Voluntary Repatriation-as-a- "Durable Solution"

As noted earlier, given the virtual end of immigration into Western states, particularly in Europe, growing numbers of immigrants have sought to avail themselves of the West's asylum system, thereby overburdening its channels designed originally to provide protection to bona fide refugees. Furthermore, the demise of the Cold War has deprived the West of the strategic and ideological utility of welcoming asylum-seekers from the post-communist East⁶⁸. Against the backdrop of Europe's prolonged recession, this has resulted in a generalized tightening of the West's asylum channels, thus making it more difficult for refugees from around the world to resettle therein.

On the other hand, it is increasingly apparent that countries of first asylum, most of them poor countries themselves, cannot be reasonably expected to keep shouldering the socio-political as well as financial costs of hosting large-scale refugee populations indefinitely. Thus, local integration of refugees no longer constitutes a viable alternative to resettlement in the West.

In this context, the international refugee regime currently emphasizes voluntary repatriation as the most

⁶⁸ This does not seem to apply in the case of the West's treatment of Chinese asylum-seekers.

realizable solution to the refugee problems of the 1990s⁶⁹. This trend has been strengthened by the post-Cold War stabilization in countries of origin which were often battlegrounds for proxy wars. Recall that UNHCR's Statutes as well as the OAU Refugee Convention emphasized voluntary repatriation as a preferable solution. Thus, the end of the Cold War has allowed the refugee regime to return to its originally intended mission.

While returning refugees, once repatriated, no longer fall officially within UNHCR's mandate, focus on their voluntary repatriation naturally directs the refugee regime towards addressing the domestic situation of the countries of origin. That is so because repatriation and reintegration of refugees requires at a minimum the reconstruction of a relatively safe environment and economic subsistence in their home countries. Thus the refugee regime finds it increasingly necessary to ally itself with peacemaking/peacekeeping and development regimes.

For example, when assisting refugees repatriating to a country in transition from conflict to peace, the UNHCR works closely with peacekeeping forces deployed in that country, such as the UN Transitional Authority in Cambodia (UNTAC)⁷⁰

⁶⁹ Sadako Ogata, the current UN High Commissioner for Refugees, called the 1990s the "decade of repatriation." *The New York Times* (3/20/94, A21).

⁷⁰ In fact, refugee repatriation constituted an integral part of UNTAC's peacekeeping mandate per se, and for that purpose, the Repatriation Component was created within UNTAC as one of the seven components constituting that organ. United Nations, *Agreements on a Comprehensive Political Settlement of the Cambodian Conflict*, DPI/1180-92077-January

and the UN Observer Mission in El Salvador (ONUSAL).

The major concern following repatriation is to promote the successful reintegration of returnees. Notable in this regard is the so-called "Quick Impact Project (QUIP)." Applied first in Nicaragua and subsequently in Cambodia and Somalia, QUIP is a small-scale development project that is implemented quickly and at low cost in areas where returnees and internally displaced people are concentrated⁷¹. In organizing and implementing QUIP, UNHCR often works in close collaboration with the UN Development Program (UNDP). QUIPs obviously cannot replace carefully-planned long-term development programs but they do offer a bridge between the latter and short-term returnee relief programs.

The Refugee Regime and the Internally Displaced

At the same time, such a focus on domestic situations inevitably leads the refugee regime to address the recurrent and fundamental issue of *preventing* refugee outflows in the first place. In this connection, the problem of internally displaced people comes to the fore since those people are displaced for the same reasons as refugees, and thus are among the most likely to become so in the future.

What is remarkable about the internally displaced, from the regime perspective, is that no international organization

1992-10M, Annex 1, Section E (New York, 1992).

⁷¹ UNHCR, *op. cit.*, (1993), p. 115.

exists with a specific mandate to care for them⁷². Nor do existing international conventions prescribe the rights of the internally displaced. This situation seems to be predicated upon the conventional assumption that each sovereign-state should and is able to protect the lives and rights of its citizens in emergencies. However, this thesis of "national protection" all too often is betrayed by reality. Given that the international refugee regime, especially UNHCR, has sufficient experience in dealing with humanitarian assistance to refugees, it would seem natural that the international community increasingly expects UNHCR and other IGOs to undertake the task of caring for the internally displaced as well. And yet such expectations have not easily been translated into action because of the misgivings states have about the potential conflict between such humanitarian "intrusion" and state sovereignty. In these ambivalent circumstances, the task of protecting and assisting the internally displaced remains a new frontier for the international refugee regime⁷³. And it is at this

⁷² While both the UN Refugee Convention and the OAU Refugee Convention cover victims of persecution and/or generalized violence, they exclude from their mandates those victims who have not crossed an international frontier.

⁷³ Francis M. Deng, special representative of the UN Secretary-General for internally displaced persons, objects to the extension of the refugee regime to cover the internally displaced for reasons that (a) the governments are not prepared to take such a "radical step" and (b) the legal obligations of governments towards their own citizens are different from those of the host government towards refugees. Francis M. Deng, "Dealing with the Displaced: A Challenge to the International Community," *Global Governance*, vol. 1 no. 1 (Winter 1995), pp. 45-57.

frontier that the refugee regime increasingly finds itself closely linked to other international regimes such as development aid and human rights. Examples of such a regime linkage are numerous and on the rise: in Sri Lanka, UNHCR has established a network of Open Relief Centers, namely, temporary sanctuaries where internally displaced people as well as returning refugees can obtain shelter, relief, and safety under UN cover⁷⁴; in Somalia, UNHCR started in 1992 a "cross-border" operation by which famine-related assistance was brought in from Kenya, for the dual purpose of stabilizing affected areas (inside Somalia) capable of producing refugees as well as creating conditions favorable to voluntary repatriation of Somali refugees from neighboring countries, including Kenya⁷⁵.

Such UNHCR efforts to prevent new refugee outflows have not been problem-free, however. In the former Yugoslavia, UNHCR has engaged in such preventive activity by providing necessary protection and relief to civilians displaced in that conflict. Nevertheless, UNHCR has been criticized because the above amounts to keeping internally displaced people in areas under great risk. On the other hand, to try to help those people flee would mean promoting successful "ethnic cleansing" by Serbs. This is the serious ethical/moral dilemma the refugee regime has been facing in the former Yugoslavia as it seeks to protect the internally

⁷⁴ UNHCR, *op. cit.*, (1993), p. 136.

⁷⁵ *ibid.*, pp. 94-95.

displaced therein⁷⁶.

One way out of this humanitarian predicament is to "militarize" humanitarian intervention. The weaker version of such militarization can be found in the role the UN Protection Force (UNPROFOR) has been playing in Bosnia and Herzegovina; it has provided not only military escorts for emergency relief supplies and the personnel of humanitarian agencies but also humanitarian assistance itself through airdrops and airlifts. Nevertheless, as the war between local combatants has prolonged and escalated in the absence of diplomatic solution, the role of UNPROFOR has become ineffective because of its limited mandate.

Such "militarization" of humanitarian assistance or the "humanitarian" use of the military is not problem-free, however. Most seriously, it entails the risk of humanitarian agencies losing impartiality/credibility in the eyes of the warring local factions, with the resulting danger of humanitarian personnel themselves becoming targets of aggression⁷⁷. One way to reduce that risk has been suggested

⁷⁶ Nevertheless, the significance of UN humanitarian assistance in Bosnia and Herzegovina cannot be denied. In Bosnia and Herzegovina UNHCR has assumed the role of "lead UN agency" responsible for coordinating NGO relief efforts as well as UN humanitarian assistance. Such UN assistance ranges from transportation and logistics (UNHCR and various agencies), food distribution (World Food Program), health care (World Health Organization), the care of children and mothers (UNICEF), to military protection (UN Protection Force: UNPROFOR).

⁷⁷ For this reason, some humanitarian agencies, prominent among them, the International Committee of the Red Cross (ICRC), have been opposing such a "militarization" of their relief activities.

by Thomas G. Weiss. He proposed the creation of a new humanitarian military unit attached to the UN Security Council⁷⁸. Its role would be to carve out security spaces within which they could take command and subsequently permit relief organizations to operate. Given its permanent organization and direct ties with the UN Security Council, such a unit hopefully would be much more neutral and more robustly mandated than UNPROFOR, for example.

In summary, given the post-Cold War trends that refugee-producing conflicts are increasingly caused by ethnic rivalries and animosities which have been exacerbated by long-term conditions of economic underdevelopment and that such conflicts often take place within the context of internal anarchy (or a "failed state"), future needs will be greater for the refugee regime to collaborate closely with other regimes, particularly the peacekeeping/making regime and the development-assistance regime, if it is to fulfill the humanitarian principle of universal protection of refugees, including the internally displaced. This would suggest a strengthening of multilateral cooperation and coordination through UN-centered international organizations, both existing and forthcoming.

3. CONCLUSIONS

Over the past roughly seventy years the international

⁷⁸ Thomas G. Weiss, "Overcoming the Somalia Syndrome - "Operation Rekindle Hope?" *Global Governance*, vol. 1 no. 2 (May-August 1995), pp. 171-187.

refugee regime has evolved from an ad-hoc arrangement for the protection of a specific group of refugees -- Russian emigres -- into something approaching a complex, global institutional network designed for the universal protection and assistance of refugees around the world.

Nevertheless, the refugee regime currently suffers the maleficent effects of triple asymmetries.

First, there is an asymmetry of definition. There is no universal consensus as to who is a refugee. While the refugee-receiving nations of the wealthy North cling to the narrower Cold-War definition of refugees as individual victims of political persecution despite (or because of) the demise of the Cold War, the refugee-producing nations of the poor South continue to insist upon their broader definition of refugees as collective victims of generalized violence inasmuch as those nations remain beneficiaries of such a broader refugee definition and do not become asylum-providers. This asymmetry is reflected in the Western dichotomy of "political refugees" vs. "economic migrants," which is increasingly untenable, as many Third-World examples have amply demonstrated. Nevertheless, the West continues to maintain such a narrow definition of refugees as well as the virtual prohibition of immigrant workers -- with the exception of contract laborers and humanitarian cases such as family reunions -- because many citizens therein feel threatened by "floods" of foreigners from the South and East. This paranoia about immigrants has resulted not only from the prolonged economic recession but also from national identity crises occasioned by deepening regional integration.

Nevertheless, it would be unrealistic to expect Western governments to agree to adopt a wider refugee definition similar to the one contained in the OAU Refugee Convention in the near future. If the Western tradition of political asylum is to be preserved, it would be necessary for each refugee-receiving nation to theoretically and politically separate refugee policy from immigration policy in general and to seek to reduce additional pressure on refugee mechanisms by devising a more realistic -- i.e., a more liberal -- immigration policy congruent with the reality of global migration in the 1990s and beyond. In other words, what is needed is for states to de-link their domestic refugee regimes from their general immigration regimes and to try to treat them separately, despite (more precisely, because of) a growing interpenetration between the two.

Second, intertwined with the above asymmetry is another regarding solutions to refugee problems. As resettlement in the West as well as local integration in countries of first asylum has become less and less feasible as solutions to the refugee problem, voluntary repatriation has come to be seen as the most realistic solution of the 1990s. Undoubtedly, the end of the Cold War has helped create many situations around the world, where relatively safe repatriation has become a possibility. Nevertheless, one should be reminded that those three solutions are interdependent, not mutually exclusive. As global migration intensifies as a result of the development of telecommunications and transportation technology as well as a widening gap between the wealthy North and the poor South, demand for each of those solutions

will become greater.

Moreover, it should be noted that emphasis on the merit of voluntary repatriation (as well as the right to remain) may well reflect the North's new "containment" policy targeted at the South, with the possible result of depriving the latter of political safety valves. This will have serious repercussions on the international security regime as well as the human rights regime. So the challenge for the refugee regime is to promote truly voluntary repatriation as much as possible, while at the same time seeking to guarantee resettlement and first asylum for people in the greatest need of protection.

Finally, there is an asymmetry of protection between refugees and internally displaced persons, perhaps the most untenable asymmetry of all. As noted above, no international organizations nor conventions exist with primary responsibility for caring for the internally displaced despite the facts that internally displaced people are much more numerous than refugees at any point in time and the only difference between the internally displaced and refugees is that the former have not crossed an international frontier.

Obviously, the best solution to the problem of internally displaced persons would be to reestablish national protection. But in actuality many governments are unwilling and/or unable to do so particularly in emergency situations. Thus in protecting the internally displaced, there will be a greater need for collaboration between the refugee regime and other regimes such as peacekeeping. Such an enhanced regime linkage in practice will challenge the traditional notion of

state sovereignty because it would reinforce and legitimize ideas and practices supportive of humanitarian intervention. As far as the refugee regime is concerned, this problem, i.e., state reluctance/resistance to accept humanitarian intervention, particularly a militarized one, could be ameliorated in part by rendering such intervention as neutral as possible through various means such as the creation and use of a new humanitarian rapid deployment unit attached to the UN Security Council.

Most fundamentally and in the long term, however, this problem should be dealt with by reforming the conventional concept of state sovereignty per se rather than trying to force new realities into the small and old conceptual "envelope" of sovereignty. Future concepts of sovereignty should entail state responsibility to prevent internal displacement in its own territory as well as to provide protection and relief to such victims through whatever means. In the future, a state without such a human rights commitment should be obliged internationally to accept multilateral humanitarian intervention, be it civilian or military⁷⁹.

If history is any guide, one could cautiously hope that the current refugee regime will continue to evolve into something broader and stronger which is capable of dealing with internally displaced people as well as refugees at least

⁷⁹ In this context, it should be noted that even within the framework of the now 50-year old UN Charter, the concept of state sovereignty connotes a state having certain responsibilities towards its citizens, including the protection of their human rights.

to the extent that the international community is able and willing to allow it to happen, if not to a more advanced level.

CHAPTER THREE

JAPAN'S IMPERIALIST REFUGEE POLICY (1890s - 1945)

1. EXILES FOR AND FROM REVOLUTIONS (1890s - 1920s)

Introduction

In an attempt to rapidly create a modern nation state in a threatening international environment created by the Western great powers, Japan, since the Meiji Restoration of 1868, had pursued modernization "from above" under the guidance of a bureaucratic authoritarian state. Driven by militaristic impulse, initially defensive and later aggressive, this state-led modernization involved heavy industrialization financed by income transferred from the agricultural sector. This industrialization resulted in the dispossession of peasant communities, thereby creating large numbers of poor peasants, i.e., surplus population in the countryside. While part of this surplus population was absorbed by urban industry, a great part of it remained unemployed (or underemployed)¹. Underrecognized is the fact, however, that in seeking solution to this surplus labor problem, the Japanese state organized and sponsored a large-scale *emigration* -- over one million people -- to countries in the Western hemisphere -- North America and later Latin America -- and to its newly acquired territories in Asia,

¹ For Japan's industrialization and its social consequences, see, for example, E. H. Norman, *Origins of the Modern Japanese State: Selected Writings of E. H. Norman*, John W. Dower, ed., (Pantheon Books, 1975), pp. 211-273.

particularly "Manchuria."

This Japanese emigration, whose main thrust continued up until the beginning of WWII, helped modernize Japan by lessening the population pressure at home, providing additional funds in the form of remittance from expatriates to their relatives back home², and transferring human resources to its colonial territories for development and management purposes.

Given such a historical background, Japan's *immigration* policy had been nothing but highly restrictive. Except for such "elite" foreign residents as diplomats, scholars, engineers, traders, and students, the only groups of foreigners allowed to enter and reside in Japan proper and/or its territories abroad for a considerable period of time were small numbers of asylum-seekers such as influential revolutionaries and political exiles from neighboring countries (such as Korea and China) in the final decades of the nineteenth century and the early twentieth century; emigres who fled the 1917 Russian Revolution and the subsequent civil war; and Jewish refugees who fled the Nazis to East Asia in the 1930s. To anticipate our argument, in all these cases, the provision of temporary asylum in Japan was predominantly a result of foreign policy calculations rather than humanitarian concerns or the protection of human rights. That meant, within the context of Japanese history of the late nineteenth and early twentieth centuries, that Japan's

² For example, in FY 1933 remittance from Japanese abroad accounted for 10 % of its invisible balance and 15% of its current account. Suzuki Joji, *Nihonjin dekasegi imin* (Tokyo: Heibonsha, 1992), pp. 245-255.

asylum-granting was contingent upon the usefulness of each asylum-seekers for the purpose of the expansion and maintenance of its imperialist interests at home and abroad.

Below, we will first examine two cases of individual Asian revolutionaries, namely Sun Yat-sen and Kim Ok-kyun, exiled in Japan, and then that of Russian asylum-seekers, the first example of a mass refugee situation modern Japan ever experienced.

Exiles for Revolution: Asian Revolutionaries

(1) The Case of Sun Yat-sen

A prime example of Japan's "imperialist" refugee policy was the case of Sun Yat-sen (1866-1925), the founding father of modern China³.

Since his first visit to Japan in 1895, Sun Yat-sen paid more than ten visits to Japan and his stay in Japan totaled at least ten years, constituting a third of his entire politically active period. An ardent admirer of Japan's Meiji Restoration and its subsequent modernization, Sun Yat-sen expected Japan to help China modernize itself and often used Japan as a safe haven from which to launch his republican revolutionary movement against Ching China (1616-1912). On the other hand, Japan supported Sun Yat-sen mainly by providing him with territorial asylum as long as he was deemed useful to Japan's foreign policy objectives vis-a-vis China, namely, the establishment of a pro-Japanese government

³ The following account is based on Yu Xin-chun, *Sonbun no kakumei-undo to nihon* (Tokyo: Rokko Shuppan, 1989), and Rameche Goharian, "Sun Yat-sen," *Refugees* (November 1986), pp. 38-9.

in post-imperial China.

Sun Yat-sen founded his revolutionary organization, the "Revive China Society" in 1894 in Hawaii where his brother had established a successful business. After the Sun-masterminded Canton uprising of 1895 failed, he went into political exile in Japan in November 1895. The GOJ allowed him to establish in Yokohama the Japanese branch of the "Revive China Society" along with fellow Chinese residing in Japan. In December of the same year, he left for Hawaii, initiating a trip to propagate his republican ideas among overseas Chinese in the U.S., Western Europe, and Indochina. The chief reason for the GOJ's 1895 decision to provide asylum was because it sought to use the existing revolutionary organizations in southern China, including Sun's, to further weaken the Ching dynasty, then strongly irredentist due to its defeat in the Sino-Japanese War (1894-95)⁴.

Upon his return to Japan in July 1905, Sun Yat-sen was allowed to found the "Chinese Revolutionary Alliance" -- the harbinger of the Kuomintang -- in Tokyo the next month with other Chinese political exiles and students⁵. This time. Sun's stay in Japan lasted for about twenty months until March 1907, when he was persuaded by the GOJ to leave Japan "voluntarily." The GOJ decision to expel Sun seemed to be

⁴ Yu, *op. cit.*, p. 64.

⁵ Those students had been sent to Japanese universities and vocational training schools by the Ching government after the Sino-Japanese War so that they could bring back Western technology (including military techniques) and ideas to China.

based on its desire to repair relations with China, which had soured after Tokyo forced China to recognize Japanese interests in southern Manchuria⁶. The GOJ was under constant request from China to extradite Sun back to China. Part of the reason for Japan's insistence on his "voluntary" departure (rather than outright extradition) was conceivably because Tokyo wished to retain Japanese influence over a future Chinese revolutionary government probably led by Sun (and his followers)⁷.

After having engineered several unsuccessful armed uprisings in southern China and also having been expelled from Vietnam -- his new safe haven -- by the French colonial authorities, Sun again sought asylum in Japan in June 1910. This time, Japanese Foreign Minister Komura, fearful of worsening the existing frictions with China, opposed Sun's entry, but Army Minister Terauchi, among others, was sympathetic to Sun and the Cabinet decided in favor of his admission. Army Minister Terauchi's sympathy with Sun was based on the former's knowledge that his revolutionary party was successfully infiltrating the so-called new army of the Ching government⁸. However, at China's insistence, the GOJ expelled Sun from Japan only two weeks after his arrival.

In October 1911, a revolt -- the "Wu-chang Uprising"--

⁶ In addition to the acquisition of the southern half of Sakhalin, Japan gained control of southern Manchuria and Korea from Russia upon its victory in the Russo-Japanese War (1904-05).

⁷ Yu, *op. cit.*, p. 115.

⁸ Yu, *op. cit.*, pp. 129-32.

finally succeeded and the revolutionary forces designated Sun as their future President. Upon learning this while in the U.S., Sun returned home, proclaiming the Republic of China in Nanking in January 1912 (the "First Revolution"). After the February abdication of the Ching dynasty, Sun resigned as president in April, giving way to the northern general/politician Yuan Shi-kai. Soon it became apparent, however, that Yuan Shi-kai, supported by the Western powers as well as Japan, was betraying the revolution. Thus, to remove Yuan and defend republicanism, Sun and his followers launched a "Second Revolution," only to be crushed by the powerful northern army led by Yuan. Again, Sun was forced to flee and seek asylum in Japan.

This time, Sun's stay in Japan was to last 33 months -- from August 1913 through April 1916. Initially, the GOJ sought to keep Sun from entering Japan, fearing that Sun's entry would antagonize Yuan Shi-kai, the victor in the "Second Revolution," and his supporters in Western capitals. But eventually, the GOJ let him in. Yu offers the following two reasons for this change of policy: first, keeping Sun in Japanese hands would serve as a useful bargaining chip vis-a-vis Yuan in pressing him to accept Japanese demands (e.g., the notorious "21-Demands" of 1915); second, if denied admission, Sun would most likely go to the U.S., thereby giving Washington a powerful diplomatic weapon in its competition with Japan (and the Western powers) for control over China⁹.

⁹ Yu, *op. cit.*, p. 247.

During his stay in Japan, Sun prepared for a "Third Revolution," and sought Japanese financial and military support to no avail. In December 1915, Yuan Shi-kai declared himself emperor and abolished the republican system. At this point, anti-Yuan forces gained momentum and the defeat of the Yuan government seemed imminent. Japan changed policy and renewed its support of Sun Yat-sen, providing him with loans and military cooperation. In March 1916, Yuan gave up his emperor's title but revolutionary momentum continued to grow. In April 1916, Sun left Japan to join the revolutionary forces in China. However, Yuan died in June 1916, thus depriving Japan of the strategic rationale to support Sun. From then on, Japan was to opportunistically support Tuan Chi-jui who replaced Yuan and who "not only appeared to be co-operative, but was also in control of those parts of China which mattered most to Japan¹⁰."

The above account allows us to conclude that Japan's granting of territorial asylum to Sun Yat-sen was contingent fundamentally upon the extent to which his presence in Japanese territory was perceived by Tokyo as beneficial to its central foreign policy objective vis-a-vis China, namely, the establishment of a pro-Japanese government in China without unnecessarily antagonizing Japan's imperialist rivals such as England and Russia and provoking strong nationalist backlash among the Chinese. Thus, it can hardly be claimed that Japan's handling of Sun Yat-sen was based on humanitarianism or consideration of Sun's human rights. This

¹⁰ W. G. Beasley, *Japanese Imperialism, 1894-1945* (Oxford University Press, 1987), p. 117.

does not mean, however, that a non-humanitarian, foreign policy-driven refugee policy was a Japanese monopoly. The point is simply that this strategic, foreign policy-based refugee policy of Japan at the time was a part of a pattern and applicable not only to Sun Yat-sen but also to other cases involving Asian revolutionaries exiled in Japan.

(2) The Case of Kim Ok-kyun

Another example which seems to strongly confirm Japan's imperialist refugee policy concerns Kim Ok-kyun (1851-1894), a Korean revolutionary who, with the help of Japan, engineered the 1884 coup attempt against the Choson dynasty (1392-1910)¹¹.

A great admirer of the Meiji Restoration like Sun Yat-sen, Kim Ok-Kyun allied himself with Japan in seeking to modernize his country by, first, breaking its ties to imperial China -- Korea's traditional suzerain. In fact, Japan was the first country that forced Korea to open itself in 1876, imposing an unequal treaty -- the Japan-Korean Amity Treaty -- on Seoul¹². This treaty worsened Japan-China rivalry over their weaker neighbor.

In July 1882, upset with the government's favorable

¹¹ The following account of the Kim Ok-kyun case is based primarily on TSUNODA Fusako, *Minbi ansatsu* (Tokyo: Shinchosha, 1988).

¹² This treaty gave Japanese nationals extraterritorial rights and opened up three Korean ports to Japanese traders. Interestingly, Japan forced this unequal treaty on Korea at a time when Japan was seeking to rectify the existing unequal treaties imposed on it by Western powers, an example of the then current international "pecking order."

treatment of elite military corps under Japanese training command, Korea's traditional troops undertook an anti-Japanese coup, killing in its course a Japanese military advisor and pro-Japanese Korean ministers as well as attacking the Japanese legation. As a result, the Japanese Minister to Korea Hanabusa and his staff were forced to flee to Inchon -- a port town near Seoul -- under the cover of night.

This anti-Japanese coup was apparently masterminded by Taewongun, King Kojon's father and the retired regent, who opposed the modernizing and pro-Japanese policies of the King and Queen Min. Taewongun was in power for a brief period but Chinese troops intervened at the request of the queen and crushed the revolt. Furthermore, the Chinese forces kidnapped Taewongun and took him to Peking. They also occupied the Korean capital.

After the coup, the queen and her clique abandoned pro-Japanese modernization policies and tilted toward China. However, Minister Hanabusa returned to Korea with Japanese troops in August and forced a treaty -- "the Chemulpo Treaty" -- on Korea, which, among its other provisions, allowed Japan to station troops in the capital to defend its own legation. Thus, the Korean capital was now occupied by Japanese as well as Chinese troops, with the latter far more numerous.

In October 1882, Korea sent a "good will" mission to Japan, as it was required by the Chemulpo Treaty. Among that mission was Kim Ok-kyun, who joined it in the capacity of a government advisor. Upon his return to Korea in early 1883, Kim decided to send Korean students to an army school and

universities in Japan for the acquisition of Western technologies and ideas¹³. The outbreak of a war between China and France over the control of Vietnam provided a hoped-for opportunity for Japan to reassert itself in Korea. Japanese Minister to Korea Takezoe planned a coup with Korean reformists led by Kim. The reformists and students (who had returned from military training in Japan) occupied the royal palace with the support of some 150 Japanese troops, while at the same time assassinating Korean military commanders and pro-Chinese ministers. The rebels were forced to flee, however, when some 1,300 Chinese troops were brought in to rescue the palace.

After taking refuge in the Japanese legation, Kim and eight other "reformist" leaders escaped with Minister Takezoe and his staff to Inchon, where they took a Japanese vessel to Japan for asylum¹⁴. Yet this asylum operation at Inchon almost failed because Minister Takezoe, confronted by P.G. Moellendorff -- a diplomatic advisor to the Korean government -- who came to the ship with Korean officials, decided to hand over those asylum seekers to the Korean authorities. Without humanitarian and courageous intervention by the ship's captain, Kim and the others would have been arrested and certainly executed by the Korean authorities¹⁵.

Having failed to eliminate Chinese influence from Korea

¹³ These students, trained in the army school, returned to Korea in July 1884 and were to play an important role in the December 1884 coup.

¹⁴ Some of those reformists went to the U.S. via Japan.

¹⁵ Tsunoda, *op. cit.*, p. 163.

through the coup, Japan chose to conclude a compromise treaty with China -- "the Tientsin Treaty of 1885" -- to secure an equal footing in Korea¹⁶. After the treaty, Japan opted for a wait-and-see policy toward Korea and began to view Kim, now in exile in Japan, as a political liability who might complicate Japan's relations with Seoul as well as Peking. Thus, the GOJ confined Kim in Hokkaido and later on one of the Ogasawara Islands off Tokyo, thus depriving him of the freedom to travel (it was not until 1890 that he was permitted to visit Tokyo).

It may be concluded that the GOJ protected and supported Kim Ok-kyun as long as he was useful in pursuing its foreign policy goals vis-a-vis Korea, that is, to establish Japanese hegemony over Korea by eliminating Chinese political and military influence in that country as well as installing a pro-Japanese government therein.

The strategic, non-humanitarian nature of Japanese refugee policy clearly manifested itself at the time of the 1884 coup attempt: Japan's official involvement was so direct and brazen that one would expect the GOJ to take full responsibility for the fate of those Koreans involved in the coup. As shown above, however, Japanese treatment of Kim Ok-kyun was hardly justifiable from a humanitarian and moral viewpoint. This confirms our thesis that the provision of asylum in Japan was fundamentally dictated by foreign policy

¹⁶ The Tientsin Treaty stipulated (a) that the two parties would withdraw their troops from Korea simultaneously; (b) that they would not supply military instructors to the Korean army; and (c) that each party would notify the other in advance should one decide to send troops to Korea.

objectives rather than humanitarian concerns or the protection of human rights. In specific, historical terms, it meant that protection was granted to Asian revolutionary exiles in pre-war Japan only to the extent that they were viewed by Japan as useful for the expansion and maintenance of its imperialist interests in Asia¹⁷.

Exiles From Revolution: Russian Refugees

As noted in Chapter 2, a huge exodus of refugees caused by the 1917 Revolution and the subsequent civil war -- which persisted into 1923 in Siberia -- forced the international community to devise various mechanisms (such as the Nansen passport) for refugee protection, resulting in the establishment of an incipient refugee protection regime. At the same time, this Russian mass exodus challenged Japan in an unprecedented way.

¹⁷ This conclusion seems to apply in the Japanese handling of Subhas Chandra Bose (1897-1945) during WWII. An Indian revolutionary who sought to achieve India's independence from Britain by allying himself with Japan, Bose was granted asylum by Japan in June 1943. For details, see Joyce C. Lebra, *Japanese-Trained Armies in Southeast Asia: Independence and Volunteer Forces in World War II* (Columbia University Press, 1977), esp. chap. 2.

On the other hand, there are several asylum cases in which Japan's imperialist motivation seems somewhat attenuated by moral considerations. For example, Japan, after the August 1945 acceptance of the Potsdam Declaration, secretly provided territorial asylum to Ba Maw (the Prime Minister of Burma under Japanese tutelage) from August 1945 through January 1946 to presumably show gratitude for his cooperation during the war. Japan did this at the risk of antagonizing the occupying Allied Powers. However, such a seemingly moralistic posture can best be interpreted as last minute face-saving behavior by the vanquished Japanese Empire. Eto Jun, ed., *Senryo Shiroku 2: teisen to gaikoken teishi* (Tokyo: Kodansha, 1989), pp. 253-294.

Besides geographical proximity, Japan's contact with Russian refugees was occasioned by Japan's strategic decision to send troops to Siberia in support of anti-revolutionary forces -- i.e., the White Russians. In the wake of the Bolshevik victory in Siberia and especially in Vladivostok -- the capital of Russia's Maritime Province and the largest port in the area -- many White Russian troops (and their families), civilians involved in provisional anti-revolutionary local governments, and merchants fled to Japan and its colonial territories such as Korea and Northeastern China¹⁸.

It is impossible to tell the exact number of Russian refugees throughout the world in the early 1920s since there existed various estimates ranging from one to three million. As for Northeast Asia, there were about 50,000 Russians registered by the Russian Red Cross as requiring assistance and later in 1934 the number increased to about 130,000¹⁹. The largest groups of Russian refugees in Northeast Asia were found in Chinese cities such as Harbin (85,000) and Shanghai (19,000). Small numbers of them resettled in Korea, Japan, Indochina, and the Philippines²⁰.

¹⁸ Eventually, most resettled in "Manchuria."

¹⁹ Marc Raeff, *Russia Abroad: A Cultural History of the Russian Emigration, 1919-1939* (Oxford University Press, 1990), p. 24. Since those numbers in Northeast Asia concerned only those registered by the Red Cross, the actual figures must have been much larger.

²⁰ James E. Hassell, *Russian Refugees in France and the United States Between the World Wars* (Transactions of the American Philosophical Society, year unknown), vol. 81, part 7, pp. 3-4.

(1) The Background: Japan's Siberian "Expedition"

In August 1918, Japan, along with Britain, the U.S., and France, sent troops to Russia in order "to rescue the Czechoslovak forces²¹." Researchers seem to be in agreement as to the real purposes of Japan's intervention, however. One scholar argued that the GOJ, then controlled by military interventionists, sought "to bolster a pro-Japanese government in the Russian territories, gain control of the Chinese Eastern Railway and the Siberian railways east of Irkutsk, and harness the region to the Japanese economy²²." For these purposes, Japan sought to contain the Bolsheviks' advance into Siberia by fighting them directly as well as providing material assistance to White forces. At any rate, the key fact was that, contrary to its initial promise of sending 10,000 to 12,000 troops, Japan sent more than 70,000 troops to Siberia's three eastern territories -- the

²¹ During WWI, Russia had allowed Czech and Slovak residents in Russia to form a Czechoslovak legion to fight for the Allies. As the Soviets withdrew from the war, the Czechoslovak legion was returning to the western front via Siberia, where they became entangled in the civil war. They were confronted by German and Austrian POWs while at the same time being assisted by anti-revolutionary forces. A detailed analysis of Japan's decision-making process which led to intervention can be found in James William Morley, *The Japanese Thrust into Siberia, 1918* (Books for Libraries Press, 1972, reprint). For details of not only the Japanese intervention but also its troop withdrawal, see HARA Teruyuki, *Shiberia shuppei: kakumei to kansho, 1917-1922* (Tokyo: Chikuma-shobo, 1989).

²² Morley, *op. cit.*, pp. 307-9. In a similar vein, another scholar noted that Japan was moved primarily by military elements who desired "first and last to take over political, military, and economic control of eastern Siberia and the Chinese Eastern Railway." Betty Miller Unterberger, *America's Siberian Expedition, 1918-1920* (Greenwood Press, 1969, reprint), p. 231.

Maritime, the Amur, and the Trans-Baikal -- and that long after the Allied forces had evacuated Siberia (1920), the Japanese army remained in Russia Far East until October 1922 and on the northern half of the Sakhalin island until April 1925²³.

With Japanese troops withdrawn and the anti-Bolshevik forces defeated, the White troops (and their families), civilians involved in anti-revolutionary governments that were set up temporarily in many locales, ordinary citizens, merchants, and Jews in Siberia fled to "Manchuria." Some reached there by land and others took boats from Vladivostok to Japanese ports or the port of Wonsan in Japanese-ruled Korea.

(2) Japan's Policy Towards Russian Refugees

(a) Refugees in Japan Proper

Since relevant statistics were lost during WWII, it is difficult to establish the number of Russian refugees who were granted "first" asylum or allowed to resettle in Japan proper. Nevertheless, one could probably approximate the number of Russian refugees *resettled* in Japan by looking at the statistics concerning Russian *residents* therein. According to Japanese official statistics, as of December 1917, immediately after the Soviet seizure of power in Petrograd, the number of Russian residents in Japan was 439, which increased to 818 by December 1924, roughly two years

²³ The southern half of the island was a Japanese territory at the time.

after the Japanese withdrawal from Siberia²⁴. Since any increase in the number of Russian residents during that period --i.e., from Dec. 1917 through Dec. 1924 -- is most likely to have been a result of a Russian refugee influx into Japan, we can regard this increase --i.e., 379 -- as approximating the number of Russian refugees resettled in Japan²⁵.

More important for our purposes is the fact that on February 6, 1920, shortly after the White forces' defeat in Vladivostok, the GOJ decided not to grant landing permits to Russian escapees -- with some exceptions -- in order to avoid

²⁴ The figures are from *Nihon Teikoku Tokei Nenkan* (Tokyo: Naikaku Tokeikyoku) Nos. 37 & 44. Afterwards, the number of Russian residents in Japan reached 1,364 in 1926 and hovered above the 1,400-500 level thereafter. Nevertheless, it is difficult to attribute this increase to renewed refugee inflows from Russia because it is more likely a reflection of increased bilateral commercial activities due to the 1925 reestablishment of diplomatic relations between Japan and the USSR. The numbers of Russian residents in Japan from 1916 through 1929 is as follows (the numbers are at the end of each year; sources *ibid.*, corresponding years):

1916	.....263	1923	.....566
1917	.....439	1924	.....818
1918	.....687	1925	...(unavailable)
1919	....1,102	1926	....1,364
1920	....1,232	1927	....1,419
1921	.....887	1928	....1,473
1922	.....835	1929	....1,527

²⁵ Needless to say, this figure is negligible as compared to the entire Russian refugee population in Northeast Asia, let alone the entire world at the time. The point here is simply to try to have some idea of how many Russian refugees were in Japan in those years.

any "misunderstanding" with the new Soviet government²⁶. As a result, on February 7, the GOJ allowed only 57 Russian civilian passengers aboard "Penza" -- a Russian Imperial battleship which had taken refuge in Tsuruga port on the Japan Sea coast four days before -- to land, prohibiting other passengers (number unknown) and 310 naval officers and cadets aboard from disembarking²⁷. In another instance, the finance minister of the Vladivostok government, a White general, the archbishop of Vladivostok, and their entourage were permitted to land at Moji port and allowed to stay temporarily in Japan²⁸.

Some of Japan's immigration rules in the early 1920s can be gleaned from media reports on the above two and other asylum cases as well.

Those include:

A refugee can land if s(he) has (a) a valid passport, (b) 250 yen worth of cash, and constitutes (c) no threat to public safety.

A refugee can land and stay temporarily in Japan if s(he) has (a) a visa issued by a Japanese consulate on a valid passport, (b) 1,500 yen worth of cash (about 3 million yen at the current value)²⁹, and constitutes (c) no threat to public safety.

²⁶ *Osaka Mainichi* (2/8/1920: eve. ed.), reprinted in *Taisho News Jiten* (Tokyo: Mainichi Communications, 1988), vol. 4, p. 218.

²⁷ *Ibid.*, pp. 218-9.

²⁸ *Jiji* (10/25/1922), reprinted in *ibid.*, vol. 5, p. 291. Interviewed by a *Jiji* reporter, the archbishop said he intended to resettle in Harbin, while the finance minister said he planned to go to Shanghai.

²⁹ HONMA Hiroshi, *Nanmin mondai towa nani ka* (Tokyo: Iwanami shoten, 1990), pp. 132-3.

Clearly, these immigration requirements -- especially financial ones --, when vigorously applied to refugees fleeing civil war, would be unreasonably stringent. In fact, the GOJ seems to have shown some flexibility in applying those rules to refugees³⁰. Yet the fact remains that *resettlement* in Japan proper was out of the question for the vast majority of Russian asylum-seekers. What about Japan's colonial territories abroad? Let us turn to Japanese-occupied Korea wherein many Russians also sought asylum.

(b) Refugees in Korea

According to Mr. SEKI Eiji, Japanese Foreign Ministry counselor at the time of writing, the majority (over 10,000) of Russian refugees who had taken to the sea in the fall of 1922, showed up in Wonsan -- a port on the Korean east coast³¹. The largest group among the refugees in Wonsan were 7,500 refugees who came in October 1922, aboard 26 naval vessels under the command of (White) Admiral Stark (sp.?). On their arrival, however, the GOJ did not permit their landing,

³⁰ In the case of the above-cited 57 civilian passengers aboard "Penza," some were permitted to land even without a passport because they possessed the required amount of money. On the other hand, in the second asylum case of White "notables," all were allowed to land and even to stay temporarily in Japan despite the fact that only the archbishop had the requisite amount of money for disembarkation.

³¹ Small groups of them arrived at Japanese ports such as Otaru, Hakodate, Tsuruga, and Moji. The account of the Wonsan case is based on SEKI Eiji, "Rosia no kanashiki sendan: Nihon ni hogo o motometa kakumei nanmin," *Nihon Keizai Shimbun* (6/19/1981). This article was brought to the author's attention by Honma, *op. cit.*

with the exception of the wounded and sick (about 500) and some high-ranking officers. The rest had to stay on board in overcrowded and unsanitary conditions (eventually, those remaining were also allowed to land to be housed in makeshift facilities). Although many refugees in Wonsan wished to resettle in Japan proper, they were not allowed to do so because of Japan's strict asylum requirements noted above.

Seki claims that basic Japanese guidelines regarding Russian refugees at the time were as follows:

(a) To assist high-ranking officials of the counter-revolutionary governments and their families to take refuge in places other than Japan proper or its territories abroad.

(b) To transfer those already in Korea to Shanghai or Northern Manchuria (neither of these areas was under Japanese rule yet) depending on their preference.

(c) To limit the further outflow of refugees from Vladivostok.

Thus, the bottom line was no refugee resettlement in Japan or its colonial territories.

Nevertheless, the second option -- sending refugees to Northern Manchuria -- was soon frustrated by opposition from General Chang Tso-lin then controlling Northern Manchuria³². The GOJ subsequently sought to persuade refugees to return to

³² General Chang, according to Seki, feared that a mass arrival of anti-revolutionary White Russians in Harbin might antagonize the Soviet government, thus unwisely increasing the risk of border-area skirmishes. In fact, Chang was already pushing back Russian refugees in Harbin toward Changchun in the south with the result that as many as 2,000 refugees were stranded at properties owned by Japan's South Manchurian Railway. Seki, *op. cit.*

Vladivostok after having secured "guarantees" for their safety from the Red Army controlling the city. But this plan also failed because, understandably, very few refugees volunteered to return to a place where persecution was almost certain.

Meanwhile, after a month of seemingly hopeless stay in Wonsan, Admiral Stark led the remaining 1,700 passengers aboard 14 vessels to Shanghai, where 900 successfully forced themselves on land defying an objection from the local foreign consulates. In February 1923, with the remaining 800 refugees, Admiral Stark arrived in Manila, where he and other 200 refugees remained. The flotilla with 600 then aboard proceeded to the U.S. and this last group of refugees were permitted to resettle therein in June 1923, thus ending their fateful seven-month voyage³³.

At the time when that final group of refugees was sailing for the U.S., there were still 4,000 Russian refugees remaining in Wonsan, awaiting resettlement elsewhere³⁴

(3) Japan and the League of Nations

Prior to the above October 1922 Wonsan incident, the Secretary General of the League of Nations had communicated with the GOJ in July 1922, requesting a clarification of Japan's position concerning the Nansen passport³⁵. Although governments were not obliged to automatically receive

³³ Seki, *op. cit.*

³⁴ Seki, *op. cit.*

³⁵ Honma, *op. cit.*, p. 133-4.

refugees traveling on Nansen passports, all state parties to the agreement relating to Nansen passports, including Japan, had consented to recognize them as valid travel documents³⁶. The GOJ's belated reply to the Secretary General was as follows:

In view of the facts (a) that our Kwantung province (in southern Manchuria) and properties belonging to our South Manchurian Railway currently are inhabited by large numbers of Russian refugees who came due to the Vladivostok incident which occurred in October 1922 and (b) that in our country living expenses are rising rapidly and there exist a great number of unemployed nationals due to economic recession, we are of the opinion that our territories are inappropriate for the resettlement of the said refugees. Therefore, for the time being, we shall postpone our decision concerning the said immigration certificate³⁷.

As the plight of the Wonsan refugees and Japan's cold-hearted treatment of them attracted international attention and criticism, Fridtjof Nansen, High Commissioner for Refugees, requested the GOJ in February 1923, to receive Russian refugees for resettlement. In response, the GOJ claimed that:

We are doing our utmost to help these refugees from a humanitarian viewpoint but we are overburdened with the financial cost of this long-term refugee relief ... We are of the opinion that due to different customs and language, our country is the most inappropriate place for refugees to take long-term refuge³⁸.

Coterminous with this response to the High Commissioner for Refugees, Japan's Interior Ministry issued a circular

³⁶ For Nansen passports, see Marrus, *op. cit.*, pp. 94-6.

³⁷ Honma, *op. cit.*, p. 134.

³⁸ Seki, *op. cit.*

internally to the effect that the GOJ did not recognize Nansen passports as valid travel documents.

From the refugee regime perspective, the above Japanese policy is significant because it meant that Japan officially refused to join international efforts in the 1920s to forge an international regime aimed at protecting refugees (and stateless persons) by providing them, for the first time, with some sort of juridical status through an international agreement.

From a humanitarian viewpoint, one is tempted to conclude that Japan failed to take full responsibility for the fate of refugees forced to flee because of defeat in a civil war in which Japan took part militarily on their behalf³⁹. In other words, Japan refused to receive refugees whose flight resulted, to a significant extent, from its own foreign policy debacle⁴⁰.

³⁹ The Siberian intervention was the first military defeat experienced by the Japanese Imperial Army and Navy. It cost Japan 439 million yen and 3,712 deaths (due to combat and illness). Hara, *op. cit.*, pp. 571-72.

⁴⁰ Here one may be tempted to compare this with U.S. behavior immediately after the "fall" of Saigon in the spring of 1975. Obviously, such a comparison entails the risk of ignoring the different historical and political backgrounds of the two cases, yet it is still a worthy undertaking simply because it allows one to view the above Japanese experience in a broader, comparative perspective.

During the month of April 1975 alone, about 130,000 Vietnamese fled their country, including South Vietnamese government officials and members of the military who feared communist reprisals. In nine days in April, the U.S. transported about 65,000 Vietnamese out of the country by air and by boat (the other 65,000 Vietnamese fled on their own). Few of those leaving had valid travel documents (Gil Loescher & John A. Scanlan, *op. cit.*, pp. 110-19).

While the subsequent flow of Vietnamese refugees to the U.S. was promoted mainly by the U.S. Cold War strategy to

(4) Russian Refugees and Russian POWs: A Comparison

Noteworthy about Japan's policy vis-a-vis the Russian refugees are some of the Japanese reasons offered for not receiving refugees for resettlement: the GOJ claimed that, among other reasons, linguistic and cultural differences rendered Japan the most inappropriate place for Russian refugees to resettle⁴¹. That might have been true if compared to such Western nations as Australia, the U.S., and France where many Russian refugees resettled.

On the other hand, such justification ignores Japanese history in that less than two decades before the arrival of Russian asylum-seekers, Japan had successfully cared for as many as 76,000 Russian POWs for two years in *Japan proper*⁴².

The Russo-Japanese War of 1904-05 produced many POWs, especially on the Russian side, the majority of whom were

embarrass the socialist government in Vietnam, this April 1975 emergency evacuation at least was undertaken purely out of a humanitarian and moral obligation on the part of the U.S., which deemed it necessary to rescue victims of its own foreign policy failure.

This difference probably stems from the fact that U.S intervention in Vietnam was driven by certain foreign policy ideology (no matter how misleading this ideology was), whereas Japanese intervention in Siberia was driven by territorial and economic ambitions alone.

⁴¹ Such reasons would be given repeatedly in future whenever Japan felt pressed to receive more refugees for resettlement. Thus, in the late 1970s, those reasons were employed to counter international pressures on Japan to receive Vietnamese refugees.

⁴² The following account of those Russian POWs is based primarily on *Meiji News Jiten* (Tokyo: Mainichi Communications, Inc., 1986), vol. VII, pp. 553-63.

brought to Japan and dispersed throughout the country⁴³. One may be surprised to find out how humane and "civilized" the Japanese handling of those POWs was⁴⁴.

On February 21, 1904, that is, eleven days after Japan's declaration of war against Russia, the Japanese Government, in accordance with the Hague Convention to which it was a party, established in Tokyo the *Furyo Joho-Kyoku* (the Information Bureau for Prisoners of War) for the purpose of facilitating the exchange of information concerning POWs between the two countries. Russian POWs in Japan, housed in army barracks, Buddhist temples, city auditoriums, etc., were given three meals plus a snack a day and allowed to pay occasional visits to their wounded/sick friends in hospitals. Moreover, Russian priests were allowed to conduct religious services in those facilities.

Furthermore, POW officers -- 9,522 in total as of April 1905 -- were allowed to read foreign-language newspapers (including a Russian one) and to stroll outside the

⁴³ The Russian POWs were distributed among twenty-four cities. The cities where more than 2,000 were housed included (as of April 1905): Hamadera: 28,174; Kanazawa: 5,580; Matsuyama: 4,043; Narashino: 2,994; Fukuoka: 2,738; Himeji: 2,184; Sendai: 2,074 (sources: *ibid.*, pp. 561-62). A vivid account of their life in Matsuyama can be found in SAIKAMI Tokio, *Matsuyama shuyojo: horyo to nihonjin* (Tokyo: Chuokoronsha, 1969).

⁴⁴ A major reason for this "civilized" treatment of Russian POWs was the Japanese official expectation that these POWs, when returned home, would propagate the image of a "civilized Japan" throughout Europe and eventually the U.S. In other words, the Meiji government sought to use POWs as its international PR agents. Nevertheless, it is ironic that such "civilized" treatment of POWs increasingly retrogressed as the years went by, culminating in the widespread persecution of POWs during WWII. Saikami, *op. cit.*, pp. 8-9.

facilities three times a week (initially, it was allowed everyday). Later, those officers were even permitted to reside outside the above facilities in compliance with certain regulations. The GOJ also provided officers with annual stipends ranging from 500 to 800 yen.

An event which epitomized Japan's humane treatment of Russian POWs was a Shintoist funeral ceremony in August 1904, accorded to four Russian naval officers who died at the Sasebo Naval Hospital in Nagasaki. This funeral, solemnly conducted in accordance with Japanese naval rules, was attended by many local notables, including the Governor of Nagasaki Prefecture personally.

Interestingly, the Japanese public's reactions to Russian POWs were generally sympathetic. In each city receiving Russian POWs, many people lined the main street on their arrival day to welcome those strangers in captivity (and satisfied their curiosity), yet some would visit the facilities later to offer them food and other daily necessities. Reportedly, there were even some cases of love affairs involving Russian POWs and Japanese women!

Their repatriation was completed on February 18, 1906, that is, nearly two years after the arrival of the first group of Russian POWs⁴⁵.

Now if we move forward to October 1922 at the Korean port of Wonsan. It would seem incomprehensible, from a humanitarian perspective, that the GOJ, which had accorded such humane treatment to enemy warriors in Japan, refused to

⁴⁵ The last group of 2,832 Russians departed aboard a British ship on that day. *Meiji News Jiten*, p. 563.

grant asylum to Russian troops and civilians allied with Japan, fleeing a civil war which Japan had itself prolonged and worsened by military intervention. Admittedly, differences exist between refugees and POWs. First, transferring Russian POWs to Japan was a military necessity and their treatment was determined by the relevant international laws (such as the Hague Convention), whereas receiving refugees was not a state obligation under any international law and of little strategic importance to Japan at the time. Second, the POWs were expected to return to Russia upon the cessation of hostilities, whereas refugees would reside in Japan for good or as long as the conditions which had caused their flight persisted⁴⁶.

Nevertheless, the heart of the matter is that, given its corporate memory and experience of successfully managing large-scale emergency operations involving over 70,000 enemy troops, the GOJ would certainly have been capable of undertaking emergency operations to protect and assist Russian refugees in Japan proper or its territories abroad for an extended period of time. Furthermore, Tokyo would have been able to let them stay until they could decide on their own fate. As for the Japanese public, they would likely have welcomed such refugees in light of their hospitable attitude

⁴⁶ In reality, this difference was somewhat blurred in the case of Russian POWs because roughly 10,000 POWs (many of whom were Polish or Jewish) expressed a desire to be naturalized in Japan on the grounds that they were discriminated against in the Russian military back home. Saikami, *op. cit.*, pp. 52-54.

toward Russian POWs⁴⁷.

In sum, Japan's inhospitable attitude towards Russian refugees stemmed fundamentally from the fact that its intervention in Siberia was motivated solely by its imperialist concerns, and not by some universal values or specific political principles. Therefore, when its military intervention resulted in refugee outflows, it did not welcome them since such people possessed little strategic value. Nevertheless, Japan's failure to receive Russian refugees meant historically that it passed up a great opportunity (that of the early 1920s) to pave the way for the creation of a domestic regime for refugee protection and assistance. That would have allowed Japan to better deal with mass refugee situations later on.

2. ESCAPE FROM THE HOLOCAUST: JEWISH REFUGEES (1938 - 1945)

Introduction

The final example of Japan's imperialist refugee policy was its handling of Jewish refugees who fled from the Nazis in Europe to the Far East -- mostly Manchuria and Shanghai -- , particularly from the late 1930s through the early 1940s⁴⁸.

⁴⁷ Besides diplomatic considerations towards the new Soviet regime, the only plausible reason for Tokyo's inhospitability towards Russian refugees seems to have been its fear of Soviet spies infiltrating into Japan, disguised as refugees. Yet given the fact that it was willing and able to reestablish diplomatic relations with the Soviet Union three years after the Wonsan incident, such a problem could have been accommodated by some security measures such as strict monitoring of Russian refugees in Japan.

⁴⁸ The ensuing account of Japan's policy towards Jewish refugees draws mainly on the following books: Ernest G. Heppner, *Shanghai Refuge: A Memoir of the World War II Jewish*

A massive and frantic exodus of Jews from Central Europe from the winter of 1938, triggered by that November's pogrom -- **Kristallnacht** -- wound its way as far as Shanghai.

Shanghai -- a cosmopolitan metropolis of over four million Chinese and roughly one hundred thousand foreigners (nearly half of them Japanese) -- was then regarded as the only port in the world that allowed foreigners without visas to enter. Between the 1938 pogrom and the end of 1941 -- the outbreak of the Pacific War at which all immigration into Shanghai ceased, some 17,000 Jewish refugees poured into the city⁴⁹.

For these refugees, two major routes were available to Shanghai:

1. The Sea Route : from the end of 1938 through June 10, 1940.
2. The Land Route: from June 11, 1940 through December 7, 1941⁵⁰.

The sea route was used mainly by those who fled the **Kristallnacht**. They left from Italy and sailed via the Suez

Ghetto (University of Nebraska Press, 1993); James R. Ross, *Escape to Shanghai: A Jewish Community in China* (The Free Press, 1994); SUGIHARA Yukiko, *Rokusen-nin no inochi no biza* (Tokyo: Asahi Sonorama, 1990, hereafter "Rokusen-nin"); INUZUKA Kiyoko, *Yudaya mondai to nihon no kosaku* (Tokyo: Nihon Kogyo Shimbun-sha, 1982, hereafter "Yudaya"); Marvin Tokayer & Mary Swartz, *The Fugu Plan: The Untold Story of the Japanese and the Jews During World War II* (Paddington Press Ltd., 1979, hereafter "The Fugu Plan"); David Kranzler, *Japanese, Nazis & Jews: The Jewish Refugee Community of Shanghai, 1938-1945* (KTAV Publishing House, Inc., 1976, hereafter "Japanese").

