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Refugee Protection in East Asia:
Taiwan and Japan in comparison

Organised by
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Foreword

Polina Ivanova and Lara Momesso

On the 24th of January the Northern England Policy Centre for the Asia Pacific (NEPCAP) at the University of Central Lancashire (UCLan), in collaboration with the Northern Institute of Taiwan Studies (NorITS), the Institute for the Study of the Asia Pacific (ISAP) and the Research Centre for Migration, Diaspora and Exile (MIDEX) at UCLan and the Institute of International Relations and Area Studies (IIRAS) at Ritsumeikan University, organised a roundtable on the theme "Refugee policies and experiences: Japan and Taiwan in comparison".

Clearly, Asia, as a region, and the countries within it, deserve more attention with regard to the issue of refugees' and asylum seekers' protection.

In this special issue, outcome of the above-mentioned roundtable discussion, four experts in the areas of migration, human rights, climate change and civil society will discuss a variety of issues on refugee protection that are specific to contemporary Japan and Taiwan. Japan and Taiwan constitute two significant cases of comparison for the broader Asian region, an area characterised by a variety of different approaches towards the issue of refugees' protection.

"No other discussion topic seems as timely as the issues of refugee regulation and protection when a new refugee crisis is unfolding in Europe leaving no country immune from it"

Precisely one month after, the war in Ukraine escalated into a major conflict, leading to millions of people leaving their homes to search for safe refuge elsewhere, generating a refugee crisis in Europe. No other discussion topic seems as timely as the issues of refugee regulation and protection when a new refugee crisis is unfolding in Europe leaving no country immune from it.

A majority of Asian states are not party to the Convention and Protocol and have not shown a great deal of collective interest in creating regional instruments that would oblige states to respond uniformly to refugee crisis [3]. Although it is difficult to disagree with these facts, there are authors who put forward different views. For instance, Brian Barbour argues that,

If we switch our attention to Asia, the picture is not much more optimistic. As Davies [1] argues, at the beginning of the twenty-first century, Asia's refugee population is still the largest of any region in the world, comparable only to Africa. Official records don't seem to reflect this statement, indeed in 2019, only 11% of the people of concern identified by the United Nations High Commissioner for Refugees (UNHCR) were located in Asia [2]. Though, this picture is hardly inclusive: it is important to consider that Asia has a large number of people who could claim refugee status but do not do so for a variety of reasons; furthermore, Asia is one of the regions of the world where displacement for new challenges, such as environmental change and disaster, will be constantly increasing in the future; finally, as many Asian countries are not signatories of the magna carta of international refugee law, the 1951 Conventions Relating to the Status of Refugees (henceforth, Convention) and the 1967 Protocol Relating to the Status of Refugees (henceforth, Protocol), they may treat asylum seeker under other laws and frameworks.

If we look more closely at any specific context in Asia, we can see that States have often committed to various legal obligations under international law, and often have human rights provisions in domestic law. In practice, they may have laws, policies, practices or systems that can be used to respond to protection needs. States also recognise and permit international institutions like UNHCR - often through a Memorandum of Understanding - to register, assist and refer persons of mutual concern. Moreover, civil society actors in every jurisdiction have developed substantial infrastructure and capacity for providing protection, and refugees are coping and/or contributing to the provision of protection for themselves, their fellow refugees and/or for host communities in every context [4].

In light of such conflicting views, how do the cases of Japan and Taiwan help us to understand more about the issues behind refugee protection in the Asian region? Their different status in the international arena, histories and national interests lead to rather dissimilar approaches to refugees' and asylum seekers' protection.

Japan signed the 1951 Convention in 1981 and the Protocol in 1982 [5]. For years, Japan has been one of the largest donors to the UNHCR: for instance, in 2021, it was the 4th largest government donor (USD 140 million), and the 3rd largest global private-sector contributor (USD 61 million) [6]. In contrast, Japan's refugee recognition rates have remained remarkably low: for instance, only 28 out of 10,901 applicants for asylum in 2016 were granted an official refugee status [7]. Numerous challenges for asylum seekers also exist in the areas of medical support and access to the healthcare system, Japanese language learning, access to legal employment and government support [8]. In addition, those asylum seekers who do not have a valid status of residence as a result of illegal immigration or overstay, are subject to detention. In light of the above, most experts agree that Japan needs to improve its refugee recognition and protection regime [10;11;12].

