

# Introduction

This is the first book written in English to provide a comprehensive account and analysis of the Japanese law and practice on the implementation of the 1951 Convention Relating to the Status of Refugees<sup>1</sup> and the 1967 Protocol Relating to the Status of Refugees.<sup>2</sup> The impetus lies in the author's concerns about Japan's involvement in the problem – how has Japan,<sup>3</sup> *Nihon-koku* or *Nippon-koku*, contributed to easing the tragedy of refugees and what should it do in the future? The author hopes that this work will attract the attention of scholars and practitioners who are concerned with the refugee law and practice of Japan but, due to language barriers and a dearth of materials, have been unable to access necessary information and analysis. It is also desirable that the work will provide Japanese players such as judges, attorneys, lawmakers, NGO members and public officers with useful material for when they consider how Japan can cooperate with the members of the international community in the field of international human rights and world peace.

The Japanese Government acceded to the Convention in October 1981 and to the Protocol in January 1982. The Convention and the Protocol entered into force for Japan on 1 January 1982.<sup>4</sup> Regrettably, actual practice relating to implementation of the Convention may be figuratively described as '*Hotoke wo Tsukutte Tamashii Irezu* (making the Buddhist image, and forgetting the soul)'; an equivalent phrase in English would be the expression 'Ploughing the field, and forgetting the seed.' This is not to ignore more recent developments in judicial practice and amendment of the law since the beginning of the new millennium.

After briefly addressing the recent background of refugee protection in Chapter 1 (Crisis of Refugee Protection), the substantive discussion of this book begins from Chapter 2 (Refugees and Japan). By way of introduction, the chapter provides a description of the history of asylum and refugee problems in Japan before, during and after its accession to the Convention and the Protocol. The historical factors that prompted the state to become a member of the international refugee regime

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1 Convention Relating to the Status of Refugees (28 July 1951) 189 UNTS 137; referred to in this book as the 'Convention'.

2 Protocol Relating to the Status of Refugees (31 January 1967) 606 UNTS 267; referred to in this book as the 'Protocol'.

3 Japan is an island nation in East Asia which covers 377,907 km<sup>2</sup>. It had a population of 127,770,000 in 2006. Statistic Bureau & Statistical Research and Training Institute of Ministry of Internal Affairs and Communications in Japan, *Japan Statistical Yearbook 2006*, <http://www.stat.go.jp/data/nihon/index.htm> (last accessed 25 March 2007). Statistic Bureau of Ministry of Internal Affairs and Communications in Japan, 'Monthly Reports of Population', <http://www.stat.go.jp/data/jinsui/tsuki/index.htm> (last accessed 25 March 2007).

4 Kazuya Hirobe and Takane Sugihara (eds), *Kaisetsu Johyakushu (Treaties and Conventions)* (Sanseidoh, Japan, 2007) 219, 225. Japan's accession record of the Convention: Treaty No 21 of 1981. Japan's accession record of the Protocol: Treaty No 1 of 1982.

and to form the present domestic system are one reason for the current systemic refusal to protect refugees in Japan.<sup>5</sup> In this chapter, socio-legal and political grounds to support future reform are also discussed. The discussion demonstrates newly emergent phenomena and views which affect the political, legal and social conditions for refugee protection in Japan. The argument here considers the process of change and, based on the process, seeks to identify the possibility for reform in the future.

In Chapter 3 (Refugee Status Determination Procedure), a comparative analysis based on the experiences of New Zealand and Australia is employed. The experiences of these states provide historical information on the factors that spurred change in the determination procedures so that the philosophy of fairness and human rights came to be integrated. This research reveals problems in Japan's refugee determination system which conflict with any reasonable understanding of the notion of fair decision-makers and fair procedure. Consequently, in the present Japanese determination system, it is difficult to be confident that accurate and fair decisions will be reached. Conceptualising the background to these problems as 'institutional underdevelopment', this chapter explains the absence of the necessary dynamics for the development of Japan's refugee determination system. Based on the examination of the problems and their background, the establishment of a new determination authority in Japan is proposed.

Chapter 4 (Refugee Definition) scrutinises the quality of Japan's judicial and administrative performance in the assessment of refugee claims, including proof of refugee status, and interpretation and application of the refugee definition. To do so, the specific practices of other states and views of scholars, which respond to the purpose of the Convention and embrace the potential to be involved in the formation of international legal norms, are used as an analytic measure. The review of Japan's judicial practice during the 1980s and 1990s concludes that, by failing to consider the development of international practice, the record of the negotiation of the Convention and academic dicta, the term 'refugee' was allowed to be narrowly circumscribed. As the background is not found in a single track but in complex strata, 'institutional lack of understanding' is a designation to articulate the impoverished law and practice on interpretation. However, judicial developments since the beginning of the new millennium have had an impact on this issue.

In Chapter 5 (Refugee Rights), supplementary research broadens the inquiry into the circumstances of the rights of asylum seekers and refugees. The Japanese situation of protection concerning post-refugee status determination can be partially characterised as 'institutional lack of assistance'.

It is proposed in the Conclusion (Towards International Cooperation for Human Rights and World Peace) that Japan should eliminate the systemic refusal and take innovative action towards refugee protection. The enthusiastic involvement of Japan in the promotion of human rights would allow a leadership role in the international community and accord with the constitutional doctrine of pacifism. Japan's economic

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5 This systemic refusal is defined by three key phrases in this book: institutional underdevelopment, institutional lack of understanding and institutional lack of assistance. In the following chapters, these terms are employed to articulate the background to each of the problems of refugee protection in Japan.

development in recent decades should bring with it a responsibility to contribute resources and powers for the promotion of human rights and world peace.