⁴⁹ This number could arguably have been much higher had it not been for the August 1939 restriction on immigration, imposed, for the first time, by the local Japanese authorities. See Kranzler, *Japanese*, pp. 90-91.

⁵⁰ *Ibid.*, pp. 86-89.

Canal (or the Cape of Good Hope) to Shanghai. This route was completely closed on June 10, 1940, when Italy entered the war. After that, refugees travelled by train from Germany to Moscow and Siberia to East Asia. Some continued their train trip to Manchuria and eventually reached Shanghai. Others, like certain Polish Jewish refugees⁵¹, sailed from Vladivostok to Tsuruga in Japan and from there traveled by train to Kobe, from whence they sailed to Shanghai⁵².

Jewish Refugees in Shanghai (the 1930s)

Understanding the refugee situation in Shanghai during the 1930s would require some knowledge of the city's then prevalent geopolitical situation.

Since July 1937, Japan and China were at war -- the "second Sino-Japanese War" --, and Greater Shanghai as well as the northern part of the International Settlement -- "the Hongkew Sector" -- were under Japanese military rule⁵³. The other sectors of the International Settlement were governed by the Shanghai Municipal Council (with its own police

⁵¹ More on them below.

⁵² Some refugees were fortunate enough to secure end-visas to countries such as the U.S., Canada or Latin American countries and able to reach their final destinations via Harbin (Manchuria), Pusan (Korea), Shimonoseki, Kobe, and Yokohama (Japan).

⁵³ The Opium War resulted in the 1842 Nanking Treaty, allowing the U.K. to establish extraterritoriality in Shanghai. Later the U.S. and France obtained the same rights therein. In 1863 the British and Americans combined their concessions to form the International Settlement, while the smaller French Concession remained separate. Japan also obtained the above rights in the International Settlement after its 1895 victory in the Sino-Japanese War.

force), in which the major powers, including Japan, were represented.

As for the Jewish population in Shanghai, the above-mentioned 17,000 German⁵⁴ Jewish refugees who had fled the Nazis constituted a third wave⁵⁵. This last wave were still allowed to keep their German passports. They were cared for by a variety of local refugee relief agencies run mainly by wealthy Sephardic Jews. All in all, there were nearly 30,000 Jews in Shanghai in the late 1930s⁵⁶.

(1) Japan's Asylum Policy towards Jewish Refugees

Of the 17,000 German Jews, 12,000 (or 70 %) were permitted to enter and remain in the Hongkew sector which was under Japanese military (more precisely, Navy) rule⁵⁷. This measure, when considered along with the facts (a) that the

⁵⁴ Here, "German" refugees mean refugees not only from Germany proper but also from Austria which was under Nazi rule since April 1938.

⁵⁵ The first wave were Sephardic (largely Bagdadi) Jews originally from the Middle East who had been coming to Shanghai since the 1830s. Although small in number (600-700), they were the wealthiest among the Shanghai Jews and enjoyed high socio-political status. In most cases, they had British (or Iraqi) passports and some of their leaders (e.g., the Sassoons) were strongly pro-British and anti-Japanese.

The second wave was represented by Ashkenazi (Russian) Jews, who fled the Russian Revolutions of 1905 and 1917-1919 to East Asia as part of a White Russian exodus. The last group came mainly from Harbin (Manchuria) after it fell under Japanese rule in 1931-1932. There were nearly 4,000 Russian Jews in Shanghai and they were mostly lower middle class. Escapees from czarist Russia, they were virtually all stateless. Kranzler, *Japanese*, pp. 45-59.

⁵⁶ Inuzuka, *Yudaya*, p. 102.

⁵⁷ *Ibid.*, p. 130.

Japanese military (more precisely, the Army) let nearly 50,000 Russian Jews cross the border into Japanese-ruled Manchuria⁵⁸ and (b) that Tokyo also allowed more than 5,000 Russian Jews to reside in Manchuria⁵⁹, would seem contradictory given that Tokyo, having concluded a Cultural Pact with Nazi Germany in 1938, was clearly pro-German and about to form a military alliance -- the 1940 "Tripartite Pact" -- with Germany and Italy.

To understand this apparent contradiction, namely, Japan's strangely benevolent policy towards Jews in its sphere of influence despite its alliance with the Nazis, it is necessary to identify the main components of Japanese Jewish refugee policy at the time. The basic guidelines which were to govern Tokyo's initial policy on Jewish refugees were adopted at the Five Ministers' Conference on December 6, 1938. These guidelines governed Japanese Jewish policy up until the outbreak of the Pacific War in the winter of 1941.

(2) The Five Ministers' Conference of December 6, 1938

The Five Ministers' Conference⁶⁰ on December 6, 1938, convened at the request of Army Minister General ITAGAKI Seishiro and participated in by Prime Minister KONOE

⁵⁸ *Ibid.*, p. 304.

⁵⁹ *Ibid.*, pp. 130-31.

⁶⁰ For the Five Ministers' Conference as a decision-making mechanism, see IMAI Seiichi, "Cabinet, Emperor, and Senior Statesmen," in Dorothy Borg & OKAMOTO Shumpei, eds., *Pear Harbor as History: Japanese-American Relations, 1931-1941* (Columbia University Press, 1973), pp. 53-80. This reference was brought to the author's attention by Kranzler, *Japanese*.

Fumimaro, General ITAGAKI, Navy Minister YONAI Mitsumasa, Foreign Minister ARITA Hachiro, and Finance Minister IKEDA Seihin, made the following declaration:

Our diplomatic ties with Germany and Italy require that we avoid embracing the Jewish people in light of their rejection by our allies. But we should not reject them as they do because of our declared policy of racial equality, and their rejection would therefore be contrary to our spirit. *This is particularly true in light of our need for foreign capital and our desire not to alienate America* (emphasis added).

This declaration was followed by the following three principles:

1. At present we will not reject the Jews presently living in Japan, Manchuria and China and we will treat them equally with other foreigners.
2. Jews who enter Japan, etc. in the future will be treated as other foreigners.
3. We will not extend a special invitation to Jews to come to our territories, but capitalists and engineers will be taken into consideration⁶¹.

The above decision was kept top-secret and only a few very high-ranking government officials were privy to it. At any rate, these three principles on Jews -- *Yudaya-jin Taisaku Yokc* -- were to govern Japanese Jewish policy up until Pearl Harbor.

As apparent from the above declaration, Japan's pro-Jewish policy was driven by two major factors.

One was a diplomatic strategy to use the existing Jewish population in East Asia as leverage (or hostages) with which to avert a further deterioration in its relations with the U.S. (and Britain). These relations had been strained by Japan's recent diplomatic moves such as the November 3, 1938

⁶¹ Kranzler, *Japanese*, pp. 232-33. The original Japanese text can be found in Inuzuka, *Yudaya*, pp. 78-79.

declaration of "A New Order in East Asia" and the conclusion of the 1938 Cultural Pact with Germany⁶².

The other driving force was financial: Japan wished to raise American (Jewish) capital for investment in Manchuria in exchange for protection of Jewish refugees in East Asia. On this latter point, Inuzuka, Tokayer, and Kranzler all seem to concur⁶³.

Apparently, this idea of using Jewish capital for Japan's expansionist purposes derived from its early historical experience. As Kranzler noted:

The most lasting impact upon the Japanese and their attitudes towards the Jews were made by Jacob H. Schiff, the German-born president of the New York banking firm, Kuhn, Loeb and Company. He arranged the floating of several crucial loans to Japan during the Russo-Japanese War of 1904-1905. These loans (...) financed about half of the Japanese Navy which later decisively defeated Russia's Baltic Fleet. Perhaps of greater significance than the cash value of these loans (...) was the confidence in, and support of Japan by European governments and financial circles skeptical of Japan's viability as a modern nation (they represented)⁶⁴.

Given such a highly pragmatic view of Jews, it is no surprise that Japan allowed an additional refugee influx into

⁶² In January 1939, the U.S. launched a "moral embargo" on aircraft and parts to Japan and in February suspended credits. See Norman A. Graebner, "Hoover, Roosevelt, and the Japanese," in Borg & OKAMOTO, *op. cit.*, p. 42.

⁶³ See Inuzuka, *Yudaya*, pp. 50-51; Kranzler, *Japanese*, pp. 175-76; and Tokayer, *The Fugu Plan*, pp. 45-46.

⁶⁴ Kranzler, *Japanese*, p. 175. The main reason for Schiff's willingness to arrange loans for Japan was his hatred of Czar Nicholas II, whom he held responsible for pogroms against the Jews in Russia. For an account of Jewish loans to Japan during the Russo-Japanese War, see A.J. Sherman, "German-Jewish Bankers in World Politics: The Financing of the Russo-Japanese War," *Leo Baeck Institute Yearbook*, vol.28 (1983), pp. 59-73.

Shanghai (within physical limits), since it suggested the enhancement of Tokyo's "Jewish leverage" vis-a-vis the U.S., however limited that might be in reality.

(3) The Inuzuka & Yasue "Agencies"

Whether Tokyo was able to successfully manage Jewish refugees for its foreign policy goals would depend to a large extent on the extent to which the Japanese authorities were knowledgeable about Jewish affairs. Such necessary expertise was provided by two Japanese military officers with unusual qualifications. One was Colonel YASUE Senko of the Imperial Army, and the other was Captain INUZUKA Koreshige of the Imperial Navy. Interestingly enough, both officers had been initiated into Jewish affairs through their participation in Japan's Siberian Expedition in 1920. In Siberia, they were tutored in "world-wide Jewish (communist) conspiracies" by staunchly anti-Semitic White Russian officers⁶⁵. This seems to explain their often ambivalent attitudes/behavior towards Jewish refugees. On the one hand, the anti-Semitism they learned in Russia prompted them to write strongly anti-Semitic books and articles in officially-supported journals using pseudonyms. In contrast, however, their knowledge of Jewish history seemed to have compelled them to protect Jewish refugees from pro-Nazi elements within the Japanese bureaucracy (especially, the Army and the MOFA), which did not have such knowledge.

In March 1938, Colonel Yasue was assigned to head the

⁶⁵ On their return home, both officers continued to study Jewish affairs on their own.

Army's intelligence unit in Dairen (now Dalian) in southern Manchuria, from where he managed and controlled the 5,000-strong Jewish population throughout the entire territory. The main mechanism of control were the GOJ-sponsored **Conferences of Russian Jewish Communities in the Far East**, held three times (1937, 1938, and 1939) and actively participated in by Japanese officials. At each conference, an appeal was adopted and cabled to major Jewish organizations in the U.S. as well as Europe, stressing that the Jews in Manchuria were treated favorably by the Japanese authorities. In fact, the Japanese authorities even once suppressed the publication of an anti-Semitic journal published by White Russian emigres in Harbin.

Meanwhile in Shanghai in April 1939, the **Bureau of Refugee Affairs** was established in the navy unit stationed therein. Managed by Captain Inuzuka, the bureau sought to put into practice the three principles on Jews adopted by the Five Ministers' Conference.

As a local agency, however, this Inuzuka Agency ("**kikan**") had more specific objectives to accomplish. They included:

1. Coordinating Jewish affairs between the central authorities in Tokyo and the Shanghai units of the Navy, Army, and Foreign Affairs Ministries.
2. Converting anti-Japanese Jewish elements, particularly the Sassoons, into pro-Japanese ones by making them aware of potential benefits which would result from such a conversion.
3. Countering anti-Japanese propaganda by American Jews in concert with the U.S. Government by mobilizing "Japanese" Jews in East Asia.
4. Exploring the possibility of attracting East Asian Jewish capital for investment in Manchuria in exchange for Japan's establishment of a Jewish colony (pop. 50,000 - 200,000) in its occupied territories, either in Manchuria or near Shanghai.
5. Converting Far Eastern Jewry's dependence on Britain into dependence on Japan.

6. Exploring the possibility of using American Jews and the mass media under their control to deter the U.S. military from preparing for war with Japan⁶⁶.

Ironically, as for the first objective, the bulk of Captain Inuzuka's energy and time was spent on protecting Jews from the increasingly pro-Nazi Army and Foreign Ministry. For example, in May 1941, Lt. General SHIODEN Nobutaka, a major pro-Nazi figure in the Army, visited Captain Inuzuka in Shanghai and suggested that all Jews there be eliminated by drowning them in a local river. This suggestion was strongly rejected by Inuzuka⁶⁷. Meanwhile in Manchuria, a fourth Conference of Russian Jewish Communities in the Far East was canceled in December 1940 by the Army which thought that the Conference's past agendas were overly pro-Jewish.

The other objectives of the Inuzuka Agency were addressed especially in the following two instances.

Sir Victor Sassoon, the leader of the pro-British Sassoon conglomerate in East Asia, made inflammatory anti-Japanese remarks during a visit to the U.S. in February 1940. These remarks were reported by major Japanese newspapers in Tokyo as well as leading English-language dailies in Shanghai. It infuriated the Japanese authorities and also stirred up anti-Semitic sentiments among the Japanese public who regarded his remarks as representative of Jewish opinion. To counter this situation, in March 1940, leaders of various Jewish

⁶⁶ Inuzuka, *Yudaya*, pp. 95-96.

⁶⁷ *Ibid.*, pp. 372-73.

communities in Shanghai, prodded by Captain Inuzuka, held a press conference with Japanese reporters, where they criticized Sassoon's remarks and told the reporters that they had sent a message to the American Jewish Joint Distribution Committee (JDC), requesting it to publicize the fact to the world that the GOJ was treating Shanghai Jews with great sympathy. By early 1941, Victor Sassoon was apparently converted to a pro-Japanese position to such an extent as to agree to set up a real-estate company jointly with the GOJ (this joint venture did not materialize, however)⁶⁸.

The other case related to the procurement of American (Jewish) capital for investment in Japanese-controlled China and strategic war materials for the Japanese military. In September 1940, a deal was struck between TAMURA Kozo, a Japanese businessman-turned-intermediary, and American Jewish leaders, including Otto Gerson, a high-ranking JDC official. The content of the deal reportedly was as follows:

Japan will establish a residential area for Jews in the Putong section in Shanghai, which accommodates 30,000 refugees, including 18,000 refugees already resident in the Japanese-ruled Hongkew section. As a quid pro quo, the American Jewish community will raise a 200-million yen credit, of which 12 million would be earmarked for the establishment of a leather-processing company which employs Jewish workers, with the remaining 188 million to be spent for the provision of war materials such as scrap iron, milling machines, petroleum, etc. for Japan⁶⁹.

This deal failed basically because Japan's September 1940 conclusion of the Tripartite Pact with Germany and Italy

⁶⁸ *Ibid.*, pp. 332-50.

⁶⁹ *Ibid.*, pp. 222-24.

forced the American Jewish side to withdraw.

(4) Restrictions on Jewish Immigration to Shanghai

Japan's remarkably pro-Jewish policy kept it from instituting restrictions on the Jewish influx into Shanghai. Ironically, however, it was the governments of the U.S., Britain and France and the major international Jewish organizations as well as Shanghai's Jewish residents themselves that jointly sought to curtail the Jewish influx from Greater Germany to Shanghai. They were all fearful that additional refugees would worsen overcrowding and economic competition in the city. They even pressured a German-Jewish relief agency as well as the German Government to reduce Jewish outmigration which the latter had been encouraging⁷⁰.

Nevertheless, Japan, the real power in Shanghai, started to take measures to limit immigration into its Hongkew section only in August 1939 when the refugee population there had reached 14,000. Moreover, this restriction was undertaken only after Tokyo convinced itself that it would not result in a world-wide protest by Jewish organizations⁷¹. This belated immigration control clearly indicates (a) how sensitive Japan was to possible Jewish criticism of its policy and (b) how strong its desire was to enhance its "Jewish leverage" as much as possible. The next day when Japan began enacting restrictions, the authorities of the International Settlement as well as of the French Concession followed suit though with

⁷⁰ Kranzler, *Japanese*, pp. 151-52.

⁷¹ Inuzuka, *Yudaya*, pp. 235-36.

the following exception; those refugees with at least US\$ 400 and guarantees of employment from a Shanghai resident were permitted to enter⁷². Similarly, in Manchuria, Japan imposed restrictions on immigration except for those refugees (a) who had a sponsoring relative in Manchuria, (b) who had an employment guarantee from a Manchuria resident, or (c) who, at the time of entry, had US\$ 500 (for an adult) and US\$ 850 (for a child under 13 years old)⁷³.

The Polish Jewish Refugees in Japan⁷⁴

As noted earlier, there were two major routes for Jewish refugees fleeing the Nazis from Europe to East Asia. One was a sea route, available until June 10, 1940, when Italy entered the war. The other was a land route stretching from Germany through European Russia and Siberia to East Asia. The latter was used from June 11, 1940 through the beginning of December 1941, when Japan declared war against the U.S. and Britain.

Among roughly 4,700 Jews who took the above land route to reach Japan and escaped therefrom were some 2,000 Polish Jews, including the students and faculty of the Mirrer Yeshiva, the only Talmudic college that, as a unit, escaped

⁷² However, these two conditions were skirted by many incoming refugees who were able to "borrow" US\$ 400 from relief organizations in Shanghai and also obtained a false guarantee of employment from sympathetic local Jewish merchants.

⁷³ Inuzuka, *Yudaya*, pp. 263-64.

⁷⁴ What follows draws on Kranzler, *Japanese*, chap. 11; Tokayer, *The Fugu Plan*, chaps. 8-12; Inuzuka, *Yudaya*, pp. 267-288; and Sugihara, *Rokusen-nin*, chap. 1.

Nazi obliteration⁷⁵. Of these 2,000 Polish Jewish refugees, approximately 1,100 were to end up in Shanghai.

For our purposes, this last group of 1,100 Polish Jewish refugees has special significance since this case clearly illustrates the crosscutting pressures -- created by Japan's two opposing foreign policy objectives -- under which Japanese Jewish policy was formulated and implemented.

The two mutually exclusive foreign policy objectives were (a) Japan's desire to maximize its Jewish leverage vis-a-vis the U.S., which required a pro-Jewish posture on the part of Japan; and (b) Japan's perceived obligations to Nazi Germany, its main ally, to bring its Jewish policy in line with that of the Nazis.

(1) Polish Jews and SUGIHARA Chiune

After Hitler invaded Poland in September 1939, thousands of Jews fled from there to Lithuania -- then a neutral and still independent state -- with the few belongings they could sneak out. Among this group were 420 students and faculty of the aforementioned Mirrer Yeshiva. As the Red Army moved into Lithuania in the summer of 1940, a student of Dutch descent from this yeshiva persuaded a sympathetic Dutch Ambassador to the Baltic States, L.P.J. DeDecker, to issue him a destination visa to Curacao, in the Dutch West Indies⁷⁶. On

⁷⁵ They consisted of about 70 rabbis and 350 students. Heppner, *op. cit.*, p. 68.

⁷⁶ This visa was actually issued by the Dutch honorary consul in Kovno, Jan Zwartendyk. Heppner, *op. cit.*, pp. 67-68.

the basis of this destination visa, this student was granted a transit visa to Japan by another sympathetic diplomat, SUGIHARA Chiune⁷⁷, the Japanese vice consul⁷⁸ in Kovno (Kaunas), the then capital. This account spread quickly among Jewish refugees in general as well as the other students of the yeshiva. Since July 1940 thousands of refugees had thus flocked to the Japanese Consulate in Kovno, requesting transit visas. Vice Consul Sugihara issued as many as 3,500 visas, largely during the single month of August 1940⁷⁹.

As one can imagine, Sugihara did this with tremendous difficulty and courage.

First of all, he issued those visas *against* instructions

⁷⁷ Kranzler, Tokayer and Heppner all spelled his first name "Senpo (or Sempo)." While the Chinese characters for his first name can be read either "Senpo" or "Chiune", the latter is officially used. See Sugihara, *Rokusen-nin*, p. 48.

⁷⁸ There is evidence to suggest that Sugihara was actually an intelligence officer. First, Mrs. Sugihara noted that his main duty was to collect information on Germany as well as the Soviet Union. Second, Japan established its consulate for the first time in Kovno just in time for Sugihara's arrival (Lithuania, bordering with the Soviet Union as well as Nazi-occupied Poland, was an excellent listening post). Third, the Japanese Foreign Ministry instructed Sugihara to use a different name when he was assigned to the post in Kovno, which he refused for the reason that it would confuse his previous contacts. Sugihara, *Rokusen-nin*, pp. 28-32.

⁷⁹ The figure is from Kranzler, *Japanese*, p. 311 (its source unknown). Mrs. Sugihara, in her memoirs, does not specify the exact number of visas her husband issued apparently because he stopped numbering the visas after they reached 2,092. On the other hand, she estimates that the number of Jews, including visa recipients' families, who were saved by Mr. Sugihara, is around 6,000. Hence the title of her book, "Six Thousands Visas for Life." Prof. Hillel Levine of Boston College claimed in a newspaper article on Sugihara that the actual number was higher, probably 8,000. *The New Canadian* (9/8/94).

from Tokyo. While fully aware that his government was allied with Nazi Germany, he consistently asked Tokyo for permission to issue visas to save those desperate Polish refugees. It was only after he received a third negative answer from Tokyo that he decided to issue visas on his own.

Second, for a refugee wishing to traverse Siberia to reach Japan, a Japanese transit visa alone was meaningless unless accompanied by a Soviet transit permit. Thus it fell on Sugihara's shoulders to negotiate with the Soviet Consulate in Kovno to issue transit permits to those already granted Japanese visas. He managed to do so thanks in part to his near-native Russian language skills. He even remained in Kovno to issue visas defying repeated evacuation orders from the Soviet occupying authorities. An instruction from Tokyo ordering him to report to the Japanese Embassy in Berlin, however, finally forced him to leave. Meanwhile, Polish refugees kept coming to the Japanese Consulate, asking for visas to Japan. On September 1, 1940, the day of his departure, refugees desperately followed Sugihara and his family to the railway station where they were to take a train to Berlin. He kept giving out visas from a train window while his train started to pull out⁸⁰.

The above episode raises key questions about Japanese

⁸⁰ After Japan's defeat in the war, Sugihara and his family were held in several Soviet POW camps consecutively. Upon their return to Japan in April 1947, he was discharged from the Foreign Service for "insubordination." He died in Japan in 1986. It was only shortly before Japan established diplomatic relations with the newly independent Baltic States that the MOFA restored his honor posthumously, in October 1991, 44 years after his dismissal. *Yomiuri Shimbun* (10/4/91).

Jewish policy: (a) how did Tokyo's rejection to issue transit visas to Polish Jewish refugees square with its pro-Jewish policy?; (b) did the GOJ jettison its three Jewish principles, adopted by the Five Ministers Conference in December 1938?

The answer to the second question is "No." In fact, Tokyo was following a pro-Jewish policy even though it prohibited Sugihara from issuing visas to Polish Jews. There is strong evidence to support this case.

First, although those Polish Jewish refugees who traversed Siberia and sailed from Vladivostok to Tsuruga (Japan), had only (unauthorized) "Sugihara visas" as well as dubious destination visas to Curacao, they were all allowed to enter Tsuruga. Moreover, those refugees found to have forged passports and other illegal papers were also accepted⁸¹.

Another indication of Japan's continued pro-Jewish policy is the fact that after the Japanese Consulate in Kovno was closed after Sugihara's departure, the Japanese Embassy in Moscow started (and kept) issuing visas to Jewish refugees⁸².

⁸¹ Kranzler, *Japanese*, p. 322.

⁸² Inuzuka, *Yudaya*, p.276. Mrs. Sugihara claims that this fact (i.e., that the Japanese Embassy in Moscow kept issuing visas) explains why as many as 6,000 Jewish refugees could obtain Japanese visas, enabling them to escape via Japan. This may contradict her claim that these 6,000 refugees were saved by the visas issued by her husband. The point of contention is that, of these 6,000 refugees, how many were saved by Sugihara's (unauthorized) visas and how many were saved by official visas issued by the Japanese Embassy. This problem becomes irrelevant, however, if one recognizes the fact that, after all, the GOJ honored Sugihara's visas, which it could have rejected. Thus, the reasonable conclusion is that all these 6,000 refugees were saved by Japan's official pro-Jewish policy.

So an answer to the first question is: Japan wished to maintain its pro-Jewish policy vis-a-vis Polish Jews as well as other Jews, but since its alliance with Nazi Germany made it particularly impolitic to officially provide protection to Jews in Europe, it decided to officially prohibit Sugihara from issuing transit visas with the internal understanding that these visas be honored by the Japanese customs authorities in Tsuruga⁸³. Such a policy compromise can be observed again in Tokyo's dealings with Polish Jews in Kobe.

(2) Polish Jews in Kobe

After their arrival at Tsuruga, the 2,000 Polish Jewish refugees traveled by rail to Kobe, where they remained awaiting resettlement in third countries. Unlike their German and Austrian coreligionists who could "pass through" Kobe thanks to their valid destination visa for a North (or South) American country, these Polish Jews had a dual problem with their visas.

First, since their Curacao visas were a mere technical device to allow them to escape Europe, they had to secure a "real" visa to a third country for resettlement. This task was undertaken mainly by the Kobe representative of the Hebrew Immigrant Aid Society (HIAS) but was facilitated by the representative in Japan of the Polish Government-in-Exile, Count Theodore de Romer, who provided them with a portion of the British (Commonwealth) resettlement quota

⁸³ All available evidence seems to indicate that at the time Sugihara himself was unaware of this de facto "two-track" policy.

allotted to Polish citizens so that many Polish refugees in Kobe were able to resettle in Australia and Canada⁸⁴. Second, and perhaps more important, their Japanese transit visas were effective only for 14 days upon entry, so the majority of the Polish refugees had to have their transit visas renewed several times until they could leave Japan. Necessary negotiations with the Japanese authorities were conducted by the Jewish Community of Kobe (JEWCOM). Here again, the GOJ made a compromise in order to reconcile its pro-Jewish and pro-Nazi foreign policies. Thus, Foreign Minister MATSUOKA Yosuke instructed the Kobe authorities to extend visas if need be, acting on their own, without officially informing Tokyo of their decisions⁸⁵. This way, Tokyo would be able to claim no responsibility for local action.

Between the spring and the early summer of 1941, three major events took place that were of critical importance to the fate of Polish refugees in Japan (two of these events also had a direct impact on the future influx of refugees). First, Foreign Minister Matsuoka instructed the Japanese Embassy in Moscow to stop issuing transit visas (this went into effect on March 17, 1941)⁸⁶. The apparent reason given for this decision was a backlog of refugees in Vladivostok -- there were too many refugees there and not enough ships to

⁸⁴ Tokayer, *The Fugu Plan*, p. 184. Despite the September 1940 Tripartite Pact with Hitler and Mussolini, Tokyo continued to recognize the Polish Government-in-Exile until October 10, 1941.

⁸⁵ *Ibid.*, pp. 126-28.

⁸⁶ *Ibid.*, pp. 154-56.

ferry them to Japan. However, in light of the fact that Foreign Minister Matsuoka was to depart Japan on March 12, 1941, to meet with Hitler in Berlin, the real reason seems to be that Matsuoka, by preemptively terminating the issuance of transit visas to Jews, sought to avoid diplomatic frictions with Hitler⁸⁷. The second event was Germany's declaration of war with Russia on June 22, 1941, making it impossible for refugees to use the Vladivostok-Tsuruga route thereafter. In short, it became virtually impossible for refugees still in Europe to escape through Japan after June 1941. The final event played havoc with Polish refugees in Kobe awaiting resettlement opportunities. By the middle of June, 1941, one simple question had been added to the U.S. visa application form: "Do you have any relatives in enemy-overrun territory?" This question was based on the assumption that anybody with relatives in enemy-held territories were vulnerable to blackmail by the enemy. Thus people with such security risks could not be accepted into the U.S.⁸⁸. This meant that the U.S. slammed its door on Jewish refugees, nearly all of whom had relatives in Axis-held Europe. Furthermore, by July 26, 1941, funds from the U.S., Britain, and Canada were no longer permitted to enter Japan, with the result that Kobe's JEWCOM could no longer count on financial support from the American

⁸⁷ *Ibid.*, pp. 139-43. While Tokayer does not provide any specific reason for this decision, his description of the conversation between Matsuoka and KOTSUJI Setsuzo -- the Hebrew-speaking Christian minister who served as a liaison between Tokyo and JEWCOM -- would lead one to reach this conclusion.

⁸⁸ *Ibid.*, p. 188.

JDC and other Jewish organizations⁸⁹.

By the summer of 1941, there were still 1,100 Polish refugees stranded in Kobe (including the students and faculty of the Mirrer Yeshiva), unable to resettle elsewhere. For them, the only way out seemed to be to sail to Shanghai to join the Jewish community therein.

Jewish Refugees in Shanghai (Early 1940S)

The 1,100 Polish Jewish refugees from Kobe arrived in Shanghai in August and September, 1941⁹⁰. Not permitted to enter the Japanese-held Hongkew section, however, they were distributed throughout the International Settlement as well as the French Concession. Initially, they were assisted mainly by members of the Shanghai Ashkenazi Communal Association because of their ethnic ties, including a common language (i.e., Russian). Unlike in Kobe where their life depended totally on financial support by Jewish organizations both in Japan and abroad, in Shanghai, they were able to supplement their livelihood by doing odd jobs while depending

⁸⁹ Kranzler, *Japanese*, p. 319.

⁹⁰ Conflicting explanations exist for this transfer. Tokayer says the transfer was a result of Tokyo's decision made in conjunction with the JEWCOM in Kobe. Mrs. Inuzuka claims, on the other hand, that it was undertaken by the JEWCOM in Kobe without GOJ permission (and in violation of the agreement made earlier between Capt. Inuzuka and the leaders of Jewish relief agencies in Shanghai not to transfer Polish refugees from Japan to Shanghai). However, this author tends to agree with Tokayer because one could hardly imagine that during wartime such a strategic operation (as mass refugee transportation) could be undertaken without Tokyo's permission. See Tokayer, *The Fugu Plan*, pp. 184-89; Inuzuka, *Yudaya*, pp. 270-86.

mainly on financial support from the JDC.

(1) Nazi Pressures on Japan

Ever since their 1936 conclusion of the Anti-Comintern Pact with Japan, the Nazis had kept pressing Japan to follow their line towards Jews⁹¹. Especially after the conclusion of the Tripartite Pact in 1940, such Nazi pressure (and Japanese receptivity to it) increased. In October, 1940, Col. Yasue, the sympathetic manager of Jewish affairs in Manchuria, was discharged from the head of the Army's intelligence unit in Dalian, thus depriving the Jews in Manchuria of their best "friend." Furthermore, a fourth Conference of Russian Jews in the Far East, scheduled to be held in Harbin, was canceled by the Army in December, 1940. Although Capt. Inuzuka had obtained in September 1940 assurances from Tokyo that the three Jewish principles adopted at the 1938 Five Ministers Conference were still in force⁹², pro-Nazi pressures were mounting on him in Shanghai. As noted earlier, in May 1941, General Shioden, a major pro-Nazi figure in the Army, suggested to Capt. Inuzuka in Shanghai drowning all the Jews in a local river (Inuzuka emphatically rejected this suggestion).

In fact, Nazi pressure on Japan would reach its culmination in July 1942 when Col. Josef Meisinger -- the

⁹¹ For example, the German Embassy in Japan proposed an anti-Semitic exhibition in Fukuoka in 1940, which did not materialize because of efforts by the Jewish community in Harbin as well as Col. Yasue and others. Kranzler, *Japanese*, pp. 324-25.

⁹² Inuzuka, *Yudaya*, pp. 482-83.

Gestapo chief for the Far East -- visited Shanghai. Prior to discussion of this visit, however, we will examine the impact of "Pearl Harbor" on Japan's Jewish policy in Shanghai.

(2) The Impact of Pearl Harbor on Japanese Jewish Policy

The Japanese attack on Pearl Harbor on December 8, 1941 and the ensuing declaration of war with the U.S. (and Britain) shook the foundation of Japan's pro-Jewish policy and eventually led to the establishment of a Jewish ghetto in Shanghai. Actual policy changes which led to the establishment of the Shanghai ghetto occurred gradually, however: it was nearly 40 days after Pearl Harbor that the GOJ, for the first time, formalized a change in its Jewish policy established three years earlier.

On January 17, 1942, Foreign Minister TOGO Shigenori sent a message to his ambassador to China, SHIGEMITSU Mamoru, and other officials on the "Emergency Measures for Jewish People⁹³." Part of this message read as follows:

Due to the outbreak of the Greater East Asia War, it became necessary that our Jewish measures be subjected to reconsideration. Apart from possible changes in the decisions reached at the five Ministers' meeting [of December 6, 1938], the following items have been established as emergency measures by the officers concerned of the Ministries of the Army, Navy and Foreign Affairs (...). You should not be careful that the measures should be carried out in an unnecessarily provocative manner that our position might be prejudiced to the interest of enemy counter-propaganda.

The measures to be taken by the Japanese authorities in

⁹³ The text of this message was decided by an Imperial Headquarters-Cabinet Liaison Conference (Daihon'ei-Seifu Renraku Kaigi) held earlier (the exact date of the conference unknown).

China and Manchukou were as follows:

1. Since Germany has deprived the Jewish people overseas of their nationality (effective as of January 1, 1942), German Jews will hereafter be treated as denationalized Jews.
2. Of the said denationalized Jews, and Jews with nationality of any neutral nation other than our allies, those who are or will be made use of on our part (...) will be treated in a friendly way. The rest will be placed under *strict surveillance* so that any hostile activity may be eliminated or suppressed (...)⁹⁴(emphasis added).

As for the first measure, up until then, the Japanese authorities had treated German Jews as German citizens mainly because the German Consulate in Shanghai argued that since those Jews were technically German citizens ("B-class" citizens), they should be treated properly as third country nationals⁹⁵.

The second measure requires some explanation. Now that German Jews were to be treated as denationalized, this category would include German Jews as well as existing stateless (Russian) Jews. "Jews with nationality of any neutral nation" may have meant Jews (Sephardi) with Iraqi citizenship, according to Kranzler. Thus Japan would make use of "usable" segments of these two Jewish groups (i.e., stateless Jews and Iraqi Jews), but the rest of them were to be watched carefully because they, being Jews, were enemies of Hitler, and a likely source for acts of sabotage. Needless to say, Jews of enemy nationalities (such as Sephardics with British passports) would be under stricter surveillance than the above two groups. The above measure of "strict surveillance" was to evolve into the establishment of a

⁹⁴ Kranzler, *Japanese*, pp. 480-81.

⁹⁵ Inuzuka, *Yudaya*, pp. 103-104.

ghetto as the war deepened.

Before turning to the issue of the ghetto, however, it is necessary to review Nazi pressures to be able to understand the strategic situation in which Japan decided to create a ghetto in Shanghai to confine the city's 30,000 Jews.

(3) Nazi Pressures and Japan's "Final Solution"

By the summer of 1942, the Gestapo chief Heinrich Himmler's plan for the total elimination of the Jewish people from the Earth or at least from Europe had been established as Nazi policy. Nevertheless, in carrying out this global "ethnic cleansing," the Nazis were experiencing an incomprehensible and tenacious resistance from their ally in Asia, Imperial Japan. Because of its own strategic considerations noted above, Tokyo had been reluctant to synchronize its Jewish policy with that pursued by the Nazis. Frustrated, Himmler ordered Colonel Josef Meisinger -- "the Butcher of Warsaw" and the Gestapo chief for Japan, China and Manchukuo -- to leave his Tokyo office temporarily to visit Shanghai, where the largest concentration of Jews in East Asia was to be found.

In July 1942 in Shanghai, Col. Meisinger and Japanese officials of the Bureau of Jewish Affairs held a top secret meeting⁹⁶. After Capt. Inuzuka was removed from office

⁹⁶ The participants were three Germans (Col. Meisinger; Adolph Puttkamer, the chief of the German Information Bureau in Shanghai; and Hans Neumann, an officer from the Bergen-Belsen concentration camp) and at least six Japanese (their names were unknown but they were representatives of the Army, Navy, Military Police (Kempeitai), Consulate, the Japanese representative to the Shanghai Municipal Council, and KUBOTA

through a pro-Nazi Army-engineered conspiracy, the Bureau of Jewish Affairs had been reorganized to give the Army and Foreign Ministry a larger voice in its management. At this meeting, Col. Meisinger emphasized the necessity of eradicating once and for all the entire Jewish population from Shanghai for the benefit of the German-Japanese alliance. To accomplish this, the visiting Gestapo chief proposed three methods which Japan could choose from:

1. To load Jews onto old, unseaworthy boats and tow them out to sea, leaving them adrift till they die.
2. To put Jews to work at several abandoned salt mines near Shanghai, forcing them to produce salt for Japan at a minimum labor cost.
3. To build a concentration camp for Jews on an island in the mouth of the Yangtse River. There, Jewish "volunteers" could be experimented on for the progress of medicine⁹⁷.

Col. Meisinger even suggested an efficient method of capturing Jews all at once: choose the Jewish New Year holiday of Rosh Hashanah and surround the synagogues in the city, where almost all Jews were likely to be congregated.

Vice Consul SHIBATA Mitsugi -- a member of the Bureau of Jewish Affairs in Shanghai -- was present at the meeting. Appalled by what had just been discussed, he hurriedly collected seven leaders of various Jewish communities to inform them of their imminent danger. This "leak" was discovered by the Military Police, which arrested all seven Jewish leaders and Shibata. A couple of weeks later, these

Tsutomu, the Bureau Director). Tokayer, *The Fugu Plan*, p. 223; Kranzler, *Japanese*, p. 505.

⁹⁷ Tokayer, *The Fugu Plan*, p. 224.

seven Jewish leaders were released from prison unharmed with the exception of one and Shibata, tortured, was dismissed from the Consulate and deported to Tokyo⁹⁸. Later, the Japanese authorities in Shanghai rejected the above allegations of planned Jewish extermination as groundless.

On this affair one can safely comment: even without Shibata's intervention, the Japanese authorities would have adopted none of the above methods of elimination suggested by Meisinger. In this connection, one should recall Foreign Minister Togo's message on the "Emergency Measures for Jewish People." It stated, among other things, that "you should be careful that the measures should not be carried out in an unnecessarily provocative manner that our position might be prejudiced to the interest of enemy counter-propaganda." In light of this official policy, the final solutions recommended by Col. Meisinger would have been too "provocative" to be adopted.

Instead, the measures Japan were to adopt were revealed in the following top-secret dispatch (dated November 18, 1942) from Consul General YANO Seiki in Shanghai to AOKI Kazuo, the Minister of Greater East Asia, regarding "Measures Pertaining to the Jewish People"⁹⁹.

Relative to measures pertaining to the Jewish People in Shanghai area, the plan, established by the Japanese Navy of that area, having been approved by the Central Government, will shortly be carried into force (...)

⁹⁸ Boris Topas, one of the seven leaders, was tortured during the interrogation. Heppner, *op. cit.*, p. 106.

⁹⁹ Kranzler, *Japanese*, pp. 481-82.

The outline of the plan was as follows:

1. A Jewish district will be set up in the Hongkew section. The Jewish people scattered around the city will be collected to live there.
2. 20,000 German Jews will be accommodated first. The disposition of White Russian and other Jewish people will be made (later).
3. Surveillance, control and guidance after collection and completion of accommodation will be conducted by the military.

At this point, Japan's pro-Jewish policy -- established at the December 1938 Five Ministers' Conference -- was abandoned, giving way to a confinement plan for Jewish refugees. However, it would not be until three months later (i.e., February 18, 1943) that the establishment of a ghetto was proclaimed in Shanghai.

The Jewish Ghetto in Shanghai (1943-1945)

(1) The Establishment of a Ghetto

The establishment of a ghetto -- decided in November 1942 and proclaimed in February 1943 -- was perhaps the last instance of a major policy compromise Japan made in order to try to reconcile its pro-Jewish and pro-Nazi policies.

The outline of the February 18, 1943 proclamation was as follows:

1. Due to military necessity, places of residence and business of the stateless refugees in the Shanghai area shall hereafter be restricted to the Hangkew section of the International Settlement.
2. The stateless refugees at present residing and/or carrying on business in sections other than that of Hangkew shall remove their places of residence and/or business to the designated area by May 18, 1943.
3. Persons other than stateless refugees shall not remove into the Hangkew section without permission of the Japanese

authorities¹⁰⁰.

Thus the refugees were given three-months notice, that is, until May 18, to relocate to the section designated by the Japanese authorities¹⁰¹. But what did the word "stateless refugee" actually mean? According to the proclamation, stateless refugees were those people who had arrived in Shanghai since 1937 from Germany (including former Austria, Czechoslovakia, Poland, the Baltic States, etc.), and who had no nationality at the time¹⁰².

The cutoff date "since 1937" is important because it excluded 4,000 or so Russian Jews from being "stateless refugees." This policy, in addition to being a traditional divide-and-rule method, also seems to have reflected Tokyo's desire not to antagonize the Soviet Union with which Japan had concluded a Neutrality Pact roughly two years earlier.

With a population of 100,000 Chinese and 8,000 refugees, the Japanese Navy-controlled Hangkew section was the most crowded in the International Settlement. It thus seemed difficult to squeeze an additional 8,000 refugees into this area within three months (it also meant that the equivalent number of Chinese had to be removed from the ghetto)¹⁰³. This

¹⁰⁰ Kranzler, *Japanese*, pp. 489-90.

¹⁰¹ It is noteworthy that the words "Jew" or "ghetto" were carefully avoided in this proclamation, being substituted by "stateless refugee" and "designated area" respectively. Even in private conversation, Japanese officials were allowed to use only these euphemisms, according to Kranzler.

¹⁰² Kranzler, *Japanese*, pp. 490-91.

¹⁰³ *Ibid.*, pp. 491-93.

onerous work was done by a committee called the Shanghai Ashkenazi Collaborating Relief Association (SACRA), composed of "free" Russian Jews¹⁰⁴. Most (not all) exits from the ghetto were guarded either by armed Japanese sentries or a 3,500-strong Jewish auxiliary police force. All stateless refugees were issued "a resident certificate" and needed a pass when leaving and entering the ghetto for commuting and other purposes.

(2) The Economic Situation in the Ghetto

Even before the establishment of the ghetto, the economic life of the refugees in Shanghai had been adversely affected by the outbreak of the Pacific War.

First, the Japanese takeover of American and British businesses in the city worsened unemployment among refugee workers, aggravating the problem of refugee relief.

Second, a communications shutdown between Shanghai and the U.S. had a direct impact on refugees' life. In addition to dashing refugees' hope of resettling in the U.S., it terminated the import of relief funds from Jewish organizations, friends and relatives in the U.S.¹⁰⁵. The American JDC, eager to demonstrate loyalty to their country, refused to circumvent the American and British Trading with the Enemy Acts (which prohibited transfers of funds to and trading with enemy territory) by using neutral states,

¹⁰⁴ In fact, SACRA procrastinated in its work, however, and it took almost a year to complete the assigned relocation.

¹⁰⁵ Kranzler, *Japanese*, pp. 456-58.

despite repeated appeals for funds from the Shanghai JDC. It was only at the end of 1943 that the State Department was persuaded to remove the communications ban, enabling the American JDC to transfer funds to Shanghai via Switzerland. This narrowly avoided a catastrophe in the refugee community in Shanghai¹⁰⁶.

For many refugees the establishment of the ghetto meant worsening economic conditions because they were forced to abandon their homes and businesses in exchange for meager compensation. While new JDC relief funds from the U.S. became available at the end of 1943, the number of refugees needing relief was steadily increasing. At the end of 1943, it was approximately 6,000, which rose to 7,300 by April 1944 and to 11,000 by June 1945¹⁰⁷. This economic hardship for the refugees was to last until September 3, 1945, when the ghetto officially closed with the arrival of an American mission in Shanghai.

Jewish Intermediaries for Peace

As already noted, Japan's pro-Jewish policy was based on the assumption that it could make use of Jewish political and economic power (through Jewish refugees) to extract American capital as well as to avoid worsening its relations with the U.S. The outbreak of the Pacific War nullified this assumption. Once Japan was at war with the U.S., it seemed no longer necessary for Tokyo to maintain its pro-Jewish policy.

¹⁰⁶ *Ibid.*, pp. 461-62.

¹⁰⁷ *Ibid.*, p. 560.

Rather, it would be wiser hereafter to consolidate its alliance with Nazi Germany by bringing its Jewish policy closer to that of the Nazis. Hence, the establishment of a Jewish ghetto in Shanghai.

Nevertheless, this did not mean that Japan totally rid itself of an exaggerated perception of Jewish influence in US politics. In fact, there is evidence to indicate that in 1944, when the war had long since turned against Tokyo, that the Japanese military sought to use "their" Jews for peace feelers vis-a-vis the U.S.

(1) The Case of Dr. Karl Kindermann

One such case involved Dr. Karl Kindermann, one of the German Jewish residents in Tokyo, most trusted by the GOJ. In early 1944, at the request of Col. SEKIGUCHI Tsugio, adviser to Prime Minister TOJO, Dr. Kindermann went to Dalian to meet with Admiral Nakamura. At the meeting, Admiral Nakamura proposed that Japan would move the refugees out of the ghetto in Shanghai to a "Jewish State" in Manchukuo, where they would be guaranteed not just security but also a comfortable life. In exchange, Admiral Nakamura hoped, the American Jewish community, grateful of Japanese kindness to their coreligionists in East Asia, would persuade President F.D. Roosevelt to come to the peace table¹⁰⁸. Dr. Kindermann relayed this message to Dr. Stephen Wise, the president of the American Jewish Congress and adviser to Roosevelt, with favorable comments on the Japanese proposal. As a matter of

¹⁰⁸ Tokayer, *The Fugu Plan*, pp. 257-58.

fact, Dr. Kindermann once relayed a similar Japanese proposal to Dr. Wise in June 1940. At the time, the Japanese side wanted to attract investment in Manchuria in exchange for the establishment of a Jewish colony in Manchukuo. Dr. Wise answered at the time that any negotiation with Japan on Jewish immigration and resettlement in Japan would first have to be approved by the State Department¹⁰⁹. This 1940 negotiation failed because, according to Kranzler, the American Jewish organizations were simply suspicious of any Japanese proposal to transfer Jewish refugees within Japanese territory. The 1944 attempt by Dr. Kindermann also failed because of Dr. Wise's opposition.

(2) The Case of the Tientsin Jewish Club

A second case of a Jewish peace feeler involved leaders of the Jewish community in Tientsin, where the second largest concentration of Jews in China was found at the time. From the beginning of the war, the Jewish community in Tientsin had sought to be pro-Japanese for survival purposes. In April 1944, leaders of the Tientsin Jewish Club -- the *Kunst* -- were visited by Col. HIDAHA Tomiaki from Peking. Col. Hidaka explained to them his proposal (a) that the Jewish leaders in Tientsin broadcast to their brothers in the U.S. to the effect that Jews were well treated under Japanese rule and (b) that American Jews make an arrangement to end the war through their great influence with the U.S. Government. In response, one of the Tientsin elders ventured to opine that

¹⁰⁹ Kranzler, *Japanese*, pp. 243-44.

such a broadcast would be counterproductive because it would give Americans the impression that Japan was now so weak as to solicit Jewish collaboration¹¹⁰. The Jewish leaders in Tientsin heard nothing further from Col. Hidaka after the meeting¹¹¹.

Conclusions

Japan's handling of Jewish refugees in Japan proper and its territories overseas was a final, important example of its imperialist refugee policy. It was a clear product of its foreign policy goal of expanding and maintaining its imperialist interests at home and abroad, and not a result of humanitarianism or of considerations of protecting the human rights of refugees in general by any means.

Specifically, Japanese protection of Jewish refugees in its territories from the 1930s through 1945 aimed mainly to use them as "hostages" or "a propaganda tool" to extract capital from the West (for investment in Manchuria and other colonial possessions) as well as to deter the worsening of its relations with the U.S. while Tokyo continued its imperialistic conquest of the Chinese Continent, Southeast Asia and the South Pacific.

In the course of the development of Japanese imperialist refugee policy, there were remarkable and laudable examples

¹¹⁰ While this was apparently aimed at dissuading Hidaka from forcing the Jews in Tientsin to collaborate with the Japanese, their reluctance to do so may have stemmed from their desire not to be seen as collaborators by the Allied forces, particularly the U.S.

¹¹¹ Tokayer, *The Fugu Plan*, pp. 258-60.

of humanitarianism demonstrated by individual Japanese officials (such as Shibata in Shanghai and Sugihara in Lithuania). Nevertheless, without detracting from their personal humanitarianism, one must say that these humanitarian acts were possible only within the geopolitical parameters determined by Japanese imperialist refugee policy. For example, had the GOJ not recognized the transit visas Sugihara issued (on his own) to Polish refugees, his humanitarian act would have come to naught, perhaps resulting loss of 6,000 Jewish refugees' lives in Europe and Siberia.

The above conclusion seems to confirm the unfortunate but objective view of the relationship between refugee and foreign policies. That is, a state's refugee policy can approach a de-politicized and humanitarian one only insofar as it coincides with fundamental foreign policy objectives of that nation¹¹². Only in this context can we note the fact that Imperial Japan did "save" 30,000 Jews in Shanghai.

¹¹² See, for example, Gil Loescher and John A. Scanlan, *op. cit.*

CHAPTER FOUR

THE 1978 INDOCHINESE REFUGEE RESETTLEMENT AND AFTER

This chapter addresses the 1978 GOJ decision to allow Indochinese refugees to resettle in Japan as well as the subsequent developments of its Indochinese refugee policy. First, it provides some historical background against which the above refugee resettlement decision may be examined. Second, it analyzes the process which produced the resettlement decision. Finally, it traces the subsequent development to date of Japan's Indochinese refugee policy.

1. THE BACKGROUND: ISOLATIONIST REFUGEE POLICY (1952 - THE MID-1970S)

Japanese refugee policy during the period from 1952, when Japan regained independence, through the mid-1970s, when Indochinese refugees started arriving in Japan as boat people, can best be characterized as "isolationist" in that it was an integral part of Japan's isolationist foreign policy.

In general, Japan's foreign policy in this period was anchored in the national strategy of concentration on the pursuit of greater economic prosperity, while adhering firmly to diplomatic isolationism which was made possible by Japan's political and military alliance with and subordination to the U.S.¹ Given this diplomatic isolationism as well as its

¹ For this strategy, see, for example, John W. Dower, *Empire and Aftermath: Yoshida Shigeru and the Japanese, 1878-1954* (Harvard University Press, 1979); Donald C. Hellmann, "Japanese Politics and Foreign Policy: Elitist Democracy

economics-centered foreign policy, it was natural that Japan saw no need to participate in and to commit itself to the existing international refugee regime. Moreover, Japan's isolationist refugee policy was reinforced by the absence of any mass refugee outflows around and towards Japan².

As a result, Japan, during this period, failed to develop an internal refugee protection regime anchored firmly in domestic as well as international law. Japan did have a refugee policy but it was simply one of no resettlement in the country.

The Search for A Domestic Refugee Protection Regime

Japan's post-WWII Constitution, written by the U.S. occupying authorities and approved by the democratically elected Japanese Parliament while Japan was still not sovereign, contained no references to the treatment of refugees. The only reference relevant to the protection of refugees can be found in its preamble: it stipulates, among other things, that "we recognize that all peoples of the

Within an American Greenhouse," in Takashi Inoguchi and Daniel I. Okimoto, eds., *The Political Economy of Japan*, vol. 2, *The Changing International Context* (Stanford University Press, 1988), pp. 345-78.

² The only significant exception to this situation were refugee movements caused by the Korean War. Between 1945 and 1953, 2.6 million refugees fled from the communist-dominated North to the South, while 6 million people were displaced within South Korea. Those internally displaced as well as refugees from the North were cared for mainly by the United Nations Korean Reconstruction Agency (UNKRA). However, these refugee movements did not directly affect Japanese territory. Joseph B. Schechtman, *The Refugee in the World: Displacement and Integration* (A.S. Barnes & Co., 1963), pp. 172-181.

world have the right to live in peace, free from fear and want³."

Japan regained independence in April 1952 when the Treaty of Peace with Tokyo (the "San Francisco Peace Treaty") became effective. While the preamble to the Peace Treaty stipulates that Japan shall strive to realize the objectives contained in the Universal Declaration of Human Rights (UDHR)⁴, the GOJ, after independence, enacted no special legislation on its own, which would have linked Japanese law to the letter and spirit of UDHR's Article 14, which proclaims that "everyone has the right to seek and to enjoy in other countries asylum from persecution⁵."

In dealing with refugee/asylum situations which emerged sporadically from the 1950s through the mid-1970s in the context of the Cold War, Japan's Ministry of Justice (MOJ), in the absence of clearly established policies and legal mechanisms for refugee protection, resorted to the rules

³ An English text of the Japanese Constitution can be found, for example, in Percy R. Luney, Jr. and Kazuyuki Takahashi, eds., *Japanese Constitutional Law* (Tokyo: University of Tokyo Press, 1993), Appendix, pp. 319-29.

⁴ The preamble to the Peace Treaty reads as follows: "Whereas Japan for its part declares its intention to apply for membership in the United Nations and in all circumstances to conform to the principles of the Charter of the United Nations; to strive to realize the objectives of the Universal Declaration of Human Rights..." *United Nations Treaty Series*, vol. 136, no. 1832.

⁵ A full text of the UDHR can be found, for example, in Walter Laqueur et. al., eds., *The Human Rights Reader* (Meridian Books, 1989), pp. 197-202.

contained in the 1951 Immigration Control Ordinance⁶. However, in practice this meant total refusal of permanent asylum to refugees/asylum seekers because the ordinance itself was virtually prohibitive in terms of resettlement of refugees. During this period, the only category of foreigners granted temporary asylum in Japan without proper travel documents were escapees from communist countries who expressed a desire to seek refuge in third countries, mostly the U.S. In such cases, Tokyo guaranteed *ando-ken* ("safe conduct") for asylum-seekers until they left Japanese territory⁷.