Because the Republic of China (ROC) was replaced in the UN China seat by the People's Republic of China (PRC), Taiwan can't officially accede to international conventions and UN treaties, and this also includes the refugee Convention and Protocol. Though, there have been a few occasions in which Taiwan has ratified international conventions and actively integrated their principles into its legal system: for instance, in 2007, it took it upon itself to sign the Convention on the Elimination of all Discriminations Against Women to elevate the standard of gender rights in the country and advance gender equality,[13] and, in 2009, it ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights [14]. With regard to refugee law, a draft has been sitting in the Parliament for more than ten years, but no steps have occurred so far in passing it. In reviews by independent human rights experts in 2013 and 2017, the recommendation to setting up refugee protection and political asylum mechanisms has been put forward [15].

Yet, no steps have been taken in this regard. Political sensitivity surrounding China-Taiwan relations, seem to be the main issue of concern in this regard. Indeed, as Kironzka argues, one significant point of contention is to what extent an asylum law should also include people from controversial countries such as China, Hong Kong and Macau [16]. This means that the few asylum seekers and refugees who are present in Taiwan are not protected by a formal law and their applications are often dealt with on a case-by-case basis, with rather different outcomes.

In light of these two broader legal and political contexts, the four contributions of this special issue will generate some insights into the main issues that refugees and asylum seekers may face in each country and will offer related policy suggestions. **Ilaria Canali** discusses the main factors that help to explain the low refugee acceptance rates and the lack of media coverage leading to the lack of public awareness in Japan. **Sohrab Ahmadian** explores the specificity of the experiences of the Kurdish diaspora in Japan caught between poor immigration policies and conservative politicians fearful of disappointing the official Turkish government. Turning the attention to Taiwan, **Ee-Ling Chiu** explores the role of NGOs in shaping the debate on refugee policy in Taiwan. Finally, **Bonny Ling** reflects on alternative possibilities, beyond international (Eurocentric) refugee frameworks, that both Japan and Taiwan could consider in order to improve their performance with regard to refugee protection. Collectively, these contributions offer important reflections on a timely theme that is of interest to many, from policymakers to civil society actors as well as international migrants interested in Taiwan/Japan and, more broadly, the Asian region.

Clearly, in a region where a majority of countries is not signatory of the Convention and Protocol and those who are, have often failed to enact the necessary legislation or establish the necessary policy and mechanism to implement their legal obligations, these contributions emphasise the urge to (re)think the role of states in protecting refugees and asylum seekers against the risks of deportation, detention, arrest, extortion, and harassment. Yet, in such a politically and culturally diverse region, characterised by nuances that could be traced back to pre-Cold War times, the existing international refugee regime, based on Eurocentric values and principles, may not necessarily be the sole solution to the protection of refugees and asylum seekers in the region.

Polina Ivanova is a visiting researcher at the Institute of International Relations and Area Studies of Ritsumeikan University and a lecturer at Kyoto University of Foreign Studies. She holds a Ph.D. in International Relations from Ritsumeikan University. Her research interests lie in the intersection of migration studies, civil society and international education. Her doctoral research examined thirty civil society organisations supporting international students in the Kansai area of Japan and their contribution to the creation of social capital in local communities. In addition, she participated in three collaborative projects in Japan, Australia, and the United States. Based on this work, Polina published six peer-reviewed articles and presented her findings at academic conferences, workshops and lecture series in the United Kingdom, Germany, Austria, Mexico, the United States, and Japan.

Polina's recent projects focus on international students' loneliness and social engagement in the United States and Japan, and civil society response to the pandemic in Japan, Australia, and the United States in the context of international student support.