In fact, one can argue that this immigration ordinance was fundamentally aimed at controlling "foreign" residents already in Japan. Upon its recovery of independence in 1952, Japan suddenly and unilaterally deprived previously Japanese citizens of Korean descent⁸ of citizenship, thereby turning them into "foreigners without passports." Furthermore, since many of these Koreans openly supported North Korea, Tokyo found it necessary to closely monitor their activities through strict immigration controls.

In short, immigration policy had a dual function of

⁶ Interestingly enough, this was the last ordinance promulgated under the Meiji Constitution.

⁷ The case in point is the 1976 asylum incident involving a Soviet Mig 25 pilot who made a forced landing in Hokkaido and sought (and was granted) asylum in the U.S. HIRANO Minoru, *Gaiko kisha nikki - Miyazawa gaiko no ninen*, vol. II (Tokyo: Gyosei Tsushin-sha, 1979), pp. 214-19 & 295-98.

⁸ Both Koreans and ethnic Koreans in Japan were forced to become Japanese citizens after Japan annexed Korea in 1910.

keeping refugees from resettling in the country as well as allowing Tokyo to closely monitor its foreign residents. To maintain its isolation during the Cold War, Tokyo deemed it necessary to control both groups of foreigners, i.e., Koreans and refugees, who might inadvertently implicate Japan in the harsh realities of international politics.

An Unsuccessful "Substitute" Regime: The Principle of Non-Extradition of Political Offenders

In the absence of an effective domestic refugee protection regime, proponents of such a regime in Japan, including lawyers, academics and human rights advocates, initially sought to link Japan to international law designed to protect human rights in general. Specifically, these proponents sought to establish in Japan the international principle of non-extradition of political offenders (hereafter, "NEPO"). The issue was whether they could press the Japanese Judiciary to acknowledge this NEPO principle as having acquired the status of international customary law. If the Judiciary acknowledged the NEPO principle, it would, they hoped, become difficult for the GOJ to forcibly repatriate many asylum seekers, with the result that they would be granted de facto protection in Japanese territory.

During the 1960s, two important cases arose in which the NEPO principle was tested in Japan and which raised national consciousness, both professional and general, concerning the asylum/refugee issue. The first such case involved a Korean

resident in Japan, and the second concerned four resident Taiwanese⁹.

Mr. Yoon Su-gil, a citizen of the Republic of Korea, came from South Korea to Japan illegally in 1951. Since 1960 he was engaged in a rescue campaign in Japan for a South Korean journalist, who had been imprisoned in South Korea by the Park Chung Hee Administration (1961-1979) on account of his political activities supporting the two Koreas' peaceful unification. After the execution of this journalist in South Korea, the GOJ arrested Mr. Yoon in April 1962 for illegal entry to Japan and issued him a deportation order (to South Korea). Mr. Yoon claimed that if he were deported, he would be subject to serious punishment on account of violation of South Korea's National Security Act of 1960 and other laws prohibiting "communist" activities.

A Tokyo District Court ruling of January 1969 acknowledged Mr. Yoon as a political offender and accordingly, nullified his deportation order, arguing that the NEPO principle as well as the principle of *non-refoulement* was established as part of customary international law and that the deportation order violated Article 98 of the Japanese Constitution which obliged the GOJ to comply with established international law¹⁰. However, the above ruling was overturned by the Tokyo High Court in April 1972, and this High Court decision was

⁹ The following account is based on Honma, *op. cit.*, pp. 142-45; and MIYAZAKI Shigeki, "Nanmin joyaku to kokunai ho," *Horitsu Jiho*, vol.53, no.7 (1981), pp. 8-13.

¹⁰ The second paragraph of Article 98 reads as follows: "The treaties concluded by Japan and established laws of nations shall be faithfully observed."

upheld by the Supreme Court in January 1976. On the basis of this Supreme Court decision, the MOJ could have deported Mr. Yoon to South Korea but it did not execute his deportation order and let him stay on in Japan¹¹.

The second case concerned the deportation of four resident Taiwanese in Japan to Taiwan.

During the fall of 1967, Japan's Justice Minister, accompanied by the Director General of the Ministry's Immigration Control Bureau, visited Taiwan and requested the Government of the Republic of China (ROC) to receive a Taiwanese citizen detained in Japan on a narcotics charge. The Taiwanese authorities did agree on condition that the GOJ deport some Taiwanese residents from Japan who were engaged in the prohibited Taiwan independence movement. In fact, the GOJ, before dispatching officials to Taiwan, had attempted in August 1967 to deport two Taiwanese independence activists back to Taiwan, only to be frustrated by a Tokyo District Court injunction against such action.

Thus, in March 1968, the GOJ, eager to make a deal with the ROC Government, detained a third Taiwanese activist. The next morning immigration officials forced him aboard a China Airlines plane departing him to Taipei, ignoring his lawyers' filing of a court injunction as well as a court request to

¹¹ Technically speaking, however, it was difficult to apply the NEPO principle to this case because the South Korean Government never requested the GOJ to extradite Mr. Yoon back home, which was a pre-condition for the NEPO principle being applied in such cases. On the other hand, it is conceivable that the South Korean Government deliberately did not request his extradition lest the NEPO principle should become an issue.

refrain from deportation until a decision could be reached on the injunction. Furthermore, it became known around that time that in February 1968 still another Taiwanese activist had secretly been deported to Taiwan. These incidents stirred up media attention in Japan and again helped to raise popular Japanese concern with the issue of refugee/asylum¹².

The above situation made Japanese proponents of a refugee regime keenly aware of the need for the establishment of a formal concrete domestic refugee regime which would protect asylum-seekers from forcible repatriation.

In the late 1960s, a group of law professors and lawyers started to pressure the GOJ to enact a *seiji bomeisha hogo ho* ("Political Refugee Protection Law") as well as to accede to the UN Refugee Convention and its Protocol and submitted in 1969 an "initiative" to this effect to the Government. In response, several Diet members, in the same year, submitted a bill entitled the "Political Refugee Protection Law" to the

¹² Here a semantic note is in order. The English word "refugee" can be translated into the Japanese language in two ways: one is *bomeisha*, and the other is *nanmin*. The word *bomeisha*, when used in daily parlance, denotes an individual political dissident (or politician) fleeing political persecution at home (so-called "political exile"). They are more or less "elite" refugees (e.g., Sun Yat-sen). On the other hand, the word *nanmin* conjures an image of a mass flight of poor people (e.g., boat people) fleeing economic misery (or some kind of violence, both natural and man-made) at home rather than political persecution. They resemble so-called "economic migrants."

In this context, the Korean and Taiwanese dissidents discussed here were all *bomeisha*, not *nanmin*, at least in the popular mind.

Diet¹³. These efforts to establish a special law to protect refugees were to be superseded by the Government's subsequent accession to the Refugee Convention.

Summary

In the above cases involving Taiwanese and South Korean refugees, Japan's asylum policy seems to have been a product of its foreign policy considerations: the GOJ sought to avoid creating a situation which might embarrass or help destabilize governments that were indirectly allied to Japan through a network of U.S. bilateral security relations in the region. In other words, priority was clearly placed on the avoidance of jeopardizing relations with South Korea as well as Taiwan, and not on the protection of the human rights of foreign residents or humanitarian concerns¹⁴. In this sense, Japanese refugee/asylum policy in this period was latently isolationist and, when it manifested itself, was fundamentally ideological-strategic in nature.

It was against this background, i. e., the combination of

¹³ Later in the 1970s, the Japanese Socialist Party (JSP) started pressuring the GOJ to enact the same bill, submitting it to the Diet in 1976, 1977, and again in 1980, a year before the GOJ acceded to the Refugee Convention.

¹⁴ The Japanese response to the Kim Dae Jung incident of 1973 may seem to deviate from this pattern: the GOJ sought for a while to diplomatically recover the *status quo ante* by bringing back Kim -- a South Korean opposition leader -- to Japan who had been kidnapped by South Korean intelligence agents from Tokyo and taken to Seoul. Nevertheless, this move was driven fundamentally by Japan's nationalistic rage against South Korea which had violated Japanese sovereignty, rather than humanitarian protection of Kim himself. See, for example, TOGO Fumihiko, *Nichibei gaiko sanju-nen* (Tokyo: Chuokoronsha, 1989), p. 203.

isolationist refugee policy and the lack of a formal domestic refugee protection regime, that Vietnamese boat people started coming into Japanese ports in the mid-1970s.

2. THE 1978 RESETTLEMENT DECISION

Introduction

The April 1978 Cabinet decision to permit refugee resettlement in Japan represented a crucial turning point in the history of Japanese "domestic" refugee policy since it was the first time in post-WWII Japan that its government ever did so.

The key questions are: Why at that specific time did the GOJ decide to allow refugee resettlement? What were the major driving forces behind this decision? Why did the GOJ accord special treatment to only Indochinese asylum-seekers?

The Background

After the "fall" of Saigon on April 30, 1975, the accelerated "communization" of Indochina and the accompanying political and socioeconomic upheavals led to massive outflows of people from Vietnam (about 780,000¹⁵), Laos (330,000) and Cambodia (220,000) through 1978. Some fled by land to neighboring countries such as Thailand, and others took to the high seas as boat people. Later, an additional 250,000

¹⁵ This includes approximately 130,000 Vietnamese who fled their country and resettled in the US shortly after the "fall" of Saigon, but excludes 260,000 Vietnamese of Chinese descent who left Vietnam for China at the time of the 1979 Sino-Vietnamese conflict. The figures are from LCCIRDP, *Indoshina nanmin no genjo to waga kuni no taio*, 1988, p. 66.

people fled Cambodia after Vietnam invaded Cambodia in January 1979. Most of those Cambodians fled to Thailand.

Since mid-1975 a segment of these boat people had been arriving in Japan, either after having been rescued by ships on the high seas or having reached Japan's southern parts such as the Okinawan Islands in rickety boats¹⁶. Besides these boat people, some 700 Indochinese students studying in Japan were stranded therein after their passports were nullified by the change of governments in Indochina.

Before discussing Japan's responses to this refugee crisis, it might be useful to briefly look at Japanese policy towards Southeast Asia in those years.

During the Vietnam War, Japan under the Sato Administration (Nov. 1964 - Jul. 1972) supported the U.S. despite strong domestic opposition to the war itself as well as to its Japanese official support. Prime Minister Sato Eisaku supported the U.S. Vietnam policy primarily because the U.S. had provided military security for Japan on the basis of the Japan-U.S. Security Treaty¹⁷. But another

¹⁶ The number of boat people that landed in Japan from 1975 through 1979 was about 3,080, of whom about 1,830 resettled elsewhere. The remaining 1,250 stayed in Japan awaiting resettlement in third countries at the end of 1979. Gaimusho, Kokurenkyoku, Jinken-Nanminka, *Indoshina nanmin mondai (tokei shiryō)* (12/31/89).

¹⁷ Despite such a treaty, Japan was unable to send troops to Vietnam due to Constitutional prohibitions as well as strong popular opposition. Thus, Japanese support was limited to the political as well as the economic spheres. For Japan's overall policy on the Vietnam War, see Masaya Shiraishi, *Japanese Relations with Vietnam: 1951-1987* (Cornell Southeast Asia Program, 1990), esp. pp. 33-39.; Thomas R.H. Havens, *Fire Across the Sea: The Vietnam War and Japan, 1965-1975* (Princeton Univ. Press, 1987).

crucial reason existed: P. M. Sato's most important foreign policy goal was the reversion of Okinawa to Japan, whose realization, he believed, would require Tokyo to provide unwavering support for the U.S. position on the war¹⁸.

After the "fall" of Indochina to communism in 1975, the U.S. reduced its military presence in the region, thus helping create somewhat of a political vacuum therein. Japan felt threatened by this but at the same time it saw a great opportunity to expand its political as well as economic influence in the region, thus starting to actively support existing region-wide economic-political institutions, namely, the Association of Southeast Asian Nations (ASEAN). In August 1977 in Manila, immediately after participating in the expanded ASEAN summit meeting¹⁹, Prime Minister Fukuda Takeo (Dec. 1976 - Dec. 1978) promised that Japan would never become a military power and that it would help ASEAN strengthen itself by increasing economic cooperation with the group while seeking to forge a mutual understanding with the Indochinese nations, thereby contributing to the development of peace and prosperity in the region. From then on, this so-called "Fukuda Doctrine"²⁰ has officially been the main

¹⁸ The reversion itself took place in May 1972. See, for example, TOGO Fumihiko, *Nichibei Gaiko Sanju-nen* (Tokyo: Chuokoronsha, 1989), pp. 109-181.

¹⁹ The participants were five ASEAN top leaders plus the prime ministers of Japan, Australia and New Zealand.

²⁰ For a positive evaluation of the Fukuda Doctrine, see, e. g., Sueo Sudo, *The Fukuda Doctrine and ASEAN: New Dimensions in Japanese Foreign Policy* (Singapore: Institute of Southeast Asian Studies, 1992). For a negative treatment of it, see, for example, Donald C. Hellmann, "Japan and Southeast Asia: Continuity Amidst Change," *Asian Survey*, vol.

pillar of Japan's Southeast Asian policy. Particularly within the context of an ASEAN-Vietnam confrontation, the Fukuda doctrine was aimed at playing a mediating role between the two. Thus, one might have expected that the Indochinese refugee crisis would serve as the first, major test of whether or not Japan was willing and able to play such a role in the region.

Japan's Initial Response to the Refugee Crisis

Lacking domestic legal mechanisms to permit the landing of refugees (read: foreigners without proper travel documents), the GOJ sought to handle the situation on an ad-hoc basis. With regard to boat people rescued at sea and brought to Japan by *Japanese* ships, the Justice Minister used his *joriku tokubetsu kyoka* ("Special Landing Permission": Article 12 of the Immigration Control Ordinance), allowing boat people to remain in Japan up to 30 days. However, as regards boat people rescued by *foreign* ships, the GOJ permitted their landing on the basis of *suinan joriku kyoka* ("Maritime Emergency Landing Permission": Article 18 of the Ordinance). But this landing was conditional on the flag state's -- namely, the shipowner's national government -- taking full responsibility for the fate of those rescued and its duration lasted only 30 days²¹.

XIX, no. 12 (December 1979), pp. 1189-98.

²¹ This differential treatment of boat people on the basis of the flag state continued until November 1977, after which all boat people were allowed to land on the basis of Special Landing Permission for up to 30 days regardless of the nationality of the ship. This was extended to 180 days in

In sum, the initial phase of the refugee crisis was basically dealt with on an ad-hoc basis by handling boat people technically as victims of maritime accidents. In terms of government agencies, this phase was managed basically by the MOJ without much input from MOFA.

The UN Conference On Indochinese Refugees (December 1978)

As the number of Vietnamese boat people reaching neighboring countries grew and the burden of these first-asylum countries, particularly Thailand and Malaysia, was increasingly heavy, especially after the latter half of 1978²², the international community convened a series of conferences to deal with this increasingly serious humanitarian crisis.

The first such conference was held in Geneva on December 11-12, 1978. This conference on refugees, sponsored by UNHCR and participated in by thirty-six states, resulted in an accord which contained an offer of 82,250 new resettlement slots by twelve states and a pledge of \$12 million in additional contributions for refugee relief by ten states. Responding to the emergency appeal made jointly by UNHCR and the International Maritime Organization (IMO) for the rescue of boat people on the high seas, approximately ten states announced at the conference that they had issued an official

May 1979.

²² From April 1978 through September 1978 on average the monthly number of boat people leaving Vietnam was approximately 5,500 but in October the number of Vietnamese boat people received by Malaysia alone reached 10,000, increasing to 15,000 in November.

memorandum to their respective shipping industries to comply with the international legal obligation of rescue at sea. Nevertheless, Japan's name was absent from all of these state lists.

Mr. OKAWA Yoshio, the GOJ's representative and the Director-General of MOFA's UN Bureau, "explained" Japan's failure to come up with a new commitment, during the second day of the conference. He noted that only a small number of those refugees who had arrived in Japan had chosen as their resettlement country (hence, Japan's inaction?)²³. It should be noted that Japan, unlike some participating states which sent cabinet members as their representatives, sent a MOFA director general as representative, a rank even lower than a vice-minister, thus indicating how low priority the refugee issue enjoyed within the Japanese foreign policy agenda.

Japan's inaction regarding the memorandum on the rescue of boat people at sea was expected because, unlike Nordic and other Western maritime states, the GOJ was not legally empowered to reimburse rescue-related expenses such as food, telecommunications and harborage²⁴.

The Decision For Refugee Resettlement

Despite its passive attitude at the refugee conference, Japan had actually instituted a drastic policy change well before the conference. On April 28, 1978, that is, roughly eight months before the conference, the Fukuda Administration

²³ *Mainichi Shimbun* (12/13/78, evening ed.).

²⁴ In Japan, such expenses fell on refugee-rescuing ships themselves.

announced its "Cabinet Understanding" allowing refugee resettlement for the first time in Japan in the post-WWII period²⁵. The question is: why did the GOJ make the above policy departure?

Noteworthy in this connection is the fact that in September 1977, a half-year before this policy change, Foreign Minister HATOYAMA Ichiro, in response to a question criticizing Japan's non-resettlement policy during a House of Representatives' Foreign Affairs Committee session, had stated that Tokyo would consider the resettlement issue but it would take time (read: "no, for the time being")²⁶.

The GOJ's position at the time of Hatoyama's reply can be summarized as follows:

- (a) Refugees rescued by foreign ships were allowed to stay in Japan temporarily contingent upon their flag states' promise of taking responsibility for the refugees' fate.
- (b) Refugees rescued by Japanese ships were allowed to stay in Japan on the condition that they resettle elsewhere.

Either way, resettlement in Japan was out of the question. Thus, the only refugee policy change the GOJ made late in 1977 was the establishment of *betonamu nanmin taisaku renraku kaigi* ("the Liaison Council for Vietnamese Refugees") within the Prime Minister's Office, consisting of representatives from the concerned government agencies such as the Foreign

²⁵ For the text of this Cabinet Understanding, see, LCCIRDP, *Indoshina nanmin no genjo to waga kuni no taio* (January 1981), p. 54.

²⁶ *Shugiin Gaimu Iinkai Gijiroku* (September 16, 1977).

Affairs, Justice, and Health and Welfare Ministries²⁷.

What happened during these intervening months, that is, between F.M. Hatoyama's September 1977 reply and the Cabinet's April 1978 announcement of the resettlement decision? What moved the GOJ to decide in favor of resettling refugees? Was that because the number of refugees arriving in Japan was increasing so fast that Tokyo was forced to permit their resettlement? Let us first look at the refugee situation in Japan back then.

In 1977 the number of refugees rescued at sea and brought to Japan was 833. For 1978 the number was 712, thus moderately smaller than that of the previous year. But if one looks at the number of refugees rescued by Japanese ships and brought to Japan -- in which case the GOJ obviously was under greater moral responsibility for accepting refugees than in the case of those rescued by foreign ships --, one will notice a considerable decrease in numbers, that is, from 589

²⁷ *The Cabinet Understanding of September 20, 1977.* The Chairman of the Council was the Vice Cabinet Chief Secretary. Its 10 members were: (1) the Director of the Cabinet's Cabinet Affairs Office; (2) the Director General of the Justice Ministry's Immigration Bureau; (3) the Director of MOFA's Secretariat; (4) the Director of the Finance Ministry's Secretariat; (5) the Director General of the Health and Welfare Ministry's Social Bureau; (6) the Director General of the Agriculture and Forestry Ministry's Economic Bureau; (7) the Director General of the Transportation Ministry's Maritime Transportation Bureau; (8) the Director General of the Labor Ministry's Vocational Training Bureau; (9) the Director of the Construction Ministry's Secretariat; and (10) the Director of the Home Affairs Ministry's Secretariat. For the text of this Understanding, see, LCCIRDP, *Indoshina nanmin no genjo to waga kuni no taio* (January 1986), pp. 53-4.

in 1977 to 200 in 1978²⁸. It seems, therefore, that in the months leading up to the resettlement decision, the refugee situation at least in Japan was improving, and not worsening.

To identify a key determinant for the timing of the resettlement decision, then, one should look elsewhere. Here it is necessary to look at P. M. Fukuda's diplomatic schedule at the time: we find that around time Mr. Fukuda's visit to the U.S. to meet with President Carter. More precisely, the resettlement decision was announced a couple of days before this scheduled U.S. visit. During his meeting with President Carter, P.M. Fukuda likely informed the U.S. leader of Japan's "ground-breaking" resettlement decision and promised him a contribution of US\$ 10 million to UNHCR²⁹. While this was a typical example of *omiyage gaiko* ("souvenir diplomacy"), the gift to President Carter was unusual because it was not a trade concession but a humanitarian commitment. Well aware of President Carter's stress on human rights diplomacy, Tokyo wished to avoid an embarrassing situation where Mr. Fukuda would be pressed by President Carter to open up Japan's door to refugees, among other things³⁰.

The resettlement decision did constitute a turning point in Japan's refugee policy, but it hardly was problem-free.

First, the conditions for resettlement were far from

²⁸ *Gekkan kokusai mondai shiryō* (July 1981), p. 143.

²⁹ *Asahi Shimbun* (5/?/78).

³⁰ A similar point is advanced in Masaya Shiraishi, *op. cit.*, p. 89.

generous. *The April 1978 Cabinet Understanding* stipulated that, for refugees temporarily staying in Japan to qualify for resettlement, they had to meet at least one of the following three conditions:

They had to be either (a) a spouse, child or parent of a Japanese citizen or of a lawful resident foreigner with a stable livelihood in Japan; (b) a person who has a secure guarantor in Japan; (c) a spouse, child or parent of a person who meets the requirement spelled out in category (b).

Second, although, in addition to Vietnamese refugees already in Japan, those Vietnamese still abroad were also allowed to apply for resettlement in Japan³¹, the conditions for the latter's resettlement were stricter than those for the former, thereby making it virtually impossible for Vietnamese abroad to apply³².

Interestingly enough, at this point Japan's newly introduced *overseas asylum* program, namely, granting of asylum to foreigners still abroad -- was much stricter than its *domestic asylum* policy -- granting of asylum to

³¹ This is equivalent to the "overseas refugee program" of the U.S. (and other Western nations) except that the Japanese program does not have a world-wide quota system, targeting instead only Vietnamese refugees.

³² They had to meet at least one of the following conditions:

- (a) The above (a);
- (b) A person who has more than one year's working experience with a Japanese company (or a Japanese diplomatic mission) in the region or who has previously resided in Japan for more than one year as a student or a trainee and has a secure sponsor and is expected to find a job which allows him/her to enjoy a healthy and stable life;
- (c) A spouse, child or parent of a person who meets the above (b).

foreigners already in Japan. This contrasted sharply with other refugee-accepting countries where overseas asylum conditions are usually found to be more liberal than domestic asylum conditions³³. This "reversed policy" probably reflected a first priority the GOJ gave to the normalization of the status of Vietnamese boat people already in Japan without appearing to encourage Vietnamese abroad to request asylum from Japan.

The third problem with the resettlement decision was that it was aimed only at Vietnamese refugees, thus disqualifying Cambodians and Laotians. This also reflected the GOJ's priority of tackling the problem of boat people first, most of whom were Vietnamese.

Finally, the GOJ failed to mention exactly how many refugees Japan would accept, again revealing the GOJ's unwillingness to decisively commit itself to the issue of refugee resettlement.

At any rate, on September 3rd of the same year, on the basis of the above Cabinet Understanding, a three-member Vietnamese family was allowed to resettle in Kitakyushu, the first case of refugee resettlement in post-war Japan. Obviously, however, this was only of symbolic significance³⁴.

³³ Such a difference stems generally from the fact that governments can afford to be "generous" in overseas policy (e.g., refugee quota systems) because they retain control over who (and how many people) will be accepted into the country for resettlement. On the other hand, a generous domestic asylum posture would risk the influx of an uncontrollable number of asylum-seekers from abroad.

³⁴ In reality, it was almost nil as compared with the numbers of Vietnamese boat people accepted by other advanced countries for resettlement by the end of 1978. For example,

Furthermore, another refugee policy liberalization measure had come about shortly before the December 11-12, 1978 Refugee Conference.

On December 6, 1978, that is, *five days before* the conference, Justice Minister SETOYAMA Mitsuo announced at a cabinet meeting that the GOJ, in deciding on the admission and temporary stay of boat people rescued and brought to Japan by *foreign ships*, would no longer request guarantees from their flag states assuming full responsibility for the future of boat people as long as Japan was their first port of call. This requirement had often been criticized by the international community, as MOFA sources conceded to the press³⁵.

After the December 1978 UN Refugee Conference, the GOJ, realizing that the above measures of refugee policy liberalization -- namely, the resettlement decision and the waiver of flag state responsibility for rescued boat people -- had hardly quelled international criticism of its highly restrictive refugee policy, announced in Tokyo further financial contributions to UNHCR's Indochinese refugee relief program. During the cabinet meeting of December 26, 1978, in fact Foreign Minister SONODA Sunao had his ministry's refugee plan formally approved by the cabinet. This plan envisioned payment before the end of FY 1978 (i.e., March 1979) of \$2.5 million of the \$4 million already pledged and also payment of \$10 million (which P.M. Fukuda promised to President Carter)

for the U.S. it was 21,600; for Australia 10,200; and for France 2,500.

³⁵ *Mainichi Shimbun* (12/1/78).

as well as \$1.5 million (the rest of the FY 1978 pledge) during FY 1979 (April 1979 - March 1980)³⁶.

Towards the end of 1978, however, it should have been sufficiently clear to Tokyo that what the international community really expected of Japan was not so much an announcement of additional financial contributions (which was welcomed of course) as a more generous offer to receive refugees.

The following episode illustrates the GOJ's attitude towards refugee resettlement prevailing around that time (1977-78):

In June 1977, the UNHCR office in Kuala Lumpur, Malaysia, convened an inter-governmental conference on Indochinese refugees, inviting officials from the local embassies of twenty or so states, both first-asylum states and resettlement states (this conference was held three more times until September 1978). Surprisingly, the Japanese Embassy in Kuala Lumpur failed to send any representative to this first conference presumably because, as an embassy official confided to a *Mainichi Shimbun* reporter, participation in such a conference might force Japan to make some commitment regarding refugee intake. However, the Japanese Embassy decided to participate in the second and subsequent conferences realizing that it would be a good opportunity to defend Japan's position on the refugee issue. At these subsequent conferences Japanese officials claimed that Japan had "special social conditions" which kept it from accepting refugees and that (to compensate for this) Japan had been making large financial contributions to the UN. These special conditions were (a) over-population, (b) the language barrier, and (c) a monoethnic society and a resulting lack of experience on the part of Japanese in dealing with other ethnic groups³⁷.

Apart from the issue of the validity of such an explanation, this represented the typical GOJ attitude on

³⁶ *Mainichi Shimbun* (12/27/78).

³⁷ *Mainichi Shimbun* (12/12/78).

refugee resettlement, prevalent at around the time of the December 1978 Refugee Conference³⁸.

Preparing For the Tokyo Summit Meeting

Another international conference that significantly impacted on Japanese refugee policy was not directly related to refugees. The Tokyo summit meeting of June 1979, however, greatly increased international political pressure on Japan to further liberalize its refugee policy.

Before discussing the Tokyo summit, though, it is useful to be aware of some of the refugee policy developments that took place during the intervening period, i.e., the months leading up to the summit.

On February 7, 1979, under the new Ohira Government (Dec. 1978 - Jun. 1980), MOFA temporarily set up the **Office for Southeast Asian Refugees** within its Asian Affairs Bureau. According to MOFA, this office was aimed at planning and coordinating refugee affairs, in cooperation with the countries involved and UNHCR, and in consultation with the **Liaison Council for Vietnamese Refugees** in the Prime Minister's Office³⁹, which continued to work on domestic resettlement affairs.

The fact that this was set up as an office within MOFA's regional bureau indicates at least two things. First, the fact that it was established in the Asian Bureau meant that

³⁸ Recall that the GOJ had used similar reasoning in rejecting the resettlement of Russian refugees in the early 1920s.

³⁹ *Yomiuri Shimbun* (2/8/79).

initially the GOJ perceived the need for policy responses to the refugee issue as confined to Southeast Asia. Second, the fact that it was established as an office rather than as a separate bureau (e.g., a Refugee Affairs Bureau) or even a section (which is more permanent than an office) within the Asian Bureau indicated the low status of the refugee issue on the Japanese foreign policy agenda⁴⁰.

A more significant policy development was the fact that Foreign Minister Sonoda stated in a House of Councilors Budget Subcommittee session on March 29, 1979, that the GOJ intended to accept as many as *five-hundred Vietnamese refugees* for resettlement in Japan under current laws⁴¹. This was the first time that Tokyo had ever pronounced a specific number of refugees to be admitted for resettlement. Equally significant, Foreign Minister Sonoda stated during the above session that the GOJ would initiate preparations for ratification of the 1951 UN Convention relating to the Status of Refugees⁴².

The April 3, 1979 Cabinet Understanding, which formalized the above five-hundred ceiling decision, announced as well that, besides Vietnamese refugees temporarily staying in

⁴⁰ *Kyodo* (Tokyo: 2/7/79), as monitored by Foreign Broadcasting Information Service (FBIS), (Daily Report, Asia & the Pacific), vol. IV, no. 027, c7.

⁴¹ This decision was so unexpected at the time that even Mr. MISE Hitoshi, then UNHCR's Tokyo representative, expressed pleasant surprise at the news. TAKADA Fusao, "Indoshina nanmin wa do kaiketsu sareru bekika," *Ajia* (November, 1979), pp. 69-78.

⁴² *Kyodo* (Tokyo: 3/29/79), as monitored by FBIS (Daily Report, Asia & the Pacific), vol. IV, no. 062, c3.

Japan, the GOJ would accept resettlement requests from Indochinese refugees from abroad⁴³. Furthermore, the GOJ would no longer require an asylum-seeker already in Japan to have a resident guarantor as in the past; the refugee need only demonstrate the will and ability to become economically self-supporting⁴⁴. In other words, both Japan's overseas and domestic asylum policies were made significantly more liberal than in the past, although its overall policy remained much more restrictive than that of any other advanced Western nation.

Clearly, this liberalization both in terms of nationality and resettlement conditions was aimed at increasing the number of asylum applicants by facilitating the resettlement of Indochinese refugees from outside Japan. This liberalization was necessary because only small numbers of Vietnamese refugees reaching Japan as boat people had chosen Japan as their country of resettlement⁴⁵.

Furthermore, the above April 3, 1979 Cabinet Understanding stipulated that the GOJ would assist those who wished to resettle in Japan with Japanese language lessons, job training, and employment referral services. Nevertheless, it was the UN along with voluntary agencies, not the GOJ, that first provided such services for refugees resettling in

⁴³ For a text of this Understanding, see, LCCIRDP, *Indoshina nanmin no genjo to waga kuni no taisaku* (January 1986), pp. 54-5.

⁴⁴ *Yomiuri Shimbun* (4/3/79, evening ed.).

⁴⁵ The vast majority had continued to choose the U.S. and other Western countries.

Japan; on April 28, 1979, UNHCR, in cooperation with Caritas Japan and International Social Service -- both voluntary agencies --, established in Kamakura (Kanagawa Prefecture) a Refugee Resettlement Center to provide services similar to those planned by the GOJ for resettling refugees⁴⁶.

Finally, the content of the April 1979 Cabinet Understanding was formalized on June 23, 1979 -- five days before the Tokyo Summit and one day before U.S. President Carter's arrival in Japan -- when Prime Minister Ohira requested that the **Liaison Council for Vietnamese Refugees** be convened.

New measures of liberalization and consolidation of refugee policy announced at the council meeting included:

(1) The council's mandate will be expanded to include not only Vietnamese refugees but also Cambodians and Laotians (as a result, the council was renamed the **Liaison and Coordination Council for Indochinese Refugees and Displaced Persons** (hereafter, LCCIRDP).

(2) The council will be chaired by a Deputy Cabinet Chief Secretary (i.e., one of the senior LDP Dietmen) and assisted by a Secretariat⁴⁷.

⁴⁶ On May 1, 1979, the first group of 19 refugees started a three-month language program at this Resettlement Center.

⁴⁷ As compared with the previous council, there were some interesting changes in the composition of the new council.

First, three additional ministries/agencies were represented on the council. They were (1) the Director General of the National Police Agency's Security (*keibi*) Bureau; (2) the Director General of the Education Ministry's International Academic Bureau; and (3) the Director of the Ministry of International Trade and Industry's Secretariat.

Second, two ministries changed their representatives. (1) MOFA replaced its Director of the Secretariat with the Director General of the Asian Bureau; and (2) the Labor Ministry replaced its Director General of Vocational Training Bureau with the Director General of the Employment Stabilization Bureau.

(3) The five hundred-ceiling will be gradually raised as resettlement expands⁴⁸.

Finally, the GOJ, in ruling on the landing and temporary stay of boat people rescued at sea and brought to Japan by foreign ships, would, in principle, no longer demand the flag state's responsibility for their future *regardless of whether or not Japan was the first port of call*⁴⁹.

It should be noted that, while the above June 23, 1979

Noteworthy was the addition of a police representative charged with internal security and a MITI representative (which supervises small businesses, i.e., likely employers of refugees) as well as the replacement of the Labor Ministry's Vocational Training director with the Employment Stabilization director. Those changes seem to have reflected a shifting policy emphasis from initial refugee reception towards long-term refugee resettlement.

⁴⁸ Moreover, the resettlement requirements were further liberalized as follows (important changes only):

1. A refugee temporarily staying in Japan would now qualify for resettlement if he/she were (a) a *relative* -- the category "relative" was broadened to include sisters, brothers, and grandparents in addition to spouses, children or parents -- of a Japanese (or a lawful resident foreigner) as long as both are able to economically support each other. Also, s/he could qualify if s/he were (b) healthy and able to maintain a *livelihood* -- previously, "livelihood" was strictly defined as *stable*. (c) A spouse, a parent or a child of a refugee who meets condition (b) could also qualify.

2. A refugee abroad shall qualify for resettlement if s/he meets the above (a), (b), or (d) has a record of employment over a *considerable period* -- previously, *more than one year* -- with a Japanese company (or a Japanese diplomatic mission) or a lawful living experience of a *considerable period* in Japan as a student, a trainee, etc., and has a secure guarantor or -- previously, and -- is expected to find a job which enables him/her to maintain a livelihood, or (e) is a spouse, a parent or a child of a refugee who meets the above (d).

⁴⁹ According to the December 1978 Justice Ministry decision, this waiver was limited to cases where Japan was the ship's first port of call.

decisions did liberalize Japanese refugee policy, they failed to establish an official entity with a mandate for actual operations (such as the recruitment of refugees from camps in Southeast Asia, the matching of those refugees with their would-be guarantors in Japan, etc). This failure stemmed partly from a general lack of interest on the part of the refugee-related ministries. Thus, during the above June 23 Liaison Council deliberations, representatives from the ministries concerned reportedly argued along the following lines:

The Ministry of Health and Welfare: "We have all our refugee relief personnel and budget tied down to the current level of resettlement." (read: no more refugees please).

The Ministry of Labor: "We do not need additional budgeting for vocational training and job references for resettling refugees, but they have to learn Japanese first." (read: we will train only refugees with Japanese language skills).

The Ministry of Education: "We do not mind providing Japanese language training for refugees, but we need an overall framework for refugee intake." (read: how many more refugees do we have to educate in the future?).

The Ministry of Finance: "We have just authorized in April an additional \$11.5 million in contributions to the UN." (read: no more burden-sharing please)⁵⁰.

At any rate, one may wonder why these decisions were made in such a hurry without a consensus among the ministries concerned, which is generally thought to be a sine qua non in Japanese public policymaking. Given that it was not until after the Tokyo summit that these decisions were formally approved by the entire cabinet, it should be evident that Prime Minister Ohira was eager to make them public *before* the

⁵⁰ *Asahi Shimbun* (6/24/79).

summit, no matter what⁵¹.

The main reason for this urgency was US pressure: on June 13, ten days before the announcement, Richard Holbrooke, U.S. Assistant Secretary of State for East Asian and Pacific Affairs, had made the following remarks at House hearings:

We have had very extensive talks with the Japanese at every level including the President directly to Prime Minister Ohira on this (i.e., Japanese refugee policy) ... I hope we will see further advances⁵².

More importantly, GOJ officials preparing for the summit learned that President Carter had expressed a wish to include the refugee issue in the summit agenda hoping that Japan (and other countries) would accept more refugees and make greater financial contributions to the UN refugee relief programs⁵³.

The U.S. was not alone in pressing Tokyo to liberalize its refugee policy. On June 7, MOFA sources told the Japanese press that when Foreign Minister Sonoda visited the UK, he was asked by the British Government to tackle the refugee issue more aggressively⁵⁴. The same MOFA sources told the press as well that, since the ASEAN member states were increasingly requesting emergency assistance for refugees

⁵¹ A text of this post-summit cabinet understanding can be found in LCCIRDP, *Indoshina nanmin no genjo to waga kuni no taio* (January 1986), pp. 55-7.

⁵² *Congressional Record Service*, H381-7.5 (June 13, 1979), p. 96. In early May 1979, Prime Minister Ohira had met President Carter in the US.

⁵³ *Asahi Shimbun* (6/24/79).

⁵⁴ *Kyodo* (Tokyo: 6/7/79), as monitored by FBIS, (Daily Report, Asia & the Pacific), vol. IV, no. 111, C3-4. Presumably, the UK wanted the GOJ to accept Indochinese refugees in Hong Kong for resettlement to alleviate its colony's worsening refugee situation.

entering their territories in growing numbers, the Indochinese refugee issue might be discussed at the summit. In that case, the sources said, Japan would be obliged to accept more refugees for resettlement in order to meet these requests⁵⁵. Presumably, MOFA, via these announcements, was seeking to warn the Japanese people against mounting international pressure on their country to accept more refugees and also to neutralize domestic opposition to refugee resettlement by stressing such *gaiatsu* (international pressure). In any case, on May 9, the GOJ admitted three refugees staying in Hong Kong to Japan for resettlement. And, on June 27, on the eve of the summit, it admitted four more refugees aboard a ship anchored in Manila Bay. Thus by the time the Tokyo summit started, Japan had secured at least ten Indochinese refugees for resettlement⁵⁶.

The Tokyo Summit Meeting (June 28-29, 1979)

Convened against the background of the second oil crisis, the fifth meeting of the so-called Group of Seven in Tokyo was generally expected to focus on global economic issues such as energy, inflation and growth, but as it turned out, the issue of Indochinese refugees was among the top

⁵⁵ In fact, Indonesia's President Suharto had visited Tokyo on June 7-8 and requested that Japan cooperate in the ASEAN-proposed project of a refugee holding center (to be constructed on Indonesia's Galang island) and accept a greater number of refugees for resettlement. President Suharto had also requested that Japan play an active role on the refugee issue at the upcoming summit in Tokyo. *Asahi Shimbun* (6/7/79; 6/10/79).

⁵⁶ This includes the first three refugees admitted in September 1978 for resettlement.

priorities on the agenda. In fact, it was the only non-economic issue that the leaders of the seven industrial states had agreed to discuss⁵⁷. The refugee issue was discussed over lunch on the first day and on the same day a *Special Statement on Indochinese Refugees* was adopted and announced separately from the general Tokyo Statement that focused exclusively on economic issues.

The chief reason that the refugee issue gained such salience at the summit was because President Carter had explicitly expressed his strong commitment to that question shortly before and during the summit. Before the formal summit session, on June 26 Prime Minister Ohira and President Carter held bilateral talks where both reportedly agreed to adopt a special statement on refugees during the summit. Nevertheless there is evidence to indicate that, although the GOJ knew the refugee issue was going to be discussed at the summit, it did not expect the issue to be granted that much attention by President Carter. On June 25, on the eve of the Ohira-Carter meeting, Prime Minister Ohira was unexpectedly given a three-point draft statement on refugees by President Carter, which was to provide a basis for the subsequent special statement on refugees. Surprised, MOFA officials rushed to inform the summit governments' Tokyo embassies of the new agenda, rather than instructing its own ambassadors

⁵⁷ For analysis of the Tokyo summit itself, see Robert Putnam et. al., *Hanging Together: Cooperation and Conflict in the Seven-Power Summits* (Harvard Univ. Press, 1984), pp. 120-23.

in foreign capitals to inform their respective host governments⁵⁸. Prime Minister Ohira, acting as host, held separate meetings on June 27 with Prime Minister Clark of Canada, Chancellor Schmidt of West Germany, and President Giscard d'Estaing of France, in order to obtain their endorsement of President Carter's proposal, which ultimately he received.

The Special Statement on Indochinese Refugees, issued on June 28, called for an immediate end to the "disorderly outflow" of refugees from Indochina "without prejudice to the principles of free emigration and family reunification." It noted that the seven summit states would make greater financial contributions for Indochinese refugee relief and that they would receive more refugees for resettlement, "while taking into account the existing social and economic circumstances in each of their countries." It also requested UN Secretary-General Kurt Waldheim to convene an international refugee conference as soon as possible "with a view to attaining concrete and positive results." It concluded by noting that the refugee problem "poses a humanitarian problem of historic proportions and constitutes a threat to the peace and stability of Southeast Asia⁵⁹."

Evidently, the summit states accomplished very little in terms of refugee assistance and protection; the statement

⁵⁸ *Yomiuri Shimbun* (6/29/79). MOFA used this unusual method of communication because the summit participants were already airborne for Tokyo.

⁵⁹ *Kyodo* (Tokyo: 6/28/79), as monitored by FBIS, (Daily Report, Asia & the Pacific), vol. IV, no. 126, A3.

failed to specify the amount of financial aid to be contributed by each state or the number of refugees each country would accept. As if to try to compensate for the noticeable lack of specifics in the statement, the U.S. delegation announced on the same day that the US would double the current monthly refugee intake of seven thousand to fourteen thousand for "humanitarian" reasons and urged other summit countries -- the UK in particular -- to be more generous in accepting refugees. Japan had "secured" only ten Indochinese refugees for resettlement by the time of the summit. Evidently, this was purely a symbolic gesture and an open embarrassment in comparison with the numbers of Indochinese refugees resettled in other summit countries⁶⁰.

During the summit, however, there was an unexpected incident in Tokyo which further embarrassed the GOJ.

On June 26, a group of Vietnamese refugees housed in the Kamakura resettlement center and a group of Vietnamese students supporting these refugees announced that they had sent a letter of appeal to each of the Tokyo embassies of the seven summit member nations. This letter, besides thanking these nations for discussing the refugee issue at the summit, requested that these nations send a mission to Indochina to investigate human rights abuses therein; terminate all assistance to Hanoi; treat refugees humanely including not repatriating refugees to their countries or not sending them back to sea; and expand refugee intake⁶¹.

To reinforce this appeal, on June 27, the nineteen refugees housed in the Kamakura center began boycotting their Japanese lessons, forcing the center to close temporarily. At the same time, this group, together with the student group cited above, issued another appeal, criticizing the GOJ's Liaison

⁶⁰ For example, the U.S. thus far had received 220,000 refugees; France, 50,000; Australia, 21,000; Canada, 13,000; West Germany, 3,438; and the UK, 1,477. *Yomiuri Shimbun* (6/28/79).

⁶¹ *Mainichi Shimbun* (6/27/79).

Council as well as the International Social Service -- the NGO managing the center. Their criticism/demand was that the present three-months Japanese language course was too short to be effective (it should be at least doubled) and that job training and job search assistance be implemented as promised to demonstrate that the GOJ is serious about assisting refugees in resettling in Japan.

Obviously, these refugees sought to take advantage of the GOJ's vulnerability vis-a-vis international pressure/criticism particularly when hosting a summit meeting, but the GOJ's response to them was punitive. The leader of the protesting refugee group (and his family) were sent to a refugee holding camp outside Kamakura against their wishes, while the remaining eighteen refugees were sent back to their original refugee holding camp⁶².

In sum, given that the Tokyo summit was the first major Western inter-governmental conference hosted by Japan since the end of WWII, it was imperative for P.M. Ohira personally as well as for the GOJ generally that it succeed. And since the Indochinese refugee issue was gaining greater salience in the minds of the seven leaders -- President Carter in particular -- the summit's success depended to a significant extent on the handling of this issue. In other words, there was tremendous political pressure on the GOJ to achieve something significant on the refugee issue.

While Japan's handling of the issue was moderately successful as far as the adoption of the *Special Statement on Indochinese Refugees* was concerned (with the proviso that

⁶² TONOOKA Teruo, "Nanmin mondai to nihon no taio, II," *Kaikakusha* (December 1980), pp. 97-8. Tonooka noted that this leader eventually left Japan with his family to resettle in Canada.

the main thrust came from the U.S.), Japan's refugee policy, especially its resettlement component, continued to be criticized internationally as inadequate in the post-summit period.

The last international conference in the remaining months of 1979 that had a significant impact on Japan's refugee policy was the UN conference on refugees, held in Geneva on July 20-21⁶³.

The July 1979 UN Refugee Conference

The Special Statement on Indochinese Refugees at the Tokyo summit offered no specifics as to how many more refugees each summit member would accept as well as how much more money each member would contribute to refugee relief. Instead, the statement had requested UN Secretary-General Waldheim to convene an international refugee conference to determine such specifics.

The July 20-21, 1979 UN Refugee Conference in Geneva was participated in by 65 states, including Vietnam, China, and the Soviet Union, reportedly the largest refugee conference to date. At the conference, 260,000 new resettlement slots (the U.S. 168,000; and Canada 50,000, for example) and \$ 19 million in additional funding were pledged by participating states. The U.S. and Japan also both pledged to double their respective contributions to UNHCR.

Equally important, the conference representatives

⁶³ Prior to this conference, on July 2 at ASEAN's expanded meeting of foreign ministers, Foreign Minister Sonoda advocated an international refugee conference in addition to reporting the Tokyo summit's results.

successfully persuaded Hanoi to promise to prevent "illegal emigration" of its people for an "appropriate period of time"⁶⁴, while UNHCR and Vietnam maintained their mutually agreed Orderly Departure Program (ODP)⁶⁵ for family reunion and other humanitarian purposes.

Notably, Japan played a highly conspicuous role at this conference, unprecedented at such a major inter-governmental conference: It was Foreign Minister Sonoda who made a de facto keynote speech to the conference at the request of Secretary-General Waldheim. In his speech, Sonoda asked the participating states to search for realistic solutions to the refugee crisis, and not to engage in mutual finger-pointing (between China and Vietnam, in particular). Specifically, Sonoda requested Vietnam, Cambodia and Laos to take immediate, effective measures to control disorderly exoduses of their people, while at the same time indicating his support for the ongoing ODP.

To tackle the Cambodian refugee issue (the so-called "land people"), he proposed a separate international conference, to be participated in by the states involved, to seek a political settlement to the Cambodian conflict itself which he believed was the only viable way to stop the refugee

⁶⁴ As for the meaning of "appropriate period of time," a Vietnamese delegate reportedly told MOFA officials in Geneva that it meant six months.

⁶⁵ The ODP agreement was reached on May 30, 1979, between Vietnam and UNHCR. It was designed to facilitate the emigration from Vietnam of persons authorized (by Vietnam) to leave the country and accepted (by receiving states) for resettlement. Many such cases concerned Amerasians who were experiencing discrimination in Vietnam. For details of the ODP, see UNHCR, *Refugees* (September, 1988).

outflow from that wartorn country.

With respect to international burden-sharing on the refugee crisis, Sonoda noted that each state should cooperate as much as possible either by promoting resettlement or increasing financial contributions, *according to each state's conditions* (emphasis added). Sonoda's final remarks seem to suggest an international division of labor concerning refugees in which Japan would play the role of a generous financial sponsor, not a generous resettlement country. In fact, Sonoda proceeded to explain Tokyo's refugee policy, highlighting its decisions to finance 50 % (about \$ 50 million) of the total budget of UNHCR's Indochinese refugee relief program (previously, 25%), and also to finance 50% (about \$6.5 million) of the total cost of the ASEAN project for the construction of a refugee holding center on Indonesia's Galang island. Sonoda also noted the recent liberalization measures of Japanese asylum policy, contained in the July 13, 1979 Cabinet Understanding. Nevertheless, his address failed to mention Japan's established five hundred-refugee quota probably because MOFA thought the figure was too embarrassing to be included. In fact, Mr. Sonoda acknowledged at a press conference held after his speech for attending Japanese journalists, that Tokyo's refugee quota was too small compared with those of other states and that the GOJ would call on Japanese NGOs for greater cooperation in promoting resettlement⁶⁶.

As a Japanese journalist covering the conference reported,

⁶⁶ *Asahi Shimbun* (7/21/79).

the issue of Cambodian refugees fleeing into Thailand was not fully addressed, in part because Cambodia's representative was not invited owing to that country's civil war, and also because the issue of boat people took ascendancy, particularly after ASEAN navies started to push arriving boat people back on the high seas, resulting in countless deaths⁶⁷.

Nevertheless, the conference resulted in a not negligible achievement. As Mr. MISE Hitoshi -- then the Tokyo representative of UNHCR -- pointed out in a magazine interview, the number of boat people registered with UNHCR in the region in the months leading up to the refugee conference was around 60,000 to 70,000 per month but plummeted to about 10,000 in July⁶⁸.

During the conference, there seemed at least two clear messages conveyed to Japan pushing towards greater resettlement.

Not surprisingly, one such message came from the U.S. On the second day, U.S. Vice President Walter Mondale proposed in his speech that each state double its refugee intake as the U.S. had pledged to do so at the Tokyo summit and announced that the U.S. would double its contribution to the UN refugee relief fund to \$ 105 million for FY 1980.

The other message, indirect but unambiguous, was conveyed to Japan in the form of an ASEAN proposal to construct a UN refugee holding center in Okinawa. Although MOFA officials in

⁶⁷ *Asahi Shimbun* (7/23/79).

⁶⁸ TAKADA Fusao, "Indoshina nanmin wa do kaiketsu sareru bekika," *Ajia* (November, 1979), pp. 69-78.

Geneva immediately dismissed this proposal as "unrealistic," pointing out the high prices in Okinawa, this brought home to the GOJ that ASEAN still believed Tokyo's refugee work was insufficient.

After this UN Refugee Conference, therefore, the issue of refugee resettlement became more pressing for the GOJ, particularly MOFA which was under direct pressure from abroad.

Summary

Japan's 1978 decision to accept refugees for resettlement can thus hardly be seen as a result of its own policy initiative.

Principally, it can be seen as part of Japan's alliance politics with the U.S. That is, in an effort to maintain its alliance with the U.S. Japan made a highly strategic decision to accept Indochinese refugees for resettlement to shoulder its share of the burden, a burden created largely by a U.S. foreign policy debacle in the region.

Secondarily, it was a diplomatic response to global and regional criticisms directed at Japan -- by then a major economic power in Asia -- for not providing protection for refugees in its own region. Thus, the case of Japanese refugee policy may seem on the surface to confirm the thesis of Japan as a reactive state⁶⁹. Nevertheless, such a characterization is misleading because it may give the

⁶⁹ Kent E. Calder, "Japanese Foreign Economic Policy Formation: Explaining the Reactive State," *World Politics* 40 (1988), pp. 517-40.

impression that Japan is merely reacting to outside events and stimuli defenselessly. In other words, it tends to conceal the ability and intention of the Japanese political system to absorb the impact of externally generated shocks and to use them to further its own national interests. This argument will be further supported by the subsequent developments of Japan's Indochinese refugee policy, to which we now turn below.

3. AFTER THE RESETTLEMENT DECISION

Introduction

Japan's refugee policy was virtually created through its response to the Vietnamese refugee crisis. As the next chapter will demonstrate, this policy was consolidated and formalized later by its accession to the UN Refugee Convention, which permitted Japan to create universal asylum procedures.

However, since the end of the 1980s, Tokyo's hitherto special, favorable treatment of Indochinese asylum-seekers has been phased out of existence. Put otherwise, the selectively liberal Indochinese component of Japanese asylum policy has by stages been absorbed into its universally restrictive general asylum policy. This section addresses this significant policy change which occurred from the late 1980s through the early 1990s.

The Indochinese Refugees Resettled in Japan: An Overview

To recapitulate some of the important policy developments following the resettlement decision:

On the basis of the April 1978 Cabinet decision to allow Vietnamese asylum-seekers already *in the country* to resettle, a Vietnamese family of three resettled in September in Kitakyushu, the first such case of refugee resettlement in post-WWII Japan.

In April 1979, shortly before the Tokyo summit meeting, the GOJ decided to accept resettlement applications by Indochinese asylum-seekers in asylum camps *abroad* -- Japan's first and only overseas refugee program to date -- as well as to establish for the first time a numerical ceiling (500) for refugee resettlement in the country⁷⁰.

In June 1980, Japan joined the ODP that had been agreed upon between Vietnam and UNHCR. This program was aimed at preventing "clandestine departures" -- i.e., boat people -- from Vietnam by promoting the authorized exit and third-country resettlement of Vietnamese⁷¹.

Thus currently, the Indochinese refugees resettled in Japan are comprised of the following four groups:

⁷⁰ It was also at this time that roughly 740 Indochinese students who had become stranded in Japan were permitted to resettle in Japan. The 500 ceiling was subsequently expanded as follows: 1,000 (June 1980); 3,000 (April 1981); 5,000 (November 1983); and 10,000 (July 1985).

⁷¹ In addition to family reunion cases, the ODP cases included many Amerasian children who were discriminated against in Vietnam. The text of the May 30, 1979 Memorandum of Understanding between Vietnam and UNHCR, on which Orderly Departure Program was based, is found in LCCIRDP, *Indoshina nanmin no genjo to waga kuni no taio* (April 1994), pp. 75-7.

(a) Vietnamese boat people who arrived in Japan and stayed at temporary refugee relief facilities therein; (b) Vietnamese who flew directly from Vietnam as ODP participants; (c) Indochinese who were recruited from asylum camps throughout Southeast Asia; and (d) Indochinese students and others -- *ryumin* -- stranded in Japan.

As of the end of 1993, the total of these four groups stood at 9,246, thus approaching the current 10,000 ceiling established roughly a decade before (see TABLE 1).