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Awareness and Media Coverage of Refugees and Asylum Seekers in Japan

Ilaria Canali

Compared to Europe, the Japanese society has a different perspective on asylum seekers. The most striking difference is a lack of understanding among the general public regarding the reasons why refugees might choose to seek shelter in a distant Japan instead of settling down in a European country. Based on activists' testimonies and media reports, this policy brief discusses the main factors that help to explain the Japanese approach towards this issue, such as low refugee acceptance rates and the lack of media coverage leading to the lack of public awareness, and examines the potential of Japanese civil society to become a game changer in that area.

Low Refugee Acceptance Rates

Since 1981, Japan has been a signatory state of the Geneva Convention (1951) relating to the status of refugees which implies its international obligations concerning acceptance of asylum seekers. However, Japan has been often criticised by the international community for its exceptionally low acceptance numbers, making it the lowest acceptance rate among the G7 countries. These criticisms exacerbated during the big migratory crisis of the last decade. When many European states had to deal with a big amount of asylum seekers crossing their borders and tried to figure out how to share the so-called 'burden', Japan was still adopting a very strict immigration policy and an almost literal interpretation of the definition of refugee written in the 1951 Convention. From 2011 to 2020, Japan had a total of 1,390 refugees and humanitarian status holders, while the estimated number of pending asylum cases at the end of 2020 was around 23,700 (Ministry of Justice, 2021).

The Japanese government's reluctance to accept refugees has long-standing historical roots.

After the end of the Second World War, Japan officially renounced to its sovereign right to war and to having an army and decided to promote peace by using its soft power.

In its many forms, Japanese soft power includes support and implementation of development projects in Africa and Southeast Asia mainly through large investments from the government and donations from private citizens. When it comes to refugees and asylum seekers, Japan has been the second largest donor to the UN High Commissioner for Refugees for many years, preceded only by the USA. For instance, in 2021 Japan was the fourth largest government donor and the fourth largest global private donation contributor to the refugee agency (UNHCR, 2021).

Considering the above, it is fair to wonder why, with such major donations, Japan has always tried to shift the attention towards refugee protection away from its internal affairs. Behind the intransigent government policy and low refugee acceptance numbers could be the desire to preserve ethnic and cultural homogeneity of the Japanese society. Traditionally, the society has been very closed to the foreign presence and shaped by the paradox of isolation until the USA forced Japan to open its borders in 1853. More than a century later, the arrival of Vietnamese boat people in the 1980s may have restarted the isolationist approach when it comes to illegal international migration and asylum seekers. If the government's tendency is closure, it should be logical to assume that the public opinion and the media might follow the same line. The actual situation, however, does not appear so simple as both media and citizens may adopt different attitudes towards asylum seekers.

Lack of Public Awareness due to the Imbalanced Media Coverage

According to the activists' testimonies, in many cases Japanese people feel sympathetic with refugees and asylum seekers. They perceive them as needing help and having the right to live in a safe environment. However, as mentioned above, there is a lack of understanding among Japanese public why asylum seekers often coming from the Middle East or Southeast Asia, would want to come to Japan instead of the much closer Europe or any other country on the continent.

In this light, the public attitude toward asylum seekers does not appear as a matter of absolute rejection but more as a matter of surprise whenever they hear news related to this population category. Many Japanese citizens simply take for granted that asylum seekers will never choose Japan because of its geographical isolation and its peculiar culture and language. This feeling is also reinforced by the fact that news related to asylum seekers does not usually make front page articles, and especially they do not get the same media coverage as in European countries. Furthermore, it is possible to see a discrepancy between the media coverage in English and in Japanese, even within the same newspaper. In the English edition the issue is often analysed much deeper, including frequent criticisms of the immigration law being too strict and the inhumane conditions of detention centres. For instance, the most notorious case mentioned in newspapers, that also sparked protests against the government from activist groups, related to the death of Wishma Sandamali, a 33-year-old Sri Lankan woman, in March 2021. The advocates say that detention officials in the city of Nagoya failed to provide Sandamali appropriate medical treatment when she complained of stomach pains and other symptoms and this neglect by the authorities led to her death. Meanwhile, Japanese editions of many newspapers tend to focus on where the refugees are from and on the reasons why there are so few refugees in Japan explaining it by its insular location being harder to reach.

They often push their readers to donate in support of refugees highlighting a need of action and a sort of sympathy towards these people in need. They also focus on statistics, numbers and donations but rarely present refugees and asylum seekers as the domestic issue.

Hopes from the Civil Society

The civil society groups in Japan have a potential to become a game changer as they are already doing much important work in the areas of refugee support and human rights advocacy.

Numerous activist groups and non-governmental organisations (NGOs) advocate for a more inclusive immigration law and better conditions for asylum seekers. Another major difference between Japan and other developed countries lies in the NGOs size: Japanese organisations tend to be much smaller and the refugee support sector is not an exception, with only one medium-sized NGO, the Japan Association for Refugees (JAR). Many university clubs and circles dedicate their activities to raising awareness about refugees and engage in support and assistance to local refugee communities. Their efforts make a difference and give hopes for the brighter future. Although some of these youth groups were created during the COVID-19 pandemic when they could not provide assistance and support activities on the spot, they succeeded in advocating and raising awareness through their constant use of social media and online events, often held in both Japanese and English to reach a wider audience. Beyond these youth groups, there is a conspicuous presence of NGOs of all kinds. Some are Japan-based but often led by foreigners whose aim is to collect funds in Japan to then sponsor development and support projects for refugee communities in Southeast Asia. The reason for this is simple: the funds collected in Japan can offer a bigger support in countries where everything is cheaper and more affordable. This is a clear example of how Japanese people are willing to help, and support those in need through their generous donations. However, the activists also point out that NGOs' work can have only limited impact without a drastic reform of the immigration law.

Policy Recommendations

The Japanese paradox comes out as a discrepancy between Japan's generous international donations to the UNHCR and its controversial domestic policies towards asylum seekers and refugees translating in low acceptance numbers, in the lack of media coverage and lack of awareness among the citizens.

Considering the above, the following policy changes may be recommended to improve the situation of the asylum seekers in the short and in the long term:

- 1.** One of the most urgent needs is to improve the asylum seekers' conditions to prevent further deaths in the detention centres. In this respect, the mainstream media should follow the lead of NGOs and civil society activists who are already raising public awareness of the problem using social media. The work of NGOs and university associations is fundamental to education the public and to keep the issue alive; however, if the larger media corporations and political parties joined the campaign, they could put pressure on the policy makers to promote much needed reforms in the refugee protection area.
- 2.** There is a need for wider and more balanced media coverage presenting refugees and asylum seekers as a part of domestic ethnocultural diversity instead of a far-away international issue. Japanese journalists may need to learn from the best practices in other countries, e.g., sharing success stories of individual refugees in local communities instead of

reporting statistics that does not allow to relate on the personal level or presenting refugees as masses invading the countries which tends to trigger a fear response among the local population.

- 3.** Most importantly, there is a need for continuing reforms of the immigration legislation making the refugee recognition process easier and the society more inclusive.

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Kurdish Diaspora in Japan: Caught in a Limbo Between Immigration Policies and Politics

Sohrab Ahmadian

The Kurdish community in Japan is growing and the reality of Japanese local governance and immigration policies has forced many Kurds to work illegally and overstay their visas. Since the 1990s, there has been a presence of Kurdish people in Japan, but the number has increased rapidly in the past few years. According to most estimates, there were over 2,000 Kurds in Japan in 2019 and more than half of them live in the area around Kawaguchi and Warabi cities in southern Saitama Prefecture, informally known as "Warabistan" (Nakajima, 2019) forming the largest Kurdish community in the country. Today, most of the residents in this community are Kurds from Turkey, and some of them are said to have applied for refugee status after coming to Japan. However, there have been no cases of Kurds from Turkey being officially recognized as refugees in Japan, except for those who have been granted special residence permits for humanitarian reasons. It is nearly impossible for Kurds from Turkey to be granted refugee status in Japan, which is a country that has friendly relations with the Turkish government (Ahmadian, 2020).