TABLE 1: RESETTLED INDOCHINESE REFUGEES IN JAPAN (Dec. 1993)

Country	Domestic	Overseas	ODP	Student	Total
Vietnam	3,413	1,629	1,097	625	6,764
Laos	0	1,168	0	73	1,241
Cambodia	0	1,197	0	44	1,241
Total	3,413	3,994	1,097	742	9,246

[Source: LCCIRDP, *Indoshina nanmin*, (April 1994), p. 23.]

The June 1989 International Conference On Indochinese Refugees

The exodus of Indochinese refugees -- "land people" who fled Cambodia (or Laos) to Thailand as well as "boat people" who fled Vietnam and took to the seas -- reached crest in

1979 with 390,000 people taking refuge in neighboring countries and localities. While this exodus was reduced to roughly 30,000 in 1986, it again climbed up to 62,000 two years later. As the first months of 1989 saw progressively greater numbers of refugees pouring into countries neighboring Indochina⁷², the ASEAN member states decided to press the international community to earnestly tackle this increasingly serious refugee crisis.

An international conference was convened in Geneva on June 13 and 14, 1989, in order to discuss ways and means to prevent further outflows of Indochinese refugees, particularly Vietnamese boat people. The participating states concluded a Comprehensive Plan of Action (CPA), the main points of which were as follows⁷³:

(a) Vietnam⁷⁴ should continue existing official measures to internally punish organizers of boat people exodus as well as promote regular departure procedures and migration programs such as ODP in cooperation with UNHCR and ICM (the Intergovernmental Committee for Migration).

(b) Each country of first asylum institutes a refugee status determination mechanism for Indochinese asylum-seekers in consultation with UNHCR. More specifically: such a mechanism uses refugee criteria and procedures recognized in the 1951 Refugee Convention and its 1967 Protocol, with the UNHCR Handbook serving as an "authoritative and interpretative guide" in developing and applying those criteria; UNHCR

⁷² For example, the region received about 19,000 Indochinese refugees during the month of May alone.

⁷³ The text of this CPA can be found in UNHCR, *Refugee Abstracts*, vol. 8, no. 3 (September 1989), pp. 71-9.

⁷⁴ Although CPA's section A "clandestine departures" makes no mention of Vietnam, it obviously was directed at Vietnam. *Ibid.*, p. 73.

participates in the process as an observer and advisor; those who arrive after the introduction of status determination procedures and are determined to be refugees are resettled in third countries; those who are determined not to be refugees are encouraged to return to their country of origin (the country of origin assures the safety and non-persecution of returnees⁷⁵. UNHCR financially assists returnees in their return to and reintegration in the home country).

(c) The resettlement of Vietnamese who arrived in temporary asylum camps prior to the appropriate cutoff date -- the so-called "long stayers" -- will be promoted except for those wishing to repatriate. All the Vietnamese "long stayers" should be resettled through a three-year commitment by resettlement countries.

(d) With regard to Laotian asylum-seekers in Thailand, the existing screening process is maintained and voluntary repatriation and the return of the screened-out should be encouraged⁷⁶.

Clearly, the heart of the above CPA lies in the introduction of a refugee screening system in each first-asylum country with an emphasis on voluntary repatriation of these screened-out. The idea was that widespread knowledge of the existence of such a screening system region-wide would discourage would-be boat people from leaving Vietnam. Notably, this proposed screening system uses the refugee criteria contained in the 1951 Refugee Convention, which the West developed during the Cold War. The irony is that during the Cold War the West had ignored this individualistic Cold-War refugee definition and almost automatically received

⁷⁵ Similar conditions for safe returns were already contained in the December 1988 Memorandum of Understanding between Vietnam and UNHCR, which was aimed at protecting those Vietnamese refugees wishing to return home. See, UNHCR, *Refugees* (May-June 1989), p. 10.

⁷⁶ The CPA did not address the issue of Cambodian refugees since the conference did not discuss this issue on the grounds that it was being dealt with in another international forum, i.e., international peace negotiations for Cambodia in Paris.

Vietnamese asylum-seekers in groups, whereas it has started applying this long-ignored refugee definition to Vietnamese asylum-seekers in the post-Cold War period.

What brought about this change at this particular point? Two key factors seem to have been at work; one is endogenous and the other exogenous.

First is the consolidation of the ongoing reforms in Vietnam and its impact on the nature of Vietnamese asylum-seekers. Keenly aware of the worsening performance of its socialist economy, Hanoi since 1987 has promoted reforms -- the so-called *Doi Moi* -- involving economic as well as social liberalization⁷⁷. *Doi Moi* was extended to politics and foreign policy as *Perestroika* -- the ongoing reform of the Soviet Union, its erstwhile protector --deepened. For example, in February 1987 Vietnam decided to withdraw its troops from Cambodia and since mid-1987 somewhat greater freedom for its press has been permitted.

However, these reforms did not eventuate in a reduction in the exodus of asylum-seekers. What happened was the exact opposite; in fact the number of refugees fleeing from Vietnam increased since 1987, as we have already seen⁷⁸.

Faced with this seeming paradox, the states concerned concluded that Vietnamese asylum-seekers now fleeing were

⁷⁷ This account of the Vietnamese reforms draws on Goto Fumio, "Betonamu nanmin no hassei gen'in," in Kato Takashi and Miyajima Takashi (eds.), *Nanmin* (Tokyo: University of Tokyo Press, 1994), pp. 53-80.

⁷⁸ For possible reasons for this paradox, see, e.g., GOTO Fumio, "Betonamu nanmin no hassei gen'in," in KATO Takashi and MIYAJIMA Takashi, (eds.), *Refugee* (Tokyo: University of Tokyo Press, 1994), pp. 53-80.

"economic migrants" looking for jobs abroad and not "political refugees" escaping political persecution back home. Hence the region-wide introduction of a refugee-screening system which it was hoped would help screen out those "economic migrants."

The second reason for the above shift in the international handling of Vietnamese asylum-seekers stemmed from a more general shift in the international refugee situation. In the 1980s, the Western nations, particularly Western Europe, tightened their immigration controls to such an extent that would-be immigrants from the South turned to Western asylum channels as a loophole to enter the West, creating therein a widespread perception of "asylum paralysis." This perception was further intensified by a potential migratory threat from the East as the Berlin Wall was demolished. Little wonder that the international community felt it could no longer continue to grant special treatment to Indochinese asylum-seekers who increasingly resembled "economic migrants."

At any rate, by September 1989, all the first-asylum countries in the region had introduced a cutoff date, arrival after which would be subject to the normal refugee determination procedures mentioned above (see TABLE 2).

TABLE 2: THE CUTOFF DATES OF FIRST-ASYLUM COUNTRIES

Countries	Cutoff dates
Hong Kong	June 16, 1988
Philippines	March 14, 1989

Indonesia	March 17, 1989
Malaysia	August 28, 1989
Japan	September 13, 1989
Thailand	September 14, 1989

[Source: Gaimusho Kokusairengo-kyoku Jinken-nanmin-ka, *Indoshina nanmin mondai (shiryō)* (May 20, 1993), p. 8.]

As TABLE 2 shows, Hong Kong, the Philippines and Indonesia had already introduced cutoff dates before the June 1989 international refugee conference where they decided to introduce such dates region-wide, thereby suggesting that the above international decision was aimed at regionalizing such an arrangement so that its deterrent effect may become maximal as well as internationally legitimating the preexisting cutoff dates post-factually.

As for those asylum-seekers screened out by the countries of first asylum, there were only two options left; either continue to stay at a crowded asylum camp in that country with practically no possibility of third-country resettlement or to opt for "voluntary" repatriation. Many of those screened-out chose the latter option. In either case, by March 1993, the region-wide total of voluntary returns of those screened-out amounted to roughly 39,200⁷⁹.

To assist UNHCR-and ICM-administered voluntary returns to Vietnam, the international community started to finance

⁷⁹ Gaimusho Kokusairengo-kyoku Jinken-nanmin-ka, *Indoshina nanmin (tokei shiryō)* (May 20, 1993), p. 6. By April 1994, this figure surpassed 60,000. *Asahi Shimbun* (4/28/94).

reintegration programs for returnees. For example, in collaboration with UNHCR, the Japan International Volunteer Center (JVC) started from the latter half of 1990 a job-training program for local residents as well as returnees, aimed at creating jobs in the areas of fishery, agriculture and small-and-medium manufacturing industries.

While the international response to Indochinese asylum-seekers shifted its emphasis from third-country resettlement towards voluntary returns, an effort continued to resettle roughly 49,000 "long stayers" through international cooperation. It was decided at the June 1989 refugee conference that resettlement countries make a three-year commitment to resettle all the Vietnamese who had arrived in asylum camps before the cutoff dates except for those already determined not to be refugees and those who wished to repatriate. By February 1992, roughly 98% of the resettlement slots pledged by resettlement countries were filled⁸⁰. Thus as far as "long stayers" were concerned, the Vietnamese refugee issue was nearly resolved.

On September 13, 1989, Tokyo introduced refugee determination procedures -- "screening" -- for Indochinese asylum-seekers in accordance with the CPA agreed upon at the June 1989 international refugee conference. From that date onward, all Indochinese boat people arriving in Japan were to be subject to a refugee status determination process rather than being granted refugee (-like) status automatically as in the past.

⁸⁰ LCCIRDP, *Indoshina nanmin*, (April 1993), p. 6.

Questions arise as to the timing of Tokyo's introduction of a screening system, as well as the specifics and significance of its screening system. Why did Japan not introduce a screening system immediately after the 1989 international refugee conference? Why did the GOJ choose that particular date, namely, September 13, 1989, to introduce its screening procedures?

The most simplistic answer to the question of delayed introduction would be that Japan diplomatically needed more Indochinese refugees for resettlement. As of the end of 1988, the number of Indochinese refugees resettled in Japan was 5,921, with the result that there was still enough room for 4,079 refugees before the 10,000 ceiling was reached. In fact, the total of boat people who arrived in Japan during the months leading up to its "screening" decision -- i.e., from January through August 1989 -- amounted to 2,609. Thus, even if all of these boat people decided to resettle in Japan, there still would be 1,470 resettlement slots left⁸¹. In short, Tokyo did not wish to introduce its own screening system until it felt it had received a sufficient number of Indochinese refugees for resettlement within its established limits. Furthermore, there was renewed diplomatic pressure on Japan to keep its doors open to boat people; at the 1989 refugee conference it had pledged to receive an additional

⁸¹ Even when ODP refugees were included in the resettlement population, there was still room for a further boat people intake; i.e., the number of ODP refugees in the first half of 1989 was 87, which, when annualized, would amount to only roughly 170.

1,000 Vietnamese refugees over the coming three years⁸².

So much for numbers. But was it merely because Tokyo wanted to attain its own refugee quota that it continued to allow in Indochinese refugees? Beyond and above this, it was fundamentally because the Indochinese component of Japanese asylum policy served as living proof that Japan had a decent asylum policy. In other words, it was necessary to continuously receive Indochinese refugees because the other, more universal component of its asylum policy, namely, the granting of Convention refugee status, was perceived as inappropriate and as such was under constant and strong criticism both at home and abroad.

Little did Tokyo know, however, that those boat people it was receiving mainly for international publicity, were metamorphosing as the year 1989 wore on. First, it was noticed that their means of transport was different from in the past. Previously, boat people had taken to the seas in unseaworthy vessels, hoping to be rescued by larger foreign ships and brought to neighboring countries of first asylum (and resettlement in the case of Japan). This time, it was evident that their final destination was Japan: aboard relatively large boats (70-100 tons with a motor), they arrived in Japan either on their own or after being rescued by Maritime Safety Agency vessels patrolling Japanese

⁸² Technically speaking, those 1,000 refugees were supposed to be chosen from among "long stayers," and not from some among newly-arrived boat people. Nevertheless, it did constitute international pressure for Tokyo not to tighten its refugee channels too soon. This stems from Japan's unique position in Asia that it is both a first-asylum and resettlement country.

southern territorial waters. Furthermore, many boat people who were brought to Japan confessed to examining officials their desire to take up whatever jobs were available to send money back home⁸³. It was progressively apparent that those people were fleeing from economic scarcity, not from political persecution in Vietnam. Nevertheless, it was another shocking discovery which finally prodded Tokyo to start a refugee screening system.

Around mid-August in 1989, a Chinese woman studying at a Japanese language school in Tokyo contacted the immigration authorities to inquire about the whereabouts of her husband who she believed had arrived recently in Japan along with other boat people. This incident alerted MOJ and it started a thorough re-examination of the identity of the boat people already allowed in as well as who were still in the process of entry into the country. It was found that many of these "Vietnamese" boat people actually were Chinese -- mostly peasants from Fujian Province -- and ethnic Chinese who had fled Vietnam to China at the time of the 1978-79 China-Vietnam conflict⁸⁴. More specifically, of 3,498 boat people who arrived in Japan in 1989, 2,792 or approximately 80% were

⁸³ *Asahi Janaru* (9/8/89), pp. 25-8. The fact that they confessed their real purposes and did not seek refugee status meant that they were ill-informed about Japan's immigration policy and practices, particularly regarding the non-admission of unskilled immigrants.

⁸⁴ Tokyo regarded those ethnic Chinese originally from Vietnam as Chinese on the grounds that they had lived in China for more than a decade. *Asahi Shimbun* (8/31/89).

found to be Chinese (or ethnic Chinese)⁸⁵ (see TABLE 3). According to MOJ officials, the majority of these Chinese acknowledged that they were from China and that they had come to Japan looking for work⁸⁶. This discovery led the GOJ to finally introduce a screening system.

TABLE 3: BOAT PEOPLE (ARRIVALS, DEPARTURES ETC.)

Year	A	B	C	D	E	F		G
						(a)	(b)	
-83	7,223	287	4,878	9	714			
84	503	34	412	1	738			8
85	435	44	371	2	484			66
86	330	21	205	4	129			101
87	144	21	195		262			124
88	219	18	116		164			109
89	3,498	20	162		152	2,792		86
90	374	45	283		171	38	1	95
91	366	22	67		263	82	6	74
92	17	18	55		239	211	35	47

⁸⁵ LCCIRDP, *Indoshina nanmin*, (April 1993), p. 9. By the end of 1990, the total of Chinese citizens who arrived in Japan disguised as Vietnamese boat people amounted to 2,830. Of these 2,830, 2,813 were deported to China from December 1989 through 1992. *Ibid.*, p. 56.

⁸⁶ *Asahi Shimbun* (8/31/89).

93	638	13	8		97	89	315	39
Tot.	13,747	543	6,752	16	3,413	3,212	357	--

[A=arrivals; B=births; C=departures; D=deaths; E=those resettled; F=deportees (a=Chinese; b=screened-out Vietnamese); G=refugees awaiting resettlement elsewhere]
[source: LCCIRDP, *Indoshina nanmin* (April 1994), p. 10]

It was under these circumstances that an important Cabinet member made highly "problematic" remarks concerning boat people. On August 30, 1989, at a regular press conference Chief Cabinet Secretary MORIYAMA Mayumi, commenting on the increasing influx of boat people, noted that Tokyo would accept even Chinese for resettlement if they were determined to be refugees. Furthermore, replying to a reporter's question on whether the GOJ would view China's repression relating to the June 4th Tiananmen Incident as a valid reason for granting asylum to the Chinese, Moriyama answered in the affirmative⁸⁷.

Her remarks seemed to be quite appropriate given that Japan was a signatory state to the 1951 Refugee Convention. Nevertheless, within the context of Japan's unstated asylum policies and practices, her opinion was highly inappropriate⁸⁸. To control the damage done by her "careless"

⁸⁷ *Asahi Shimbun* (8/30/89, evening ed.).

⁸⁸ Moriyama explained to this author that when she made those remarks on boat people, she was thinking about the refugee recognition procedures contained in the Immigration Act (i.e., Article 61-2), and not the "screening" system which the 1989 CPA recommended. She insinuated that she was unaware of the latter arrangement when she made those remarks. In other words, the implication is: had she known of

remarks, a senior MOJ official noted immediately after Moriyama's remarks that even if Chinese asylum-seekers attributed their flight from their country to "political instability" back home, they could not be granted refugee status unless they could establish specifically and credibly how their life was threatened in China before their flight. Such a problematic view concerning the timing of persecution aside⁸⁹, this MOJ official was seeking to re-establish the tacit understanding within the Government that Japan does not grant Convention refugee status to Chinese asylum-seekers no matter what.

Expectedly, the next day, Moriyama backed down from her previous remarks, noting that those boat people found to be Chinese could be deported⁹⁰.

As for the specific date of the introduction of its screening procedures, namely -- September 13, 1989 --

the screening system, she would have answered in the negative because that screening system was designed only to examine "Vietnamese" boat people, not Chinese disguised as Vietnamese. That would have placed her remarks in conformity with Japan's established asylum practices, one of which is the non-granting of refugee status to Chinese asylum-seekers. Author's interview with Moriyama (Tokyo: March 1994).

⁸⁹ His view, shared by other immigration officials, is problematic in that it equates refugees only with those who left the country of origin due to fear of persecution, ignoring the possibility that people who did not have such a fear when they left their country can become refugees while living abroad. For a discussion of the temporal dimension of persecution, see, Chapter Six.

⁹⁰ *Asahi Shimbun* (8/31/89). The main reason why Moriyama made the previous remarks deviating from Tokyo's established asylum policy was probably because she, having been appointed a Cabinet member very recently and for the first time, had not been sufficiently briefed by MOJ (or MOFA) officials on Japan's immigration policy.

Moriyama explained to the present author that it was simply because the first Cabinet meeting after Prime Minister Kaifu's return from a U.S. trip was scheduled and held on that day⁹¹.

Japan's newly instituted screening system for boat people consisted of the following two stages: First, all boat people arriving in Japan were allowed to land on the basis of *kari joriku kyoka* ("Temporary Landing Permission": Article 13 of the Immigration Act). Second, these boat people were "screened" to determine whether or not a person was entitled to *ichiji higo joriku kyoka* ("Landing Permission for Temporary Refuge" status: Article 18-2). Those who were granted LPTR -- or "screened in" -- could stay in Japan up to 180 days, whereas those not granted LPTR -- or "screened out" -- were detained pending deportation⁹².

One problem with this screening system is that an asylum-seeker is first subjected to a de-facto language test; if that person did not understand Vietnamese, s(he) would be judged to be Chinese, to be screened out for deportation⁹³.

⁹¹ The author's interview with Moriyama (Tokyo, March 1994).

⁹² The Vietnamese Government had said that it would accept Vietnamese boat people determined not to be refugees as long as they were willing to return home. In other words, Vietnam would accept only voluntary returnees. The October 9, 1989 meeting between Vo Van Sung, Vietnamese Ambassador to Japan, and MATANO Kagechika, Director General of MOJ's Immigration Control Bureau. *Kyodo* (Tokyo: October 9, 1989), as monitored by FBIS. For the deportation of Chinese boat people, see the next chapter.

⁹³ Those determined to be Vietnamese would then be examined as to whether or not they should be granted LPTR.

In other words, those determined to be Chinese would not have a chance to have their reasons of flight heard by the immigration authorities. They were simply treated as illegal entrants to be deported to their native country. Clearly, such a method entailed a risk of returning real refugees to China, as happened to Lin Guizhen, a Chinese dissident⁹⁴.

In Japan, a UNHCR representative's participation in its screening process as an observer and advisor was guaranteed as agreed at the June 1989 international refugee conference. However, the risk of sending Chinese refugees back home was still present because UNHCR representatives did not attend the "language test" stage of the screening process.

The End of "Special Treatment" of Vietnamese Refugees

On February 14, 1994, the Steering Committee of the International Conference on Indochinese Refugees met in Geneva to review the 1989 CPA. On the basis of the fact that the total of Vietnamese staying in asylum camps in the region had dropped from roughly 120,000 at the time of the conclusion of the 1989 CPA to some 60,000 around the time of this meeting, the Steering Committee judged that the Vietnamese refugee crisis was over and that the special treatment the international community to date had accorded to Vietnamese asylum-seekers on the basis of the 1989 CPA should be terminated.

The committee explained this important change in international policy towards Vietnamese refugees as follows:

⁹⁴ For Lin's case, see, Chapter Six.

(A)s a result of changing circumstances within the country of origin, screening procedures under the CPA should no longer be applicable to Vietnamese arriving in first asylum countries after 14 February 1994. Vietnamese arriving after the above date will be treated in accordance with national legislation and internationally accepted practices⁹⁵.

Furthermore, the committee decided that the repatriation of the remaining 60,000 Vietnamese in camps, a great majority of whom had been determined not to be refugees, should be completed through voluntary returns by the end of 1995.

These "changing circumstances" in Vietnam were already noted, but High Commissioner for Refugees Ogata stressed at the meeting's opening statement the importance of another change; she then announced restoration of U.S. trade links with Vietnam, which she hoped "will be a strong inducement for the remaining camp population to return home (...)".⁹⁶

There was yet another key reason why the international community felt it should stop favoring only Vietnamese refugees. In explaining the termination of the CPA for Vietnamese refugees, High Commissioner Ogata pointed out new challenges the international refugee regime was facing in the 1990s. She noted that "new humanitarian emergencies have arisen, placing new demands and straining existing resources of the international community⁹⁷," whereas the acute human

⁹⁵ UNHCR, *Statement by the Fifth Steering Committee of the International Conference on Indochinese Refugees* (Adopted on 14 February 1994 at Geneva), p. 4.

⁹⁶ *Opening Statement by Mrs. S. Ogata, the United Nations High Commissioner for Refugees at the Fifth Meeting of the Steering Committee of the International Conference on Indochinese Refugees* (Geneva, 14 February 1994), p. 3.

⁹⁷ Ogata, *Opening Statement*, p. 2.

tragedy which led to the establishment of the CPA no longer existed in Vietnam. In short, the international community could and should no longer treat the Vietnamese any differently from other groups of asylum-seekers.

This international position was endorsed by the U.S., the country which had kept alive the international commitment to Vietnamese refugees as well as being the largest donor for international refugee programs in general and Indochinese refugee programs in particular.

Warren Zimmermann, head of the U.S. delegation at the above steering committee meeting noted as follows:

(T)his approach is the fairest in making clear to the people in camps who have been found not to be refugees that voluntary return to Vietnam is their best option and that there is no possibility of resettlement or of remaining in the camps indefinitely (...) (N)ew arrivals should be treated like any other asylum seekers, including respect for the principle of non-refoulement⁹⁸.

On the basis of the above international decision to terminate the CPA for Vietnamese boat people, Japan decided to do the same on March 4⁹⁹. That is, if boat people arriving in Japan thereafter wished to land and resettle in Japan, they would have to file an application for Convention refugee

⁹⁸ *Statement by Warren Zimmermann, Head of the U.S. Delegation at the Fifth Meeting of the Steering Committee of the International Conference on Indochinese Refugees (Geneva, February 14, 1994), p. 2.*

⁹⁹ For the text of this March 4, 1994 Cabinet Understanding, see, LCCIRDP, *Indoshina nanmin*, (April 1994), p. 62.

status just like any other asylum-seeker¹⁰⁰. Furthermore, in April, Tokyo announced that its Omura Refugee Reception Center in Nagasaki would be closed as of March 1995¹⁰¹.

Summary

With the end of Japan's special and favorable treatment of Vietnamese asylum-seekers, its hitherto three-track refugee policy has become a two-track one, that is, a unified, universally restrictive asylum policy with generous financial contributions to international refugee programs.

This significant policy change occurred as Japan responded to shifts in international norms and procedures relating to the protection of Indochinese asylum-seekers. Put differently, the change in Japan's domestic refugee regime was a direct consequence of the corresponding change in the international refugee regime. Thus Japan seems to have "merely" reacted to outside developments. Nevertheless, what Japan really did was to use those international events and accords for its own national purposes by manipulating their impact on national policymaking through either immediate acceptance (e.g., the termination of CPA) or delaying tactics (e.g., the introduction of screening system). In short, Japan reacts to outside pressures defensively to protect what it

¹⁰⁰ It should be noted, however, that Japan still maintains the ODP program for Vietnamese, whereby Vietnamese *in Vietnam* can come to Japan to resettle for family reunion and other humanitarian reasons.

¹⁰¹ As of April 1994, the center had 169 Vietnamese, of whom 42 were yet to be examined for refugee status. *Asahi Shimbun* (4/16/94).

sees as its vital national interests.

Returning to the issue of Japan's resettlement decision itself: since it was a reaction to the crisis and the attendant international pressure, not an autonomous decision by the GOJ, Japan found it necessary to legitimize the decision post facto, relating it to autonomous action by Japan as a sovereign state. Thus, the impact of the Japanese response to the Indochinese refugee crisis provided a valid justification for the GOJ to join the international refugee regime by acceding to the UN Refugee Convention and its Protocol.

CHAPTER FIVETHE 1981 ACCESSION TO THE REFUGEE CONVENTION1. THE PRE-ACCESSION REFUGEE REGIME IN JAPAN

In promoting refugee resettlement in Japan, the GOJ felt the need for closer coordination and collaboration with the existing refugee relief NGOs in Japan. Thus, it felt that the first thing it should do after the Tokyo summit was to build an entity which would serve as a focal point for refugee work in Japan, both governmental and non-governmental.

To that end, the GOJ on November 2, 1979, inaugurated *nanmin jigyo honbu* (the "Refugee Affairs Headquarters," hereafter "RAHQ") as part of the existing *ajia koji fukushi kyoiku zaidan* (the "Foundation for the Welfare and Education for Asian Orphans") in Tokyo¹. Composed of representatives

¹ This foundation, established in 1969, had built and managed in the early 1970s a vocational training center for orphans in Bien Hoa, a Saigon suburb. After the "fall" of Saigon, it had become dormant until the present GOJ decision to use it as an organizational basis for its refugee work. After this, the foundation was called the Foundation for the Welfare and Education for Asians, thus dropping the word orphan.

The establishment of the RAHQ as part of a rather obscure, existing foundation was a result of bureaucratic politics. First, the establishment of a separate semi-governmental corporation -- *tokushu hojin* -- for such purposes would have required new legislation, a time-consuming process. It also would have gone against the governmental pledge to prune national bureaucracy -- *gyosei kaikaku*. Second, in its search for operational partners, MOFA had sounded out several existing foundations to no avail. It then sought to relegate refugee work to the Japanese Red Cross. Although MOFA secured consent from the Red Cross, this scheme failed because the Ministry of Health and Welfare (MHW) -- the supervisory

from the ministries concerned, RAHQ's task was to undertake and coordinate national efforts to promote refugee resettlement, which until then were left to an inter-ministerial task force (i.e., the Liaison and Coordination Council for Indochinese Refugees and Displaced Persons: LCCIRDP) and NGOs, both religious and non-religious².

In the absence of official commitment, these NGOs were experiencing financial difficulties in the late 1970s as they cared for refugees in increasing numbers. For one thing, the Constitutional provisions of the separation between Church and State barred the GOJ from subsidizing religious organizations. Thus it was necessary to set up some entity (preferably a semi-official one) through which GOJ funds could be channeled to the NGOs, particularly religious ones.

agency of the Red Cross -- was offended by this foray into its own bureaucratic turf and rejected the arrangement. In this connection, a senior MHW official reportedly said that "Refugees are MOFA's business, not ours." *Asahi Shimbun* (6/24/79).

² These NGOs included non-religious groups such as the Association to Aid Refugees (*Nanmin o tasukeru kai*: AAR); Japan Volunteer Center (JVC); International Social Service (ISS); the Japan Red Cross, as well as religious ones such as Caritas Japan (Catholic); *Rissho kosei kai* (Buddhist); *Soka gakkai* (Buddhist); and Sotoshu Volunteer Association (SVA: Zen Buddhist). Of particular interest was the AAR, the first refugee relief voluntary agency, which was established in November 1979 -- then called "*Indoshina nanmin o tasukeru kai*" -- by a group of citizens such as university professors, trade union leaders, and leaders of women's groups in order to help arriving Indochinese refugees. Since then AAR has provided various resettlement programs such as Japanese language lessons, scholarships for students, as well as counselling services including the provision of personal guarantees necessary for resettlement. Furthermore, it has offered various assistance programs to refugees throughout the world. AAR, *Futatsu no sokoku, futatsu no furusato* (Tokyo, 1993), pp. 204-212.

Since its inception the RAHQ has provided Japanese-language lessons, vocational training, employment references, good offices for adoptive parents, and financial assistance for resettling refugees. For these purposes, the RAHQ in late 1979 and early 1980 set up two Resettlement Promotion Centers, one each in the Tokyo and Osaka metropolitan areas with total accommodations for about 250 refugees³. Externally, the RAHQ sent officials to refugee camps throughout Southeast Asia in an effort to recruit resettlement-eligible refugees.

Later, the GOJ expanded RAHQ's mandate to assist refugees wishing to resettle elsewhere. To this end, it set up two temporary holding centers for refugees, one in Omura, Nagasaki Prefecture, the other in Tokyo, particularly the latter at the strong initiative of Prime Minister Nakasone⁴. This expanded mandate seems to have been based on the rationale that, as Western resettlement nations became less generous in accepting refugees, refugees temporarily staying in Japan and awaiting resettlement abroad were forced to extend their stay, thus, in practice at least blurring the line between refugees resettling in Japan and those awaiting resettlement elsewhere.

With the establishment of the RAHQ, Japan's refugee regime

³ They were: the Yamato Resettlement Promotion Center (established in February 1980 in Yamato, Kanagawa Prefecture); and the Himeji Resettlement Promotion Center (established in December 1979 in Himeji, Hyogo Prefecture).

⁴ The "International Refugee Assistance Center," accommodating up to 720 refugees, was established in Shinagawa, Tokyo in April 1983. The "Omura Refugee Reception Center" was established in February 1982.

took shape to some extent in its official organizational form, but its legal/normative component still remained to be developed. This caused several serious problems with the status of refugees in Japan.

The first problem concerned special treatment of Indochinese refugees. In Japan there existed no domestic legal standards with which to provide protection for refugees in general⁵.

The reason the GOJ protected Indochinese refugees alone was based in part on the request from the UN: UNHCR and the UNGA had requested protection of this particular group of refugees through various resolutions⁶, binding on member states, including Japan. Yet fundamentally, as noted before, the GOJ did so because of explicit and strong USG pressure to that effect and its own desire to accommodate this pressure to maintain favorable Japan-U.S. relations. Thus, there was no guarantee in the late 1970s that refugees from countries and areas other than Indochina would be permitted to enter Japan, let alone to resettle in the country. In other words, if refugees in general were to be protected in Japan, uniform, domestic legal standards for this purpose would have to be constructed.

The second problem was related to the insecure status of

⁵ One possible exception was the fundamental human rights principles of the Japanese constitution. But they rarely were applied to foreigners because the term *kokumin* ("national" or "people") in the constitution was interpreted as meaning Japanese citizens only.

⁶ The key resolution was UNGA Resolution 3455 (XXX) (12/9/1975).

Indochinese refugees in Japan. Even though the GOJ politically permitted them to resettle, the legal basis of their resettlement resided in several Cabinet Understandings, which were administrative procedures, not laws. As the Tokyo representative of UNHCR pointed out, Indochinese refugees, permitted to resettle in Japan (on the basis of a renewable one-year residency permit) were only long-term residents and had no legal guarantee as to whether and when they would be granted *eijuken* ("permanent residency") or whether and when they would be granted citizenship⁷.

The third problem concerned differential treatment within the Indochinese refugee community. It should be noted that boat people were not the only Indochinese people residing in Japan in the late 1970s. There were some 700 Indochinese students as well who had come to Japan before April 1975 and were stranded therein after political changes back home -- the so-called refugees *sur place*. Initially, the GOJ treated these students flexibly in terms of residency permits and provided some financial assistance, but later it granted them only a 6-month residency permit (renewable) once they left school. It was only after they took to the streets in Tokyo, collecting pedestrian signatures to demand their formal refugee recognition that Tokyo granted them a one-year residency permit (in March 1979) and later permitted them to resettle (in April 1979). The latter measure created immediate pressure on the GOJ to expand the five hundred-

⁷ Takada, *op. cit.*, pp. 77-8.

refugee quota⁸.

Besides students and boat people, there were other Indochinese people, the so-called *ryumin* ("floating people"), estimated at some 2,000. These people fled Indochinese conflicts and went to Thailand, Hong Kong, or Taiwan where they illegally acquired Taiwanese passports and came to Japan on tourist visas and overstayed. These *ryumin*, mostly ethnic Chinese, were the least protected of the three Indochinese groups because they were technically "illegal aliens." A survey conducted by *Kokusai Shinzen no Kai* (the International Friendship Society) -- a citizens' group assisting *ryumin* -- indicated that, many of them, fearful of the police, stayed home during the day and worked at night as menial workers such as dishwashers at small, backstreet restaurants⁹. These people, if caught, would be sent to an illegal entrant center for deportation to the country that issued their passport. If rejected by their passport country, they could end up in the above center for a long period of time, according to the IFS. On the other hand, if they returned to their country of origin, they would face such criminal charges as evasion of military service, illegal departure, etc. Asked about *ryumin*, a senior official with the LCCIRDP in the Prime Minister's Office reportedly expressed skepticism as to whether anybody holding a passport (even if counterfeit!) could be considered

⁸ TANAKA Hiroshi, *op. cit.*, pp. 25-6; and Honma, *op. cit.*, p. 150. Later in April 1981, all students (742) were incorporated into the expanded 3,000 refugee quota.

⁹ What follows is based on *Kyodo* (Tokyo: 7/29/79), as monitored by FBIS, (Daily Report, Asia & Pacific), vol. IV, no. 147, C4-5.

a refugee. Criticizing such a GOJ attitude, Ms. KOMATSU Hideko, IFS's secretary general, took the government to task for practically sending back refugees.

The final problem with Japan's domestic refugee regime at the time was closely related to a serious defect found in the larger regime for the protection of human rights of "foreign" residents in Japan¹⁰. "Foreign" residents were treated in a discriminatory way in the areas of social security/welfare (such as child-rearing allowances, national pensions, public housing, and national health insurance¹¹) because these services were only for Japanese citizens. Thus resettled refugees and their children would have the same problem as "foreign" residents unless and until they acquired Japanese citizenship¹². Thus, in addition to obvious language difficulties, those refugees who have acquired some knowledge of the above situation either by living in Japan or by word of mouth, would have second thoughts before choosing Japan as

¹⁰ The word foreign is placed in parentheses here because most of them were Korean who were born and raised in Japan (the elder ones having been Japanese citizens until 1952).

¹¹ Some municipalities with larger "foreign" resident communities (e.g., those in Osaka) did provide national health insurance for foreigners.

¹² Their children, even born and educated in Japan, would continue to have the same problem because Japanese citizenship was acquired on the basis of parental blood ties -- *jus sanguinis* -- rather than birth place -- *jus soli*. Of course, a refugee can apply for naturalization but Japan's naturalization requirements tend to be applied rather arbitrarily as well as strictly partly because of their vague wording (the only requirement that is unambiguously stated is that of a minimum five-year continued residency in Japan) and partly because of official reluctance to increase the number of naturalized citizens.

their place of resettlement¹³. This was one of the major reasons why so few refugees have chosen Japan as their adopted home. Thus, the improvement of the legal treatment of refugees would ultimately help increase the number of refugees wishing to resettle in Japan. On the other hand, this would necessitate an improvement of the legal status of foreign residents in general.

All those problems noted above seem to point to a growing need for Japan to create domestic legal norms/mechanisms which would allow for the protection of arriving Indochinese refugees as well as foreign residents in general. It was in these circumstances that the GOJ initiated, albeit belatedly, necessary preparations for the ratification of the 1951 UN Refugee Convention and its 1967 Protocol.

2. THE 1981 ACCESSION DECISION

Introduction

On June 24, 1975, in what was to become the first case of boat people landing in Japan, the Justice Ministry allowed 50 Vietnamese boat people -- rescued by a Danish ship on the high seas and brought to the port of Nagoya -- to land in the country¹⁴. The next day, Justice Minister INABA Osamu stated

¹³ This is supported by some evidence. By the end of 1979 there were only 97 refugees resettled in Japan. Of this, only 5 had some living experience in Japan, with the rest recruited from camps abroad, who conceivably had little knowledge of Japan. Gaimusho Kokurenkyoku Jinken-Nanminka, *Indoshina nanmin mondai (tokei shiryō)* (12/31/89).

¹⁴ This landing permission came only after the request of UNHCR's Tokyo office and the agency's guarantee of the future of the refugees.

at a Diet's Justice Committee session that the GOJ should no longer delay the ratification of the refugee convention and that the GOJ believed that it was an opportune moment¹⁵. This was the first time the GOJ officially ever expressed a desire to ratify the refugee convention¹⁶. This government stance was reconfirmed at the UN in October, 1979, when the Japanese Ambassador to the UN in Geneva, Mr. SAWAKI Masao, stated at UNHCR's 30th EXCOM meeting that Tokyo was earnestly preparing for the ratification of the convention. From this point on, Japan's accession to the refugee convention was a matter of time.

On March 13, 1981, the Suzuki Cabinet approved the proposal regarding Japan's acceptance of the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol. On June 5, 1981, the 94th Diet session approved Japan's accession to the refugee convention and its protocol (these became effective on January 1, 1982). Japan thus became the 85th party to the convention and the 83rd to its protocol¹⁷, thirty years after the convention was adopted.

¹⁵ *Kokkai Homu Iinkai Gijiroku, no. 28 (6/25/75)*.

¹⁶ SAITO Yasuhiko, "Konnichi ni okeru nanmin no hogo to enjo no hori," *Horitsu Jiho*, vol. 53 no. 7 (1981) p. 15. What follows is based on this article.

¹⁷ As of May 22, 1981, the refugee convention had 84 state parties, whereas its protocol had 82. This difference stemmed from the fact that the U.S. and Swaziland were parties only to the protocol. As noted earlier, however, a state party to the protocol automatically becomes party to the convention itself (except for several provisions) owing to the former's legal significance. KAWASHIMA Yoshio, "Nanmin joyaku eno kanyu to tomen no kadai," *Jurisuto (8/1-15/81) no. 747*, pp. 246-54.

Japan's accession to the UN Refugee Convention (and its Protocol) meant that it internationally and formally accepted the legal obligations that the convention imposes on contracting governments regarding the protection and assistance of refugees. In other words, Japan formally joined the international refugee regime.

This raises two key questions: first, why did it take so long -- roughly thirty years since its adoption -- for Japan to accede to the convention, arguably the most fundamental instrument of international refugee law?; second, what were the driving forces behind this accession?

Factors which have delayed accession

The first thing to note is that Japan has historically been an *emigration* country, rather than an *immigration* country. Mainly to lessen internal population pressures, the GOJ has encouraged emigration since the opening of the country in the latter half of the nineteenth century. For example, in 1885 the first group of Japanese emigrants departed for Hawaii under governmental auspices¹⁸. During the period from the Meiji Restoration to the eve of WWII, the total number of Japanese who emigrated amounted to

¹⁸ SUZUKI Joji, *Nihonjin dekasegi imin* (Tokyo: Heibonsha, 1992), pp. 51-75. Up until the early 1920s the majority of Japanese emigrants went to the U.S. mainland as well as Hawaii.

After the 1924 U.S. ban on Asian immigrants (the National Origins Act of 1924 excluded all Asians, but since existing laws had already excluded Chinese and Asian Indians, that law specifically targeted Japanese), the majority of subsequent Japanese emigrants headed for Latin America.. For details, see, Ronald Takaki, *Strangers from a Different Shore: A History of Asian Americans* (Penguin Books, 1989).

approximately 700,000¹⁹. In the post-WWII period, the main destinations for Japanese emigrants have been the U.S., Canada, and some Latin American nations such as Brazil. In 1954 -- two years after Japan's regaining of independence --, in order to promote emigration through public relations activities and relocation assistance, MOFA set up the *Kaigai Kyokai Rengo* (the "Federation of Overseas Societies"), an umbrella organization for the Overseas Societies preexisting in each prefecture. Furthermore, in 1955, MOFA established its Emigration Bureau and also the Japan Emigration Promotion Co., Ltd., for the purpose of providing loans for prospective emigrants. Finally, in 1963, *Kaigai Ijyu Jigyodan*²⁰ (the "Japan Emigration Service") was established by way of a merger of the above Japan Emigration Co. and the Federation. It was only around the mid-1960s that the number of emigrants started to decline as Japan's sustained economic growth improved Japanese living standards and generated greater demand for a domestic labor force. A decade later, the tables were turned and Japan was to receive the first shipload of Indochinese boat people.

In regime terms, one can argue that this entrenched "exit" regime remained even after the original conditions which brought about the exit regime -- over-population, shortage of

¹⁹ Prime Minister's Office, *Nihon no tokei* (1983).

²⁰ Interestingly enough, this agency was to develop into the current Japan International Cooperation Agency (JICA), one of whose major duties currently is to send Japanese technical experts to developing countries. ISHII Yoichi, "Nihon no nanmin taisaku o tou," *Keizai Orai*, (November 1989), pp. 102-09.

farmland, poverty, etc. -- weakened (or disappeared)²¹. It then served as a perceptual as well as bureaucratic inertia hindering the establishment of an "entrance" regime. As a result, there has been a prolonged absence of an immigration regime in Japan particularly as it relates to unskilled immigrants²². Given the "step-by-step" nature of the Japanese decision-making process, it is not surprising that the GOJ had not created a refugee regime prior to and in the absence of a more general immigration regime.

A second reason for Japan's delayed accession to the Refugee Convention is the belief held by both the government and the Japanese public that their country is a *tan'itsu minzoku shakai* (a "monoethnic society"), unique in the world. This deeply-rooted ethnic ideology has arguably delayed Japan's acceptance of refugees as well as immigrants in the following two ways: First, the Japanese have regarded this "monoethnicity" as a source of strength -- such as helping maintain high levels of social cohesion and discipline, educational standards, public safety and health, and economic efficiency²³. From this perspective, any mass influx of

²¹ For example, MOFA still retains its Emigration Bureau at of the end of 1994.

²² To date, unskilled immigrants, in principle, are not allowed to work in Japan. However, this non-admission policy was somewhat modified by the December 1989 revision of the Immigration Act, which included de facto immigration programs such as *kenshusei* (trainee) as well as special permission for foreigners of Japanese descent to engage in unskilled labor. For details, see Chapter ??.

²³ Conversely, this has led to the widespread view in Japan that "multiethnicity" is a source of social weaknesses. Such a view has been repeatedly expressed by influential LDP

aliens, especially destitute immigrants from other Asian countries, would shake the above social bedrock, thus threatening these virtues, and eventually even national/cultural identity. Second, this firmly entrenched ideology of monoethnicity has kept the majority of Japanese voters (and elected officials) from facing the reality that there exist in the country a sizable group of resident foreigners -- mostly Korean -- as well as smaller groups of ethnic minorities -- Buraku, Okinawans, Ainu. To maintain this monoethnic myth, the GOJ has forced these ethnic minorities to culturally conform with the larger Japanese society²⁴. At the same time, this myth has allowed many social laws blatantly discriminatory of foreigners to be maintained for an extended period of time. Since the refugee convention stipulates equal, national (or most-favored-nation) treatment of refugees in the areas of social security/welfare, employment, housing, etc., the GOJ would be forced to correct these discriminatory laws if it decided to accede to the convention. The GOJ, especially MOFA, feared that such a legal reform would stir up opposition from conservative politicians as well as government bureaucrats.

A third reason is that, given the geopolitical reality of Japan as being the wealthiest nation in Asia, surrounded by

politicians, resulting in diplomatic frictions between Japan and the U.S. A case in point are former Prime Minister Nakasone's denigrating remarks about Blacks and Hispanics in the U.S.

²⁴ For example, until very recently, the GOJ forced naturalizing Korean residents to take up Japanese rather than Korean names. Even today, the GOJ discourages naturalizing residents from choosing foreign-sounding names.

politically unstable, economically underdeveloped, environmentally precarious, and over-populated nations -- China, above all --, the acceptance of refugees/unskilled immigrants for resettlement as well as the ratification of the refugee convention -- no matter how restrictive its refugee definition might be -- would send a wrong signal to Asian nations, a signal that Japan now is wide-open to them. For Japanese policy-makers, one of the worst-case scenarios has been (and will continue to be) one in which hundreds of thousands of Chinese refugees are pouring into the coastal areas of western Japan, fleeing political/economic upheavals back home²⁵.

Finally, the Japanese Left -- communists, socialists, and independents -- as well as Japanese mainstream media had ambivalent attitudes towards Indochinese refugees, especially Vietnamese refugees. Defining the Vietnam War as one of national liberation from U.S. imperialism, the Left and the mainstream media strongly opposed the Sato Administration's support for the US position on the war. From this perspective, it was confusing and frustrating to see thousands of ordinary Vietnamese people fleeing their newly "liberated" homelands at the risk of their own lives. Mr. HONDA Katsuichi, an influential journalist, wrote in *Asahi Shimbun* in early 1977 as follows:

²⁵ Honma, *op. cit.*, pp. 146-7. To anticipate our argument, this Japanese fear of mass Chinese influxes was at work when Tokyo summarily repatriated Chinese boat people -- disguised as Vietnamese -- who started arriving in Japan particularly since 1989.

"Those elites, directly involved in the old Saigon regime who enjoyed "very good" lives, had already left shortly before the fall of Saigon. Some segments of the public, who were directly or indirectly related to foreign companies or foreigners, had a "considerably good" life. It is these segments that are most eager to flee now²⁶."

This attitude, unsympathetic with and even contemptuous of boat people, was representative of mainstream Japanese journalism back then.

As for opposition parties, the Japan Communist Party (JCP) which sided with the Soviet Union in the Sino-Soviet dispute, supported its friend's ally, North Vietnam, throughout the Vietnam War and the Socialist Republic of Vietnam after 1975. Thus, JCP Chairman MIYAMOTO Kenji demanded in July 1979 that the GOJ stop attacking Vietnam using the refugee issue as a pretext, rather than pressuring the government to accept Vietnamese refugees²⁷.

As noted earlier, while the Japan Socialist Party (currently the Social Democratic Party) was actively lobbying since the mid-1970s for the establishment of a *Seiji Bomeisha Hogoho* ("Political Refugee Protection Act"), the JSP seemed hardly eager to press the GOJ to protect Indochinese refugees through resettlement. This contradictory position may be attributable to the fact that while the JSP, which never recognized the legitimacy of the Government of the Republic of Korea, was very much concerned with the protection of South Korean dissidents in Japan by establishing the above

²⁶ Quoted in TONOOKA Teruo, "Nanmin mondai to nihon no taio," *Kaikakusha* (December, 1980), p. 94. Later, Mr. Honda wrote articles less unsympathetic to Vietnamese boat people.

²⁷ *Mainichi Shimbun* (7/16/79).

law, it was lukewarm in ensuring protection for people fleeing socialist countries.

These ideological positions of the Left and the mainstream media, unsympathetic to boat people, likely freed the GOJ from domestic pressure which would have pressed it to permit resettlement from humanitarian concerns. This ideological situation probably contributed to the delayed creation of a refugee protection regime in Japan.

The GOJ's Position Concerning the Refugee Convention

Before discussing the factors which have probably accelerated Japan's accession to the Refugee Convention, it would be useful to review the GOJ's past arguments employed to delay its accession to the convention.

First signs of domestic pressures on the GOJ to become a party to the refugee convention can be found as early as the beginning of the 1960s. In 1962, when an opposition politician asked why Japan would not join the refugee convention, the government claimed that the refugee definition, contained in the convention lacked clarity, thereby keeping Japan from becoming a party to it²⁸. Subsequently, the GOJ argument against accession became more specific; at a House of Representatives' Justice Committee session in April 1968, the GOJ, responding to an opposition member's criticism of its past explanation for not acceding to the refugee convention, argued that, given its cutoff date

²⁸ The government representative (*seifu iin*) Nakagawa's reply to the question by Inomata, a Socialist member, at the House of Representatives' Justice Committee, 41st Extraordinary Diet Session (August 24, 1962).

(i.e., refugees caused by the events before January 1, 1951) as well as its geographical limitations (i.e., refugees caused by the events in Europe) the convention was aimed at protecting European refugees, not refugees in general. Therefore, it was inappropriate for Japan, an Asian nation, to become a party to it²⁹. Nevertheless, one should recall that from January 1967 on, the Protocol to the Refugee Convention, which eliminated the above cutoff date as well as its geographical limitations (elimination of the latter was up to each state party) was open for accession on behalf of any state that was a member of the U.N.³⁰. Since Japan had been a member of the U.N. since 1956, a more forward-looking Tokyo would have joined the 1967 Protocol, thereby automatically making Japan a party to the 1951 convention itself. Accordingly, the GOJ's argument against accession was increasingly untenable.

In any event, with regard to refugee protection itself, Tokyo was gradually forced to bring its position closer to the norms contained in the refugee convention. Thus, in August 1973, the Justice Ministry officially expressed its position that in accordance with existing law, the government would grant asylum to a foreigner with a well-founded claim of political persecution back home upon weighing the balance

²⁹ The government representative (*seifu iin*) Shigemitsu's reply to the question raised by Inomata, a Socialist member, at the House of Representatives's Justice Committee, 58th Diet Session (April 19, 1968).

³⁰ For the full texts of the refugee convention and its protocol, see, for example, Guy S. Goodwin-Gill, *op. cit.*, pp. 247-74.

between human rights and the national interest; and would avoid returning the foreigner, when not granted asylum, to places where s/he may experience persecution³¹.

Factors which have accelerated Japan's accession

At around the same time as the government made the above compromise, while refusing to reform the existing immigration law, there emerged additional domestic pressures, moving the GOJ further towards an accession to the refugee convention.

In December 1973, in part to commemorate the 25th anniversary of the adoption of the Universal Declaration of Human Rights, 17 human rights NGOs organized in Tokyo an umbrella organization, *Kokusai Jinken Kiyaku Hijun Sokushin Kaigi* (the "Council to Promote Japanese Ratification of International Covenants on Human Rights")³². Instrumental in organizing this council were such public figures as the

³¹ Director General of the Justice Ministry's Immigration Control Bureau, Mr. Yoshioka's reply to the question by Mr. Watabe, a member of the House of Representatives' Foreign Affairs Committee, 71st Diet Session, (August 29, 1973). Presumably, this government response was prompted by the August 1973 abduction of Kim Dae Jung from Tokyo at the hands of the Korean Central Intelligence Agency.

³² Constituent 17 organizations included: the National Women's Committee for the United Nations NGOs; Amnesty International of Japan; the Tokyo Bar Association; the Japanese Association of University Women; the Asian Human Rights Center; Japan Civil Liberties Union; the Japan Women's Bar Association; the Japanese Medical Women's Association; the League of Women's Voters of Japan. Notably, women's organizations took the initiative in this movement aimed at protecting foreigners, including asylum-seekers. This probably reflected Japanese women's own lower status than men in Japan and hence their greater sympathy with the other socially vulnerable groups of people. Saito, "Japan and the Human Rights Covenants," *Human Rights Law Journal*, vol.2 (1981), p. 89.

independent firebrand M.P. ICHIKAWA Fusae, Professor OGATA Sadako, currently the UN High Commissioner for Refugees, and Professor SAITO Yasuhiko, an international refugee law specialist who later became the first correspondent of UNHCR's Tokyo office.

Since its 1973 establishment, the council presented annually on December 10 -- UN Human Rights Day -- an appeal to the Administration as well as to the Diet. Its 1976 appeal read as follows:

Today, we are witnessing many cases where discrimination on the basis of race and religion, as well as the violation of freedom of speech and belief, are seriously threatening the international peace. Accordingly, there is a greater need for each state to establish a domestic legal system for the protection of human rights, in accordance with international treaties. Particularly in Japan, there is no well-established law which would protect foreign residents as well as asylum seekers, fleeing political persecution. In light of this, it is urgent that Japan, in the spirit of its constitution, ratify as early as possible the two International Covenants on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relating to the Status of Refugees, and other related treaties³³.

It is noteworthy that this council symbolically, if not organizationally, combined a demand for a domestic refugee protection regime with one for a more general domestic human rights regime. Therefore, combined with the participation of influential public figures, such a broadly-conceptualized demand generated broader and stronger pressures on the GOJ than in the past.

Furthermore, the supporters of Indochinese refugees

³³ Saito, *op. cit.*, p. 14.

pressed the GOJ to accede to the Refugee Convention presumably because they believed that such accession would provide legal protection as well even for Indochinese refugees whose status was guaranteed *administratively* and *politically*³⁴ (we should recall here that the granting of protection to Indochinese refugees was possible even *without* Japan acceding to the Refugee Convention). Needless to say, these refugee advocates believed that such accession would benefit other groups of asylum-seekers in Japan as well.

A second factor which has probably accelerated Japan's accession concerns the GOJ's own foreign policy tactics.

The GOJ, aware of its failure to sufficiently mollify the international as well as domestic criticism of its refugee policy even with the 500-refugee resettlement decision, decided to take a more formal diplomatic step forward, i.e., an accession to the refugee convention and its protocol. The central purpose of Japanese accession was not to promote refugee resettlement in Japan, given that the main function of the Refugee Convention was (is) to ensure protection for refugees already inside a signatory state's territory. Furthermore, the GOJ seemed to believe that the use of the international authority and legitimacy of the UN Refugee Convention -- namely, *gaiatsu* -- could help it politically neutralize domestic opposition from status-quo supporters to

³⁴ There is evidence to support this argument. After Japanese accession to the refugee convention, apparently in order to strengthen their legal status, some (approximately 150) of the Indochinese refugees already resettled in Japan chose to apply for refugee status in accordance with the newly promulgated Immigration Control and Refugee Recognition Act. Honma, 1990, *op. cit.*, p. 151.

its attempts to improve the legal status of resident foreigners as well as to introduce more refugees into the country.

Tokyo's accession also seems to have resulted from the following foreign policy calculations: an accession to the convention would transform the case of Indochinese refugee intake into the first and last one in which the GOJ found itself diplomatically pressured by the international community to accept mass refugees, to the detriment of Japanese sovereignty. In other words, as long as Japan was a party to the refugee convention, it would be much more autonomous in determining whether or not to accept specific refugee groups, without worrying about how to justify its decisions internationally. In a nutshell, Japan joined the international refugee regime in order to reaffirm its state sovereignty³⁵.

Thus, we might as well argue that Japanese accession to the UN Refugee Convention took place as a result of interest convergence between the government and refugee regime proponents, although their motives were different.

Domestic Legal Reform in Preparation for Accession

Since the refugee convention stipulated national (or most-favored-nation) treatment of resettled refugees especially in

³⁵ Of great interest for our purposes is that the GOJ would be able to enhance its autonomy (in the area of refugee resettlement) by committing itself to international obligations prescribed in the refugee convention. This is an example of an exceedingly interesting regime phenomenon in which a state can enhance its policy autonomy by joining a relevant international regime.

the areas of obligatory education, social security and welfare, employment and housing, existing Japanese laws discriminatory of resident foreigners in these areas needed to be revised before Japan could accede to the refugee convention. Otherwise, a socially awkward and politically unsustainable situation could arise, where, for example, a recently-arrived refugee might enjoy more favorable legal treatment than a long-time legal foreign resident.

This necessary legal reform was carried out through the removal of the citizenship clause from eligibility requirements contained in the above laws as well as through the revision of the existing Immigration Control Ordinance.

In the period from mid-1979 through mid-1980, MOFA, determined to carry out Japan's accession to the refugee convention, successfully negotiated with other refugee-concerned ministries on revisions of the discriminatory laws under their respective jurisdictions. Thus, the Ministry of Education promised equal, national obligatory (free) education for children of refugees as well as resident foreigners; the Ministry of Labor guaranteed equal, national working conditions for refugees as well as resident foreigners; and the Ministries of Construction and Finance made refugees and resident foreigners eligible for apartments as well as housing loans managed by *jutaku kin'yu koko* (the "Government Housing Loan Corporation") and *jutaku toshi seibi kodan* (the "Housing and Urban Development Corporation")³⁶.

³⁶ Some observers believe that this policy change by the Construction Ministry was a result of Japan's accession in September 1979 to the two UN International Covenants on Human Rights (which also prohibit discriminatory treatment for

Nevertheless, strong resistance came from the Ministry of Health and Welfare (MHW). In fact, one can say that Japan's delayed accession to the refugee convention was attributable to a significant degree to MHW's opposition to the revision of the National Pension Law and the three Child Support Laws³⁷, which would have been necessitated by Japan's accession to the refugee convention.

The reasons MHW cited officially for opposing this revision were: these laws are applicable only to Japanese citizens (obviously, a circular reasoning); those refugees over 35 years old would be unable to meet the provisions of the pension law, requiring a person to continue to contribute for 25 years till s/he turns 60 years old (after which pension payment starts), thereby resulting in the loss of their contributions. However, as several specialists have pointed out with regard to the latter problem, MHW, to skirt this 25-year requirement problem, was able to devise special transitional measures when it initiated the pension system itself in 1961 and again when it incorporated residents of

reasons of nationality). However, since the accession to the human rights covenants seems to have been part of GOJ actions to accommodate international criticism of Japanese handling of the Vietnamese refugee crisis, this housing-policy change too can be seen as a result of the refugee crisis. In other words, the refugee crisis served as an independent variable, and the housing-policy change was a dependent variable, with the accession to both the human rights covenants and the refugee convention being intervening variables. For the above housing-policy change, see TANAKA Hiroshi, *Zainichi Gaikokujin* (Tokyo: Iwanami-shoten, 1991), esp. chap. VI.

³⁷ They are *Jido Fuyo Teate Ho* (the Dependent-Child Allowance Law), *Tokubetsu Jido Fuyo Teate Ho* (the Special Dependent-Child Allowance Law), and *Jido Teate Ho* (the Child Allowance Law).

Okinawa when they became eligible after its reversion to Japan in 1972³⁸. Thus, this "problem" could have been solved had MHW been willing to do so.

The real reason for MHW's resistance was, as MOFA correctly suspected at the time, the potential, considerable increase in pension expenditures which would result from the prospective participation of some 700,000 resident Koreans³⁹.

Emblematic of this MHW resistance was the fact that around the time of the June 1979 Tokyo summit (at which the leaders of the seven industrial nations discussed the refugee issue, among other issues), Health and Welfare Minister HASHIMOTO Ryutaro, in reference to Indochinese refugees, stated at a press conference that his ministry could not help being cautious about issues (such as the issue of accession to the refugee convention) which would affect the legal status of resident foreigners. Thus he virtually rejected undertaking legal changes necessary for Japan's accession to the refugee convention⁴⁰. This MHW stance was reconfirmed at a cabinet meeting on May 9, 1980, at which Health and Welfare Minister Noro rejected Foreign Minister Okita's request for MHW's cooperation in the GOJ's effort to join the refugee convention.

³⁸ See, for example, OGAWA Masaaki, "Shakai hoshō to kokuseki," *Horitsu Jiho*, vol. 53, no. 7 (1981), pp. 28-36.

³⁹ MOFA estimated that additional pension expenses for these resident Koreans would be 4.5 billion yen for the first year and 6 billion yen after 10 years. *Mainichi Shimbun* (5/10/80).

⁴⁰ *Asahi Shimbun* (6/27/79, Nagoya evening ed.).

It was only after MOFA's tenacious negotiations with MHW that the latter agreed to the revision of the pension law and other refugee-related laws. Notably, MHW's agreement came when it was headed by Mr. Sonoda, who, as foreign minister, had actively participated in the Tokyo summit as well as the July 1979 UN Refugee Conference. In this connection, it has been pointed out that the GOJ became far more positive about ratification of the U.N. human rights covenants following the appointment of Mr. Sonoda as Foreign Minister. Thus we could surmise that Sonoda's personal interest in human rights issues as well as his strong leadership was instrumental to a significant degree in persuading MHW's senior bureaucrats to drop their opposition to the revision of the refugee related laws under their jurisdiction.

On April 28, 1981, the government submitted to the Diet a bill containing revisions of the pension law and other refugee-related laws and on June 5, 1981, the Diet approved it along with a proposal for Japan's accession to the refugee convention.

In parallel to the above legal reform, the existing Immigration Control Ordinance was revised to incorporate the legal significance of the Refugee Convention. In order to fully understand this revision, however, we would have to look at the main target population of Japan's immigration ordinance, namely, resident foreigners, mostly Koreans.

On March 2, 1981, Japan's major daily newspapers reported on their front pages that a revised Immigration Control Ordinance would grant permanent residency unconditionally to resident foreigners originally from North Korea as well as

Taiwan. To understand what this really meant, some historical background seems helpful⁴¹.

As a starter, approximately 90 % of resident foreigners in Japan as of July 1980 were mostly Koreans (and a much smaller group of Chinese) who -- or whose parents -- were brought to Japan by force -- or came voluntarily -- from the Korean peninsula and Taiwan when these places were under Japanese colonial rule⁴². When Japan surrendered in August 1945 there were roughly 2 million Koreans living therein. Upon regaining independence in 1952, the GOJ unilaterally deprived those who remained in Japan (estimated at 600,000 in 1948⁴³) of Japanese citizenship, thereby turning them into foreigners without passports. To deal with this irregular situation, the GOJ issued so-called Law No. 126 the same year, entitling these people to stay in Japan without residency permits until a relevant law was established to determine their residency period as well as status.

In 1965 the Sato Administration established diplomatic relations with the Republic of Korea by concluding the Japan-South Korea Basic Relations Treaty in the face of strong

⁴¹ What follows is based on TANAKA Hiroshi, *op. cit.*

⁴² Japan ruled Korea for thirty-six years (1910-1945) and Taiwan for fifty years (1895-1945).

⁴³ From 1945 to 1948, 1.4 of the 2 million people had returned to Korea. The ICRC, *Report on the Repatriation of Koreans after 1959*, reprinted in Olive Checkland, *Humanitarianism and the Emperor's Japan, 1877-1977* (St. Martin's Press, 1994), p. 207.

domestic opposition in Japan as well as South Korea⁴⁴. On this occasion, the two countries made an agreement -- *nikkan hoteki chii kyotei* ("Japan-South Korean Agreement on Legal Status") --, thereby granting permanent residency -- *kyotei eiju* ("agreement-based permanent residency") -- to resident Koreans in Japan who originally came from South Korea (estimated at 350,000 as of July 1980). Thus, the legal status of residents of South Korean descent was more or less formalized. But the status of other foreign residents, including residents of North Korean descent and South Koreans who chose not to apply for the *kyotei eiju* status, as well as Taiwanese residents, remained unchanged; Their status continued to be based on Law No. 126.

Among these people under the auspices of Law No. 126 were two groups: One was the first generation (estimated at 143,000 as of July 1980) whose residency period was open-ended, and the other was their children and grandchildren (estimated at 142,000 as of July 1980) whose residency period had to be renewed every three years. The people the newspapers reported on were these two groups. These people would now unconditionally be granted *tokurei eiju* ("exceptional permanent residency") upon application. Their application process started on January 1, 1982, when the revised Immigration Control Ordinance, now called **Immigration**

⁴⁴ Those who opposed it argued that such a move would solidify and legitimize the existing division of the Korean peninsula.

Control and Refugee Recognition Act, came into effect⁴⁵.

In sum, it seems that the extension of many social security benefits to resident Koreans (and other resident foreigners) was a byproduct of Japan's ratification of the refugee convention. This conclusion is supported by the fact that during the period in question -- i.e., from the late 1970s through the early 1980s -- there was little sign of a significant intensification of anti-discrimination movement among Korean and other foreign residents which, in the hypothetical absence of Japan's ratification of the Refugee Convention, would have pressed the GOJ to eliminate discriminatory clauses from the relevant social laws.

In normative terms, as Professor Onuma noted, these resident foreigners should have been granted such social security benefits long before Japanese ratification of the Refugee Convention, given the historical circumstances that Japan's colonial policies (especially after 1939) brought them (or their ancestors) forcibly to Japan and that as members of local communities they have been under the same tax obligations as Japanese citizens for a long period of time, i.e., "no taxation without rights"⁴⁶.

3. CONCLUSIONS

⁴⁵ In March 1991, the Immigration Act was amended, thereby incorporating all those legally different categories of residents originally from Japan's ex-colonies -- i.e., *kyotei eiju* people; Law No. 126 people; and *tokurei eiju* people -- into the single category of *tokubetsu eiju* (special permanent residency).

⁴⁶ ONUMA Yoshiaki, *Tan'itsu minzoku shakai no shinwa o koete* (Tokyo: Toshindo, 1986), p. 126.

In 1978, for the first time in its post-World War II history Japan decided to accept refugees for resettlement. For a variety of reasons, however, the number of those refugees who chose to resettle in Japan continued to be smaller than the GOJ would have hoped, thereby inviting further criticism from at home and abroad. That in turn prompted greater Japanese efforts to fill its refugee quota (so far, refugees meant only *Indochinese* refugees, however). In part to mollify the above continued criticism and in part to regain sovereign control over future refugee situations affecting the country, the GOJ decided to accede to the UN Refugee Convention and its Protocol, thereby imposing on itself the international obligation of providing protection to refugees *regardless of nationality*. In other words, aside from its motives, Japan at last formally joined the international refugee regime.

For the proponents of a domestic refugee regime, who maintained necessary domestic pressures on the GOJ, it was a victory after almost two decades of legal battles. Yet this victory was a qualified one in that the main thrust for the formation of Japan's refugee regime came from abroad, i.e., the *Indochinese* refugee crisis *per se* and resulting international pressure.

As far as bureaucratic politics is concerned, MOFA continued to be the key government agency in promoting Japan's accession to the refugee convention with the exception of an initial response to the refugee crisis -- which was managed by the Ministry of Justice. MOFA's central role in refugee affairs stemmed from the fact that it has

been the chief manager of the Japanese-U.S. alliance; the refugee issue has been incorporated into that alliance politics; and it has been directly exposed to foreign pressures/criticism with respect to Japanese refugee policy.

Interestingly enough, the government agency that was most strongly resistant to the creation of a domestic refugee regime was the Ministry of Health and Welfare, and not the Justice Ministry, the supervisor of the country's immigration policy⁴⁷.

Direct beneficiaries of Japan's formal linkage to the international refugee regime included the 700,000 resident Koreans and other resident foreigners, as well as the refugees themselves because, as noted above, the GOJ, in forming this linkage, was forced to partially correct its discriminatory treatment of foreigners in order to attain congruence between the emerging domestic regime and the international regime.

In regime terms, Japan's formation of its domestic *refugee* regime through participation in the international *refugee* regime resulted in the improvement, albeit a modest one, of its domestic *human rights* regime, particularly as it pertained to the social protection of resident foreigners.

On the other hand, one could argue that Japan's accession to the refugee convention -- the first such accession in East

⁴⁷ One is tempted to speculate on the reasons for lack of opposition by the Justice Ministry. One reason seems to be typical bureaucratic behavior that an additional function (i.e., refugee recognition) means expansion of its bureaucratic turf. On the other hand, for MHW a domestic refugee regime meant only an increase in its social welfare outlays.

Asia -- as well as its generous financial contributions, enhanced to some extent the authority and effectiveness of the international refugee regime. In other words, Japan was neither regime maker nor regime taker nor regime breaker. It was a regime user.

Finally, Japan's accession to the UN Refugee Convention and its Protocol laid the necessary legal foundations for a domestic refugee regime in Japan.

In the next chapter, we will look at the actual workings of the Japanese refugee regime in order to identify its problems as well as its particular characteristics.

CHAPTER SIXGENERAL REFUGEE RECOGNITION POLICY**Introduction**

Japan's new immigration law, *Nyukoku kanri nanmin nintei ho* ("the Immigration Control and Refugee Recognition Act"¹), which became effective in the beginning of 1982, has transformed in theory Japan's hitherto two-track refugee policy into a three-track one². According to this new, third track, the procedures for refugee recognition in general, are newly incorporated into the immigration law (Article 61: 2-8). From then onwards, besides providing Indochinese asylum-seekers de facto refugee status, the GOJ may provide Convention refugee status and resettlement for any asylum-seeker from the world over, including Indochinese, thus transforming Japan's hitherto country-specific -- Indochinese only -- asylum policy into a truly universal one.

The new Japanese law explicitly incorporates the refugee definition contained in the UN Refugee Treaties: Japan now recognizes asylum-seekers as Convention refugees if their unwillingness (or inability) to return to their native land

¹ In accordance with this new law, the Ministry of Justice created within its Immigration Bureau the Refugee Recognition Section, whose main functions include recognition of refugee status and issuance of refugee travel documents.

² The first track is the Cabinet-sponsored program which has granted asylum and resettlement exclusively to Indochinese asylum-seekers. The second track is Japan's contribution to international refugee organizations, UNHCR in particular.

is based on well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion³.

The irony is that it is exactly this third aspect of Japan's refugee policy -- i.e., its universal asylum policy -- that has invited numerous criticisms both at home and abroad. We will summarize the basic problems below.

The Issue

Clearly, the above criticisms of Japan's universal asylum policy resulted primarily from the fact that the number of beneficiaries of the universal asylum policy continues to be minuscule. As of the end of 1993, the cumulative number was slightly more than 200. Of these 200 or so Convention refugees, over 80% were recognized as such within the first three years after Japan's accession to the refugee treaties, that is, during the period when the international community was curious about what effect that accession could have on Japanese refugee policy. After that period, the average annual number of refugee status grantees dropped to a meager five (in recent years it has been three). Furthermore, of these roughly 200 Convention refugees, nearly 80% were of Vietnamese descent. What it really meant was that since these Vietnamese had already been admitted to Japan for

³ In addition to the above reasons, Japanese law provides for "other equivalent reasons" to qualify for refugee status. This was aimed at letting Vietnamese boat people into the country, who normally did not qualify for a Convention refugee status. However, these reasons remain unspecified.

resettlement on the basis of the first-track refugee policy, the actual number of non-Vietnamese Convention refugees is less than 50.

TABLE 4: APPLICATIONS FOR REFUGEE STATUS

	Filed	Granted	Rejected	Withdrawn	Pending
1982	530	67	40	59	364
1983	44	63	177	23	145
1984	62	31	114	18	44
1985	29	10	28	7	28
1986	54	3	5	5	69
1987	48	6	35	11	65
1988	47	12	62	7	31
1989	50	2	23	7	19
1990	32	2	31	4	44
1991	42	1	13	5	67
1992	45	3	41	2	66
1993	50	6	33	16	61
1994	73	1	41	9	83
Tot.	1106	207	643	173	83

[source: *Japan Times* (2/23/93) and the MOJ]

One way to assess how liberal a country's refugee policy

is might be to compare cumulatively the number of those recognized as refugees with that of applicants for refugee status. During the corresponding period (i.e., 1982-93), the cumulative number of refugee applicants in Japan was roughly 1,000. The rate of refugee recognition thus was approximately 19% $[(207/1,106) \times 100\%]$. This figure seems respectable on the surface⁴. Nevertheless, once these statistics are placed within the context of Japan's overall undocumented foreign population whose official estimate stood at some 300,000 in 1993, one wonders why so few foreigners have applied for refugee status in Japan. This question becomes even more salient particularly when the Japanese situation is put in a comparative perspective. In Western nations with stringent immigration policies, great numbers of "illegal entrants" have availed themselves of the West's relatively liberal asylum system, thereby causing a paralysis of its asylum channels, as demonstrated by Germany in recent years. Why has the same thing not occurred in Japan which in principle admits no unskilled immigrants? Is this because the majority of illegal immigrants in Japan intend to return to their native lands after saving enough money and do not wish to resettle in Japan? Or is it because they are aware that Japan's refugee recognition is so stringent that it is simply not worth pursuing it as an alternative for obtaining legal residency? Whichever the reason may be (it may well be both),

⁴ As a matter of fact, officials of the Justice Ministry's Refugee Recognition Section have boasted of a figure higher than this -- 26% -- particularly when being interviewed by foreign correspondents. See, for example, *The Asian Wall Street Journal*, 12/1/93.

the fact remains that in Japan there have been numerous asylum cases where asylum-seekers -- whom UNHCR as well as Japanese refugee NGOs regarded as legitimate refugees -- have experienced great difficulty in obtaining refugee recognition from the MOJ.

In identifying the characteristics and problems of Japan's general asylum policy, we will scrutinize a recent "debate" between Japan's MOJ and Amnesty International (AI)⁵.

The Debate Between the MOJ And Amnesty International

The AI report can be summarized with reference to the following six themes: asylum application; asylum procedures; appeal; deportation; detention; and the role of UNHCR in Japanese asylum policy.

First, according to the AI report, asylum application in Japan entails problems such as the denial of "landing permission for temporary refuge," obstruction of the right to submit an asylum application; and the restrictive application of the 60-day rule.

Japanese law stipulates that people who claim asylum at a port of entry may be granted *ichiji higo joriku kyoka*

⁵ This "debate" was initiated by a recent AI report on the subject, which was followed by a written reply by the MOJ. They are: "Japan: Inadequate Protection for Refugees and Asylum-Seekers," AI INDEX: ASA 22/10/93 (Amnesty International, March 1993, hereafter "the AI report") and KOJIMA Kyoji, Director, the MOJ's Refugee Recognition Division, "Comments regarding the Amnesty International report entitled: "JAPAN Inadequate protection for refugees and asylum-seekers" no date (hereafter "the MOJ memo").

For comments on this debate, see, KAWASHIMA Yoshio, "Nihon ni okeru nanminhogoseido to sono un'yo," *Handai Hogaku*, vol. 43, nos. 2 & 3, pp. 9-34 (November 1993) (hereafter "the Kawashima Memo").

("landing permission for temporary refuge," hereafter "LPTR") for up to 180 days if the examining immigration officer at the port determines that the person has entered Japan "on the grounds provided for in Article 1A of the Refugee Convention and other equivalent reasons theretofore fleeing from a territory that was feared to be harmful to his life, physical being or physical liberty." (Article 18-2). This LPTR provision was incorporated into the law at the time of its 1981 revision mainly in order to deal with the preexisting problem of Vietnamese boat people⁶.

As the AI report points out, this provision, if implemented universally and effectively, would "ensure protection against *refoulement* at the port-of-entry by allowing people fleeing for their safety to be admitted temporarily until it is safe for them to return home or, if they wish, to allow them to submit an application for asylum⁷." But the reality is that virtually all of the beneficiaries of this provision were Vietnamese asylum-seekers⁸. In other words, non-Vietnamese (or Indochinese) people seeking asylum at a Japanese (air) port have been denied LPTR. The MOJ memo made no reference to this uneven treatment. This non-application of LPTR is another reason why

⁶ This is based on an explanation by a senior MOJ official. Before this, boat people were allowed to enter Japan on the basis of *joriku tokubetsu kyoka* ("Special Landing Permission). YAMAZAKI Tetsuo, "Boto pipuru," *Juristo*, No. 944 (Nov. 1, 1989), pp. 10-11.

⁷ *The AI report*, pp. 6-7.

⁸ Citing official statistics, the AI report noted that nearly all of the 4,394 people granted LPTR since 1982 were Vietnamese asylum-seekers.

there have been so few refugee applicants in Japan because for potential asylum-seekers to submit refugee applications, they would have to officially enter Japanese territory⁹.

The second component of the asylum application problem and also one more reason for a paucity of refugee applications is the MOJ's putative obstruction of the right of asylum-seekers already in Japan to submit a refugee application. A lawyer with the *horitu fujo kyokai* ("the Legal Aid Association": LAA)¹⁰ confided to visiting AI officers that many cases have come to their attention where Tokyo immigration officials had refused to register asylum applications. In some cases, asylum-seekers were not even given application forms to fill in at the immigration office. In such cases, only an LAA lawyer's intervention would reverse the situation¹¹. With respect to detained asylum-seekers, the AI report also cited several examples in which detainees had great difficulty in meeting with lawyers and were not given any information about applying for asylum¹².

The MOJ countered this as follows:

⁹ While Japan maintains an overseas refugee program by which asylum-seekers still abroad may apply for asylum in Japan, this program is only for Indochinese seeking family reunion on Tokyo's national territory.

¹⁰ Since 1982 the LAA has been providing free legal advice and assistance to asylum-seekers on the basis of a contract with UNHCR-Tokyo. The LAA provides assistance to asylum-seekers upon request from UNHCR, which reimburses LAA expenses related to these designated refugees.

¹¹ *The AI report*, p. 24.

¹² *The AI report*, pp. 19-21. These cases include that of Lin Guizhen, which will be reviewed later in this chapter.

Any asylum seeker (in Japan) is guaranteed the right to apply for recognition of refugee status, in accordance with the procedures prescribed in the Immigration Control and Refugee Recognition Act¹³.

Furthermore, it claimed that Japanese officials allow an asylum seeker to contact a lawyer even if s(he) is an illegal entrant.

Although the official will notify any person detained for deportation about the procedures for refugee recognition when a person claims that he is a refugee, this practice will not apply to a person who does not claim to be a refugee¹⁴.

In other words, the MOJ, unless requested, would not volunteer to offer asylum information to asylum-seekers. Nevertheless, such a position contravenes the 1977 Conclusions adopted by UNHCR's Executive Committee, which provides that asylum-seekers must be provided the assistance necessary to submit an application to the competent authorities¹⁵.

The third aspect of the application problem concerns restrictive interpretation of the 60-day rule. Japanese law requires that all asylum-seekers submit their applications within 60 days of their arrival in Japan (or within 60 days from the time when they became aware of the circumstances which gave rise to a fear of return). Exempt from this rule are the cases where the asylum-seeker was kept from applying

¹³ *The MOJ memo*, pp. 6-7.

¹⁴ *The MOJ memo*, p. 4.

¹⁵ *The Kawashima memo*, pp. 13-4. See, UNHCR, *Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Program*, No. 8 (XXVII), 1977, (e) (ii), (iv).

within 60 days by "unavoidable circumstances"¹⁶." A number of asylum-seekers and lawyers indicated to AI that if the asylum-seeker approached the immigration office after 60 days had passed, the immigration office refused to register an application. When AI asked MOJ officials about this, their opinions diverged; officials at the Ministry were unclear about whether the immigration office could refuse to register a claim where it was not submitted within 60 days and lacking in unavoidable circumstances. Meanwhile, officials at the Tokyo immigration office claimed that *all* applications were registered, regardless of the 60 day rule. Evidently, such a divergence of official opinion reflects an ambivalent treatment of the 60-day rule.

The gist of the AI criticism is that the restrictive interpretation of this rule has led to situations where applications were rejected without the merits of claims being considered, as happened to Zhao Nan¹⁷. This criticism, a valid one, is based on the 1979 Conclusion of UNHCR's Executive Committee, which stated that "while asylum-seekers may be required to submit their asylum request within a certain time limit, failure to do so or the non-fulfillment

¹⁶ These "unavoidable circumstances" are those making it physically impossible for the person concerned to submit an application such as illness and breakdown of transportation.

¹⁷ The Chinese student, Zhao Nan, upon knowing of an unexpected denial of his visa extension and realizing that he might have to return to China, applied for refugee status. His application was rejected because of the 60 day rule. This rejection occurred despite the fact that although he indicated his fear of returning to China for political reasons when applying in person to extend his visa, the authorities did not inform him of his right to apply for refugee status. *The AI report*, p. 25.

of other formal requirements, should not lead to an asylum request being excluded from consideration¹⁸. Other countries with such time limits usually still consider late requests.

On this account, the MOJ saw nothing wrong with their 60 day rule, stating that:

The fact that those who do not immediately seek the protection of the government of Japan gives rise to justifiable questions whether such persons are true refugees¹⁹.

However, this MOJ reply does not seem to address AI's criticism; the latter's point was the restrictive interpretation of the 60 day rule, not the setting of a time limit itself, whereas the former focused on the reasonableness of establishing a time limit. In this connection, this author was told by a lawyer and long-time refugee advocate in Japan that many asylum-seekers have found the 60 day limit to be too short to prepare for asylum application because, before submitting asylum applications, they tend to take a wait-and-see attitude, often trying to verify to what extent the political situation in their native lands was harmful to them if they returned. Moreover, after being convinced of the danger of return, they seek to obtain materials in support of their claims from home, which process easily takes several weeks given the less than perfect

¹⁸ *The AI report*, pp. 25-6. See, also, UNHCR, *Conclusion on Refugees without an asylum country*, adopted by the Executive Committee of the UNHCR Program (XXX), 1979, No. 15, (i).

¹⁹ *The MOJ memo*, pp. 2-3.

telecommunications in many home countries²⁰.

A second problem with Japan's general asylum policy concerns specific procedures. Assuming that asylum-seekers are able to overcome all the obstacles mentioned above and succeed in submitting asylum applications, they still have numerous hurdles to overcome. They include: the burden of proof; the qualifications of examining authorities and the objectivity of decision-makers; and the non-provision of reasons for rejection.

AI takes the MOJ to task for forcing asylum-seekers to provide full documentation to support their cases. AI noted that it also received repeated complaints from asylum-seekers that in addition to having to submit documents to substantiate *all* aspects of their claims, they were required to have the documents translated into Japanese *at their own expense*. Furthermore, the MOJ was reluctant to accept as evidence anything other than official documents²¹. Such Japanese policy and practice contradicts the provisions of the UNHCR "Handbook," noted AI.

The UNHCR "Handbook" points out in this connection that:

[C]ases in which an applicant can provide evidence of all his statements will be the exception rather than the rule (...) while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner²².

²⁰ This author's interview with ITO Kazuo, a lawyer and refugee advocate (March 1994, Tokyo).

²¹ *The AI report*, p. 28.

²² *The AI report*, p. 28. See, also, UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the*

The MOJ rejected this AI criticism by claiming that:

We, of course, understand that it is difficult for a refugee escaping persecution to submit documentary evidence. Bearing this in mind, we actively investigate the relevant claims through various ways, such as collecting information about the current situation in the applicant's country of origin and accept statements made by persons involved with the case in order to make up for a lack of documentary evidence. However (because ?), it is important to verify if the applicant's claim about the possibility of persecution is reliable²³.

Nevertheless, the MOJ officials whom AI interviewed apparently had given the impression that in most cases the MOJ sought the necessary information on the situation in an applicant's country of origin from the MOFA. This led AI to conclude that "there is no reliable system in place in the Ministry of Justice to collect current and impartial information from the widest possible range of sources, including non-governmental organizations and others who report on the human rights situation in countries around the world²⁴."

The second component of the asylum procedures problem pertains to the qualifications of examining officials and the objectivity of decision-makers.

Refugee Examiners play a crucial role in the process of asylum decisions because their recommendations on each case become the basis for eventual decisions. Thus, their

Status of Refugees (hereafter "Handbook"), September 1979, p. 47.

²³ *The MOJ memo*, p. 8.

²⁴ *The AI report*, p. 28. Valid as this criticism is, it would seem too much to expect such an information system within the MOJ given that even MOFA has yet to develop such a system to date.

knowledge of specific human rights conditions in the country of origin as well as international refugee law and international human rights law is crucial. But Refugee Examiners in Japan seem to lack that necessary knowledge. For example, Tokyo immigration officials whom AI interviewed were unsure of the status and content of the UNHCR Handbook, which is considered as an authoritative -- if not legally binding -- detailed guidance for refugee examiners and decision-makers on the application of UN refugee treaties²⁵.

With respect to knowledge of the general political situation of specific countries, suffice it to say that not a few Iranian asylum-seekers were told by refugee examiners to return home because "Iran is a democracy²⁶."

AI's criticism of Japan's asylum policy seems to have derived in large part from the MOJ's refusal to identify the actual asylum decision maker(s)²⁷. The AI report notes:

One point of particular concern is the secrecy surrounding the process of applying for asylum in Japan. (...) the government's refusal to disclose the identity of the decision-maker(s) serves to underline Amnesty International's concern that the procedures are arbitrary and overly politicized and do not operate in a way which fulfills Japan's international obligation to identify those in need of protection²⁸.

In response, the MOJ memo still refused to disclose any

²⁵ MOJ officials told AI that the Handbook itself, available in Japanese, was not necessarily made available to the Refugee Examiners (only excerpts deemed relevant to the case concerned were copied for Refugee Examiner).

²⁶ *The AI report*, p. 27.

²⁷ *The AI report*, p. 5.

²⁸ *The AI report*, pp. 22-3.

information on the actual decision-makers except to say that: It is unfair to conclude that the refusal of disclosure serves to underline that the procedures are "arbitrary and overly politicized" only because I (Kojima) refused to disclose the identity of the decision-maker to the representative from your organization (AI)²⁹.

While the ambiguity of the real locus of decision-making is one of the characteristics of Japanese public policymaking, that characteristic seems to have compounded AI's suspicions regarding the arbitrariness of Japan's asylum procedures.

As regards the objectivity of decision-makers, Professor Kawashima contrasted Japan with other industrialized democracies. In the latter, where an Administrative Agency determines refugee eligibility, normally a third-party entity such as an independent advisory body becomes involved in the determination process³⁰. By contrast, in Japan, a single Administrative Agency, i.e., the Ministry of Justice, exclusively determines refugee status without any involvement by other body³¹.

The third problem of Japan's general asylum policy concerns the non-provision of reasons for rejection. The reasons the immigration office provides for the rejection of asylum claims are very short, rarely more than a few

²⁹ *The MOJ memo*, p. 6.

³⁰ *The Kawashima memo*, p. 17.

³¹ While this contrast ignores the role of judicial review as a second procedure in the course of refugee determination, the ineffectiveness of Japan's judicial review in overturning MOJ decisions is so evident that refugee lawyers rarely resort to it.

sentences. Furthermore, the reasons given usually tend to note "insufficient evidence" submitted to support asylum claims. A typical explanation goes like this: "You did not submit the documentary evidence sufficient to prove the claim, although requested³²."

Such inadequate explanations obviously do not help asylum-seekers very much when seeking an appeal. The MOJ memo made no comments in this regard. In terms of due process, it would be necessary for MOJ to provide as specific reasons as possible particularly in cases of rejection³³.

Thirdly, several problems exist which militate against an effective appeal by asylum-seekers. Besides the problem of insufficient explanations for rejection, there are two other key problems. First, in Japan, review of a denied refugee recognition case is undertaken by the same Minister of Justice who made the very same negative decision in the first instance. AI rightly criticized this point:

[S]ince the same ministry deals with both the appeal and the case of first instance, some of the same departments or individuals may be involved in the case at both levels (...) This arrangement does not provide for an effective review; officials from the same ministry who made the first decision are unlikely to be rigorous or effective in identifying errors in previous decisions made by their colleagues.

Furthermore, the fact that in many appeal cases, MOJ requests asylum-seekers to provide new evidence, demonstrates the failure of this system: "The whole point of a review should be to allow for a fresh look at the same facts, not

³² *The AI report*, p. 31.

³³ *The Kawashima memo*, p. 17.

the same look at new facts," noted the AI report³⁴.

The MOJ defends this overlapping of adjudicating and reviewing authorities as being in accordance with Japanese law³⁵. With respect to the requirement for additional evidence in case of appeal, the MOJ memo asserted that the submission of any additional document relevant to the case is vital for "ensuring the fairness of the investigation³⁶."

While international instruments such as the 1977 UNHCR Executive Committee Conclusion does not require separation of review authority from authority of first instance³⁷, in many major Western nations an appeal is made to an independent body separate from the adjudicating authority of first instance and even where the same authority does both adjudication and review, such authority tends to be a third-party body or the involvement of a third-party entity is guaranteed in the review process³⁸.

A second problem with appeals relates to legal assistance. In Japan, the right to legal assistance is scarcely guaranteed for appeals. Although the MOJ indicated to AI that

³⁴ *The AI report*, p. 31.

³⁵ The *gyosei fufuku shinsa ho* (the "Administrative Appeal Law") stipulates that the appeal shall be submitted to the administrative authority that made the decision, if there is no superior authority to that authority or if the Minister is the decision maker. *The MOJ memo*, p. 9.

³⁶ *The MOJ memo*, p. 9.

³⁷ The 1977 UNHCR EXCOM conclusion only provides that an appeal should be allowed to be submitted to either the (same) adjudicating authority or another administrative or judicial authority in accordance with the country's existing law.

³⁸ *The Kawashima memo*, p. 19.

a lawyer may be allowed to attend a re-interview of the asylum-seeker after appealing a negative decision to the Justice Minister, this was entirely at the discretion of the Refugee Examiner.

AI bases the above criticism on international human rights law which Japan has pledged to abide by; Article 13 of the International Covenant on Civil and Political Rights (ICCPR), which concerns the protection of foreigners against expulsion, should particularly apply to asylum-seekers because the rejection of asylum claims could result in a person being deported to a country where (s)he might experience persecution. Thus lawyers should be allowed to attend the (re-) interview to determine refugee status and to provide assistance to the asylum-seeker concerning the statement prepared by the Refugee Inquirer before the asylum-seeker signs it³⁹.

The MOJ countered that the determination of refugee status is a different procedure from that of deportation and that only when a person who was refused refugee status also comes under a deportable category will deportation procedures be enforced against that person⁴⁰. It also claimed that the immigration authority has never rejected a request from the lawyer representing the applicant to attend a re-interview

³⁹ ICCPR's Article 13 provides that non-nationals lawfully in a country are entitled to "submit the reasons against expulsion and to have the case reviewed by, and represented for the purposes before, the competent authority."

⁴⁰ But in practice it is almost inconceivable that an asylum-seeker, after being denied refugee status, does not fall into any deportable category such as visa expiration.

for appeal⁴¹.

The fourth problem of Japan's general asylum policy relates to the deportation of asylum-seekers. This chapter began by raising the question as to why there have been so few refugee applications (1,000) in Japan, where there are an estimated 300,000 undocumented foreigners. The answers to this so far include: difficult access to asylum procedures; stringent asylum procedures (e.g., the 60-day rule); and ineffective appeals. There is yet another plausible answer which is perhaps more powerful than those already pointed out. Simply put: if an asylum-seeker (and illegal alien) is aware of the likely danger that his (her) application for refugee status will result in his (her) detention and deportation, will (s)he apply for asylum in the first place? The answer would be a categorical "no" for the majority of asylum-seekers.

Thus many of the Burmese living illegally in Japan feared that if they reported themselves to the immigration office to apply for refugee status, they would be detained and deported to Myanmar⁴². They also believed that if they applied for asylum, the GOJ might notify the Burmese embassy in Tokyo of this fact, with the result that their family members in Myanmar would suffer reprisals by the Burmese Government. Of roughly 4,700 undocumented Burmese in Japan, the vast

⁴¹ *The MOJ memo*, p. 8.

⁴² Unofficial sources in Japan informed AI that 299 Burmese were deported in 1990 and 187 in 1991, although their destinations (Myanmar or elsewhere) and composition (asylum-seekers or non asylum-seekers) remained unspecified. *The AI report*, pp. 15-6.

majority came to Japan after the 1988 imposition of martial law in Myanmar and the bloody suppression of the pro-democracy movement therein, according to Dr. Win Naing, the head of the Burmese Association of Japan (BAJ), a dissident body⁴³.

While there is no telling to what extent the Burmese fear of being deported is reasonable, it was so strong that in September 1992, a group of 14 undocumented Burmese in Japan, rather than applying for asylum on their own, decided to petition the Human Rights Committee of *nichibenren* ("Japan Federation of Bar Associations": JFBA) requesting that body's legal (and political) protection for their submission of asylum applications⁴⁴. The point here is to assert neither that the GOJ actually notifies the Burmese embassy of asylum claims made by Burmese nationals nor that Burmese asylum-seekers' fear is unreasonable. It is simply that the perceived danger of detention and deportation has effectively deterred Burmese asylum-seekers from exercising their individual rights to apply for asylum in Japan.

The MOJ asserted with regard to the Burmese case that the Japanese immigration authorities "never provide any organization relating to the government of the state of origin of the applicant with any information about the

⁴³ BAJ's 570 or so members have been more or less involved in the Burmese pro-democracy movement. *The AI report*, p. 15.

⁴⁴ *The AI report*, p. 16. Besides these fourteen Burmese, seven others have also applied for asylum. By the end of 1993, six of them had been granted asylum, including Dr. Win Naing and his two family members. *Asahi Shimbun* (12/27/93, evening ed.).

applicant⁴⁵." It also criticized AI for its failure to distinguish between the deportation of visa violators and asylum-seekers, adding that no asylum-seekers have been among the Burmese nationals who have been deported from Japan⁴⁶.

Another problem with deportation in Japan is the MOJ's tendency to undertake it even when an appeal against the refusal to grant asylum is being considered by the judiciary. To illustrate this, the AI report cites the case of Lin Guizhen, a Chinese asylum-seeker.

On September 27, 1989, Lin Guizhen arrived in Japan along with some 230 other Chinese aboard a boat. They were all detained and held in the Omura Detention Center (near Nagasaki) pending deportation to China as illegal entrants.

On November 5, 1989, a local television broadcast the story of those detained Chinese. It showed Lin expressing the wish to obtain asylum in Japan because of a fear of returning to China for political reasons. This broadcast later came to local lawyers' attention.

However, it took the lawyers five weeks and long negotiations with the MOJ to meet with her at the detention center. On December 15, 1989, Lin told the lawyers that before that meeting she was never given any information about asylum procedures.

On December 20, 1989, her lawyers submitted an application for refugee status.

Before this application, a deportation order had already been issued against Lin Guizhen. Thus her lawyers challenged in the courts both the deportation order and the refusal to grant her refugee status. Despite the fact that her appeal

⁴⁵ *The MOJ memo*, p. 3.

⁴⁶ *The MOJ memo*, p. 4. Nevertheless, this is circular reasoning: naturally, deportees would not include asylum-seekers if potential asylum-seekers were denied refugee status and deported simply as visa violators.

was still being considered by the courts and against the opinion expressed by UNHCR-Tokyo the day before deportation to the effect that it would be "more just an approach" to await the court decisions before deporting her, the GOJ deported Lin Guizhen to China. Upon return, she was arrested and sentenced to two years of "reeducation through labor." She has since been "released," meaning that while not detained, she is under official supervision and may be re-detained depending on her behavior⁴⁷.

Responding to reporters' questions about this case, Ogata Sadako, the UN High Commissioner for Refugees, reportedly stated that UNHCR expected that deportation of asylum-seekers should not be carried out as long as the legal process was still in progress⁴⁸. The AI report also referred to the 1977 UNHCR Conclusion, which provides that "The applicant (...) should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending⁴⁹."

The MOJ memo termed Lin Guizhen's deportation "lawful and appropriate" because, even though her legal suit was still pending, it was executed after "total consideration was given to the various factors concerning her case." Concerning the 1977 UNHCR Conclusion, the MOJ memo noted that it "does not

⁴⁷ Amnesty International Japan, *Nihon ni okeru nanmin no hogo* (Tokyo: Nihon Hyoronsha), pp. 42-3.

⁴⁸ *The AI report*, p. 21.

⁴⁹ *The AI report*, pp. 30-31. See, also, UNHCR, *Conclusions adopted by the Executive Committee of the UNHCR Program*, (XXVIII) 1977, No. 8 ("Determination of Refugee Status").

necessarily prohibit the deportation of a person whose application is pending and that deportation of a person is permitted if the request is clearly abusive⁵⁰." In this connection, the MOJ memo claimed elsewhere that Lin Guizhen was "obviously not a refugee, because she had illegally entered Japan pretending to be a Vietnamese refugee⁵¹."

It should be noted that in cases such as that of Lin Guizhen, the Minister of Justice may issue a *tokubetsu zairyu kyoka* ("Special Residency Permission") to such a person even if the individual's request to revoke the deportation order is judged groundless by the courts (Article 50-1). However, this last resort to suspend the deportation of asylum-seekers has rarely been used by the Justice Minister since the beginning of 1985, as H. Domzalski, the Legal Officer at UNHCR-Tokyo, and others have pointed out⁵². Given that this extreme official reluctance to grant Special Residency Permission still exists today, the use of Special Residency Permission as a substitute for refugee status seems not too promising under current circumstances.

Fifth, the Japanese practice of detention of asylum-seekers is problematic. Many cases of detained asylum-seekers in Japan which AI cited may be grouped into (a) those who were detained while their asylum application was being considered by the immigration authorities and (b) those who

⁵⁰ *The MOJ memo*, p. 5.

⁵¹ *The MOJ memo*, p. 10.

⁵² Horitsu Fujo Kyokai, *Nihon no nanmin nintei o megutte* (December 1987), pp. 1-2.

were detained after their asylum claim was rejected and they were subject to pending deportation.

Siros Rahiman, an Iranian asylum-seeker, exemplifies the first group. He arrived in Japan in 1988 on a false passport⁵³. Shortly after his arrival, he tried to apply for refugee status, but he was not allowed to do so and instead was immediately detained. He spent nearly 18 months in detention, during which time his refugee application was considered. In 1989 he was granted *kari homen* ("Provisional Release")⁵⁴.

A similar case concerns an Afghan refugee. He (anonymous) arrived in Japan in February 1984 on a false Pakistani passport. Two weeks after his arrival he reported to a police station, explaining his wish to apply for refugee status. He was detained and held for 23 months by the immigration authorities, apparently because of his irregular travel documents. He was not given a refugee application form until roughly one year after his detention began although he explained his fear of return to Afghanistan in interviews regularly conducted in the weeks following his arrest.

In criticizing such over-restrictive practices, AI cites Article 31 of the Refugee Convention:

⁵³ Rahiman told AI that this was the only way he was able to leave Iran. *The AI report*, p. 17.

⁵⁴ In most cases *Kari Homen* is granted to those detained asylum-seekers who, upon rejection of their asylum application, refuse to be deported. It is only granted after a bond is posted and the person concerned is required to remain within designated areas. It usually lasts 30 days, after which the person has to report to the immigration authorities for renewal. *The AI report*, p. 17.

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 (...) 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.

With regard to the second group of detained asylum-seekers, AI cites the cases of the Ahmadiyyas, a religious minority persecuted in Pakistan. After having applied for refugee status, many Ahmadiyyas were placed under detention upon notification of the rejection of their refugee claim. Some of the detainees were later granted Provisional Release. Others were ordered deported, including Maqsood Ahmad Anjun, Daud Ahmad and Anees Ahmad. While challenging in the courts their rejection of refugee status, they continued to be detained. Since they were advised by their lawyers that release was unlikely, they decided to return to Pakistan at the risk of being persecuted there rather than remain in indefinite detention in Japan⁵⁵.

As for this second group, the MOJ claimed that governments naturally detain a person who comes under any of the deportable categories, including staying in a country illegally, and subject to deportation proceedings. It also claimed that the non-refoulement obligation was not violated should a person who has been refused refugee status be returned⁵⁶. The MOJ memo did not comment on the first group of asylum-seekers who were detained while their asylum claim

⁵⁵ *The AI report*, p. 18.

⁵⁶ *The MOJ memo*, p. 4. But this argument is valid only if the asylum-seeker's merits have been duly considered by the authorities.

was being considered presumably because Japanese law does not provide for the detention of aliens where they have not come under a deportable category⁵⁷.

As is the case with deportation, prolonged detention of asylum-seekers in Japan seems to have served two purposes. First, as demonstrated by the case of the Ahmadiyyas, it forces the person out of desperation to give up on pursuing his(her) refugee claim. This author has been told by a human rights advocate in Japan that a clear tendency exists at the immigration office that the stronger the person's refugee claim seems to be, the longer the duration of detention, probably in the hope that the person would become desperate enough to return home or seek protection elsewhere⁵⁸. Second, the widespread reputation that asylum-seekers in Japan are subject to prolonged detention has served as a deterrent against the future arrival of the asylum-seekers. While the use of detention as a deterrent against future refugee influxes is hardly a Japanese monopoly, the duration of detention in Japan is extraordinarily long compared with that of other Western nations who employ such measures⁵⁹.

⁵⁷ *The Kawashima memo*, p. 23.

⁵⁸ The author's interview with Saul Takahashi, Refugee Coordinator of the AI-Japanese Section (March 1994, Tokyo).

⁵⁹ In Canada, for example, the maximum length of detention of asylum-seekers is seven days, after which the reasons for the person's continued detention are reviewed regularly. In the U.S., however, some cases hold that detention of asylum applicants is not punishment and does not violate Article 31 of the Refugee Convention. See, Arthur C. Helton, "The Detention of Asylum Seekers in the United States and Canada," in Geoffrey Coll and Jacqueline Bhabha, eds., *Asylum Law and Practice in Europe and North America* (Federal

At least two problems arise from this practice of using prolonged detention as an administrative pressure on asylum-seekers. First, it directly infringes the basic human rights of refugees in that the person is kept from enjoying the protection (s)he is entitled to in Japan, which is a party to the two International Conventions on Human Rights as well as the Refugee Convention. Second, although the MOJ may claim it is not violating the non-refoulement precept if the person after long detention decided to go to a third country for asylum rather than returning home where persecution awaits, it would be violating one of the principles of the international refugee regime, that is, international burden-sharing concerning refugee intake.

The final problem of Japan's general asylum policy concerns its relationship with UNHCR. That is, the role of UNHCR in Japan's asylum policy is unwarrantedly circumscribed. This issue is particularly important for our purposes because it is indicative of the extent to which the GOJ is committed to synchronizing its domestic regime with the current international regime in the area of central importance, that is, refugee recognition.

AI criticizes Tokyo's relationship with UNHCR on the following two grounds: frequent differences between MOJ and UNHCR on refugee determination; and the ineffective use of the UNHCR "Handbook" by the MOJ.

AI pointed to several cases where UNHCR-Tokyo has intervened in MOJ decisions on behalf of asylum-seekers whom

Publications, Inc., 1992), pp. 165-76.

the former regarded as refugees but who were denied refugee status by the latter. To cite an example:

Hong Jianbing arrived in Japan in September 1990 as a member of an official delegation of the Chinese State Planning Commission. Hong had participated in the pro-democracy movement in China in the months leading up to the June 1989 Tiananmen incident. After he expressed a wish to obtain refugee status to the Japanese company sponsoring the visit, he was questioned by MOFA officials and told to return home. As he refused to do so, MOFA officials sought to force him to go to the airport to return to China to no avail. With the help of the Japanese branch of the Federation for a Democratic China (FDC) he managed to escape from the hotel where he was under official surveillance and applied for asylum with the assistance of a lawyer. His application was rejected in April 1992 and his appeal was also rejected in September 1992. The MOJ rejected his claim despite the fact that UNHCR-Tokyo had recognized him as a refugee and that he had become active in the FDC movement in Japan⁶⁰.

Other examples of such MOJ-UNHCR discrepancies involve the Iranian asylum-seekers whom AI interviewed in Japan. They had all been recognized as refugees by UNHCR, but none of them had been granted refugee status by the MOJ⁶¹.

Noting that Article 35 of the Refugee Convention obliges Japan (and other signatory states) to cooperate with UNHCR and facilitate its duty of supervising the implementation of the Convention⁶², AI recommended that the GOJ should grant refugee status to asylum-seekers whom UNHCR has recognized as people in need of international protection⁶³.

⁶⁰ *The AI report*, p. 13.

⁶¹ *The AI report*, p. 17.

⁶² Article 35-1 provides that "The Contracting States undertake to co-operate with the Office of the UNHCR (...) in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention."

⁶³ *The AI report*, p. 30.

The MOJ claimed that Article 35 of the Convention provides neither that "UNHCR has the competence to determine who is entitled to refugee status" nor that "UNHCR's decisions are superior to those of the contracting states"⁶⁴. It also noted that Japan "on its own sovereignty decides who is to be accorded refugee status, and is not bound to make the decision based on UNHCR's recommendation"⁶⁵. In this connection, it stated elsewhere that persons covered by the Convention and the persons UNHCR regards as being entitled to its protection are not necessarily the same⁶⁶.

In a nutshell, the position of the MOJ is that it alone has the competence and responsibility for granting refugee status to asylum-seekers in Japanese territory and that that decision is made exclusively in accordance with the criteria contained in the UN refugee treaties, regardless of UNHCR recommendations in that regard.

As noted in the previous chapter, Japan terminated in March 1994 the Comprehensive Plan of Action (CPA) for Vietnamese boat people, thereby practically eliminating the role of UNHCR entirely from its refugee recognition process. Nevertheless, some degree of UNHCR involvement in a state's refugee recognition process is desirable and beneficial. Interestingly enough, research has indicated that most Contracting States allow for such UNHCR participation and that the greater UNHCR involvement in a Contracting State's

⁶⁴ *The MOJ memo*, p. 9.

⁶⁵ *The MOJ memo*, pp. 8-9.

⁶⁶ *The MOJ memo*, p. 3.

refugee recognition procedures, the higher the State's rates of refugee recognition⁶⁷.

The implication here is that the lack of institutionalized UNHCR participation in its refugee recognition procedures partly accounts for the relatively small number of people granted refugee status in Japan.

A second problem in MOJ-UNHCR relations is the ineffective use of the UNHCR "Handbook" by the MOJ. The UNHCR Handbook elaborates basic international standards for treating asylum application, which are provided for by the Conclusions adopted by UNHCR's Executive Committee (EXCOM)⁶⁸. Japan has been a member of this EXCOM. Furthermore, the 1989 Comprehensive Plan of Action (CPA) for Indochinese Refugees adopted by the international refugee conference in which Japan participated, explicitly recognized the Contracting States' use of the Handbook in making decisions on refugee status. AI claims therefore that Japan's existing asylum procedures must be assessed against these standards in particular and its obligations under international human rights treaties in general. AI concluded that Japan's asylum procedures fall below international standards and that Japan's protection of asylum-seekers who are at risk of serious human rights violations in their home countries is inadequate⁶⁹.

⁶⁷ *The Kawashima memo*, p. 24.

⁶⁸ Of particular importance are *Conclusions No. 8 (XXVII) 1977* and *No. 30 (XXXIV) 1983*.

⁶⁹ *The AI report*, p. 22.

The MOJ countered that according to the 1989 CPA for Indochinese Refugees, the refugee criteria to be used by the States are those contained in the Refugee Convention and the Handbook was just to "serve as an authoritative and interpretative guide in developing and applying the criteria." It concluded that the Handbook should not have the equivalent legal effect as the Convention and the Protocol⁷⁰.

This restrictive MOJ view ignores the fact, however, that the international protection of refugees and asylum-seekers cannot be ensured if the States do no more than abide by a few international obligations contained in the existing positive international law⁷¹.

⁷⁰ *The MOJ memo*, p. 6.

⁷¹ Obviously, one way to guarantee refugee protection is to seek to incorporate into international law the state obligation to provide asylum to asylum-seekers. But it has proved to be extremely difficult to do so, as demonstrated by the failure of the 1977 UN Conference on Territorial Asylum to conclude such agreements. Thus, in seeking to guarantee international protection of refugees, ways and means should be explored to oblige the States to comply with even international standards that are not legally-binding.

In this context, Professor Kawashima emphasizes the importance of the concept of "equitable burden-sharing." The reason why all the developed nations have accepted refugees even in the absence of international obligations to do so is because of this principle of burden-sharing. It has been established as an international standard, from which advanced states can deviate with great difficulty. Professor Kawashima seems to conclude that international political pressure should be applied more systematically than before on the signatory States so that they can receive refugees on the basis of international burden-sharing.

While I fundamentally agree with his conclusion that burden-sharing should be more emphasized, some parts of his discussion seem slightly confusing and confused for the following reasons. First, his interpretation of AI's criticism seems imprecise: AI seems to be criticizing Japan not only because it does not recognize soft law standards that go beyond hard law, but also because it is not really

There is yet another important area where the MOJ and UNHCR differ from each other and which was not raised in the AI report.

That is the temporal dimension of persecution in determining refugee status⁷².

According to the Refugee Convention, a person must have a well-founded fear of persecution to be granted refugee status. Nevertheless, this immediately raises the question of *when* the person must have such a fear. Must the person have it at the time of flight or at the time of applying for asylum or at the time of a threatened repatriation? In this connection, Henry M. Domzalski, the Legal Officer of UNHCR-Tokyo, has pointed to a discrepancy between UNHCR and MOJ: while Japanese immigration law as well as the Refugee Convention provides that refugees fundamentally are those people unwilling to return to their country of origin because of fear of persecution (not those who left their country of

complying with the hard law requirement of nonrefoulement given that it rarely grants refugee status to bona fide refugees. Second, his argument on burden-sharing needs elaboration. Legalistically, since granting refugee status to those entitled to Article 33 protection is a state burden and obligation, not simply a burden, burden-sharing becomes more of an issue in dealing with asylum-seekers who are not entitled to Article 33 prohibition of refoulement (e.g., Indochinese "refugees"). In reality, however, this "burden vs. obligation" distinction becomes blurred as states try to even evade that obligation because there is no right to asylum as such. Only in this context does Professor Kawashima's argument on burden-sharing become relevant.