Since Japan joined the Refugee Convention in 1981, the acceptance of refugees has been a part of the country's immigration policy. In general, the approval process for refugee applications is conducted on a case-by-case basis, but it usually takes six months to be eligible to work part time as an asylum seeker, and the result may take one year or more to obtain. As a result, regardless of whether Kurdish asylum seekers have been persecuted in their home country (Turkey), they hardly apply for refugee status as they are not allowed to work full time. Consequently, why is Japan refusing to formally accept Kurds as refugees or workers, even though it urgently needs foreign workers and how the Kurds in Japan can be protected?

Kurdish immigrants in Japan can be divided into two main groups:

- asylum applicants who register their application with the Immigration Office and are willing to and have a limited legal stay for a long period of time from the start of the application process until the result is announced, which can be extended for a new screening. As a result, asylum applicants can reside in an unstable situation until the result, which can take several years.
- "overstayers" who use their legal residence period in the first few months but do not register any applications after that and keep on staying in Japan irregularly. Unlike those immigrants who enter Japan through the sea borders illegally, Kurdish immigrants usually enter Japan with their Turkish passports quite legally and officially through international airports. As a result, because their entry information is recorded, the term "undocumented" cannot be applied to them. Most of them stay in Japan for as long as they like, and work and earn money while keeping away from the immigration police.

Analysis

In general, the Japanese government has a two-fold approach to these two groups:

- 1) Regarding the first group, the Japanese immigration agency, while allowing them to apply for asylum, is prolonging the process of asylum applications, which not only doesn't reduce irregular migration but also increases it. Many people apply for asylum with the aim of buying time, and a negative or rejective result on the asylum application is predictable for the applicants. They work hard in Japan, earned, and save money, or send money to their families overseas.

2) The Japanese government approach to the second group lies in pretending to ignore the reality because identifying and dealing with illegal immigrants is a costly and very time-consuming process. If Japan wants to use a comprehensive strategy to identify, detain, deport, or imprison irregular immigrants, it will need to hire an extra human source as well as perform other functions, including dealing with lawyers. International and public opinion and the media. As a result, in many cases, the Japanese government has opted for a policy of ignorance and silence. Ultimately, all Kurdish immigrants, especially those living as irregular residents in Japan, play the role of a labour force for Japan in the sectors and industries where Japan is facing labour shortages. However, illegal workers are often not treated equally as Japanese citizens, and it would lead to unfairness, discrimination, and human rights' abuse of these workers.

"It is nearly impossible for Kurds from Turkey to be granted refugee status in Japan, which is a country that has friendly relations with the Turkish government"

The situation around the Kurdish community in Japan has been affected by a conservative political attitude from the Japanese and Turkish governments. The Turkish regime has tried in various ways to suppress its opposition, even in the diaspora. Recently, the Turkish president Erdogan agreed to the NATO membership of Finland and Sweden only on condition that the two countries hand over Kurdish opposition members to the Turkish regime (Washington Post, 2022).

Almost all Kurds in Japan are considered part of the Turkish regime's opposition and clearly support the People's Defence Units (YPG) and Abdullah Ocalan (the imprisoned leader of the Kurdistan Workers' Party).

The Turkish president Recep Tayyip Erdogan has repeatedly opposed granting asylum to supporters of the Kurdistan Workers' Party and the YPG in the diaspora. At the same time, the Japanese government's preference and policy toward the Kurds from Turkey are affected by its economic and diplomatic interests with the Turkish regime. So far, it has refused to accept the Kurds from Turkey as refugees. However, public opinion and NGO-led demonstrations have succeeded in preventing Kurdish refugees from deportation until now. Also, in recent years, two Kurdish asylum seekers who were tortured in detention centres in Japan got Provisional Release under the pressure of opposition activities and NGO-based campaigns. (Mainichi Daily News, 2021). However, the Kurdish issue in Japan cannot be solved with only street protests and without a fundamental reform of the immigration law.

Proposed Policies:

The Japanese government needs to establish a specific task force to identify and strategically manage the growing Kurdish community in Japan.