⁷² For discussion of the temporal dimension of persecution, see, Walter Kalin, "Well-Founded Fear of Persecution: A European Perspective," in Coll and Bhabha, *op. cit.*, pp. 21-35.

origin because of such fears)⁷³, the Japanese immigration authorities have tended to argue that since the person was not persecuted in her (his) country of origin and left it without problems, (s)he should be able to return home⁷⁴. Obviously, this ignores the possibility that even such persons can be persecuted politically upon repatriation either because of their own post-flight political activities in the host country; illegal departure from their country; non-return to their country; or because of fundamental political change (e.g., revolutions) in their country after they left⁷⁵. UNHCR's position is that the MOJ should extend protection to such refugees *sur place* as well as those who fled persecution back home and came to Japan for protection⁷⁶.

The GOJ's Overall Reaction to Amnesty's Criticism

The MOJ has completely rejected the conclusions and recommendations contained in the above AI report, calling

⁷³ In this regard, the UNHCR Handbook notes as follows: "The requirement that a person must be outside his country to be a refugee does not mean that he must necessarily have left that country illegally, or even that he must have left it on account of a well founded fear (...) A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee *sur place*." Quoted in Kalin, *op. cit.*, p. 25.

⁷⁴ Horitsu Fujō Kyōkai, *op. cit.*, p. 5.

⁷⁵ Kalin, *op. cit.*, pp. 24-5.

⁷⁶ In practice, the MOJ has granted refugee-like status to post-1975 Indochinese students -- refugees *sur place* -- but this application has remained an exception to date.

them "groundless"⁷⁷ Such a categorical rejection was reiterated at the highest political level when KONO Yohei, the Chief Cabinet Secretary, noted concerning the AI report that "particular people who presented their own evidence to AI are special cases and are inappropriate as examples" and that Tokyo had no plans to change the existing refugee procedures⁷⁸.

Such total rejection seems to have derived from political and cultural sources that are intertwined.

First, it is another typical example of the way a sovereign state would react when its policies are challenged by influential NGOs. Particularly in a policy area as politically sensitive as immigration policy, the government would normally react strongly to defend itself. This is especially true in the case of Japan, where the idea of state prerogatives defining and regulating the relationship among nationality, citizenship and residency has not eroded as much as in the European Union or in the U.S.

Second, Japan's obstinacy with maintaining its own approach to the refugee issue reflects a larger problem of what we may call "paternalistic pan-statism"⁷⁹ shared by the Japanese elites and (to a lesser extent) general public. Viewed from this "paternalistic pan-statist" perspective, anyone who dares to oppose the formally constituted authority of their own country is an "immoral" citizen (or even worse,

⁷⁷ *The MOJ memo*, p. 1.

⁷⁸ *Japan Times* (3/19/93).

⁷⁹ We will elaborate on this concept in Chapter 7.

a "traitor"), and is much worse when that person abandons her/his native country and expresses such critical views while living in another country on whose "benevolence" her/his continued residence depends⁸⁰. Such a mindset is recognizable in the MOJ's attitude towards asylum-seekers. For example, the MOJ memo reviewed here demonstrates a high degree of official distrust towards them. It stated on the first page that "they (asylum-seekers) know that they are not truly refugees, so they are prone to make false statements for the purpose of obtaining permission to take up residence; some others distort the facts so as to place themselves in a favorable light⁸¹." This "paternalistic pan-statist" attitude is also reflected in the English translation of the Japanese form "Application for Recognition of Refugee Status." For example, a significant discrepancy exists between the Japanese original and the English translation of question No. 4 on the form:

(Japanese original)

Did you belong to any organization(s) which were hostile to the government of your home country (*hongoku seifu*)?

(English translation)

Did you belong to any organization(s) which were considered hostile to the interests of your home country? (emphasis added)⁸².

An asylum-seeker who has little/no knowledge of written

⁸⁰ This "paternalistic pan-statism" also is reflected in Japanese official unwillingness to criticize human rights violations in other countries.

⁸¹ *The MOJ memo*, p. 1.

⁸² For a reproduction of this form, see, Amnesty International Japan, *op. cit.*, pp. 44-7.

Japanese and who opposes the existing government of her/his home country but who believes (s)he is working for the interests of her/his home country might have difficulty in answering this question in the affirmative. Thus, in practice if you answer no, your reasonable fears of return are denied and if you answer in the affirmative, MOJ officials' "paternalistic pan-statist" attitudes may also have a negative effect on your application.

Needless to say, such "pan-statist" thinking has been behind Japanese unwillingness to receive asylum-seekers in the first place.

Conclusions

From the perspective of the international refugee regime, Japan's general refugee-recognition policy has serious flaws.

First, Tokyo does not allow for institutionalized participation of UNHCR in its refugee recognition process despite the fact that its experience in applying international refugee instruments is very limited. This renders Japan's asylum decision-making process problematic as well as highly autonomous and hence impermeable to regime pressure/expectations. Given the combination of secrecy of procedures and lack of explanation for rejection of refugee status, therefore, permitting UNHCR's participation in Japan's asylum decision-making process would be far more beneficial than it could be in some other countries in that it would increase decisional transparency.

Second, Japan pays insufficient attention to the regime rules and procedures provided by the "soft laws" such as the

Conclusions of UNHCR's Executive Committee as well as the Handbook, with the result that procedural safeguards in the field are seldom implemented to protect asylum-seekers' human rights. Furthermore, the official claim that Japan has only to comply with the "hard laws" such as the 1951 Refugee Convention and its Protocol does not necessarily mean that it is actually doing so.

Third, Tokyo has been unnecessarily resistant to international pressures to be more liberal in granting Convention refugee status to bona fide refugees. Such a policy contravenes the international norm of burden-sharing and is unfair to nations more generous in granting such status than Japan is because they are morally and politically compelled (we hope) to accept even greater numbers of refugees.

In sum, as far as Japan's general refugee-recognition policy is concerned, Japan has hardly been a positive force in the development of the international refugee protection regime, much less an innovative one.

CHAPTER SEVENCASE STUDIES OF GENERAL ASYLUM POLICY**Introduction**

As noted earlier, Japan's asylum policy has become universally restrictive after formally abandoning in 1994 the special treatment of Indochinese asylum-seekers. In order to illustrate this restrictiveness of Japanese asylum policy more concretely, we will discuss two additional case studies below: first the 1987 case of North Korean asylum seekers, and second that of post-1989 Chinese asylum-seekers.

The North Korean case has been selected for the following reasons. Unlike the Indochinese refugee case which involved a high degree of US pressure on Japan to receive refugees, the Japanese response in this case took place in the relative absence of such pressure/attention and thus is expected to reveal more faithfully the basic features of Japan's restrictive asylum policies and practices. In other words, the underlying assumption is that the case of the North Korean refugees was the norm and that of the Indochinese refugees was exceptional in Japan's refugee policy.

The second case of Chinese asylum-seekers, mostly students, has been chosen because, despite the existence of intensive extra-regional (Group of 7) pressure/attention regarding Japan's treatment of Chinese asylum-seekers, Tokyo still maintained its restrictive asylum policy, thereby reinforcing our thesis that Japan's asylum policy has been and will remain restrictive barring pressure from abroad whose satisfaction Tokyo deems vital to its national

interests.

1. NORTH KOREAN ASYLUM-SEEKERS

This case is particularly interesting and revealing as to how Japan has dealt with the delicate and difficult act of balancing the legal and humanitarian obligations which Tokyo has assumed of protecting asylum-seekers and its self-perceived "national interests." Of particular interest was the fact that such a balancing act was performed in a highly complex and charged regional Cold-War political environment, involving two pairs of divided nations -- i.e., North and South Korea; and China and Taiwan, and concomitantly because Japan had diplomatic relations with only one of each antagonistic pair -- i.e., South Korea and China.

"A Warm Country in the South"

On January 20, 1987, 11 North Koreans aboard a small maritime resources research ship "J-Dan 9082" reached Fukui Shinko port in Fukui Prefecture on the Japan Sea side. Investigation by the regional office of the Maritime Safety Agency (MSA)¹ revealed that 11 North Koreans (4 men, 3 women, and 4 minors), led by Kim Man-chol, a physician, were all related -- either his family members or relatives; and that they had a large amount of rice aboard. Kim told them that they had left Chongjin, a North Korean port, to go to a "warm

¹ The MSA is the Japanese equivalent of the U.S. Coast Guard. Like its U.S. counterpart, the MSA falls under the jurisdiction of the Ministry of Transport, not of the armed forces.

country in the south²" to live in but their ship developed engine trouble, forcing them adrift into the said Japanese port.

Obviously, it was an asylum case but Tokyo initially treated it as a case of emergency refuge. Nevertheless, the fact that MOFA dispatched officials to Tsuruga port -- the port to which the 11 North Koreans had been transferred -- to interview them only two days after the asylum-seekers' arrival indicated that the GOJ fully knew the political nature of this incident.

Taking place within the context of the ongoing confrontation between North and South Korea, this asylum case from the outset unavoidably placed Japan amidst a heated diplomatic tug-of-war between the two Koreas. Throughout, South Korea demanded the custody of the asylum-seekers from the North, the intensity of which increased as days went by.

On the day after their arrival, Seoul requested Tokyo to promptly grant the defectors political asylum on humanitarian grounds. Furthermore, to press the GOJ to permit the North Koreans to transit to Seoul, South Korea's foreign ministry on January 23 sent the Deputy Director-General of its Asian Affairs Bureau, So Pyong-yong, to Tokyo. For the ROK, the "warm country in the south" which Kim mentioned could have meant no other than itself. Commenting to Yonhap -- a South Korean wire service --, So noted that the amicable relations which existed between his country and Japan would make it

² Kim did not specify which country. Judging from their route of flight, however, the most likely countries were Japan or South Korea.

unlikely that the latter would send them back on the high seas. Reiterating Seoul's official line, he claimed that what they meant by a "warm country" referred to his own country.

Following So's visit to Japan, the ROK sent Assistant Foreign Minister, Kim Tae-chi, to Tokyo on January 26 to discuss the issue with top MOFA leaders. Notably, on that occasion, Kim, while upholding Seoul's position that his country was the most desirable resettlement place, conceded that Seoul and Tokyo would respect the defectors' wishes, thus suggesting some degree of flexibility on Seoul's part.

As if to respond to the above Korean flexibility, the Japanese side came closer to acknowledging that it was a case of exile: on January 28, the deputy chief of the MSA Tsuruga headquarters -- under whose protective custody the North Korean escapees were placed -- told Japanese reporters that the North Koreans were refusing to return home even after being told that their ship was repaired, thus insinuating for the first time officially that the case concerned a flight for refuge, not a maritime accident. Such a shift in Tokyo's stance was reconfirmed when the same MSA official said the next day that the fate of those asylum-seekers would be settled *politically*. Significantly, he acknowledged that on January 28 the GOJ had allowed three South Korean diplomats to interview the North Koreans at Tsuruga.

Reflecting Tokyo's shifting approach, MOFA officials, for the first time since the incident began to officially comment on the case as one of asylum. On January 29, a senior MOFA official told reporters that Tokyo was sounding out several third countries on whether they were willing to receive the

North Koreans. They were doing so because Seoul had dropped its insistence on receiving them and the asylum-seekers had expressed a desire not to return to North Korea or to resettle in Japan. The same MOFA official noted that the governments of those third countries were now on lunar new year holidays and their answers would be delayed, thus hinting that they included Taiwan and Hong Kong³. This MOFA announcement of the "third-country" option resonated on the South Korean side; at the January 29 press conference in Seoul, the South Korean foreign ministry announced that the North Korean defectors wished to go to a third country (other than South Korea) and that Seoul no longer requested their custody from Tokyo. Thus by the end of January Japan and South Korea seemed to have agreed on sending the North Koreans to a third country -- not necessarily as a final destination -- rather than South Korea.

Throughout, the Democratic People's Republic of Korea (DPRK) kept up a strong demand for the immediate repatriation of its 11 nationals, claiming that they were going from Chongjin to Wonsan -- another North Korean port --, but that their boat had drifted into Japanese waters after it had developed engine problems. Pyongyang's story was flimsy particularly given that a supposedly professional crew of an official research ship were all related to each other⁴.

³ *Asahi Shimbun* (1/30/87).

⁴ Later Pyongyang changed its story and claimed that Mr. Man was a criminal and trying to flee with the family of his brother's wife with whom he had an affair to Wonsan. This new version was also flimsy because it would seem meaningless for a fugitive in North Korea, a notorious police state, to move

In any event, the key fact was that from the outset Pyongyang used its "trump card" vis-a-vis Tokyo in trying to recover the defectors: North Korea directly linked this asylum incident to the fate of two Japanese seamen detained in the North since 1983. In other words, the North's basic position seemed to be a possible exchange of these two Japanese and the 11 North Koreans. It hoped that such an exchange might take place between Tokyo and Pyongyang without Seoul's involvement.

Some explanation of the case of the detained Japanese seamen is necessary since it significantly affected the subsequent development of the present asylum case.

In November 1983, a North Korean army sergeant, Min Hong-ku fled North Korea hiding himself on a Japanese freighter, the No. 18 *Fujisan-maru* (which was berthed at Nampo, a North Korean port near Pyongyang). Upon arrival in Japan, Min was turned over to the Japanese authorities and detained on charges of illegal entry. When the same freighter returned to Nampo a few days later, all five crew members were arrested by the North Korean authorities on charges of espionage. While three of them were released in January 1984, skipper BENIKO Isamu and chief engineer KURIURA Yoshio had been detained there since. Pyongyang detained them apparently to use them as hostages in exchange with Min.

Thus, on January 24, 1987, four days after the arrival of the North Korean asylum-seekers, Pyongyang threatened Tokyo, saying that, should the latter deliver them to Seoul, it would have a serious impact on the solution of the Japanese hostage case⁵. As a result, throughout this asylum case,

from one city to another for purposes of flight.

⁵ A letter from Son Song-pil, chairman of North Korea's Red Cross Society to HAYASHI Keizo, his Japanese counterpart on January 24. *Asahi Shimbun* (1/25/87).

Tokyo was obliged to act under this highly sensitive constraint. In fact, MOFA, fearful of antagonizing Pyongyang, permitted representatives of the Fukui branch of *chosen-soren* -- the pro-North organization of Korean residents in Japan -- to meet with the defectors on January 21, before permitting South Korean diplomats to do so⁶.

But the question remains as to why Tokyo and Seoul had agreed on the third-country option. In this regard, recent remarks by the former president of South Korea, Chon Du-hwan during whose presidency the above asylum incident took place, will help shed some light on this question⁷.

According to Chon, Japan and South Korea made the following plan for the North Korean defectors: after the ship was repaired, the GOJ would let the ship with the 11 North Koreans aboard go back on the high seas. Those "heroes" would be received by South Korean navy ships awaiting them in international waters. This plan failed, however, because it was discovered that North Korea had also deployed ships in the nearby waters trying to catch those "traitors," thus threatening an armed conflict between North and South. Such a conflict was averted by the timely intervention of the US, which realized the danger of the situation and requested Tokyo not to send the defectors out to sea, Chon stated⁸. Consequently, Tokyo and Seoul opted for a third country

⁶ *Fukui Shimbun* (1/23/87).

⁷ *Yomiuri Shimbun* (1/5/94).

⁸ In the absence of media reports it is difficult to know exactly when this US intervention took place, if it ever did.

option.

From Japan To Taiwan

Japan and South Korea seem to have agreed on a third-country option by the end of January, as noted above⁹. Taiwan as the most likely recipient of the North Koreans was mentioned first in a Yonhap dispatch from Tokyo (not in the Japanese press). Quoting a high GOJ source, that dispatch noted that while Taiwan might not grant permanent resettlement for the defectors, it might receive them on a short-term basis on the condition that they would eventually resettle in South Korea¹⁰.

On February 4, two weeks after the asylum-seekers' arrival in Japan, the GOJ formally announced that they would be sent to Taiwan; on that day Chief Cabinet Secretary GOTODA Masaharu said at a press conference that they would be sent to Taiwan but he also claimed -- without much credence -- that he did not know their final destination. Asked about Pyongyang's threat to Tokyo regarding the Japanese hostages, he replied that Tokyo viewed the two issues separately and would continue to work on the seamen's release¹¹.

⁹ Even before this, Yonhap had reported on January 26, quoting diplomatic sources in Tokyo, that the GOJ was sounding out several Asian countries (including the Philippines, Taiwan, Malaysia, and Brunei) as a possible resettlement place for the North Koreans. Yonhap (Tokyo: 1/26/87). Yet it is conceivable that Tokyo and Seoul were trying to deflect international attention away from the "real" operation by airing such a third-country option.

¹⁰ Yonhap (Tokyo, 2/2/87), as monitored by FBIS.

¹¹ Kyodo (Tokyo, 2/4/87), as monitored by FBIS.

On February 6, the Taiwanese Government was reported to have agreed to let the North Koreans in the country on a "temporary" basis¹². Up to this point, Tokyo had -- perhaps deliberately -- left vague two important points concerning their flight to Taipei: the duration of their stay in Taiwan and their final destination.

MOFA, the chief agency handling this asylum case, faced at least two immediate problems in conjunction with this Taiwan operation. The first problem concerned the safety of the North Korean defectors. How should their airlift be undertaken? The use of Self Defense Forces aircraft was simply out of the question because it would violate the SDF law which prohibited their deployment overseas¹³. To charter a commercial airplane -- most likely a Japan Air Lines (JAL) jet -- would entail security risks. As a compromise, MOFA decided to use a MSA plane -- technically a Ministry of Transport plane -- and contacted that Ministry on February 6. Minister of Transport HASHIMOTO Ryutaro agreed on the use of an MSA plane on the condition that its flight to Taipei be logistically supported by the Defense Agency and monitored by the Agency's radar system for security purposes¹⁴.

Furthermore, to reinforce the operation's safety, MOFA decided to send a senior official, TANINO Sakutarō, Vice-Director General of its Asian Affairs Bureau to accompany

¹² *Kyodo* (Tokyo, 2/6/87), as monitored by FBIS.

¹³ Such SDF airlifts of refugees, broadly defined, became a point of controversy during the Persian Gulf War of 1990-91. See Chapter 8.

¹⁴ *Asahi Shimbun* (2/8/87).

them, probably in the belief -- unwarranted though -- that North Korea would not dare to attack an official GOJ plane with a high-ranking Japanese official aboard.

The second problem concerned the issue of "the two Chinas." Predictably, dispatching a GOJ plane with a high-ranking official aboard to Taiwan would antagonize China: the terms of the 1972 Japan-China Joint Declaration, which normalized their bilateral relations, dictated that Japan recognize Beijing as the sole legitimate diplomatic representative of the Chinese people. Therefore, sending an official mission to Taiwan would violate that declaration. To avert a likely diplomatic fallout with Beijing, Tokyo sent a senior MOFA official to Beijing to brief them on the imminent Taiwan operation¹⁵. Moreover, on the night of February 7, as the MSA plane departed Japan for Taiwan, the Director-General of MOFA's Asian Affairs Bureau Fujita called in a minister from the Chinese embassy in Tokyo to brief him on the nature of the mission in progress. That Chinese minister reportedly noted that since North Korea was a friend of China, China would expect Japan to meet the North's wishes, and the fact that a senior GOJ official was aboard the official plane was "incomprehensible and regrettable¹⁶." Despite all this, the Taiwan mission took place on February 7¹⁷.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ The mission proceeded as follows: during the wee hours of February 7, the 11 North Koreans were flown by two helicopters to MSA's Miho air base inside Yonago Airport, Tottori Prefecture, arriving around 8 A.M. A MSA plane with the 11 Koreans and two MOFA officials aboard, including

Interestingly enough, Vice-Director General Tanino, in a diplomatic gesture to Beijing, did not get off the plane at Taipei airport and immediately returned home aboard the same aircraft¹⁸.

Predictably, Pyongyang protested strongly against this operation, with the North Korean Central News Agency (KCNA) - - an official propaganda organ -- calling it as an act of "international terrorism." More specifically, KCNA claimed that North Korea had so far handled Japanese fishermen who had violated its laws leniently and had been even dealing gently with two Japanese sailors who had committed espionage, in the interests of Korean-Japanese friendship. It warned that (because of this Taiwan operation) Pyongyang could no longer be lenient unilaterally and would strictly deal with all Japanese offenders in accordance with its laws¹⁹. Specifically, it threatened that the two Japanese sailors

Tanino (former Japanese minister to South Korea), took off from Miho base at around 3:30 P.M. bound for Naha, Okinawa Prefecture for refueling. At approximately 9 P.M. the plane landed in Naha. After the Koreans underwent emigration procedures and physical checkups, it left Naha at around 10 P.M. heading for Taipei, where it landed in the very early morning of February 8.

¹⁸ Tanino told the present author that he was later "reprimanded" by both Beijing and Taipei for his action; a Chinese diplomat said to him, "our friend Mr. Tanino visited Taipei against our wishes," and a Taiwanese official said, "our friend Mr. Tanino did not even greet us in Taipei." The author's interview with Tanino (Tokyo: March 1994). The other MOFA official stayed in Taipei for a short while, attending to necessary immigration procedures for the North Koreans.

¹⁹ KCNA (Pyongyang, 2/7/87), as monitored by FBIS.

would not be soon released²⁰.

Tokyo responded by reiterating its earlier position that it handled the case from a humanitarian viewpoint, respecting the wishes of the North Korean asylum-seekers. Moreover, it criticized North Korea's linking the present asylum case with the detention of the Japanese sailors, calling it "utterly inappropriate and regrettable." Such a GOJ stance was underscored at the highest level when Prime Minister Nakasone, asked about the asylum case, said that Japan had sent them to Taiwan in accordance with humanitarianism and international law²¹.

From Taiwan To South Korea

After the North Koreans' arrival in Taipei in the early morning of February 8, however, a situation unfolded, utterly unforeseen by Tokyo: they were airlifted to Seoul in no more than 20 hours after their ROC arrival! At around 10:30 P.M. the same day, a government-chartered Korean Air Lines (KAL) plane transported them to Seoul, where they received a hero's welcome.

This unexpected (and premature) airlift left Tokyo in great embarrassment and bewilderment. While it understood that the 11 North Koreans would be transferred from Taiwan to

²⁰ Pyongyang Radio reported on February 8 that Son Song-pil, the chairman of North Korea's Red Cross Society had sent a letter on February 7 to his Japanese counterpart, HAYASHI Keizo, in which Son stated warnings to that effect. *Asahi Shimbun* (2/9/87).

²¹ *NHK General Television* (Tokyo, 2/8/87), as monitored by FBIS.

South Korea eventually, it did not expect this would happen so quickly. MOFA sources conceded later on the night of February 8 -- shortly after the North Koreans' arrival in Seoul -- that the development was "beyond our imagination²²." The next day, MOFA sources reported to the Japanese press as follows:

Taipei had rejected Tokyo's proposal for at the minimum a three-month "cooling-off" period after their arrival in Taipei.

On the other hand, Seoul had assured Tokyo that the former would take into account the latter's concerns of timing. Tokyo had hoped that the "cooling-off" period would be 2 or 3 days at a minimum²³.

From Tokyo's viewpoint, the shorter the "cooling-off" period in Taiwan became, the worse its impact on Japanese-North Korean relations, because it would come closer to a worst-case scenario for Pyongyang, namely, a direct and immediate transfer of its defectors from Japan to South Korea. Given that Pyongyang had already criticized the Taiwan operation as a flimsy cover for the eventual transfer of the North Koreans to South Korea and now that their suspicions had apparently proved true, Tokyo feared that the fate of the two Japanese hostages would be significantly compromised. Thus, Tokyo subsequently denied any prior knowledge of Seoul's hurried transfer: late on the night of February 8, immediately after their arrival in Seoul, MOFA announced in Tokyo that the arrangement for their Taipei-Seoul transfer was made only between the defectors themselves and the Taiwanese authorities. Chief Cabinet Secretary Gotoda

²² *Asahi Shimbun* (2/9/87).

²³ *Asahi Shimbun* (2/10/87).

reiterated this official stance, telling the press the next morning that there was no prior arrangement between Tokyo and Taipei on the refugees' airlift to South Korea; he noted that Tokyo was not in a position to comment on it because it was Taipei's decision. Furthermore, Gotoda again criticized Pyongyang's linking the fate of the Japanese seamen to that of the North Koreans, stressing the different nature of the two cases²⁴.

Tokyo's diplomatic embarrassment had several domestic repercussions. First of all, MOFA was attacked by other ministries. At a February 10 Cabinet meeting, Foreign Minister Kuranari reportedly faced strong criticisms from his colleagues: Minister of International Trade and Industry Tamura scored MOFA's handling of the case calling it "clumsy," pointing out that the defectors' immediate transfer from Taiwan to South Korea was transparent; Minister of Transport Hashimoto complained that the true victim was his ministry because its aircraft was used for the airlift from Japan to Taiwan; Minister of Justice Endo commented that after all, their initial transfer (to Taipei) was unnecessary because they were immediately afterwards transported to Seoul²⁵.

KUNO Chuji, an LDP member of parliament and the Chair of the *nitcho yuko sokushin giin renmei* ("the Federation of Parliamentarians for the Promotion of Japanese-North Korean Friendship"), who had been working on the release of the

²⁴ *Asahi Shimbun* (2/9/87, evening ed.).

²⁵ *Asahi Shimbun* (2/10/87, evening ed.).

Japanese seamen and other pending bilateral issues, blasted the government's handling of the case, arguing that his federation's 5-year effort to improve Tokyo-Pyongyang relations had come to nothing and now were frozen as before²⁶. TANI Yoichi, the above federation's Acting-Chairman and an LDP member reiterated the criticism of MOFA: "I have no qualms about protecting the human rights of the 11 North Koreans, but what will happen to those of the two Japanese seamen?"²⁷

Of course, the opposition attacked the government. On February 9, the Chairman of the JSP's Special Committee on Korean Affairs, YASUI Yoshinori met with Foreign Minister Kuranari and the Director-General of MOFA's Asian Affairs Bureau Fujita, and accused the government of seeking from the outset to send the North Koreans to Seoul via Taipei, thereby worsening Japanese-North Korean relations as well as antagonizing China²⁸. Predictably, the Tokyo headquarters of the DPRK-oriented *chosen-soren* blasted Tokyo's handling of the case as a "barbarous act"²⁹.

²⁶ *Asahi Shimbun* (2/9/87). On February 3 and 4, Kuno had met with his North Korean counterpart in Beijing at the latter's invitation. Reportedly both sides had concluded the following agreement: North Korea would release the two Japanese sailors on the condition that the 11 North Koreans would remain in Japan for the time being; North Korea also would renew the North Korea-Japan provisional fishing agreement. As noted before, the GOJ had airlifted the North Koreans to Taiwan contrary to the terms contained in that agreement. *Mainichi Shimbun* (2/13/87).

²⁷ *Asahi Shimbun* (2/11/87).

²⁸ *Asahi Shimbun* (2/10/87).

²⁹ *Asahi Shimbun* (2/9/87, evening ed.).

Twenty days after their arrival in Japan, the asylum case of the 11 North Koreans was "resolved." Nevertheless, it was resolved at the cost of the GOJ "losing face" -- particularly MOFA -- and also at the cost of deteriorating Japanese-North Korean relations. From this point onwards, Tokyo would be forced to focus its attention on the rescue of the two Japanese hostages in North Korea as well as the fate of the defected North Korean soldier detained in Japan.

Before turning to the above, however, we will review the whole process of this complex asylum crisis so far in order to better grasp why the GOJ behaved as it did. We will do so from the perspective of policy trade-offs. In this case, how did the GOJ balance human rights concerns and its perceived national interests? What were Japan's goals, implicit and explicit, and what options were available? How did the GOJ relate options to goals, and the converse?

Human Rights vs. "National Interests"

Japan's major policy goals as they related to the above asylum crisis included:

1. protecting the lives and human rights of the 11 North Korean defectors.
2. accelerating the release of the two Japanese seamen from North Korea.
3. maintaining "friendly" Japanese-South Korean relations.
4. maintaining "friendly" Japanese-North Korean relations.
5. maintaining "friendly" Japanese-Chinese relations.
6. maintaining Japanese national security (esp. preventing terrorist attacks on Japanese nationals and interests in and outside Japan).
7. protecting Japan's reputation regarding the respect of foreigners' human rights.
8. preventing future influxes of North Korean asylum-seekers into Japan.

9. renewing the Japanese-North Korean fishing agreement³⁰.

At least four policy options -- "durable solutions" -- were available for Tokyo in dealing with the North Korean defectors.

- A. integration in Japan.
- B. repatriation to North Korea.
- C. resettlement in South Korea.
- D. resettlement in a third country other than South Korea.

TABLE 5: POLICY GOALS AND DURABLE SOLUTIONS

	Positive		Neutral		Negative		
1	D	----	A	-----	C	-----	B
2	B	----	D	-----	A	-----	C
3	C	----	D	-----	A	-----	B
4	B	----	D	-----	A	-----	C
5	B	----	D	-----	A	-----	C
6	B	----	D	-----	A	-----	C
7	A	----	C	-----	D	-----	B
8	B	----	D	-----	C	-----	A
9	B	----	D	-----	A	-----	C

Table 5 shows the impact of each of the four durable solutions vis-a-vis each of the nine policy goals (the horizontal continuum represents the nature and degree of such an impact: the left end represents the most positive impact and the right end the most negative impact). For example, with respect to goal "1," i.e., the protection of the

³⁰ This bilateral fishing agreement had expired at the end of 1986.

defectors, the four solutions can be placed on the continuum as "D (third-country resettlement) - A (integration in Japan) - C (resettlement in South Korea) - B (repatriation to North Korea)" in that positive to negative order.

If we look at the left-most column, i.e., that of the most positive impact, we will find "B" as the most preferable in order to achieve many goals (there are six B's on that column). But we know that the alternatives Tokyo actually adopted were "C"³¹ and "D", not "B." Thus, by looking at the policy alternatives which the GOJ actually adopted, we can speculate *post-facto* on the policy goals pursued by the GOJ. These were "1," "3," and possibly "7"³².

This matrix tells us two more things of significance.

First, "C" and "D" which were actually adopted by the government to pursue "1," "3," and "7" would also have had the "second-best" positive impact on nearly all the rest of the goals (there are seven D's in the second column).

Second, the most negative impact which "C" might have on many goals (i.e., "2," "4," "5," "6," and "9") would be potentially lessened if "D" was combined with "C"³³. Thus, we are now better able to understand the extent to which the GOJ must have been embarrassed and upset when it found out that

³¹ In reality, the content of "C" was attenuated because it was a temporary stay (in Taiwan) rather than resettlement.

³² Initially, they were "1" and possibly "7" because, as we recall, the GOJ planned to hand over the North Koreans directly to South Korea on the high seas.

³³ "B" would have had the most attenuating effect on "C." But "B," i.e., repatriation to North Korea, and "C," i.e., resettlement in South Korea, were mutually exclusive.

South Korea unexpectedly had airlifted the defectors to Seoul on the same day as they arrived in Taipei. This was so because such an action virtually wiped out the moderating and positive effect of "D" vis-a-vis almost all the GOJ's -- assumed -- policy goals.

In summary, Japan seems to have focused on at least three major policy goals in this asylum crisis: protecting the escapees; maintaining "friendly" Japanese-South Korean relations; and protecting its own human rights reputation. It did so by means of a combination of promoting a temporary stay in Taiwan and resettlement in South Korea. Nevertheless, because it failed to obtain South Korea's cooperation on the transfer issue, it lost face, internationally as well as domestically, and dangerously antagonized North Korea, with the result that the prospects for an early release of the Japanese hostages were dashed³⁴. The only positive result was the fact that the human rights of the North Korean defectors were protected³⁵.

The Japanese Seamen vs. the North Korean Soldier

³⁴ Additionally, the renewal of the fishing agreement with North Korea was postponed indefinitely and Japan-China relations soured to some extent.

³⁵ To some extent this asylum affair helped preserve "friendly" Japanese-ROK relations to the extent that the arrival of "eleven heroes" from the North politically rescued the Chon government which had been in trouble because of public outrage against the recent police torture and killing of a Seoul National University student. However, there is no telling whether or not Tokyo was consciously following such a strategy to aid Chon at the time. KURODA Katsuhiko, "Kitachosen boto pipuru o megutte," *Korea Review*, no. 298 (April, 1987), pp. 44-5.

With the asylum crisis involving the 11 North Koreans resolved, Tokyo found itself with markedly deteriorated relations with North Korea and accordingly diminished prospects for release of the two detained Japanese seamen.

The most drastic solution under these circumstances would have been a hostage exchange, namely, exchanging the two Japanese seamen with the previously mentioned North Korean soldier detained in Japan. In fact, one could argue that one major reason for the nearly 4-year (since November 1983) detention of the defected soldier was Tokyo's veiled hope that North Korea might informally suggest such an exchange at some point in the future.

This scenario was out of the question, however, because it would have prompted devastating international criticism against Japan for rescuing its nationals at the sacrifice of a foreign refugee. Furthermore, after having allowed the 11 North Koreans to seek exile in the South for "humanitarian" reasons, Tokyo was under strong pressures to treat the soldier in a similar manner.

Thus, with the option of repatriation virtually eliminated, Tokyo had three alternatives left, similar to the case of the North Korean family: these were resettlement in South Korea; resettlement in a third country other than South Korea; or integration in Japan.

At the domestic level, however, this case was different from the previous one involving the North Korean family: previously, MOFA was able to enjoy a near monopoly over the decision-making process and thus to emphasize diplomatic considerations. This time, the soldier, Min Hong-ku, had been

under the custody of the MOJ³⁶, which made it difficult for MOFA to freely handle the case. In fact, MOFA-MOJ rivalry was to complicate resolution of the case.

On February 14, 1987, a week after the North Korean family's transfer to Seoul, the MOJ expressed the following opinion about the Min case³⁷:

Min should be allowed to go to South Korea -- i.e., a resettlement country of his own choice -- and to this end, should first be granted provisional release. This is based on the following two reasons: since the GOJ handled the case of the 11 North Koreans from a humanitarian viewpoint, it should do the same with Min; since Pyongyang was very much upset with Tokyo (for its handling of the North Korean family) anyhow, maintaining the status quo (i.e., continued detention of Min) would do no good in improving the chances of the two seamen's release.

This MOJ stance was not solely based on humanitarianism. As its senior officials conceded, the chances were high that the ministry would lose a legal battle if Min filed a lawsuit demanding an early execution of his deportation order³⁸.

On the other hand, MOFA argued that sending Min to South Korea on the heels of the North Korean family would further antagonize North Korea, thus worsening the prospect of the

³⁶ Since his November 1983 arrival on the Fujisan Maru, Min had been detained at the MOJ's Yokohama immigration detention center on charges of illegal entry, awaiting the execution of his deportation order.

³⁷ *Asahi Shimbun* (2/14/87).

³⁸ Min's case was unprecedented in that the execution of his deportation order had been suspended for as long as 3 years. This made MOJ's position vulnerable. In fact, Min had filed a complaint with *Nichibenren's* (the Japan Lawyers' Association) Human Rights Protection Committee, claiming that MOJ's protracted detention of him violated his human rights.

release of the Japanese hostages³⁹. Meanwhile, on February 18, MOFA announced its plan to sound out several Western third countries with diplomatic relations with North Korea about accepting Min for resettlement⁴⁰. On announcing this plan, a senior MOFA official revealed the proposal North Korea had made at the beginning of January 1987 -- shortly before the arrival of the North Korean family -- to the effect that Pyongyang free the Japanese seamen in exchange for Tokyo's sending Min to a third country of the former's choice. Apparently, MOFA believed -- rather optimistically -- that this North Korean proposal could be dusted off for new use. However, the concerned MOFA official did acknowledge that it would be some time before Pyongyang calmed down and listened to Tokyo⁴¹.

In these circumstances Seoul made a new move concerning the Min case. On February 21, the ROK's Foreign Minister Choe Kwang-su called in the Japanese Ambassador in Seoul to request that Tokyo respect Min's wishes and send him to South Korea in accordance with international law/customs and

³⁹ In this connection, on February 16, members of the Federation of Parliamentarians for the Promotion of Japanese-North Korean Friendship disclosed to the press the contents of a letter (from the DPRK to the federation) protesting Tokyo's treatment of the North Korean family. That letter noted, among other points, that both skipper Beniko and chief engineer Kuriura had been sentenced to twenty years' imprisonment on charges of espionage. MOFA claimed, however, that it could not confirm the existence of such a sentence. *Asahi Shimbun* (2/17/87).

⁴⁰ *Asahi Shimbun* (2/19/87).

⁴¹ In the end this third-country option did not take place. Tokyo reportedly sounded out the U.S., Canada, and the U.K. to no avail. *Asahi Shimbun* (2/22/87).

humanitarian practice. Moreover, F.M. Choe objected to Tokyo's ongoing third-country option and stressed the necessity of Tokyo's handling the Min case in the same way as it had that of the North Korean family⁴². This was the first time that Seoul officially had requested Min's custody through diplomatic channels⁴³.

Clearly, such a request boosted the Justice Ministry's domestic position as far as the Min case was concerned and weakened that of the Foreign Ministry's. On the other hand, Justice Minister Endo was under pressure from the pro-North Korean M.P. KUNO Chuji to adopt for the time being a wait-and-see attitude vis-a-vis the Min affair⁴⁴.

On February 24, MOFA and MOJ jointly discussed Min's fate and reached an agreement; that is, MOJ withheld any move on Min until MOFA secured a third country (other than South Korea) for his resettlement⁴⁵. Nevertheless, MOFA's failure to find such a third country frustrated the above bi-ministerial agreement, thereby leaving Tokyo only two options regarding his fate, i.e., resettlement either in Japan or in South Korea. Since MOFA strongly opposed the latter option, it was decided that Min be set free on a Provisional Release basis to resettle in Japan. In November 1987, MOJ released

⁴² *Asahi Shimbun* (2/21/87, evening ed.).

⁴³ The previous day, South Korean Prime Minister Rho Shin-young had made similar remarks, underlining the point that Japan's pursuit of a third-country option might negatively impact Japanese-South Korean relations. *Asahi Shimbun* (2/21/87).

⁴⁴ *Asahi Shimbun* (2/21/87).

⁴⁵ *Asahi Shimbun* (2/25/87).

him from its Yokohama Immigration Detention Center, thus terminating almost four years of detention⁴⁶.

Now Tokyo was able to shift its focus onto the issue of the two Japanese sailors detained in North Korea. As noted earlier, since North Korea's chief purpose for taking them hostage was to exchange them with Min and now that Min's release rendered such an exchange unattainable, the only way for Tokyo to gain their release was to negotiate with Pyongyang. In the absence of diplomatic relations between the two nations, that task fell on the governing LDP as well as the JSP -- the only Japanese political party that had relations with the North's Korean Workers' Party (KWP).

Thus, after several JSP leaders, including Chairwoman DOI Takako, had visited Pyongyang to test the waters, the LDP and the JSP sent a joint mission there in September 1990. Led by the LDP's powerful don and ex Vice-Premier KANEMARU Shin and the JSP's Vice-Chairman, TANABE Makoto, the mission successfully obtained the promise of the seamen's release from Secretary General Kim Il Sung in exchange for a three-party (LDP-JSP-KWP) declaration. That declaration not only promised the initiation of talks to establish diplomatic relations but also contained such words as Japan's "profound gratitude towards a magnanimous, humanitarian measure" taken by the KWP as well as the DPRK⁴⁷. On October 11, 1990,

⁴⁶ As of 1988, he still lived near Tokyo. SAKURAI Yoshiko, "Dai-juhachi fujisan-maru: nagasugita higeki no genkyo," *Bungei-shunju* (November 1988), pp. 262-274.

⁴⁷ *Nihon Keizai Shimbun* (9/28/90; 10/11/90, evening ed.). The reasons for Pyongyang's decision to release the hostages included: (1) its wish to counter Seoul's move to establish

Captain Beniko and chief engineer Kuriura of the No.18 *Fujisan-maru* landed at Haneda Airport, Tokyo, after a nearly seven-year detention in North Korea.

Summary

How should we interpret Japan's handling of the above asylum case within the framework of the international refugee regime?

The first thing to note is that throughout the incident, Tokyo did not grant Convention refugee status to any of the 11 North Korean asylum-seekers nor the North Korean soldier. Initially, the GOJ sought to depoliticize the case of the North Korean family by handling it as an ordinary maritime accident. As such, the 11 North Koreans were permitted to land on the basis of the Immigration Act's Article 18 -- "landing permission for temporary refuge⁴⁸." Although the political nature of the case became increasingly apparent as the days went by, at no point did Tokyo consider granting refugee status. The GOJ's rationale for not granting refugee status was that should the North Koreans decide to resettle in Japan, their lives might have been endangered because of the

diplomatic relations with Moscow by mending its relations with Tokyo; (2) its economic stagnation was so serious that it desperately needed economic aid and investment from Tokyo. In this connection, Tokyo had insisted previously that talks to establish diplomatic relations come before such economic assistance/war reparation, whereas Pyongyang had demanded some form of economic aid as a precondition for such talks. Thus, on this occasion Pyongyang moved closer to Tokyo on the issue of diplomatic relations.

⁴⁸ Until March 1994 the GOJ used this article to permit Indochinese boat people to land in the country.

existence of pro-North Korean groups therein (e.g., *chosensoren*)⁴⁹.

The GOJ further claimed that its basic policy was to respect their free will: it respected their wish to go to a third country and thus transferred them to Taiwan, a country relatively safe for escapees from the communist camp. Nevertheless, during the negotiations which took place between the GOJ and UNHCR's Tokyo Branch, the latter reportedly expressed its opinion that the GOJ should grant them refugee status because Tokyo's responsibility for international burden-sharing (i.e., refugee intake) precedes the respect for the wishes of asylum-seekers⁵⁰. Tokyo did not accept this UNHCR request presumably because it feared that to grant refugee status to those North Koreans -- i.e., an equivalent of Japan's formal recognition of the existence of political persecution in the DPRK -- would further antagonize North Korea, which had already been upset with the Japanese refusal to repatriate Min.

In the final analysis, the above asylum case was resolved through resettlement in South Korea, with the result that the North Korean family's human rights were protected without the

⁴⁹ One may wonder if the North Koreans would have been safer in South Korea (than in Japan), which, to everybody's knowledge, has been infiltrated by Pyongyang's intelligence personnel. This skepticism becomes stronger if we recall that the North Koreans themselves were reluctant to defect to the South for the very same security reasons.

⁵⁰ In his lecture at *Horitsu Fujo Kyokai* (Legal Aid Association: LAA) in Tokyo on July 21, 1987, Henry M. Domzalski, UNHCR-Tokyo's legal officer, argued that Japan should have recognized them as refugees regardless of their final destination. *Nihon no nanmin nintei o megutte* (Tokyo: LAA, December 1987), pp. 9-10.

use of formal refugee recognition. Nevertheless, such protection was possible not primarily because the GOJ sought to protect the human rights of the North Korean family. It was rather because that protection coincided with Japan's foreign policy interests, i.e., preserving its relations with South Korea as well as protecting its international reputation in the area of human rights.

Furthermore, Japan's treatment of Min was much harsher than in the above case. This defected North Korean soldier was treated as simply an "illegal entrant" and held in an immigration detention center for nearly four years, with his human rights, including his right to asylum, seriously violated. This happened not least because Pyongyang linked his fate directly to that of the Japanese hostages. Tokyo denied him refugee status although he specifically requested it. With his repatriation out of the question and the prospect of his third-country resettlement virtually unattainable⁵¹, Tokyo had two choices, i.e., resettlement in Japan or in South Korea. It rejected the latter option because it felt that such an action would further antagonize Pyongyang (additionally, Tokyo might have felt that it had done Seoul enough favors by letting them have the North Korean family). Thus, by default, Japan granted Min *de facto* protection within its territory, which was acquiesced to by

⁵¹ The U.S., among other Western nations, refused to receive Min for resettlement partly because of its belief that Japan should be primarily responsible for his fate; and partly because of cold foreign policy calculations that, given his low military rank, Min was unlikely to possess information of sufficient strategic value for Washington.

Pyongyang hoping to improve its relations with Tokyo.

In conclusion, in both cases, Japan followed the fundamental refugee-regime norms of non rejection at the frontier and non-refoulement while bypassing some of the regime's formal rules and procedures -- e.g., the examination of bona fide asylum-seekers to determine their refugee eligibility. Obviously, one can argue that Japan pursued such an informal, compromise approach due to a factor specific to these cases, i.e., its preoccupation with the fate of the Japanese hostages.

Nevertheless, we can argue more generally at this stage that such an approach -- i.e., a strong preference to use informal (rather than formal) methods of refugee protection when pressed -- reflects Japan's predominant foreign policy style -- i.e., a fundamental reluctance to disrupt *existing* bilateral relations with other governments by officially articulating its political judgements about them. Such a fundamentally conservative, non-confrontational approach to international relations is even more visible in Japan's dealing with Chinese asylum-seekers.

2. CHINESE ASYLUM-SEEKERS

Introduction

This section analyzes the asylum situations in Japan involving Chinese students, which took place in the aftermath of the June 4, 1989 Tiananmen Square massacre. The 1989 Tiananmen Square massacre made Japanese-Chinese relations tense partly because it generated a series of difficult asylum situations for Tokyo. Such cases included: the landing

of a hijacked Air China jet; the defection of a Tokyo-posted Chinese diplomat, and the asylum request of Chinese students in Japan, many of whom were opposed to their Government and did not wish to return home under the current circumstances. In what follows, however, we will focus on the asylum case of Chinese students, given its significant long-term implications⁵² for Japanese-Chinese relations.

The West's Response to the Tiananmen Square Massacre

The severe and large-scale repression involved in the Tiananmen Square military crackdown of June 4, 1989 challenged each state committed to international human rights to respond in various ways. It was particularly so for the seven advanced industrialized nations ("Group of Seven") which convened in Paris on July 15-16, 1989 to hold the "Summit of the Arch." Responding to the Tiananmen incident, this "Group of Seven" sought to implement a coordinated policy, particularly with regard to the protection of Chinese nationals found in their territory from involuntary repatriation⁵³. Nevertheless, such policy coordination did not prevail largely because of Japan's less than generous policy towards Chinese students therein.

Below we first examine Japan's immigration/asylum policy

⁵² One of those implications is that many of those Chinese students may possibly be future leaders in their country.

⁵³ The "Declaration on China" at the July 15, 1989 Summit of the Arch decided, among other things, to "extend the stays of those Chinese students who so desire." *U.S. Department of State Bulletin* (September 1989), p. 2.

and practices towards Chinese students on its own territory and then look at Japanese-Chinese interactions within the context of the protection of those students therein.

Japan's Policy Towards Chinese Students on Its Territory

First, it would be useful to look at the size of the Chinese student community in Japan at around the time of the Tiananmen incident. A year after the Tiananmen incident, there were approximately 63,000 Chinese students in Japan, the largest such community outside China itself (e.g., the U.S. had 50,000 at that time). Of this, 15,000 were *ryugakusei* -- 4-year university students -- and the remaining 48,000 were *shugakusei* -- nearly all of them Japanese Language school students⁵⁴.

According to the Japanese branch of the Federation for a Democratic China (FDC) -- a Chinese dissident student group whose headquarters was set up in Paris shortly after the Tiananmen incident --, at least one third of the above 63,000

⁵⁴ 4-year university students were normally on scholarships from the Japanese or Chinese Governments (*kokuhi ryugakusei*). They were the creme of the Chinese students, in a sense. On the other hand, the majority of the *shugakusei* were there at their own expense. *Kyodo* (Tokyo, 6/4/90), as monitored by FBIS; JCLU, *op. cit.*, p. 19.

It should be noted, however, that the latter visa category, i.e., *shugakusei*, has been "abused" (by both Japan and China) as an informal channel of importing -- "exporting," from the Chinese perspective -- unskilled laborers. Its main merit is that it allows "students" to stay in Japan for six months (rather than 90 days as in the case of tourist visas) and to work up to 20 hours a week. Thus the issue of *shugakusei* overlaps with the issue of foreign workers in Japan. For the problem of *shugakusei*, see, for example, WAKABAYASHI Keiko, *Chugoku jinko chotaikoku no yukue* (Tokyo: Iwanami shoten, 1994), pp. 193-201.

students were involved in some form of pro-democracy movement in Japan after the Tiananmen incident⁵⁵. Furthermore, the political activities of those students in Japan, as elsewhere, were closely monitored by Chinese diplomats posted in Japan. Thus, one may speculate that at least a third of the total, i.e., roughly 19,000 Chinese students might well have been persecuted if they had returned to China.

Thus, the immediate question facing those students was: would the GOJ keep the promise it had made at the Summit of the Arch and specifically permit them to extend their stay?

In this connection, on June 29, 1990, nearly one year after the Tiananmen incident, the Kaifu Cabinet made a formal reply to the "Outlines of Questions Concerning the Immigration Control and Refugee Recognition Act" which had been submitted on June 21, 1990 by KITAMURA Tetsuo -- a Socialist member of the House of Councilors. In his "Outlines" Kitamura requested that the GOJ handle the legal status of the Chinese students in Japan from the human rights viewpoint.

The above government reply promised the following:

Applications for visa renewals (from Chinese students) will be examined on a case-by-case basis.

The Immigration Act will apply to "overstayers" so that they may be deported.

However, the above "overstayers" may not be deported to places where their life or freedom may be threatened because of their political opinions, etc. (emphasis added).

This reply acknowledged that there were 16 Chinese students who had applied for visa extensions for fear of persecution should they return and 4 students who had

⁵⁵ *Asahi Shimbun* (9/20/90).

overstayed due to passport or visa expiration⁵⁶.

In brief, GOJ policy was that it might deport Chinese students depending on their individual circumstances (that is what was meant in practice by "on a case-by-case basis") but they would not be deported to China⁵⁷. Clearly, this position fell far short of the commitment summit member states -- including Japan -- made at the July 1989 Summit of the Arch.

Faced with such an inhospitable GOJ attitude, the Chinese students took the initiative to protect themselves from forcible return: eight members of the FDC-Japan requested TANIMURA Shotaro, chairman of the Human Rights Committee of *nichibenren* (JFBA) to file an action of *jinken kyusai* ("Relief of Human Rights") with Prime Minister Kaifu as well as Justice Minister Kajiyama, requesting visa renewals for Chinese students who did not wish to return for fear of persecution⁵⁸.

Criticizing the GOJ's June 1990 policy guidelines concerning the Chinese students, FUJIMORI Katsutoshi, a Tokyo lawyer supporting them, noted that the Japanese policy of a "case-by-case" examination had the effect of forcing Chinese students to confess their anti-PRC activities, with the result that they might be penalized should they be

⁵⁶ *Asahi Shimbun* (6/29/90, evening ed.).

⁵⁷ Admittedly, this is the most liberal interpretation of the GOJ position because it assumes that the GOJ judges China to be "unsafe."

⁵⁸ More specifically, FDC-Japan requested through *Nichibenren* that visa renewals be granted immediately; "overstayers" be granted official permits of stay; and applications for refugee status be accepted regardless of the 60-day rule. *Asahi Shimbun* (9/15/90).

repatriated. The GOJ should allow unconditional visa extensions for Chinese students in accordance with the spirit of the agreement at the Paris Summit, he further stated⁵⁹.

In fact, this case-by-case approach created difficulties for the Chinese students: some had their applications for visa extensions left pending for the reason that they were not registered with schools at the time of application; some overstayers had their passports stamped *shukkoju junbi* ("preparing for departure," a three-month period), thus practically being forced to leave Japan. By mid-1990, the MOJ had rejected over 500 requests for visa extensions from Chinese students⁶⁰.

Let us contrast this with other summit member states' policies towards Chinese students in need of protection. By the autumn of 1990, they all had made special arrangements for Chinese students who wished to extend their stays in their host countries.

For example, on April 11, 1990, U.S. President George Bush issued an executive order to extend until January 1, 1994 the legal stay in the U.S. of all Chinese students/academics and their families who refused to return home for fear of persecution. It also guaranteed their freedom to leave and

⁵⁹ Fujimori added that as of August, 1990, 23 students were awaiting the result of visa renewals and 8 students were overstayers. *Asahi Shimbun* (9/20/90).

⁶⁰ Tokyo University Associate Professor NAMIKI Yoritoshi's remarks to a *Kyodo* reporter. *Kyodo* (Tokyo, 6/4/90), as monitored by FBIS.

re-enter the U.S. as well as their right to employment⁶¹.

In France, the government decided to extend the Chinese students' visas unconditionally, as well as extend the period of scholarships for Chinese students. The French Government also facilitated the refugee examination process for Chinese asylum-seekers⁶². Other summit member states instituted similar favorable measures for the Chinese students on their territory.

Regarding Japan: it was only at the end of 1990 that the Japanese media detected a slight improvement in the GOJ's handling of the Chinese students. It was reported on December 6, 1990, that the MOJ had granted "a short-stay visa" (of 90-day's duration; renewable) to 10 or so Chinese students applying for visa extensions. Previously, Chinese students' requests for visa renewals were all turned down and overstayers were designated as "preparing for departure," pending deportation. On this occasion, an official at the MOJ's Immigration Bureau noted that it had started granting short-stay visas since August, 1990 and that his bureau would continue to do so when appropriate in the future. While the same official denied it, this did indeed constitute a policy change in favor of the Chinese students. The fact remained, however, that this changed policy still fell far short of those of other summit member states which unconditionally

⁶¹ Executive Order 12711: Policy Implementation With Respect to Nationals of the People's Republic of China (April 11, 1990). *Weekly Compilation of Presidential Documents*, vol. 26, no. 15 (April 16, 1990), pp. 558-59.

⁶² JCLU, *op. cit.*, pp. 19-20.

granted visa extensions to Chinese students.