- Some Kurdish immigrants bring their families with them to Japan, which could include fathers, mothers, wives, and children, and Japanese government needs to develop policies to help dependent family members of Kurdish migrants adapt to and integrate into the Japanese society
- Japan has faced a labour shortage in industries such as those in which the Kurds now work. In recent years, the Japanese government has launched a system called the "Specified Skilled Worker," which allows citizens of twelve specific countries to apply for a Japanese working visa

a five-year period to work in certain industries. By setting conditions for pardoning the crime of illegal residency and overstaying, Japan can provide conditions for Kurdish asylum seekers to apply for this type of visa formally and legally inside Japan.

- Problems with social culture and socialization among Kurdish immigrant groups and the host society can be left to non-governmental organizations set up and run by the Kurds themselves in Japan. Since Japanese associations and institutions have difficulty interacting with and recognising the immigrant community, they cannot be expected to succeed in this mission alone. New measures and programs should be designed to spread multiculturalism and the spirit of coexistence between the Kurdish community and the Japanese community.
- The Japanese government should try to free itself from political hesitation over granting asylum to the Kurds in Japan because the assimilation policies in Turkey against the Kurds and the denial of their identities and rights have become a part of the Constitution of the Republic of Turkey since 1982. While Article 66 of the constitution of Turkey clearly declares that "everyone bound by the Turkish state through the bond of citizenship is a Turk," more than 20 percent of the people in Turkey are Kurds. The Japanese government should no longer ignore the political persecution that Kurdish asylum seekers have faced in Turkey.

Sohrab Ahmadian is currently a PhD candidate at the University of Tsukuba, Japan. His research focuses specifically on the Kurdish diaspora patterns in Japan and their impact on the growth of political issues and identity formation in the context of Japanese society as well as the country of origin. He has been awarded the MEXT Scholarship for the Super Global Universities program in 2019-2020 and has been granted the fellowship of the Japan Science and Technology Agency (JST) for the "SPRING" funding program in 2021-2022. Sohrab also writes poems and is currently working on a collection of poems drawn from the life stories of migrants to be published in 2022. His first series of poems, "Confession," was published in Iran in 2014.

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How Should NGOs in Taiwan respond to the Current Refugee Policy? E-Ling Chiu

Due to its disputed international status, Taiwan is not a UN member state. That means it is not a signatory of the 1951 Convention Relating to the Status of Refugees (henceforth, Convention), and it does not have an office at the UN High Commissioner for Refugees. Differently from what it did with other international conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women [1], the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights [2], Taiwan hasn't yet ratified the Convention and the 1967 Protocol Relating to the Status of Refugees (henceforth the Protocol), nor it has developed a domestic refugee law.

The Executive Yuan (executive branch of the government) drafted a bill of refugee law, which has been reviewed by independent committees in 2013 and 2017. An innovative feature of this draft bill is that it also includes climate refugees, a category that is not protected in the Convention and Protocol. Though, a weakness is that it excludes the asylum seekers who come through a safe third state. Centre of widespread debates in Taiwan, involving the publics, civil society and the government, this bill has yet to be passed and it has been sitting in the Parliament for more than ten years.

Based on my experience as Executive Director at Amnesty International in Taiwan, this policy brief discusses the consequences of a lack of legal refugee protection in Taiwan and urges the Taiwanese government to pass a refugee law as soon as possible. Although Taiwan does not have a refugee law, this doesn't mean that there are no refugees in the island. Despite a lack of official statistics regarding refugees, civil groups have offered support to Turkish people, Kur-

-dish people from Syria, Tigray people from Ethiopia, Tibetan exiles from India and Nepal, LGBTI from Uganda, asylum seekers from China and Hong Kong, etc.