Japanese policy towards Chinese students showed another minor improvement towards mid-1991. On May 31, 1991, Chen Shinsen, an FDC member applying for a renewal of his 90-day short-stay visa, was granted, to his pleasant surprise, a *tokutei katsudo* ("designated activities") visa by the MOJ⁶³. The FDC-Japan welcomed this MOJ decision⁶⁴ not least because Chen was the first Chinese student to be granted this 6-month renewable visa, which previously had rarely been granted⁶⁵. The MOJ justified this action on the grounds of "special circumstances" which had taken place in the country of the applicant's nationality. His *tokutei katsudo* visa permitted Chen to engage in "daily activities" for the time being and also would allow him to work if he so wished. To date more than 30 Chinese students have been granted this visa and their renewals have been without problems.

Nevertheless, from our viewpoint, this situation raises the more fundamental question: why did those Chinese students not try to obtain Convention refugee status, which guarantees rights that are clearly prescribed by international as well

⁶³ This visa, newly created by the 1991 revision of the Immigration Act, may be granted by the Justice Minister to a "person who engages in activities which belong to categories that shall not be generally permitted, but whose residence shall be specifically permitted under humanitarian and other special circumstances." Amnesty International, *Japan: Inadequate Protection for Refugees and Asylum Seekers* (March, 1993), p. 11.

⁶⁴ *Kyodo* (Tokyo, 6/2/91), as monitored by FBIS.

⁶⁵ For example, this visa was granted to a Tokyo representative of the Palestine Liberation Organization (PLO).

as Japanese law.

Lawyers supporting the Chinese students explained in this connection that they advised the students to obtain a *tokutei katsudo* visa (rather than refugee status) because they felt it pointless to pursue refugee status. In other words, the lawyers resorted to the *tokutei katsudo* visa as a second-best means of protection against forcible repatriation.

There were significant differences between the *tokutei katsudo* visas and Convention refugee status, however. First, since the former was a national administrative measure under the discretion of the justice minister, it was not legally as significant as the latter, which was a legal measure embedded in international law. That is to say, the former could not legally guarantee the principle of *nonrefoulement* and the recipient's individual freedoms as explicitly and firmly as the latter. Second, like applying for refugee recognition, an applicant for the *tokutei katsudo* visa was expected to document risks of human rights violations should (s)he return to China, but the immigration official granting the latter would not have to formally acknowledge that such human rights risks were involved. Reasoning for granting the *tokutei katsudo* visa can be as vague as demonstrated in the case of Chen, i.e., "special circumstances" in the country of origin.

On the other hand, from the GOJ viewpoint, the *tokutei katsudo* visa has been very useful for the very reasons discussed above. That is, unlike refugee recognition, the issuance of the *tokutei katsudo* visa did not force the GOJ to officially acknowledge the existence of political repression in China, although such a visa provided Chinese dissidents

with some form of necessary protection against forcible return. The former has been helpful in maintaining *nicchu yuko* -- "Japanese-Chinese friendship" -- while the latter was necessary for Japan to avoid being criticized by the international community for its failure to protect Chinese students on its territory.

As a result, as far as one can see, there has been no case of a Chinese national being granted Convention refugee status since Japan's 1982 accession to the Refugee Convention. Given that there were roughly 63,000 Chinese students one year after the Tiananmen incident in Japan, it is an extraordinary situation, to say the least. One may go so far as to say that the non-granting of refugee status to PRC nationals has been Japan's *state policy* regardless of administration.

To give additional support to this argument, we will examine the case of Zhao Nan, the then president of the FDC-Japan, who sought but was denied refugee status by Japan⁶⁶.

In September 1988, Zhao Nan, a PRC citizen, came to Japan at age 37. Having participated in the 1978-79 pro-democracy movement in China -- "Beijing Spring," as editor of a now-banned dissident magazine, he was put in a labor camp for two years (1982-84). On the condition that he refrain from political activities abroad, Zhao was allowed to come to Japan to study Japanese language.

Nevertheless, in the wake of the Tiananmen Square massacre, he wrote many articles critical of the Chinese Government as well as joining anti-PRC demonstrations within

⁶⁶ The following is drawn mainly from Amnesty International, *op. cit.*, pp. 10-12.

Japan. In June 1990, he became the president of the Japanese branch of the FDC, which Beijing regarded as an "unconstitutional and counter-revolutionary" organization.

As his study visa was to expire in September 1990, he applied for a six-month extension, which was refused on October 25, 1990. He was subsequently told to leave Japan before December 26, 1990 (let us note that in September as well as on October 25, 1990, Zhao clearly indicated to the immigration office that he feared returning to China because of his political activities).

In the summer of 1990, he read about the testimony given by Xu Lin -- a third secretary at the Chinese Embassy in Washington, D.C., who defected to the U.S. -- before the U.S. House Foreign Affairs Committee, describing PRC tactics of monitoring Chinese students abroad as well as punishments awaiting those students should they return⁶⁷. Furthermore, in September 1990, Zhao knew through his contacts that his name was on a "blacklist" prepared by the Chinese Government.

On December 6, 1990, he applied for refugee status, which the MOJ rejected in March 1991 on account of the notorious 60-day rule, i.e., refugee application must be filed within 60 days of the date when circumstances arose which caused the applicant to fear returning to his(her) country. Thus the MOJ claimed (later in court) that Zhao should have applied immediately after he read about Xu Lin's congressional testimony or he became aware his name was on the Chinese

⁶⁷ Xu Lin's testimony was originally published in the *Washington Post* (5/11/90). *Kyodo* (Tokyo, 6/4/90), as monitored by FBIS.

"blacklist." The MOJ ignored Zhao's argument that his refugee application was made within 60 days of the day when his visa extension was refused -- October 25, 1990.

On June 5, 1991, Zhao filed an appeal with the Tokyo District Court, although his *tokutei katsudo* visa was renewed without any problem.

The point of the above account is that even a key leader of the Chinese dissident group in Japan was unable to secure refugee status from the GOJ due to a mere technicality. It thus strongly supports our argument that the non-granting of refugee status to PRC nationals is Japan's established, albeit tacit, state policy⁶⁸.

The PRC's Treatment of the Chinese Students in Japan

Dissident Chinese students in Japan have reported numerous instances where they were harassed by Chinese diplomats stationed in Japan: Not surprisingly, those Chinese diplomats sought to destroy the Chinese students' pro-democracy movement in Japan by , among other tactics, threatening to cancel (or refusing to renew) their passports and/or inducing them to quit the movement (or become informants for the PRC).

One of the most blatant cases of such intimidation took place at Nagoya University in 1990:

In mid-March, 1990, two Chinese embassy officials visited Nagoya University, a national institution, and interviewed dozens of Chinese students registered with the university.

⁶⁸ This claim is further bolstered by the fact that to date 5 dissident Burmese, including Dr. Win Naing, the president of the Burmese Association of Japan, have been recognized as refugees by the GOJ.

The students told reporters later that they were told by the diplomats to quit the pro-democracy movement or they would be severely punished when they returned to China. Upon discovering this incident, Nagoya University authorities lodged a strongly worded protest with Councilor Peng Jiasheng of the Chinese Embassy, demanding that his embassy stop intimidating questioning of Chinese students on their campus. Peng reportedly acknowledged the above allegation and apologized. Later, it became known, however, that such intimidation was not limited to Nagoya University⁶⁹.

When asked about this incident at a regular MOFA press briefing on March 19, Foreign Minister NAKAYAMA Taro answered that such intimidation "infringes on university autonomy and is problematic." However, the GOJ failed to take any special actions to protect the Chinese students or to protest against the Chinese Government. On April 22, a similar case of intimidation was reported from Kyoto University, a top national university⁷⁰.

One would be tempted to contrast this GOJ lack of response with the USG's resolute attitude towards similar harassment

⁶⁹ Peng in an interview with a Kyodo reporter admitted that he -- a councillor charged with education -- instructed embassy officials to visit universities across Japan but he claimed it was to help Chinese students there to renew their student visas as well as to collect information on the personal situations and academic progress of students on scholarship from the Chinese Government. *Kyodo* (Tokyo, 6/4/90), as monitored by FBIS.

⁷⁰ At the Chinese dormitory -- "Kokaryo" -- of Kyoto University a Chinese Consul General and a Vice Consul met with 30 Chinese students of that university and other Kansai-area universities and intimidated them in a similar way. *ibid.*

cases. On May 11, 1990, the U.S. Department of State announced that it had repeatedly warned the Chinese Government that harassment of PRC nationals in the U.S. would violate U.S. law and damage U.S.-Chinese relations⁷¹.

More seriously, however, there is some evidence to indicate that Tokyo was not only acquiescing to Beijing's harassment tactics but also handling the Chinese students in a manner fundamentally similar to that of the PRC. Here is an example:

Chao Jing, a Chinese student who had come to Japan in 1986, participated in pro-democracy demonstrations in Japan in the spring of 1989. Shortly after the Tiananmen incident, he was approached by a person who claimed to be a *koan chosakan*⁷² ("public security investigator") of the MOJ. Eager to explain his political cause, Chao told this official about the need for democratization in China without giving away specific information which might be detrimental to his movement. After repeated phone interviews, the official offered him a college teaching position in exchange for his quitting the movement⁷³.

Similarly but more methodically, many Japanese immigration officials seemed to have sought to "convert" the Chinese students when interviewing them for visa renewals. Here are

⁷¹ *The Washington Post* (5/12/90).

⁷² These investigators work for MOJ's *koan chosacho* ("the Public Security Investigation Agency").

⁷³ To this he reportedly answered sarcastically, "I wouldn't mind a professorship at Tokyo University since I am going to sell my soul." *Asahi Shimbun* (10/20/92).

some examples of officials' actual remarks which students confided to their lawyers.

(1) (To a student who stated that dissident Chinese might be executed should they return to China):

"The Japanese Government has nothing to do with whether or not you will be executed. That's China's business."

(2) (To a student requesting visa renewal for similar reasons):

"Just submit a letter to your government apologizing for your dissident activities and you will be fine."

(3) (To a similar request):

"You are ruining friendly relations between Japan and China."

(4) (To a student registered with an area university):

"We know all about your political activities. How many members does the FDC in this area have? Who is the head of your local branch? What kinds of activities do you people engage in?"⁷⁴

By way of summary, we may say that this callous and even hostile attitude of the GOJ towards dissident Chinese students in Japan has three main sources. The first two of them seem specific to Japanese-Chinese relations, whereas the third one is a general component in Japan's handling of international relations.

First and foremost, the GOJ's human rights concerns, as far as they exist, tend to succumb to the bilateral official mantra of *nicchu yuko* ("Japanese-Chinese friendship"), which has meant little more than the existing "friendly" relations between the two governments. In other words, to the extent that the GOJ believes its unilateral pursuit of human rights vis-a-vis the PRC harms such governmental relations, its human rights concerns tend to be submerged.

Second, Japanese politicians and bureaucrats as well as

⁷⁴ JCLU, *op. cit.*, pp. 22-23.

the public have visceral fears that once their country showed a generous reception of Chinese people, whether students or boat people, it would be inundated. These fears stem mainly from the geostrategic reality surrounding Japan, that China, the most populous nation on earth with its 1.2 billion people, is a 250-mile sea voyage away from Japanese territory (at its nearest point) and its people can easily gain access if they wished, as demonstrated by recent influxes of boat people.

Finally, it reflected the Japanese concept of "paternalistic pan-statism," introduced in Chapter Six when discussing Japan's generalized reluctance to receive refugees.

As it relates to the relationship between the state and people, this concept stands on the following three premises.

(1) State "A" should take care of its citizens, i.e., it should educate, feed, protect, and "discipline" them. Particularly, the State has the right to such "disciplinary" acts when it feels betrayed by its citizens (the doctrine of "paternalistic statism").

(2) Such state paternalism extends to its citizens outside its territory, i.e., its expatriots (the doctrine of "paternalistic outreach").

(3) State "B" should not interfere with such state-subject interactions concerning State "A" even if they take place within the territory of State "B," let alone within the territory of State "A." State "A" is expected to reciprocate (the doctrine of "pan-statism").

Viewed from the perspective of this "paternalistic pan-statism"⁷⁵, the GOJ's attitude towards dissenting Chinese

⁷⁵ This ideology is somewhat different from the traditional concept of "non-interference in internal affairs." It may more accurately be called the concept of "non-interference in state affairs" in that it allows a state

students in Japan would become less incomprehensible, if not less reprehensible. That is to say, the fact that the GOJ did not protest against the Chinese Government for intimidating Chinese students in Japan can be partially explained with reference to the above premises (1), (2) and (3), i.e., the doctrines of "paternalistic statism," "paternalistic outreach" and "pan-statism." Furthermore, the fact that GOJ officials facilitated the PRC's attempt to destroy the pro-democracy Chinese student movement in Japan can be explained in terms of their effort to reinforce "paternalistic pan-statism."

The problem is that this "paternalistic pan-statism" will constrain not only Japanese policy towards the Chinese students in Japan, but also Japan's incipient efforts to become more active in the area of international human rights⁷⁶.

Summary

The single most important feature of the above asylum cases involving Chinese students is the extreme degree of reluctance on the part of the Japanese Government to formally grant them Conventional refugee status. This official reluctance seems to have stemmed from three key factors --

to condone other states conducting their state-subject interactions within its own territory on the condition that they reciprocate.

⁷⁶ While identifying factors which would reinforce (or weaken) this "paternalistic pan-statism" is an extremely interesting and important theme, it falls outside the purview of the present study.

two of which were specific to Japan's relations with China, while the third one was universal to Japan's foreign policy. Of overwhelming importance, however, seems to be the factor of political expediency, i.e., Japan's preoccupation with not harming "Japanese-Chinese friendship" (*nicchu yuko*). Since this slogan has been abused to date without being subjected to any critical scrutiny by the Japanese media, it has become almost an official magic mantra which can be employed whenever necessary to expel an "evil spirit" threatening to damage the amicable relations between Japan and China. Nevertheless, this official slogan of *nicchu yuko* has only meant the maintenance of the *present governmental relations* between the two, which is a precondition for the development and maintenance of mutually lucrative trade and investment relations.

Nevertheless, we may wonder if a Japanese State with an enlightened self-interest would focus exclusively on present (or short-term) governmental relations: Why does the Japanese Government not understand the simple fact that those Chinese students in Japan, as elsewhere, may well become part of China's future leadership?

Another key and more general factor which accounted for Japan's reluctance to provide political asylum for Chinese was its ideology of "paternalistic pan-statism." This was so because the very concept of asylum -- protection of foreign nationals against the exercise of jurisdiction by the government of their country of origin -- would undermine pan-statism -- i.e., the idea that the State for disciplinary purposes should be able to extend its control over its own

nationals abroad and that other States should not interfere with such "domestic" affairs.

Nevertheless, such thinking seems sadly anachronistic as we approach the beginning of the twenty-first century and grossly unfitting to a country claiming to strive for a more active role in the international human rights regime. If the Japanese and Chinese leaderships believe that they can insulate their bilateral relations from an internationally legitimate and growing trend towards global human rights protection, I hope they will be eventually proved wrong.

In the final chapter, we will look at Japan's external refugee policy, namely, its financial and human contributions to the multilateral refugee programs centering around the United Nations, in order to be able to obtain a comprehensive view of its refugee policy in toto.

CHAPTER EIGHT

JAPAN'S EXTERNAL REFUGEE POLICY

Introduction

To recapitulate the fundamental characteristics of Japan's current "domestic" refugee policy, namely, its permanent asylum policy:

First, generally, it has been unduly restrictive as compared to that of other traditional resettlement countries such as the U.S., Canada and Australia. It is so even compared to that of some Western European nations such as Italy that have only recently become countries of immigration. Such a generalized restrictiveness has stemmed fundamentally from Japan's historical legacy. That is, its informal yet predominant state ideology of "paternalistic pan-statism," which manifests itself in the GOJ's view and treatment of foreign asylum-seekers as "renegades" of their fatherland at worst or international "trouble-makers" at best.

Second, it has been particularly restrictive towards Chinese asylum-seekers additionally because of the political expediency officially referred to as *nicchu yuko* ("Japanese-Chinese Friendship") as well as Japan's geostrategic considerations and fears.

In order to obtain a more comprehensive understanding of Japanese refugee policy, this chapter examines Japan's "external" refugee policy -- namely, its financial as well as human-resource assistance for international refugee programs. More specifically, such an examination is necessary in order

to demonstrate the comparatively high degree of interdependence between Japanese refugee policy's domestic and external components.

This chapter first looks at Japan's financial contribution in the area of international refugee protection and assistance¹. It then reviews its incipient human-resource contribution in the same area.

1. FINANCIAL CONTRIBUTION

One of the most salient features of Japan's overall refugee policy has been a glaring contrast between its highly restrictive (nearly prohibitive, to be precise) asylum policy and its enormously generous financial contribution to the existing multilateral refugee programs. A casual glance at Japan's recent financial contributions to major refugee-related intergovernmental organizations would reveal that Japan has been an extremely generous donor in this field. Here are some examples from 1992 figures²:

Japan contributed \$119.6 million to the UNHCR (its General

¹ While acknowledging the fact that some of Japan's Official Development Assistance (ODA), both bilateral and multilateral, in the apparently non-refugee areas does ultimately help refugees -- e.g., Japan's ODA given to agricultural projects in sub-Saharan Africa, we will try to concentrate our attention on Japan's funding of international organizations as well as programs that aim mainly at refugees. In this sense, what we are looking at below is a minimal picture of Japan's financial contributions in the area of refugee assistance/relief.

² These examples are from U.S. Department of State, *World Refugee Report: A Report Submitted to the Congress as Part of the Consultations on FY 1994 Refugee Admissions to the United States* (July 1993), pp. 217-221.

& Special Programs combined), thus accounting for 10.7% of the agency's total governmental contributions. As a single donor state, this ranked Japan second only after the U.S. (21.5%)³.

It contributed to the UN Relief and Works Agency For Palestine Refugees in the Near East (UNRWA) \$25.8 million or 8.8% of its total governmental donation. Japan was the third largest donor state after the U.S. (23.5%) and Sweden (9.0%). Before 1992, Japan almost always had occupied the second place for many years.

Japan contributed \$4.4 million to the UNBRC -- UN Border Relief Operations. Its share (21.0%) came second only after that of the U.S. (38.0%).

The International Organization for Migration (IOM), a non-UN intergovernmental organization for migrants and refugees, received \$1.7 million or 2.8% of its Assessed and Voluntary Contributions from Japan despite the fact that it was not even a member state (it had observer status)⁴. Japan was the eighth largest donor state after Switzerland.

Before analyzing the characteristics and trends of Japan's financial contribution in the refugee area, we may speculate at this point on the possible reasons for such Japanese financial generosity towards refugees and displaced people.

A reason which immediately comes to our minds is that Japan has been generous monetarily in order to compensate for

³ If we treat the European Community (20.2%) as a single country donor, Japan would come third.

⁴ Japan became a member state of the IOM in November 1993.

its meager domestic resettlement record. This compensatory role of Japan's financial generosity was particularly visible when it was tackling the Indochinese refugee crisis.

The journalist Barry Wain, in his excellent book in the early 1980s on the Indochinese refugee crisis, quoted a Japanese diplomat defending his country's seemingly indefensible policy of refugee non-resettlement:

One Japanese diplomat based in Southeast Asia used a friendly Sunday-afternoon American-style barbecue as a model to describe the collective approach to taking care of the Indochina refugees. The barbecue is successful, he said, when every participant contributes something he finds most suitable and appropriate. One friend makes his home available, because he has the space and facilities in his backyard; others bring the meat and salad, while someone else chips in and does the cooking. Similarly, some nations were giving temporary shelter to Indochinese, while those with the room and conducive social conditions accepted them for permanent settlement and others provided the funds to do the job⁵.

Clearly, the point this Japanese diplomat was trying to make was that since Japan was unwilling to receive refugees, it was instead providing financial support to international refugee programs. Since those days Japan's refugee policy has improved significantly, as demonstrated by its decision to allow refugee resettlement as well as its accession to the 1951 Refugee Convention. Nevertheless, the fact that Japan's asylum policy continues to be unduly restrictive and hence continuously criticized as such guarantees that its generous refugee funding continues to play a compensatory role for its

⁵ Barry Wain, *The Refused* (Simon and Schuster, 1981), p. 173.

reluctance to take in greater numbers of refugees⁶.

A second possible reason for Japan's financial generosity for the cause of refugees is that financing international refugee programs has been strongly supported by the Japanese public because, in addition to its obvious emotional appeal, funding of refugee relief, just like its Official Development Assistance (ODA), has been presented to the public as fundamentally humanitarian in nature with little, if any, political/strategic involvement on the part of Japan. In other words, the funding of refugee programs has squared well with traditional pacifism (or isolationist pacifism) of the Japanese public in the post-WWII period in that it has permitted the Japanese to make claims on contribution to global peace through non-military means.

On the other hand, it is also consonant with its "neo-pacifism" (or globally-minded pacifism) which the Japanese public seems to have tended to prefer especially after the bitter experience with the Persian Gulf War. This "neo-pacifism" claims that Japan must contribute more actively to humanitarian causes as well as the maintenance of international peace and security but still must do so through

⁶ In this context, it is interesting to note that Amnesty International, in criticizing Japan's refugee policy, sought to separate its restrictive resettlement and its financial generosity. The AI report previously quoted in this study included the following caveat at the outset:

"(I)t must be noted that the generous financial assistance provided by Japan to UNHCR (...) (is) beyond the scope of this report, which deals solely with the obligations owed to those people who arrive in Japan and exercise their right to seek asylum there." Amnesty International, *Japan: Inadequate Protection for Refugees and Asylum Seekers* (March 1993), p. 2.

non-military means. As pressure at home and abroad is likely to increase on Japan to move towards the militarization of its *kokusai koken* ("international contributions"), public support for funding for refugees on humanitarian grounds will remain strong and grow even stronger in the years to come⁷.

Below we will focus on Japan's financial assistance for the two major UN organizations for refugees, UNHCR and UNRWA, while also taking into account its assistance to other humanitarian organizations and programs for refugees and displaced people.

UNHCR

Japan started its financial contributions to UNHCR in 1967, and currently, it is the second largest contributing state after the U.S., accounting for 10.7% of the agency's total governmental contributions in 1992⁸. Notably, UNHCR's "U.S. No.1 - Japan No.2" funding pattern has been long established since 1979.

TABLE 6: STATES' CONTRIBUTIONS TO UNHCR (%)

1977	Swed(18.5)	Norw (13.2)	Neth (11.7)	FRG (9.6)
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⁷ This suggests that the GOJ will continue to be able to rely on this significant political capital (of public support for the refugee issue) as it gropes for a greater role in UN centered-multilateral diplomacy. A case in point is the recent dispatch of Self Defense Force troops to the Zairian border to help Rwandan refugees sustain themselves in camps.

⁸ UNHCR's current global program, started in 1959, is funded by voluntary contributions from governments as well as NGOs. The global program is divided into General Programs and Special Programs.

1978	US (24.3)	Swed (15.6)	Neth (13.0)	Den (10.7)
1979	US (20.3)	Jpn (18.4)	EC (17.4)	UK (7.5)
1980	US (32.2)	Jpn (21.7)	EC (14.3)	UK (6.1)
1981	US (37.0)	Jpn (14.8)	EC (10.5)	UK (4.4)
1982	US (39.4)	Jpn (17.6)	EC (13.5)	Can (4.7)
1983	US (41.9)	Jpn (19.5)	UK (7.3)	Neth (3.9)
1984	US (34.5)	Jpn (13.4)	FRG (9.4)	UK (5.7)
1985	US (37.4)	Jpn (20.2)	UK (6.5)	Can (4.6)
1986	US (24.4)	Jpn (14.9)	FRG (10.0)	UK (8.6)
1987	US (26.7)	Jpn (13.1)	EC (10.6)	FRG (9.7)
1988	US (23.2)	Jpn (12.1)	EC (8.9)	FRG (7.9)
1989	US (24.9)	Jpn (14.4)	EC (8.3)	FRG (6.8)
1990	US (19.8)	EC (11.4)	Swed (10.2)	Jpn (9.0)
1991	US (22.4)	EC (13.8)	Jpn (12.7)	Swed (7.8)
1992	US (21.5)	EC (20.2)	Jpn (10.7)	Swed (8.2)
1993	US (21.2)	EC (15.2)	Jpn (10.8)	Swed (8.7)

(Note) Figures for 1977-78 and 1984-93 are shares of both General and Special Programs; Figures for 1979-83 are shares of General Programs only.

[Source: for 1977-83 from US State Department, *United States Contributions to International Organizations* (corresponding years); for 1984-93 from US State Department, *World Refugee Report* (corresponding years)]

In fact, Japanese share of governmental contributions to UNHCR, a meager 0.2% in 1978, jumped ninety-two times (!) to

18.4% in 1979, suddenly catapulting Japan into the second largest contributor (see TABLE 6). This phenomenal increase was due mainly to huge contributions Japan made to the agency's programs for Indochinese refugees⁹. Thus, as was true with its domestic refugee policy, the Indochinese refugee crisis was a decisive event for Japan's external refugee policy.

This suddenly salient Japanese external refugee policy was faced almost concurrently with yet another refugee crisis, however.

The Afghan "Revolution" of April 1978 and the ensuing Soviet invasion of Afghanistan at the end of 1979 sent a vast wave of Afghan refugees into Pakistan. Those refugees, numbered roughly 400,000 at the end of 1979 climbed to approximately 1.7 million, thus imposing a tremendous burden on Pakistan. In 1980 UNHCR, at the request of Pakistan, made appeals to the international community for some \$100 million to care for Afghan refugees in Pakistan.

In response, the GOJ early in 1980 donated 1.38 billion yen¹⁰ for Afghan refugees. Of great diplomatic significance was Japanese Foreign Minister ITO Masayoshi's inspection trip to refugee camps in Pakistan, on his August-September 1980

⁹ Since 1979 roughly half of the agency's Indochinese programs have been financed by Japan. In FY1979 Japan contributed roughly \$90 million for Indochinese refugees and in FY 1980 it contributed over \$100 million for Indochinese refugees including \$60 million for UNHCR, \$20 million for the WFP (World Food Program). MOFA, *Waga gaiko no kinkyō* (1981), p. 95.

¹⁰ It included 1 billion yen to UNHCR and 0.38 billion yen to Pakistan.

visit to India and Pakistan. Japan's financial contribution continued: in FY 1980, it donated 0.59 billion yen¹¹; in FY 1981 the amount was 3.9 billion yen; from FY 1983 through the late 1980s Japanese financial outlays for Afghan refugees have amounted to a more or less annual 4 billion yen¹².

As for the Afghan refugee crisis itself, unlike the Vietnamese refugee crisis, the only durable solution seemed to be voluntary repatriation. However, voluntary repatriation was conceivable only after Soviet withdrawal from Afghanistan, which eventually resulted from the weakening of the Cold War.

On the basis of the April 1988 Geneva agreement reached by Afghanistan under the pro-Soviet Najibullah Administration, Pakistan, the Soviet Union, and the U.S., Soviet military withdrawal was completed in February 1989.

Shortly after the above Geneva agreement, in May 1988, UN Secretary-General Javier Perez de Cuellar appointed Prince Sadruddin Aga Khan, former High Commissioner for Refugees as "Co-ordinator for UN Humanitarian and Economic Assistance Programs relating to Afghanistan¹³." To assist the UN repatriate Afghan refugees, Japan contributed \$60 million in 1988 and \$105 million in 1989¹⁴. It contributed \$18 million

¹¹ 0.3 billion yen to Pakistan; 0.29 billion yen to WFP.

¹² For example, in FY 1986 it was 3.85 billion yen or \$18 million). MOFA, *Waga gaiko no kinkyō* (1987, No. 31), p. 434.

¹³ UNHCR, *Refugees* (June 1988), p. 35.

¹⁴ The actual repatriation from Pakistan started in the latter half of 1991 and was accelerated after the April 1992 collapse of the Najibullah government, while repatriation from Iran started in April 1992.

(UNHCR & WFP) in FY 1991 and \$15 million (UNHCR & WFP) in FY 1992, with the result that by FY 1992 Japan's accumulative contribution for Afghan refugees totaled \$400 million¹⁵.

Notably, the GOJ, in accordance with its basic non-strategic policy posture towards refugees, has never used its major foreign policy principles (such as a member of the Western camp) to justify its vast financial assistance to Afghan refugees although they were another important case of Cold-War refugees. Tokyo's rationale for helping Afghan refugees has been the same as the one used for helping refugees elsewhere: that is, the refugee issue is primarily a humanitarian issue and only secondarily is a political one for it can affect the peace and stability of the areas concerned¹⁶. The slogan the GOJ has coined to justify its assistance to Afghan refugees as well as Indochinese refugees is so-called "Cooperation for Peace"¹⁷. This has placed Japan's funding for refugees well within the confines of popular traditional pacifism.

Towards the early 1980s Japan's external refugee policy reached beyond the Asian region as it joined international efforts at helping African refugees.

On April 9-10, 1981 the UN-organized International

¹⁵ MOFA, *Gaiko Seisho* (1993, No. 37), p. 284.

¹⁶ Note that the word *anzenhosho* ("security") was carefully avoided in explaining funding for refugee relief. This reflects GOJ concern that use of such a "warlike" word would unnecessarily arouse domestic opposition to its support for refugee relief, which nevertheless is often based on strategic burden-sharing with other Western nations.

¹⁷ *Ibid.*, p. 58.

Conference on Assistance to Refugees in Africa (ICARA I) was held in Geneva. This conference was attended by representatives of 85 countries, and 43 countries pledged financial contributions. MOFA sent its *seimu-jikan* ("Parliamentary Vice-Minister," the ministry's second-highest political official) AICHI Kazuo to the conference and pledged \$20 million¹⁸. It was the fourth largest donation -- after the U.S., Federal Republic of Germany, and Saudi Arabia -- pledged at the conference, as MOFA's 1982 *Diplomatic Bluebook* boasted¹⁹. Japan's involvement in the African refugee issue was sustained as MOFA again sent its *seimu-jikan* KITAGAWA Ishimatsu to the Second International Conference on Assistance to Refugees in Africa (ICARA II), held in Geneva on July 9-11, 1984. At this conference, attended by over 1,000 people representing 100 countries and 140 IGOs and NGOs, Vice-Minister Kitagawa praised the work of UNHCR by saying that "Japan rates very highly UNHCR's activity, and will continue to give it all possible cooperation," and pledged \$6 million to the agency's 1984 African refugee relief program²⁰.

The Japanese mass media extensively covered the plight of drought-stricken refugees in the Horn of Africa particularly during the period 1984-85, thereby greatly impressing the general public. Furthermore, several NGOs, including a

¹⁸ It included \$5 million to UNHCR and \$15 million to WFP. The total pledge at the conference was over \$560 million, which was more than expected.

¹⁹ MOFA, *Waga gaiko no kinkyō* (1982, No. 26), pp. 313-14.

²⁰ UNHCR, *Refugees* (September 1984), p. 32.

nationwide TV network, campaigned to send relief goods such as blankets to Africa. In November 1984 Foreign Minister ABE Shintaro visited Ethiopia's drought-affected areas and during his visit pledged an additional \$50 million in food and agricultural aid for Africa during FY 1984²¹. Notably, Foreign Minister Abe proposed a year later a plan for "Green Revolution for Africa" at the Group of Seven summit meeting in Bonn, which led to the creation of "Green Corps" within the Japan International Cooperation Agency (JICA). This "Green Corps" involved young volunteers planting trees in Africa to prevent further desertification therein. One may note that while initiated and sponsored by the government, this volunteerism added a new human-resource dimension to Japan's emergent neo-pacifism.

Since the mid-1980s Japan has responded to nearly every emergency appeal made by UNHCR to finance its African refugee programs. For example, Japan responded, fastest among donors, to the March 1991, UNHCR emergency appeal on behalf of Ethiopian refugees, pledging a donation of \$8 million. In 1992, Japan donated \$15 million to the UNHCR, of which some \$6 million was directed to Somali refugees in neighboring countries. Furthermore, to help feed the 2 million internally displaced Somalis, Japan donated additional \$15 million to

²¹ From the mid-1980s on Japan's contributions for African refugees have been directed mainly to UNHCR and WFP. The annual contributions were as follows: \$15 million (FY 86); \$16 million (FY 87); \$18 million (FY 88); \$22 million (FY 89); \$36 million (FY 90); \$25 million (FY 91); \$46 million (FY 92). *Gaiko Seisho* (1990, No.34), p. 415; *Gaiko Seisho* (1993, No.37), p. 284.

WFP²².

Officially, Japan's assistance to African refugees has been explained in terms similar to those used for "Cold-War refugees" such as Afghans and Indochinese. That is, it was important from the humanitarian viewpoint as well as for the maintenance of the peace and stability of the region affected²³. In other words, Japan's official rationale for refugee assistance overseas has been constant regardless of whether or not particular refugee flights were a by-product of the Cold War.

As regards the international refugee regime's effort for Africa, the early 1980s saw a renewed focus placed on the African refugee crisis partly because of its sheer magnitude -- more than 5 million refugees -- and partly because of the regime's recognition that its attention to the Indochinese refugee issue had been lopsided during the preceding decade, to the detriment of other refugees.

In this connection, the 35th UN General Assembly (1980) concluded as many as six resolutions dealing exclusively with the African refugee crisis, including one which called for the convocation of ICARA noted above. Particularly, Resolution (35/124) on "International Cooperation to Avert New Flows of Refugees" was significant in that it urged the international community to seek ways to prevent new flows of refugees, rather than simply responding to refugee crises

²² MOFA, *Gaiko Seisho* (1992, No. 36), PP. 138-9.

²³ For example, MOFA, *Waga gaiko no kinkyō* (1985, No. 29), p. 248.

everytime they occurred²⁴. Interestingly, this resolution was proposed by the Federal Republic of Germany, not Japan whose foreign ministry claimed in its 1981 *Diplomatic Bluebook* that:

"Japan has been strongly interested in and deeply concerned with the refugee issue (...) and has been actively contributing to the solution of the refugee issue by, among other things, becoming the second largest donor country to UNHCR in FY 1979 and 1980²⁵."

It seemed that Japan's main contribution to the international refugee regime would continue to be the funding of its programs, and not human resources or innovative ideas.

UNRWA

As in the case of UNHCR, Japan has in many years been the second largest -- after the U.S. -- donor state for UNRWA. In the case of UNHCR, the Indochinese refugee crisis catapulted Japan into the No. 2 contributor's slot. As for UNRWA, the equivalent key event which also pushed Japan into the No. 2 position had little to do with refugees themselves: it was the 1973 oil crisis which prompted Japan to decide to become far more sympathetic than before to the plight of the Palestine refugees.

TABLE 7: CONTRIBUTIONS to UNRWA (percentage)

Year	First	Second	Third	Fourth	Jpn
1972	US (50.7)	UK (10.7)	FRG (7.5)	Swed (6.6)	1.7

²⁴ UN General Assembly Resolution 35/124 (December 11, 1980), A/35/PV. 92 (pp. 172-75); A/35/739.

²⁵ MOFA, *Waga gaiko no kinkyō* (1981, No. 25), p. 290.

1973	US (42.0)	EC (13.2)	UK (8.9)	FRG (8.7)	2.0
1974	US (34.5)	EC (28.2)	Jpn (5.9)	UK (5.6)	5.9
1975	US (39.3)	Saud(10.5)	UK (6.4)	Swed (5.2)	4.7
1976	US (39.8)	EC (12.8)	Saud(10.0)	UK (6.2)	4.9
1977	US (44.7)	EC (15.5)	Swed (7.4)	UK (5.5)	5.1
1978	US (44.0)	EC (13.3)	Swed (7.3)	UK (6.2)	5.6
1979	US (40.8)	EC (13.6)	Swed (7.7)	UK (7.1)	5.5
1980	US (31.9)	EC (22.8)	Swed (6.5)	UK (6.0)	5.6
1981	US (33.9)	EC (20.8)	Jpn (6.0)	UK (5.9)	6.0
1982	US (37.6)	EC (18.8)	Jpn (6.3)	Swed (6.0)	6.3
1983	US (43.3)	EC (15.3)	Jpn (6.3)	Swed (5.1)	6.3
1984	US (44.7)	EC (13.4)	Jpn (5.7)	Nor (5.1)	5.7
1985	US (47.0)	EC (13.6)	Jpn (7.6)	Swed (5.0)	7.6
1986	US (45.6)	EC (11.1)	Swed (6.5)	Jpn (6.1)	6.1
1987	US (36.7)	EC (16.9)	Jpn (9.4)	Swed (6.4)	9.4
1988	US (32.0)	EC (17.1)	Jpn (9.7)	Swed (7.0)	9.7
1989	US (30.0)	EC (22.1)	Jpn (7.9)	Swed (6.9)	7.9
1990	EC (23.8)	US (23.2)	Swed (8.8)	Jpn (8.1)	8.1
1991	US (23.2)	EC (22.8)	Jpn (8.4)	Swed (8.0)	8.4
1992	US (23.5)	EC (22.9)	Swed (9.0)	Jpn (8.8)	8.8

1993	US (23.2)	EC (23.2)	Swed (8.6)	Jpn (8.5)	8.5
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[Source: U.S. State Department, *United States Contributions to International Organizations*, corresponding years]

In 1972, before the Arab oil embargo of 1973-74, Japan's annual share of UNRWA's total governmental contributions was 1.7% but it more than tripled to reach 5.9 % in 1974. Thus Japan suddenly turned into the second largest donor state for UNRWA, surpassing the UK, a former power historically involved in the Palestinian issue. During the period 1975-1980 when the Japanese economy slowly recovered from the impact of the oil crisis, Japan failed to make second place, with its shares hovering around mid-5%. Since 1981 Japan has been competing with Sweden -- with the exceptions of 1981 (with the UK) and 1984 (with Norway) -- for the second place on UNRWA's donor list.

With more than 70 percent of Japan's oil imports -- on which Japan depended overwhelmingly for its survival -- at the time originating from OPEC nations, the 1973 oil crisis made Japan keenly aware of its vulnerability to the strategic use of oil as well as its dependence on Middle Eastern oil, thereby suddenly shifting its Middle Eastern policy from one of relative neglect towards a pro-Arab one. Viewed from such a perspective, vastly increased financial contributions to UNRWA clearly constituted an integral part of this policy shift in favor of the Arabs.

Another important aspect of the 1973-74 shift in Japan's policy towards UNRWA is that while the US share of the

agency's total governmental contributions decreased significantly from 1972 (50.7%) to 1974 (34.5%) -- the lowest figure ever since the U.S. started to contribute to the UN Palestinian refugee program in 1948²⁶, Japanese shares significantly increased during the same period, as noted above. One can speculate that the above reduction in US contributions, apparently reflective of its antipathy towards the Arab oil strategy, were offset to some extent by increases in Japanese contributions as well as newly-started EC contributions, although it is difficult to tell if this Japanese move was a result of policy coordination with the U.S.

The second significant change in Japan's UNRWA policy came after the Persian Gulf War of 1990-91. As the Middle East peace process deepened due partly to the divisions within Arabs created by the Gulf War, Japan's donation to UNRWA significantly increased: in 1993 it increased to \$38 million up from \$18 million in 1992²⁷. This increase seems to have been motivated by Japan's bitter experience of being severely criticized by the West for its "insufficient" contribution to the allied forces' war effort.

Summary

²⁶ US contributions during 1948-50 were made to UNRPR (United Nations Relief for Palestine Refugees). The US's first contributions to UNRWA were made in 1951 constituting 69.5% of the whole that year. See Norbert Scholz, ed. *U.S. Official Statements: The Palestine Refugees* (Institute for Palestine Studies, 1994), Appendix X.

²⁷ MOFA, *Gaiko Seisho* (1993, No. 37), p. 119.

Japan's decisions concerning assistance to Palestinian refugees have been highly pragmatic in that they have stemmed from Japan's preoccupation with securing the supply of oil that is of vital importance to its national (economic) security, rather than out of humanitarian concerns for refugees.

With regard to the Afghan refugees, given the apparent lack of an imminent and direct "national interest" involved therein, Japan's financial assistance to Afghan refugees seemed to have stemmed from a strategic requirement of its alliance with the West, mainly the U.S., although its rationale was couched in humanitarian terms.

As regards African refugees, Japan's assistance probably came closest to "pure humanitarianism" given the relative absence of historical as well as strategic ties with sub-Saharan Africa -- with the exception of resource-rich South Africa --; and the Japanese public's high level of genuine sympathy towards the plight of African refugees.

From the regime's perspective, Japan's generous donations to its various programs, regardless of its motives, could not have been more appreciated by refugee IGOs. In fact, without Japanese funding it would be difficult to conceive of UN refugee operations functioning normally. In brief, Japan, through its funding, has contributed greatly to the sustenance of the international refugee regime.

For the Japanese Government as well as the public, however, it has been increasingly frustrating to see their country criticized by the international community -- seemingly ungrateful of its financial generosity -- for its

insufficient contributions of a more visible kind -- namely, human resources -- to multilateral efforts at global issues. This frustration heightened particularly with regard to the Gulf War in which Japan contributed as much as \$13 billion to the allied war effort as well as conflict-bordering countries and was criticized severely for its "too little-too late" efforts. After the war the Japanese public as well as the Government felt their effort was unappreciated by the international community. In the post-Gulf War period, therefore, it has become one of Japan's major diplomatic and national goals to enhance its visible human participation in the international humanitarian regime.

In other words, a national consensus of sorts has emerged in post-Gulf War Japan to the effect that not only financial generosity but also human participation was necessary if Japan was to earn the global respect it felt deserved. But conflicting visions existed as to in what ways Japan should commit its human resources in the areas of humanitarianism and international peace and security.

Such clash of visions as to the proper role of Japan more specifically has manifested itself in Japan's refugee relief activities during and after the 1990-91 Gulf War. This is so because the Gulf War powerfully accelerated Japan's search not only for the most appropriate forms of human contribution in international humanitarian efforts but also for a new international role in the post-Cold War world.

2. HUMAN CONTRIBUTIONS

Introduction

MOFA's 1991 *Diplomatic Bluebook* explained the goals of Japan's post-Gulf War refugee policy as follows:

In strengthening Japanese efforts on the refugee problem, going beyond financial and material contributions to include a greater contribution of *human resources* has become one of the major tasks for Japan.

The importance of Japanese contributions through human resources in refugee assistance has been highlighted ever since *the Gulf Crisis* produced a number of displaced persons from Iraq and Kuwait as well as Kurdish refugees.

The Government of Japan has tried to answer these needs by taking such measures as dispatching medical teams from the Japan Emergency Relief Teams (...).

In Europe and the United States, there are non-governmental organizations (NGOs) with sufficient experience in emergency relief which have made active contributions by sending their personnel to the field.

Although Japan's experience in this field is still limited, it is expected that with its NGOs accumulating more experience, thereby becoming more capable of active participation in humanitarian fields, including refugee assistance, Japan's contribution with its human resources will be increased in the non-governmental sector as well²⁸ (emphasis added).

The above quotation reveals a great deal about Japan's official thinking on its external refugee policy.

First, it confirms that Japan's decision to contribute greater human resources to the multilateral refugee effort was motivated fundamentally by its bitter experience during the course of the Gulf War. Despite its enormous financial contributions, which even necessitated tax hikes, Japan's response to the Gulf War was criticized as "too little, too late" by the multi-national alliance, and the USG in particular. The GOJ as well as the Japanese public seemed

²⁸ MOFA, *Diplomatic Bluebook* (1991, No. 35, English ed.), p. 162. I changed the original translation slightly.

convinced that it was because Japan's contribution was only financial, which was necessary indeed but invisible in the heat of the war. Therefore, both the government and the public felt that in future Japan should contribute human resources to such international crises in order to visibly demonstrate Japanese national will to actively contribute to global peace and security.

In this sense, a national consensus has emerged as to the inadequacies of Japan's traditional isolationist pacifism. As noted above, however, there was a lack of consensus as to what kinds of human resources Japan should contribute. The GOJ pursued -- persistently but unsuccessfully -- the path of sending military personnel, whereas large segments of the opposition as well as the public at large sought to block that GOJ attempt through various means, as will be shown below.

Second, while the above bluebook emphasized the importance of NGO activities in international humanitarian efforts, it neglected to mention Japanese citizens groups' successful effort to help foreign migrant workers in conflict areas to repatriate or the opposition's attempt to create a new non-SDF overseas relief corps. This omission reflected the GOJ attitude that such civilian-oriented operations and initiatives by NGOs would hinder, rather than help its plan to project a greater political presence of the Japanese State throughout the world using its ultimate means, namely, its soldiers. Furthermore, while the GOJ deplored the "underdeveloped" stage of Japanese NGOs in the area of humanitarian relief, its policies often seemed to discourage

Japanese NGOs from becoming more actively engaged in international humanitarian relief activities.

The rest of this section looks at Japan's refugee policy within the context of the Gulf War of 1990-91. The word "refugee" in this section does not necessarily mean a "political refugee" as defined in the 1951 Refugee Convention: it basically means foreign migrant workers stranded in the conflicted areas who had to evacuate to a neighboring country and eventually to their home country²⁹.

Japan's Overall Diplomatic Response to the Gulf War

Some discussion of Japan's overall Gulf War diplomacy is necessary in order to place its Gulf War refugee policy within the broader international context at the time³⁰.

Japan's overall policy towards the Gulf War (August 1990-April 1991) was comprised of: the implementation of economic sanctions; \$13 billion of financial support for the anti-Iraqi multi-national coalition and neighboring countries (Jordan, Egypt, Turkey, Syria); the formulation and Diet deliberation of the UN Peace Cooperation Bill (not enacted); logistical support for war refugee repatriation; the dispatch

²⁹ In this sense, they resembled refugees as defined in the OAU Refugee Convention because they were found outside their country and were unable to seek protection from the government of their home country or host country due to the ongoing international conflict.

³⁰ Below, the "Gulf War" and the "Gulf Conflict" are used interchangeably. For purposes herein, the Gulf War started with the Iraqi invasion of Kuwait on August 2, 1990 and ended with the April 11, 1991 Iraqi acceptance of UN Security Council Resolution 687 (April 3, 1991) declaring a cease-fire.

of medical teams to Iran and Turkey to help Kurdish refugees; and the dispatch of environmental protection experts to the Persian Gulf.

While of these only refugee repatriation and the dispatch of medical teams for refugee relief directly concerned refugee relief using human resources, some of the other policy components were significantly related to refugee relief as well. For example: the \$13 billion contribution was aimed partially at assisting those conflict-neighboring countries to cope with vast influxes of refugees as well as with the negative impact of Iraqi-targeted sanctions on their economies. Another example was the UN Peace Cooperation Bill, which was aimed at enabling the Self Defense Forces (SDF) to be sent to the Middle East for humanitarian relief as well as for rear-support for the multi-national coalition.

Below we first look at the policy components indirectly or potentially related to refugee relief in order to provide some background against which to evaluate those policy components actually implemented to help the Gulf War refugees.

Economic Sanctions:

While Japan's overall *kokensaku* ("contribution measures") were criticized as being "too little, too late," its economic sanctions against Iraq came uncharacteristically swiftly: Japan announced its own economic sanctions against Iraq (and occupied Kuwait) on August 5, 1990, prior to the August 6 adoption of UN Security Council Resolution 661 calling for such sanctions.

Japan's economic sanctions included embargo on oil imports from Iraq and Kuwait; embargo on exports to the above two countries; adoption of appropriate measures to suspend investments, loans and other capital transactions with the two countries, and freezing of economic cooperation with Iraq³¹.

Initially, the Ministry of International Trade and Industry (MITI), whose consent was necessary for any trade ban, hesitated to ban oil imports from Iraq and Kuwait not least because their combined share accounted for 12% of Japan's total oil imports. But the Kaifu Cabinet was able to quickly convince MITI and made the above decisions in a rather short period of time. One possible reason for this decisional swiftness was that Tokyo had learned lessons from its past experience: it had been internationally criticized in the past for its tardy and hesitant adoption of economic sanctions against target states (e.g., Iran after the 1979 Revolution; China after the 1989 Tiananmen Square incident).

Financial Support for the Multi-National Coalition:

In hindsight one may argue that had Japan pledged the above \$13 billion -- or even half that amount -- to the anti-Iraqi multinational coalition immediately after the Iraqi invasion of Kuwait, Tokyo would not have been criticized as

³¹ MOFA, *The Diplomatic Bluebook* (1991, No. 35, English ed.), p. 47. The UN Security Council Resolution 661 requested member states to (1) ban the import of products originating in Iraq or Kuwait; to (2) ban activities to promote exports from Iraq or Kuwait; to (3) ban the export of products to Iraq or Kuwait and any promotion activities; to (4) ban service trade with Iraq or Kuwait. Furthermore, Resolution 661 established a Committee of the UN Security Council to examine the implementation of the above mentioned sanctions.

much as was the case or political pressure from the USG as well as at home on the Kaifu Cabinet to contribute human resources (read: SDF) as well might not have been as nearly great as it actually was. In that case, the Kaifu Cabinet would not have felt it necessary to submit the UN Peace Cooperation Bill to the Diet.

In reality, however, it was nearly a month after the Iraqi invasion of Kuwait that Japan finally came up with its first version of *kokensaku*, the contents of which was approved at the August 29 Cabinet meeting and announced at a press conference on the same day. An outline of this initial contribution plan follows:

Contribution to the multi-national force included:
Chartering of commercial aircraft and vessels to help the coalition forces transport food, water and medicines; provision of equipment and materials for heat-proof measures and water supply; dispatch of a medical team of up to 100 personnel; and financial support for countries providing aircraft and vessels for the coalition forces.

Assistance to the affected countries in the region included: financial support for conflict-neighboring countries such as Jordan, Turkey and Egypt; and \$10 million for Jordan to help care for refugees coming into that country.

But why did it take Tokyo so much time -- more than four weeks -- to come up with such a simple list of measures? Moreover, the only specific monetary amount was that of \$10 million for Jordan. More significantly, a decision on the amount of the first portion of donation to the coalition forces was delayed until the next day when Foreign Minister Nakayama and Finance Minister Hashimoto met each other³².

³² As a receptacle for the Japanese contribution, Tokyo established the Gulf Peace Fund inside the existing Gulf Cooperation Council (GCC) on the basis of the exchange of

That amount turned out to be \$1 billion.

Notably, at this stage Tokyo made no mention of "military" contribution despite the fact that it by then had received US request for assistance in transporting troops, weapons and ammunition to the Middle East. It seems that such "controversial" items were deliberately excluded from the list of freight cited above. In the end, no request came from the US for such Japanese-sponsored transport.

On the other hand, the Kaifu Cabinet highlighted the sending of a medical team as an example of human contribution Japan could make to this (and future) multi-national war effort. To this end, Foreign Minister Nakayama, himself a medical doctor, sought to recruit as many medical experts as possible³³ but all he could assemble was a seventeen-member medical team, including five doctors all of whom from the public sector. On September 17, this original team left for the Middle East for a fact-finding mission. Although the GOJ sent such an advance team again before the end of 1990, it dispatched no working medical teams to the Middle East until after April 1991, that is, after the cessation of hostilities.

Notably, it was during the August 29 press conference that Prime Minister Kaifu officially for the first time expressed his desire to legislate *kokuren heiwa kyoryoku ho* (the "UN

notes between Japan and the GCC on September 21. All subsequent Japanese financial support for the multi-national coalition was deposited in this fund.

³³ At this point the SDF's medical personnel was excluded out of domestic political considerations.

Peace Cooperation Law") which would permit Japan's significant human contribution to the allied war effort. But P.M. Kaifu at this point withstood increasing pressure from domestic hawks -- including some of his own cabinet members and the LDP's executive leadership -- as well as from the USG, to send SDF forces to the Middle East³⁴. He categorically refused to do so, reiterating that his country's contributions should be made within the framework of its constitution which prohibits troop deployment overseas³⁵.

On September 7, in order to press Japan for additional financial support for the allied war effort, US Treasury Secretary Nicholas Brady -- President Bush's special envoy -- visited Tokyo and talked with Japanese political leaders. On September 14, the Kaifu Cabinet approved an additional \$3 billion contribution (\$1 billion for the coalition forces; \$2 billion for Egypt, Turkey and Jordan). This amount was exactly what Treasury Secretary Brady had requested from Tokyo³⁶. As a Japanese journalist noted, it took Japan a whole month to decide on its own to donate \$1 billion for the anti-Iraq coalition and only a week to cough up \$3 billion

³⁴ During the Gulf War the U.S. Ambassador to Japan Michael Armacost and the LDP's Executive Committee Chairman Ozawa Ichiro formed a de-facto alliance in order to press Kaifu to permit an SDF troop dispatch to the Middle East. See, for example, Yamaguchi, *op. cit.*, pp. 54-57; Sasaki Yoshitaka, *Umi o wataru jieitai* (Tokyo: Iwanami Shoten, 1992), pp. 13-16.

³⁵ Yamaguchi Asao, *Nihon no kiki kanri* (Tokyo: Nisshin Hodo, 1991), pp. 114-115.

³⁶ Yamaguchi, *op. cit.*, pp. 124-28.

after Brady's visit. Tokyo was responding swiftly to US lawmakers' mounting criticism of its "inadequate" war effort. For example, Senator John McCain, a powerful member of the Senate Armed Forces Committee, issued on September 10 a dire warning to Japan from the Senate floor:

If Japan wants friends in the United States, and to continue the progress of economic interdependence among nations, then it must assume the mantle of a world power. Japan must pledge at least \$8 billion, not \$1 (billion)³⁷.

In fact, an additional huge Japanese donation more than what Senator McCain had demanded materialized roughly four months later. At the G-7 meeting of finance ministers and central bank presidents held in New York on January 20-21, 1991, i.e., three days after the outbreak of war between Iraq and the coalition force, Treasury Secretary Brady met Finance Minister Hashimoto and told that the US wanted an additional \$9 billion from Japan to finance the allied war effort covering the initial trimester (January -- March 1991). Reportedly, Hashimoto gave Brady an affirmative answer in fifteen minutes(!)³⁸. To confirm this pledge, P.M. Kaifu telephoned President Bush on January 24, as he normally did during the Gulf War whenever he decided on contribution measures he deemed significant. Reportedly, Kaifu told Bush on the phone as follows:

After I was told about the pledge by my finance minister Hashimoto, I decided to go ahead with it after considering all things (...) With regard to transporting refugees, we will send commercial aircraft to Cairo (to repatriate them).

³⁷ *Congressional Record* (September 10, 1990), vol. 136, no. 109, S 12692.

³⁸ Sasaki, *op. cit.*, pp. 72-74; *The New York Times* (7/28/91).

We are also introducing a new government ordinance so that we can use SDF aircraft for that purpose when necessary.

President Bush responded by thanking Prime Minister Kaifu, saying that he would tell it to the American people as well as Congress so that they too would appreciate such wonderful cooperation from Japan³⁹.

The above projected logistical support for refugee evacuation/repatriation formed a key component of Japan's human-resource contribution for refugees during the war.

Before examining this, we will briefly look at the UN Peace Cooperation Bill. While not enacted, this bill was significant for it paved the way for the June 1992 enactment of the "International Peace Cooperation Law," which for the first time in post-WWII period permitted SDF troops to be dispatched to conflict areas overseas⁴⁰.

The UN Peace Cooperation Bill:

The analytical challenge here is to examine as briefly as possible the complex political process which led the Kaifu Cabinet to formulate the UN Peace Cooperation Bill as well as to kill it in the Diet. However, one can perhaps simplify the analysis by focusing on the central dynamic which moved the above process forward: it was a "tag of war" between the proponents of the overseas dispatch of the SDF and its

³⁹ Sasaki, *op. cit.*, pp. 73-74.

⁴⁰ An analysis of the policymaking process regarding this International Peace Cooperation Law is a fascinating one, but to the author's regret, it falls outside the purposes of this study. For such an analysis, see, for example, Sasaki, *op. cit.*, pp. 137-168.

opponents. These opponents were aided by the general public's aversion to Japan's military involvement in the Gulf War, whereas the proponents took full advantage of the heat of the war as well as the popular appeal of humanitarian mission which the SDF would be expected to engage under the auspices of the projected law. The former included Prime Minister Kaifu (initially at least), *naikaku hoseikyoku* ("the Cabinet Legislative Bureau"), doves within the LDP leadership -- represented by the former Chief Cabinet Secretary GOTODA Masaharu, opposition parties except for the Democratic Socialist Party (DSP), and the majority of public opinion. The latter included Prime Minister Kaifu (later in the process), the hawkish members of the LDP leadership -- represented by its Executive Committee Chairman OZAWA Ichiro, MOFA, the JDA, and the Bush Administration.

Initially, Prime Minister Kaifu firmly upheld his position that dispatching the SDF abroad was unconstitutional and that Japan's human contribution to the Gulf War should be made within the letter and spirit of its constitution. But his weak intra-party leadership as well as lack of resolution did not permit him to maintain this position, thus succumbing to strong currents in the opposite direction.

Aware that sending the SDF to the Middle East at this point was improbable, if not impossible, MOFA initially supported P.M. Kaifu's alternative plan of creating a new non-SDF entity for overseas relief purposes. But, impressed by unexpected strength of an alliance between the JDA and the LDP's so-called *kokubo zoku* -- "Defense Tribe," MOFA joined the bandwagon and pushed for the enactment of a UN Peace

Cooperation Bill.

The Finance Ministry, operating under its traditional fiscal conservatism, opposed the creation of a new governmental entity for fear of additional budget outlays, thus lending hands to the proponents of the SDF dispatch overseas.

But the decisive thrust came from across the Pacific. On September 29, 1990, during a meeting with President Bush in New York, Prime Minister Kaifu told him about Tokyo's ongoing legislative efforts for a UN Peace Cooperation Bill. President Bush reportedly replied that the Japanese SDF would be welcomed by the international community if they joined the multi-national coalition to provide logistical support such as transport and medical service⁴¹. This input from the USG helped shape even the specifics of the bill. For example, one controversial issue was the modality of SDF participation in a projected UN Cooperation Corps. MOFA, mindful of possible negative reactions from its Asian neighbors, sought to minimize the military nature of SDF participation by insisting that SDF personnel should participate with the *kyushoku-shukko* ("on leave-on loan") status, whereas the JDA, claiming the alleged impact of such a status on the SDF's morale, insisted on the *heinin* ("dual appointment") status, thus resulting in a policy deadlock. This was finally resolved -- in favor of the dual appointment status -- by P.M. Kaifu's phone call from New York, who had just come out

⁴¹ Sasaki, *op. cit.*, p. 33.

of a talk with President Bush⁴².

On October 16, 1990, the Kaifu Cabinet approved a UN Peace Cooperation Bill and sent it to the 119th Ad Hoc Diet session -- which was held for roughly a month (Oct. 12-Nov. 10) to specifically debate on this single bill. During this Diet session, the government's answers to questions by the opposition were very often confused and at times self-contradictory. For example, a major issue of the bill was whether or not the multi-national forces in the Middle East had been originally deployed on the basis of UN Security Council resolutions. If not, the opposition hoped, the GOJ would not be able to send its UN Peace Cooperation Corps there simply because the bill conditioned its dispatch upon appropriate UN Security Council resolutions. Responding to such a question by the SDP's Secretary General YAMAGUCHI Tsuruo, senior MOFA officials noted that the deployment of those multi-national forces was based on UN Security Council Resolutions 660 (August 2), 661 (August 6), and 665 (August 25)⁴³. Yamaguchi retorted, however, that since American troops had been deployed in Saudi Arabia and other countries since August 8, those resolutions preceding that date -- i.e., Res. 660 and 661 -- had nothing to do with the deployment of American troops and subsequently of the multi-

⁴² Sasaki made this interpretation on the basis of a "leak" by a senior aide to Prime Minister Kaifu. Sasaki, *op. cit.*, pp. 33-34.

⁴³ Res. 660 condemned the Iraqi invasion of Kuwait and demanded immediate withdrawal of its forces; Res. 661 established anti-Iraqi economic sanctions; and Res. 665 allowed multi-national forces to take necessary actions (read: limited use of force) to implement those sanctions.

national coalition. Yamaguchi triumphantly noted: "if we can cooperate with armed forces not authorized by UN resolutions, we will be able to do so with any military, won't we?"⁴⁴.

Furthermore, the Kaifu Cabinet contradicted itself on a number of points that were crucial to the passage of the bill⁴⁵. In view of the Kaifu Cabinet's ill-preparations with regard to the bill, the Komei Party decided to "kill" it even in the House of Representatives. The Komei Party had supported the bill on the condition that it be applicable only to the Gulf War -- so-called *jigen rippo* ("temporary legislation") -- and its votes were decisive in the House of Councilors where the LDP had lost its absolute majority. This was its death knell, which the GOJ hoped was to become the center piece of Japan's human contribution in the Gulf War.

Nevertheless the Komei Party was not alone in killing the bill. Even some of the LDP leaders voiced concern about the SDF's overseas dispatch, as in the case of GOTODA Masaharu, a powerful senior LDP politician who was well-known for his successful blocking of Prime Minister Nakasone's attempt to send SDF mine-sweepers to the Persian Gulf during the Iran-Iraq War.

⁴⁴ Yamaguchi, *op. cit.*, pp. 182-84.

⁴⁵ For example, Article 27 stipulated that Peace Cooperation Corp members, including SDF members, were allowed to carry small arms for self-defense purposes only. Asked about this, Director General of MOFA's Treaties Bureau, Yanai answered that those small weapons meant pistols and rifles, whereas Director General of the JDA's Defense Bureau, Fujii replied that SDF members serving in the UN Peace Cooperation Corps were permitted to carry even machine guns in accordance with Article 95 of the SDF Law, regardless of the stipulations of the UN Peace Cooperation Bill. Yamaguchi, *op. cit.*, pp. 185-86.

Needless to say, strong opposition from the SDP, the then largest opposition party, also contributed to the bill's defeat. On the first day of the so-called "Middle East Diet" session DOI Takako, the SDP's chairwoman, asked the government: "why does Pacifist Japan have to take the same action as the military superpower (read: the US), violating its own constitution?"⁴⁶ Led by Doi, the SDP kept its opposition to the bill throughout.

At the time, Doi's above sentiment was widely shared by the Japanese public. A *Kyodo* opinion poll conducted by telephone during the period August 31-September 1 indicated that only 15% of respondents answered "yes" to the question "Should Japan consider sending the SDF to the Middle East?," whereas an overwhelming 83 % answered "no."⁴⁷ Another telephone poll carried out by *Asahi Shimbun* in the early November 1990 showed an almost identical response pattern: only 15% of respondents agreed with the question "Do you think it good to enable the SDF to go to international conflicts overseas?," whereas 78% disagreed⁴⁸.

In the final analysis, the political momentum created by the debate in this "Middle East Diet" resulted in the conclusion of a tripartite agreement reached just before the closing day of the session. This November-8 agreement, reached among the LDP, the Komei Party and the DSP

⁴⁶ Sasaki, *op. cit.*, p. 50.

⁴⁷ Ijiri(?) Hirofumi, "PKO rongi no konmei o toku," *Gaiko Forum* (May 1992), pp. 36-37.

⁴⁸ Sasaki, *op. cit.*, p. 49.

envisioned, among other things, the establishment of an organization -- separate from the SDF -- to enable Japan to engage in UN peacekeeping operations⁴⁹. This new organization would be permitted to join UN Security Council resolution-based humanitarian relief missions as well as UN peacekeeping operations. As an astute journalist pointed out, this tripartite agreement served as a face-saving mechanism for the Kaifu Cabinet as well as for the LDP which under Ozawa's leadership had attempted and failed to bulldoze the bill through the Diet⁵⁰. Furthermore, it was also meant to please the USG by showing that something had come out of a "desert storm" inside the Japanese teapot.

Japan's Actual Human Contributions for Refugee Relief

As noted before, one of the promises Prime Minister Kaifu had made to President Bush in late January 1991 along with the \$9 billion pledge was logistical support for refugee evacuation and repatriation, -- more specifically, sending commercial aircraft to Cairo to evacuate (and repatriate)

⁴⁹ The SDP's non-participation in the agreement stemmed mainly from its disapproval of a peacekeeping cooperation corps envisioned by the Komei Party as well as by the DSP -- i.e., something resembling a Nordic UN stand-by force which is commanded by military officers. The SDP feared that such a command structure would eventually lead to SDF participation in that force. Yamaguchi, *op. cit.*, pp. 210-11.

⁵⁰ At the time Ozawa believed that the real issue was not to pass the bill -- which would of course be desirable -- but to force the Kaifu Cabinet to change the GOJ's traditional interpretation of the constitution in such a way as to render the SDF's dispatch abroad under UN auspices constitutional. Given the developments during the early 1990s, involving the SDF, Ozawa's goal seems to have been achieved to a significant degree.

foreign workers fleeing from Iraq as well as Kuwait. In this connection, Kaifu also told Bush about Tokyo's intention to introduce a new government ordinance, if necessary, to permit the use of SDF aircraft for that purpose. For the Kaifu Cabinet, such a humanitarian measure was as far as it could go in trying to project Japan's military presence in the Persian Gulf now that the UN Peace Cooperation Bill had met an ignominious death.

In the final analysis, the GOJ did send commercial aircraft -- JAL and ANA jumbo jets -- to Cairo and repatriated refugees -- mostly Southeast Asians. As for the introduction of the government ordinance necessary to use SDF aircraft for that purpose, the government was able to do so but such a dispatch did not take place for various reasons.

Below we examine why the GOJ decided to use SDF aircraft for evacuation and repatriation of refugees in the Middle East.

On January 16, the same day of his return from a US trip during which he had met with President Bush, Secretary of State James Baker as well as UN Secretary-General Perez de Cuellar, Foreign Minister Nakayama met Prime Minister Kaifu to relay to him an urgent message from President Bush: Bush had told Nakayama that while he acknowledged Japan's difficulty in sending the SDF abroad due to constitutional constraints, he still expected Tokyo to make as much human contributions as possible to the allied war effort. "In other words, Mr. Prime Minister, President Bush wants to see the

Japanese national flag in the Persian Gulf," Nakayama told Kaifu⁵¹.

Late into the night on the same day (January 16) -- the deadline set by the by-now-legendary UN Security Council Resolution 678, authorizing the use of "all necessary means"⁵² -- the Kaifu Cabinet and the LDP executive leaders discussed human contributions as well as additional financial support⁵³. The LDP side, led by the so-called *san'yaku* ("big three," namely, the Chairman of the Executive Committee OZAWA Ichiro, the Chairman of the General Affairs Committee NISHIOKA Takeo and the Chairman of the Political Affairs Research Committee KATO Mutsuki), pressed for the dispatch of SDF aircraft for refugee transport. In response, Prime Minister Kaifu could only express his wish to use commercial aircraft *first* for that purpose. More specifically, the Kaifu side explained at around 6 PM that refugees fleeing from Iraq had been pouring into Jordan as well as Syria and that these refugees would likely be transported from Amman and Damascus to Cairo by inter-governmental organizations such as IOM. From Cairo they could be repatriated by Japanese-chartered commercial aircraft. But at around 8 PM the government changed its story; now the IGOs would not be able to undertake such transport between Amman/Damascus and Cairo.

⁵¹ Sasaki, *op. cit.*, p. 64-65.

⁵² Resolution 678 (November 29, 1990) had authorized Kuwait-supporting member states to use "all necessary means" unless Iraq on or before January 15, 1991 fully implemented relevant Security Council resolutions.

⁵³ The following account is drawn on Sasaki, *op. cit.*, pp. 65-69.

Furthermore, around midnight Transport Minister MURAOKA Kanezo and Foreign Minister Nakayama had to tell the party's "big three" that commercial airliners were now hesitant to undertake refugee airlifts between Amman/Damascus and Cairo because war insurance premiums covering those routes had shot up 200 to 500 times. Informed of this deadlock, Ozawa suggested other means, pressing clearly for the use of SDF aircraft. At this point, Kaifu brought his position a little closer to that of Ozawa, saying that the GOJ would first request cooperation from commercial airlines and if that did not work, would consider dispatching SDF aircraft.

At around 9:30 AM, January 17, one hour after the multinational coalition initiated hostilities, Kaifu held an ad hoc Cabinet meeting as well as a National Security Council meeting and established the *wangan kiki taisaku honbu* ("the Headquarters for Measures for the Gulf Crisis") within the Cabinet. At 10:45 AM, Kaifu met Ozawa, Nishioka and Kato to discuss the dispatch of SDF aircraft. Coming out of this meeting, Kaifu instructed the JDA's Director-General Ikeda to finalize that course of action -- more specifically, to modify relevant ordinances concerning the implementation of the SDF Law's Article 100-5 (which authorized the SDF to transport "state guests and others") so that SDF aircraft could transport war evacuees as well⁵⁴.

⁵⁴ According to the relevant cabinet ordinance, "others" included the Emperor and other members of the imperial family, the Speaker of the House of Representatives, the President of the House of Councilors, the Supreme Court Chief Justice and the Prime Minister. *Kyodo* (Tokyo, 1/25/91), as monitored by FBIS.

Clearly, those LDP leaders led by Ozawa were able to press Kaifu to cross the Rubicon. On January 25, the Kaifu Cabinet issued a *tokurei seirei* ("provisional ordinance") necessary for dispatching SDF aircraft to the Middle East.

The government's plan envisioned first the establishment of an SDF transport headquarters in Cairo to provide air shuttle services for refugees between Amman/Damascus and Cairo (using the Air-SDF's five C-130 transport aircraft); and second the chartering of Japanese commercial aircraft (JAL and ANA) to transport refugees from Cairo to their home countries.

On the basis of this government plan, an Air-SDF team, consisting of five C-130s and approximately 200 personnel, was organized at Komaki Air base, Aichi Prefecture and was readying for take-off as soon as the GOJ received a request from the IOM to that effect⁵⁵.

Meanwhile, the refugee situation in the Middle East quickly deteriorated⁵⁶. On January 21, MOFA announced that approximately 66,000 refugees had fled from Iraq and Kuwait to neighboring countries since the January 17 start of the war and that within Iraq roughly 110,000-120,000 Southeast Asians as well as Egyptians were massing near the Jordanian

⁵⁵ Sasaki, *op. cit.*, p. 68-9.

⁵⁶ For a comprehensive view of the forced migration during the Gulf Crisis, see, for example, Nicholas Van Hear, "Mass flight in the Middle East: involuntary migration and the Gulf conflict, 1990-1991," in Richard Black & Vaughan Robinson, (eds.), *Geography and Refugees: Patterns and Processes of Change* (Belhaven Press, 1993), pp. 64-83.

border, waiting to be evacuated to Jordan⁵⁷.

On the same day, Transport Ministry officials indicated that JAL and ANA had accepted the GOJ request to send chartered planes to the Middle East. The same officials also said that the GOJ would bear the cost of war insurance premiums, now skyrocketing, for these flights and would have government officials -- police officers and MOFA officials -- on board the aircraft. However, they did not specify at this point whether those commercial planes would shuttle between Amman/Damascus and Cairo or they would just fetch refugees from Cairo and repatriate them.

Finally, on January 22, Transport Minister Muraoka announced that MOFA had received a request from the IOM to airlift 963 Vietnamese refugees from Cairo to Vietnam⁵⁸ and that he had requested JAL and ANA to do so. Those 963 Vietnamese, divided into two groups, repatriated on January 30 and on February 1⁵⁹. All told, during January and February 1991, a total of 1,046 refugees -- 963 Vietnamese and 83 Thais -- were repatriated from Egypt by GOJ-chartered

⁵⁷ *Kyodo* (Tokyo, 1/21/91), as monitored by FBIS.

⁵⁸ Those Vietnamese were part of the refugees who had travelled via land to Amman with the help of IOM.

⁵⁹ On January 28, the first group -- 580 -- of the above Vietnamese arrived in Cairo by IOM-chartered buses and on the same day left for home via London/Paris and Tokyo aboard two JAL Boeing 747s. They arrived in Tokyo on January 29 and the next day arrived in Ho Chi Minh City. Following the same route, the second group of 466 refugees -- this time 383 Vietnamese and 83 Thais, including two Thai diplomats -- landed in Tokyo on January 31 and arrived in Ho Chi Minh City and Bangkok respectively on February 1.

commercial aircraft⁶⁰.

While the GOJ was averse to acknowledge, the clear implication was that such refugee relief operations were achievable without the use of SDF aircraft. Furthermore, developments in and outside the Middle East at the time produced a situation where the non-use of the SDF in such relief operations would have made them diplomatically more acceptable and militarily less dangerous.

First, at a January 24 press conference in Tokyo the Iraqi Ambassador to Japan Rashid al-Rifai threatened that any military plane in the battlefield or within the "theater of operations" would become a legitimate military target, thus hinting that SDF aircraft in the Middle East might be attacked by Iraq. The Iraqi Ambassador further warned that Japan's funding of the multi-national forces had transformed it into a hostile country in the eyes of Muslims the world over⁶¹.

Second, initially at least, the Government of Jordan was reluctant to give permission to let SDF aircraft use Amman Airport for refugee evacuation because, given its large pro-Iraqi Palestinian population, it was not easy for the Jordanian government to receive military aircraft from Japan

⁶⁰ In fact, this was not the first time Japan had repatriated refugees from the Middle East during the Gulf War. In September and October 1990, GOJ-chartered JAL and ANA planes repatriated 803 Filipino refugees from Jordan to the Philippines. *Gaiko Seisho* (1991, No. 35), p. 162-63.

⁶¹ *Kyodo* (Tokyo, 1/25/91), as monitored by FBIS.

-- a US ally supportive of the anti-Iraq multi-national forces⁶².

Third, as expected, some Asian nations expressed concern over the likely deployment of Japanese military overseas, the first such case in the post-WWII period. For example, the Republic of Korea's major opposition party, the Party for Peace and Democracy (PPD) urged its government to examine carefully the motives behind Tokyo's above decision to determine whether it was the beginning of Japan's quest for military power in the world⁶³. Similarly, a senior official of the Philippine's Department of Foreign Affairs, while negotiating with his Japanese counterparts on Tokyo's plan to fly SDF aircraft over Philippine territory, expressed skepticism as to why Japan needed to send SDF aircraft on a mission which could obviously be undertaken by civilian aircraft⁶⁴.

Predictably, inside Japan the government's attempt to deploy the SDF abroad generated an enormous controversy:

First, it would contravene the above-mentioned November-8 tripartite agreement which had proposed the establishment of an organization, separate from the SDF, for the purpose of joining UN humanitarian as well as peacekeeping operations.

⁶² Jordan had received military aircraft from Singapore and New Zealand for refugee evacuation purposes but after January 17, it was increasingly reluctant to do so even only for refugee evacuation purposes. *Asahi Shimbun* (1/29/91); *Kyodo* (Tokyo, 2/2/91), as monitored by FBIS.

⁶³ *The Korea Times* (Seoul, 1/27/91), as monitored by FBIS.

⁶⁴ *Kyodo* (Tokyo, 1/28/91), as monitored by FBIS.

Thus, the Komei Party -- the least enthused of the three parties about rapidly upgrading Japan's involvement in UN peacekeeping -- joined the SDP and the JCP this time to oppose the dispatch of SDF aircraft.

Second, the fact that such a policy change, which had significant long-term political and diplomatic implications for Japan, would become possible simply by the government's issuing a new cabinet ordinance, without Diet debate was unsettling to the majority of Japanese. Although very often ceremonial in the past, Diet debate nevertheless has provided political constraints on the overseas role of the SDF throughout the post-WWII period.

Furthermore, it was obvious to everybody that the government's equating "refugees" with "state guests" was an unreasonably overstretched interpretation of the SDF Law. Thus, the opposition --except the DSP -- was on firm ground when it claimed that the SDF Law did not provide for any overseas role for the SDF and insisted that the law must be revised -- a practical impossibility -- if SDF aircraft were to be sent overseas⁶⁵.

The majority of public opinion at the time was opposed to SDF deployment abroad. A *Kyodo* poll conducted shortly after the GOJ's January 24 announcement of its SDF dispatch plans as well as the \$9 billion pledge, found that only 38% favored the plan to send SDF forces even for refugee evacuation, while 58% opposed it. Asked about Japan's future international contribution, 36% chose greater economic

⁶⁵ *Kyodo* (Tokyo, 2/5/91), as monitored by FBIS.

assistance, 34% preferred economic assistance and non-SDF human contributions, and only 16% favored the dispatch of the SDF⁶⁶. We can clearly see here a transition away from traditional pacifism towards a nascent neo-pacifism, but hardly any sign of popular aspiration for "multilateral realism."

In early February 1991, a series of popular demonstrations took place in Japan against the GOJ's *kokensaku* in the Gulf War, including the projected dispatch of the SDF to the Middle East.

On February 2, approximately 500 demonstrators tried to form a "human chain" around the Diet building in Tokyo. On the same day in Osaka, several thousand people marched in the city center to oppose the Gulf War itself and Japan's involvement in it. The next day there was a 1,500-strong demonstration in Tokyo, and similar but smaller-sized demonstrations took place in half-a-dozen cities, including Yokohama, Hiroshima, and Fukuoka⁶⁷.

Nevertheless, the GOJ was not totally isolated in seeking ways to semi-militarize its cooperation in the Gulf War. Particularly on the issue of SDF deployment, the GOJ found its strongest ally in the USG. As noted before, President Bush, in a January 24 telephone conversation with Prime Minister Kaifu, had thanked the latter for his intention to dispatch SDF forces as well as his additional \$9 billion pledge. On January 28, Ambassador Armacost reiterated

⁶⁶ Izeri, *op. cit.*, p. 37.

⁶⁷ *Kyodo* (Tokyo, 2/2 & 2/3/91), as monitored by FBIS.

President Bush's gratitude when meeting with HIRAIWA Gaishi, new chairman of the *keidanren* ("the Federation of Economic Organizations"). Besides thanking for Japan's additional \$9 billion contribution, Amb. Armacost hailed the GOJ decision to send SDF aircraft. Throughout the war, the ambassador kept pressuring the GOJ for greater involvement in the war by, among other things, warning that American antipathy to Japan might grow if the Gulf War was prolonged and casualties mounted in the context of economic recession⁶⁸.

Analysis of Japan's effort at refugee evacuation would be incomplete without considering its citizens' parallel efforts for the same purposes.

As noted above, the SDF dispatch to the Middle East for refugee evacuation had been made contingent upon such a request from the IOM (or other similar humanitarian IGOs). Presumably, this conditionality was meant to avoid the image of Japan unilaterally taking up such mission, by borrowing the authority and legitimacy of the multilateral refugee/humanitarian regime. However, to the GOJ's dismay, no such request came from the IOM or other IGOs during and after the war. Speculating on possible reasons for this is not difficult.

For the refugee regime, the key issue was to rescue refugees/war victims as soon as possible using whatever means. Whether the vehicle for that mission was military or non-military was irrelevant. Thus, if such a mission could be achieved by civilian aircraft, there would be no need to

⁶⁸ *Kyodo* (Tokyo, 1/28/91), as monitored by FBIS.

request a military airlift from any country, including Japan. In fact, while visiting Tokyo early in February, 1991, Thomas W. Lamb, an adviser to the IOM, urged Tokyo to dispatch planes, *either civilian or military (SDF)*, to the Middle East to evacuate refugees, although he felt that skyrocketing insurance premiums as well as personnel arrangements made SDF aircraft more appropriate. In this connection, Lamb praised Japanese citizens' ongoing campaign to charter commercial planes to airlift refugees from Amman to Cairo. But inside Japan, debate focused exclusively on the *nature of the vehicle* for such missions, thus suggesting a incongruity between the international refugee regime and Japan's refugee debate.

Below Japanese citizens' campaigns to help refugees evacuate from the Gulf conflict is examined. They undertook their campaigns in parallel, but not together, with the GOJ, thus placing themselves firmly within the context of Japan's neo-pacifist vision.

The idea of citizens' pooling their donations to charter commercial aircraft for refugee evacuation reportedly stemmed originally from Mr. FUKUSHIMA Takayuki, chairman of the *kokusai shinzen koryu kyokai* ("the Association for International Exchange and Goodwill"). Convinced that sending military aircraft from Japan -- a US ally supporting multinational forces --to Jordan -- an Arab country with a large Palestinian population --ignored the sensitivity of the latter's domestic politics and that civilian alternatives should be explored, Fukushima consulted with SUZUKI Kazuo, the General Manager of the Royal Jordanian Airline (RJA)'s

Japan Branch and a long-time friend. Suzuki and Fukushima made an arrangement by which Japanese citizens could charter a RJA flight between Amman and Cairo for \$40-50,000. This story, broadcast by Tokyo Broadcasting Station (TBS) on January 30, prompted many people, including representatives from the Japan Catholic Bishops Council as well as from the Association of Supporters of DOI Takako -- the SDP's chairwoman -- to contact the RJA's Tokyo Branch. To facilitate this process, on February 7 Fukushima opened a bank account in which any citizen could deposit money for Gulf War refugee evacuation. As of the beginning of February, the total contributions collected was sufficient to charter at least 25 such flights⁶⁹.

Even before the opening of the above bank account, some citizens, upon learning of the availability of RJA charter flights, had undertaken similar projects by themselves. On February 6, the first such flight financed by Japanese citizens flew from Amman to Cairo, bringing 139 Yemeni refugees out of harm's way. INOUE Masanobu, one of the two lawyers who financed this first charter flight, explained roughly as follows:

After watching the TV news on January 30 about RJA's charter flights, I sent a fax to IOM's Geneva headquarters -- via its Tokyo branch -- to tell them about the charter arrangement we had made with RJA as well as to ask them to make the necessary arrangements for refugee transport. This clearly shows that we don't have to send SDF aircraft to the Middle East. If each citizen could do this, the Japanese Government, by spending a fraction of what it has decided to pay for the multi-national forces, could charter an enough number of flights so that a lot of refugees could be

⁶⁹ *Mainichi Shimbun* (2/8/91).

transported without using SDF aircraft⁷⁰.

Clearly, such citizens' campaigns for refugee evacuation were motivated not only by pure humanitarianism but also -- perhaps more strongly -- by their desire to block the GOJ from dispatching SDF aircraft for refugee evacuation. They sought to do so by demonstrating that such missions could be accomplished by civilian aircraft chartered by ordinary citizens.

As noted already, the Japanese public seems to have been inclined towards neo-pacifism (or internationally-oriented pacifism) especially after the bitter experience with the Gulf War. This neo-pacifism claims that Japan must contribute more actively to the maintenance of international peace and security but it must do so through non-military means. Given their unconventional ideas and initiatives, the above citizens' campaign for refugee evacuation would fit in such neo-pacifism. While their contribution remained essentially financial, it was prescribed for humanitarian purposes only. On the other hand, the humanitarian nature of its mission notwithstanding, the GOJ attempt to dispatch SDF aircraft would exceed the emerging parameters of neo-pacifism due to its reliance on military means.

Thus, one may say that the conflict that emerged between the government and the public as both tackled the humanitarian issue of refugee evacuation reflected two competing visions of Japan's future role in the world: one vision -- proposed by the GOJ -- sought to quickly transcend

⁷⁰ *Asahi Shimbun* (2/7/91); *Yomiuri Shimbun* (2/8/91).

Japan's traditional pacifism into "multilateral realism"⁷¹; the other -- pursued by citizens' groups -- sought to elevate traditional-isolationist pacifism into "nec-pacifism" with more active human -- but non-military -- involvement in the areas of global peace and security.

In what follows, we analyze another case of Japan's human contribution for refugee relief, that is, the dispatch of medical teams to help Kurdish refugees in Iran and Turkey. This time, taking place after the Gulf War, the GOJ's policy did not produce a major controversy because official visions and citizens' visions regarding Japan's future role in the world overlapped to a significant degree.

In March 1991, taking advantage of a defeated Iraqi government, the long-oppressed Kurds and Shiite rebelled against the regime in the North and the South respectively⁷². However, both uprisings were brutally suppressed by the Iraqi regime and mass exoduses of refugees ensued. It is estimated that a total of 1.8 million Kurds and Shiite -- 10% of Iraq's entire population -- fled into Iran and Turkey.

Responding to this crisis, the UN Security Council on April 6 adopted Resolution 688 calling on Baghdad to halt its

⁷¹ By "multilateral realism" we mean (1) a foreign policy ideology which tends to rely on military power/influence for achieving foreign policy objectives and (2) such use of military power/influence is predicated upon sanction by multilateral organizations such as the United Nations. In other words, it is a realism which is embedded in multilateralism and the use of military power as a major foreign policy tool is sanctioned by multilateral institutions.

⁷² The following account of the Kurdish refugees is based mainly on Human Rights Watch, *The Lost Agenda: Human Rights and U.N. Field Operations* (June 1993), pp. 135-173.

oppression of the Kurds and appealed to the international community for humanitarian assistance. Tokyo provided an additional \$100 million⁷³ in April at the request of UNDR0 (UN Disaster Relief Operations), which helped finance refugee relief operations by UNHCR, UNICEF, WFP and other humanitarian organizations in the Middle East. The GOJ also chartered 10 commercial flights (7 to Iran; 3 to Turkey) to transport \$630 million worth of such emergency materials as blankets, crackers, powdered milk, water, and medicine for Kurdish refugees⁷⁴.

More significant for our purposes was that the GOJ sent emergency medical teams to Iran and Turkey to help Kurdish refugees therein: it consecutively dispatched 5 medical teams -- totalling 51 medical personnel -- belonging to its Japan Disaster Relief (JDR) teams to Iran's Azerbaijan Province from early April through mid-June (approximately 70 days). Similarly in May, it sent a 8-member JDR medical team to Yermak, Turkey⁷⁵.

Japan's August 1990 *kokensaku* for the Gulf Crisis included the dispatch of a medical team of up to 100 personnel to the Gulf. This plan failed partly because Japan could not agree

⁷³ This amount accounted for a quarter of the amount requested by UNDR0 for emergency assistance for the Kurds. *Kyodo* (Tokyo, 4/24/91), as monitored by FBIS.

⁷⁴ These relief goods were provided by the local governments and the private sector as well as by Tokyo. MOFA, *Diplomatic Bluebook* (1991, English ed.), pp. 166-67.

⁷⁵ In Iran, these JDR teams provided medical service to the Kurds in collaboration with the Iranian Red Crescent Society as well as with UNHCR. Likewise in Turkey, they collaborated with the Turkish Red Crescent as well as the UN agency.

with Saudi Arabia, a host country, on the duration of their stay. More fundamentally, however, it was because Japanese medical personnel in the public sector, fearful of getting directly involved in the US-led coalition's campaign in the gulf, refused to cooperate with the government⁷⁶.

This time, the GOJ's dispatch of medical teams to Iran and Turkey was not strongly opposed presumably because the war itself was over with the result that there was little public concern over Japan's direct participation in the war (besides, their destinations were outside the conflict areas). Equally important, the enormity of the human disaster involving Kurdish refugees was widely reported in Japan and the humanitarian nature of their missions was unquestionable. In a nutshell, here was an ideal-typical form of international contribution for Japan: the mission was important and genuinely humanitarian in nature and which was achievable without military involvement. Thus, undertaking such a mission was perfectly congruent with the public vision of Japan striving to become a neo-pacifist nation.

In this context, the Japan Disaster Relief (JDR) teams can

⁷⁶ The Saudis wanted Japanese medical teams to stay in their country at least for six months, which the GOJ argued was impossible given the typical tight working regimen at Japanese medical institutions.

On the other hand, medical personnel unions in Japan strongly opposed the Gulf War itself. For example, Secretary General of Tokyo University's Hospital Union, SASAKI Toshiaki, claimed that sending doctors to the Middle East would result in Japanese medical personnel joining US-led coalition forces to fight Iraq, not helping refugees as originally intended. Union opposition was such that the GOJ kept secret the names of medical members of the advance teams. *Kyodo* (Tokyo, 9/17/90; 2/6/91), as monitored by FBIS.

serve as a significant foreign policy instrument for Japan as it seeks a greater and fitting role in the post-Cold War world. Nevertheless, despite such potential, the JDR has become another policy "battleground" where the above-mentioned two distinct visions conflict with each other for control over Japan's global role.

A brief examination of the evolution of the JDR seems appropriate here.

The Japan Disaster Relief Teams (JDR):

In 1982, Tokyo established the Japan Medical Teams for Disaster Relief (JMTDR), which was to become the core organization around which the JDR developed. The establishment of the JMTDR was motivated largely by Japan's traumatic experience with the Indochinese refugee crisis. Particularly, the Cambodian refugee crisis of 1979 painfully revealed the inadequacy of Japan's response to international emergencies. In contrast with other developed nations, Japan found itself utterly unprepared for providing emergency medical assistance even in its own region. This bitter experience was repeated as Japan tried to respond to the October 1980 earthquake in Algeria⁷⁷.

Consisting of more than 100 medical experts, the JMTDR was envisioned as a humanitarian "rapid deployment force," which would be sent to refugee relief as well as natural disaster

⁷⁷ In the case of the Algerian earthquake in which roughly 5,000 people were estimated to have died, Japan was able to send a medical team only one week after the quake. West Germany as well as France had sent their medical teams the day after the quake.

relief operations⁷⁸. Nevertheless, subsequent disasters abroad proved the JMTDR to be still inadequate as an emergency relief body. The experience with the Mexican earthquake as well as with the volcanic eruption in Colombia in 1985 demonstrated that without rescue capabilities such a medical relief organization was ineffective. Thus, in September 1987 the GOJ created a new JDR on the basis of the "Law Concerning the Dispatch of the Japan Disaster Relief Teams." This new JDR consisted of the following three teams:

Relief Teams are rescue experts from Fire Departments (of city governments); Police Agencies (of Tokyo and Prefectures); and the Maritime Safety Agency (MSA). There were more than 1,500 personnel registered as of mid-1991. Medical Teams are physicians and registered nurses from both private and public sectors, as well as coordinators from the private sector. Roughly 500 were registered as of mid-1994. Expert Teams are technical experts from relevant Ministries and Agencies. They are sent to control the impact of the disaster and to restore and reconstruct damaged facilities⁷⁹.

During and after the Gulf Crisis, the GOJ, in addition to the medical teams noted above, sent several JDR expert teams to Saudi Arabia to control oil-spills and air pollution as well as to maintain desalination plants in the Persian Gulf. By the end of 1992, Japan had dispatched JDR teams 23 times, involving roughly 300 personnel in total, to disaster areas the world over.

Nevertheless, in mid-1992 a significant revision was made

⁷⁸ *Mainichi Shimbun* (10/16/81, evening ed.).

⁷⁹ In order to expedite the delivery of emergency materials (e.g., blankets, tents, water-purifiers, power-generators), reserve depots have been built abroad (Singapore; Mexico; Italy; the US) as well as in Japan (Narita Airport). MOFA, *Diplomatic Bluebook* (1991, English ed.), pp.168-9.

to the JDR Law, to which the Japanese media, consumed by the debate on the peacekeeping cooperation bill, has paid little attention but which has had a significant impact on the contours of Japan's humanitarian relief activities in the future.

MOFA's 1992 *Diplomatic Bluebook* noted as follows:

The experiences of past relief activities have provided the following lessons: In some cases, large-scale teams need to be dispatched; in others, there is a need for the teams to be self-sufficient. There is also a need to improve transportation systems. To meet these needs, it is appropriate for Japan to make efficient use of the capabilities of the existing administrative organizations to improve the disaster relief system (emphasis added)⁸⁰.

Thus, in June 1992 the GOJ revised the JDR Law in such a way as to enable the SDF to participate in the JDR. The stated rationale for this change was to provide JDR with SDF transportation capabilities to make the former more self-sufficient. This revised JDR Law provides that the Foreign Minister, in consultation with the JDA's Director-General, can dispatch units of the SDF to engage in disaster relief operations themselves as well as in the transport of JDR personnel and materials to disaster-affected regions when the Foreign Minister deems it particularly necessary⁸¹. To allay domestic opposition to and fears about possible dispatch of the SDF abroad, the GOJ emphasized during relevant Diet sessions that the participation of the SDF would not lead to future situations where JDR teams would be sent to more dangerous areas, i.e., disasters stemming directly from armed

⁸⁰ MOFA, *Diplomatic Bluebook* (1992, English ed.), p. 140.

⁸¹ The Japanese original text of this revised law is found in *Roppo Zensho* (Tokyo: Yuhikaku, 1994), p. 1243.

conflict; and no weapons would be carried to protect the JDR as well as SDF personnel while operating in disaster areas.

The above change had two major consequences. The first one was apparent: from now on SDF personnel will be permitted to engage in overseas disaster relief operations along with their JDR colleagues. But the second consequence hardly was apparent: from now on the JDR will not be able to engage in assistance for victims of the consequences of armed conflict, the most salient example of which are refugees who have fled from civil wars. The supreme irony here is: precisely because of the official legal maneuver to permit SDF participation in the JDR, putatively to make the JDR "self-sufficient," the JDR itself will not be able in future to participate in humanitarian relief operations involving refugees such as the Kurdish case. Obviously, the GOJ has thrown out the baby with the bath water.

But this was only part of the picture. The whole picture became clear when Tokyo enacted the International Peace Cooperation (IPC) Law⁸² in June 1992, that is, concurrent with the above revision of the JDR Law. This Law provides for the dispatch of the SDF abroad to participate -- on certain conditions⁸³ -- in UN peacekeeping as well as humanitarian

⁸² For the full Japanese text, see, for example, *Roppo Zensho* (Tokyo: Yuhikaku, 1994), vol. I, pp. 1380-1383.

⁸³ These conditions or the so-called "five principles" are as follows:
 (1) agreement on a cease-fire shall have been reached among the parties in the conflict; (2) the parties in the conflict, including the territorial state(s), shall have given their consent to deployment of the peacekeeping forces and Japan's participation in that Force; (3) the peacekeeping force shall strictly maintain impartiality, not favoring any party in the

international relief operations.

In other words, the combined legal significance of the IPC Law and the revised JDR Law has created the legal framework within which the SDF can now participate in UN peacekeeping operations and relief operations for disasters of all kinds, whether by nature or by armed conflict⁸⁴. On the other hand, the JDR can participate only in relief operations for disasters caused by nature or human accidents (e.g., gas explosions).

In summary, Japan's future participation in relief operations for refugees whose flight was caused by political factors such as ethnic conflict will be undertaken primarily by its armed forces⁸⁵.

Nevertheless, such legal restrictions on the range of JDR activities can be detrimental to the further strengthening of Japan's external refugee policy. One reason is endogenous:

conflict; (4) should any of the above guideline requirements cease to be satisfied, the Government of Japan may withdraw its contingent; and (5) use of weapons shall be limited to the minimum, necessary to protect the peacekeeping personnels' lives. MOFA, *Diplomatic Bluebook* (1992), pp. 52-54.

⁸⁴ The SDF can participate in such humanitarian operations not only in accordance with Resolutions by the UN General Assembly, Security Council as well as ECOSOC, but also at the request of UN Agencies (UNDRO, UNHCR, UNRWA, UNICEF, UNV, UNDP, UNEP, WFP, FAO, WHO) as well as IOM.

⁸⁵ Actually, this exclusive SDF mission has already taken place. On the basis of the IPC Law -- more specifically, Articles 2-1 & 3-2 providing for the SDF's engagement in "humanitarian international relief activities," the SDF was dispatched to the Zairian border to help Rwandan refugees during September-December 1994. Before departure, the JDA/SDF declined offers of help from the JMTDR. *Asahi Shimbun* (10/10/94).

now consisting of more than 2,000 experts, including 180 medical doctors, JDR has developed extensive know-how ranging from foreign language skills to treatment of tropical diseases -- with which the SDF is insufficiently equipped⁸⁶. The second reason is exogenous: the number of refugee flights caused by ethnic conflict is likely to increase in the future so that the SDF will eventually need organizational help from the JDR.

Furthermore, given that the central norms of the international humanitarian regime is the effective and swift rescue/relief of victims through whatever means, Tokyo's insistence on the use of troops for such purposes may hinder the implementation of that regime norm, thereby generating tensions between the international regime and Japan's own external refugee policy.

3. CONCLUSIONS

Japan's vast financial donations to the international refugee regime to date would lead us to conclude that Japan has been a highly significant actor in the maintenance of this particular regime. It is no exaggeration to say that without Japanese funding the refugee regime will be unable to sustain itself for long. This remains to be true regardless of Japan's motives for such financial generosity.

Nevertheless, as long as Tokyo uses its financial power to "compensate" for its own poor resettlement record, such a stance will continue to be criticized internationally simply

⁸⁶ *Asahi Shimbun* (10/25/94).

because refugee-intake is yet another important component of international burden-sharing.

Japan's human-resource contribution for refugee relief was initiated fundamentally because Japan "learned lessons" from the 1990-91 Gulf Crisis. It shocked the Japanese into realization of the inadequacies of their traditional pacifism and formation of a national consensus to that effect. But there are conflicting visions as to how such traditional an isolationist pacifism should be elevated to a new internationalist philosophy fitting the world' second-largest economy.

Precisely because of this lack of a unified vision, the contribution of human resources for the cause of refugees -- supposedly an act of genuine humanitarianism -- has become an ideological battleground between the proponents of "multilateral realism" and those of "neo-pacifism." To date, the government has been able to use the issue of refugee assistance to promote its vision of "multilateral realism." However, such a militarization of Japanese external refugee policy, as demonstrated by an increased dependence on the SDF for humanitarian relief operations, will likely undermine the policy's own effectiveness, given that refugee-producing situations are increasingly difficult to contain, much less resolve, by military means.

The real challenge for Japan as well as for other nations committed to refugee relief is this: to develop a conceptual framework capable of integrating financial, human, and intellectual resources in such a way as to tackle the real causes of refugee flights. To date the regime has not gone

beyond simply trying to improve its operational capabilities (itself no easy task). Japan has done a great deal up till now about the maintenance/improvement of the refugee regime's operational capabilities, but it has yet to contribute innovative ideas therein.

In the future Japan should strive to become a well-balanced contributor to and even an innovator in the international refugee regime through formulating new ideas and initiatives for the regime in addition to providing protection for greater numbers of asylum-seekers from the rest of the world.

CONCLUSIONS

The present study of Japan's contemporary refugee policy has been predicated upon the assumption that it has changed considerably since the late 1970s. This study has sufficiently -- I hope -- documented the specifics and importance of that policy change, namely, the refugee resettlement decision and an accession to UN refugee treaties. The issue of greater significance, however, has been why that policy change took place.

At least two answers to that question have been presented in this study.

One answer derives from the view that Japan is a "sovereign state" jealously guarding what it deems as its unique national characteristics, namely, its high degree of ethnic homogeneity. From such a perspective, the previously mentioned policy change was a tactical concession on the part of the Japanese government, which, facing strong international pressure to liberalize its asylum policy, sought to retain its fundamentally isolationist refugee (and more generally immigration) policy so that it could maintain its "mono-ethnic" society.

Thus, although Japan, passively reacting to outside pressures, may again seem to have behaved according to the pattern predicted by the "Japan-as-a-reactive state" thesis, its reaction was anything but passive in nature; it was to defend what it perceived to be the national interest of preserving its cultural/ethnic identity. In this context, our seemingly paradoxical observation that Tokyo's accession to UN refugee treaties -- i.e., its partial delegation of

sovereignty to the international refugee regime -- was aimed fundamentally at regaining its sovereign control for its refugee policy was only superficially paradoxical.

Regarding the issue of Japanese "mono-ethnicity," Japan's desire to maintain its "mono-ethnic" society has stemmed from the strong national belief that its society has been "mono-ethnic" over the centuries and should remain so lest it lose its ethnic/cultural identity¹. As a corollary of that "mono-ethnic" mythology, the Japanese tend to believe that their relative economic prosperity and safe streets depend to a significant degree on the continued exclusion of (poor) foreigners from their national territory.

In a nutshell, Japan's isolationist asylum (and more generally immigration) policy has been construed and in fact used in order to defend Japan's putative national cultural/ethnic purity and hence its economic prosperity and public safety.

Obviously, Japan, as a major economic power, cannot get away with keeping such an exclusionist attitude in this increasingly interdependent world. Thus in order to compensate for its restrictive asylum policy, Tokyo has been paying generously for international refugee relief

¹ This psychological component of cultural defense has been at work, either explicitly or implicitly, in almost every debate about the Japanese refugee (and immigration) issue. Among the most vocal proponents of such a view is Prof. NISHIO Kanji of Tokyo's Denki-Tsushin Daigaku. See, for example, Nishio Kanji, *senryakuteki "sakoku" ron* (Tokyo: Kodansha, 1988).

activities, as demonstrated here². In addition to the above consideration of cultural/ethnic defense, Japan's official reluctance to receive refugees has also reflected what we have called "paternalistic pan-statism," saliently manifested among Japanese government officials and potentially among the public. This ideology has, among other things, confined these officials within the anachronistic mind-set that refugees are renegade aliens who should be repatriated and "disciplined" in the hands of the competent authorities of their native countries.

Furthermore, such a "paternalistic pan-statist" view governs the Japanese concept of political dissent as well as asylum, negatively affecting not only the Japanese treatment of foreign asylum-seekers inside Japan but also the prospect of Japan's more active human rights diplomacy abroad³.

² One can safely generalize this policy linkage -- i.e., its restrictive asylum policy and its generous financial contribution to international refugee programs -- by expanding it into the one between Japan's restrictive immigration policy in general and its generous Official Development Assistance (ODA). For example, Japanese diplomats have officially admitted that Japan's huge yen-denominated ODA to the PRC has been partly motivated by Tokyo's thinking that domestic economic development in China would hopefully deter Chinese peasants from migrating to Japan. James Hollifield has called this as the strategy of "bringing capital to people as a way of avoiding tensions in the labor market at home, and pressures for emigration in less developed neighboring countries." James F. Hollifield, *Immigrants, Markets, and States: The Political Economy of Postwar Europe* (Harvard University Press, 1992). p. 25.

³ Other obstacles to Japan's more active human rights diplomacy include the lack of a global human rights situation monitoring system within the relevant government agencies; its failure to date to implement the human rights conditionality of its Official Development Assistance Charter; and its failure to come to terms with the legacy of

The second answer stems from the view that Japan is a "semi-sovereign state" whose security has been dependent ultimately on the capability and will of another state, namely, the U.S. In brief, Tokyo changed its refugee policy because it felt compelled to diplomatically demonstrate solidarity with the U.S., -- i.e., its security provider -- by permanently receiving Indochinese refugees who had been created by that security provider's foreign policy failure, namely, the Vietnam War. Put otherwise, Japan's refugee policy change stemmed from its perceived need to maintain its critically important relations -- particularly military alliance -- with the U.S., and not from its spontaneous decision to address the Indochinese refugee crisis *per se*. Here again, Japan's "reactive" response was a strategically defensive one.

Furthermore, a reputational consideration was at work in Tokyo's refugee resettlement decision; its status of the economically most advanced nation in Asia as well as one of the wealthiest in the world in the late 1970s compelled it to receive refugees in its own region. Otherwise Japan would have been criticized internationally as an egotistic nation, thus resulting in a "loss of face" for the Japanese government.

Another underlying question which has informed this study throughout was: to what extent and in what ways have Japan's refugee policy and its overall foreign policy been related to each other. Working under the normative assumption that Japan

World War II such as the issue of "comfort women."

needs a new foreign policy commensurate with its greatly enhanced stature among nations, we have decided to use Japan's refugee policy as a litmus test to determine whether or not Tokyo has been developing such a new foreign policy.

Does our inquiry permit us to affirm that Japan has indeed been developing such a new foreign policy philosophy? The answer would obviously be in the negative, but with significant reservations. Our answer would have been a categorical "no," had it not been for the fact that the Indochinese refugee crisis generated in Japan numerous humanitarian NGOs eager to help refugees at home and abroad, and that the Persian Gulf War compelled a great many Japanese citizens to engage in voluntary activities aimed at aiding war refugees and victims of that conflict. Although one may argue that such humanitarian behavior -- as it took place during emergencies -- was an exception rather than a norm in Japanese behavior, one may also argue that such behavior would have been improbable -- if not unthinkable -- had the Japanese been confined within their "isolationist pacifism" which both the Japanese government and people have complacently nursed throughout the post-World War II period.

These "new" types of behavior could more appropriately be labelled as what we have termed "neo-pacifism," a pacifism which is more internationally-oriented and more actively engaged in global issues through non-military means, than its philosophical forerunner.

On the other hand, the Japanese government -- the Ministry of Foreign Affairs in particular -- has tended to seek a quick conversion of Japan's traditional "isolationist

pacifism" into what we have called "multilateral realism." This "multilateral realism" tends to rely on its involvement in multilateral military actions for the realization of its own national interests. Tokyo's repeated attempts to send SDF troops/aircraft for refugee rescue/relief missions in the Persian Gulf are a case in point. In other words, there have emerged conflicts of vision -- between the general public and the government -- pertaining to Japan's appropriate new role in a greatly changed world. Such a conflict of vision dramatically manifested itself as Japan sought to assist war refugees during the Gulf Conflict.

Thus we can conclude that the main challenge for Japan's refugee policy has been a specific manifestation of the larger challenge confronting its foreign policy in general, namely, a challenge about how to reconcile these two conflicting visions of its own place in the world⁴. Since the predominant pattern of public decision-making in Japan has been democratic, this reconciliatory process is -- I hope -- likely to be carried forward in the direction of the general public's "neo-pacifist" visions and preferences, which seem more consonant with the framework provided for by the Japanese constitution. In this context, the global and pacifist orientation of the Japanese constitution, which has been "frozen" during the Cold War, may as well become "defrosted" in the interests of the larger world as well as of Japan.

⁴ This is not only a matter of foreign policy but also a matter of Japan's existence itself, that is to say, does Japan's existence have a higher purpose?

There are practical and possible ways to narrow that national philosophical cleavage within the context of refugee policy.

In the mid and long terms, the Japanese government should be more willing to receive greater numbers of Convention refugees from abroad, particularly from other Asian countries. It should also provide innovative ideas and insights for multilateral forums, including the UN, to address the issue of how to prevent refugee flights, as well as continuing its collaboration with other like-minded wealthy nations in assisting refugees.

In the short term, Tokyo should, for example, expand and upgrade its Japan Disaster Relief Teams (JDR) and send them -- rather than its Self Defense Forces (SDF) -- in greater numbers to remote corners of the globe to assist and protect victims of disasters, both natural and man-made; it should increase and sustain its financial commitment to international humanitarian organizations in and out of the UN system, and finally but no less important, it should financially support and nurture humanitarian NGOs -- at home and particularly in the underdeveloped world -- through new legislation so that these NGOs can expand and improve their humanitarian capabilities without financial constraints⁵.

In a nutshell, Japan will be able to meaningfully transcend the debate between "neo-pacifists" vs.

⁵ This governmental support of NGOs is predicated on the assumption that the government does not (and should not) impose any official positions on NGOs pertaining to specific human rights/humanitarian situations.

"multilateral realists" by opting for "human security".⁶

From the international refugee regime's perspective as well, Japan's popular neo-pacifist vision would seem preferable to its official multilateral realist vision in light of the fact that the currently multiplying victims of forced migration -- both internal and external -- throughout the world are being produced increasingly by such non-military factors as a widening economic gap between the North and the South, uncontrolled population growth in the South and global environmental degradation. Given its financial capabilities as well as its non-offensive military doctrine, Japan is well-positioned to explore an increasingly complex linkage among various international regimes, including that of refugees.

Finally, such a neo-pacifist refugee policy will partially but significantly transcend the seeming contradictions among Japan's so-called "three diplomatic principles." Receiving greater numbers of political refugees in its own region as well as a more active engagement -- through non-military means -- in refugee relief and refugee preventive activities would strengthen and further legitimate its membership in the advanced West, substantively improve its reputation among Asian peoples -- if not their current governments -- and help further consolidate UN and other multilateral humanitarian activities.

Up till now, the refugee issue has served as a useful

⁶ For a concept of "human security," see, for example, James S. Sutterlin, *The United Nations and the Maintenance of International Security: A Challenge to Be Met* (Praeger, 1995).

window through which Japan -- a nation prone to be exceptionally ethno-centric in dealing with other nations -- could more constructively relate itself to the rest of the world, both existentially and perceptually. Thus there is every reason for Japan to continue to take advantage of such benefits stemming from its involvement in the global refugee issue as it aspires to play a greater and a more enlightened role in Asia and beyond.

Finally, in order for such a new role to be sustainable, it will have to be supported by the desires and expectations of the majority of its own people as well as other nations.

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