Furthermore, the fact that Taiwan does not have a refugee law, does not mean that there is not a form of protection for specific categories. For instance, stateless Tibetan exiles from India and Nepal who arrived in Taiwan before 2016, were covered by article 16 of the Immigration Act. The Act Governing the Relations Between the People of the Taiwan Area and the China Area and the Law and Regulations Governing the Relations with Hong Kong and Macau include articles dealing with asylum seekers from China and Hongkong, but they are overly brief, lack a clear process, and lack the principle of non-refoulement enshrined in the Convention and International law [3]. Clearly, these legal provisions are limited to specific ethnic and national groups or time periods. For a majority of asylum seekers who do not fall within these special categories, their legal protection and access to individual rights is approached on a case-by-case basis. This also means a lack of access to appeal, turning asylum into a given favor instead of a right.

In such conditions, the goodwill and service of civil society organisations have been crucial in dealing with the needs of asylum seekers. For years, civic organizations and churches have provided asylum seekers with accommodation, medical, and other living needs. Civic groups have also pressured the government for policy change, by holding press conferences for undocumented overstayed immigrants and migrant workers, categories that may not necessarily fall within the area of asylum seekers.

Also, during the pandemic, civic groups shed light on the issue that these groups, along with refugees and asylum seekers, could not get vaccinated in Taiwan and called for the govern-

-ment to provide them with vaccines.

Civic organizations have also worked to raise awareness amongst the Taiwanese publics. Organisations such as Taiwan Association for Human Rights, Human Rights Network for Tibet and Taiwan, Legal Aid Foundation of Taiwan and Covenants Watch, along with the transnational Asia Pacific Refugee Rights Network, have been crucial in this process. Amnesty International Taiwan mainly focuses on campaigning for bills and raising the awareness of the public by holding activities such as press conferences, online talks, film festivals and trainings. Last year, Amnesty International published a coloring book about Rohingya people, hoping this could help more Taiwanese families understand the hardships of Rohingya child refugees. Other organisations, such as From Syria, created a board game to help Taiwanese students understand the situation of Syrian refugees when they fled the country, and sold hand-made earrings made by Syrian women to raise awareness about Syrian refugees. Glocal Action is a Taiwanese organization that pays attention to refugees at the Thailand-Myanmar border, and helps the public learn more about these refugees by holding activities such as border trip, selling handicrafts, exhibitions and lectures.

"Taiwan can help." This is what has been repeated endless times during the pandemic. Though, there seems to be little interest to help the most vulnerables in society: recently, the Taiwanese government sent an Iranian refugee mother and her son back to Nauru island, where they came from, after they received urgent medical treatment in Taiwan [4].

Why further endangering these two highly vulnerable people by sending them back to a much-criticised refugee settlement? It may be time, for the Taiwanese government and civil society, to really think who the targets of our help could be.

If Taiwan wants to play an important role on human rights at the regional and international level at times of widespread global displacement, it is not sufficient to repeat convenient slogans. It is important to set up a mechanism to fit the standard of international law on refugee protection.

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Substance and Form: UN Refugee Convention in Japan and Taiwan in a Regional Context

Bonny Ling

The UN Refugee Convention of 1951 (the “Refugee Convention”) is the foundational treaty for the global system of international protection for individuals seeking safety from political persecution. In 2021, the Convention celebrated its 70th anniversary. The occasion then saw the UN High Commissioner for Refugees Filippo Grandi, who holds the mandate for protecting the world’s estimated 84 million forcibly displaced people [1], affirming the instrument as indispensable for protecting the rights of refugees worldwide. Grandi states: “Thanks to the Convention, millions of lives have been saved. Seventy years since it was drawn up, it is crucial that the international community defends its principles” [2].

That the Refugee Convention has been instrumental to the protection of refugees worldwide is not in dispute. The Refugee Convention, as an international treaty, gives legal effects to Article 14(1) of the 1948 Universal Declaration of Human Rights that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.” It is one of the most well-known public international law treaties. Its definition of a refugee underscores the need for an international system of protection: a refugee is a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” [3].

The Refugee Convention began as a legal instrument to protect individuals affected by post-war European displacement prior to 1951. In the following decade, Article 1 of the 1967 Protocol Relating to the Status of Refugees (the “Protocol”) broadened the Refugee Convention’s scope of application by removing its earlier geographical and temporal limits, thereby making it universally applicable. Since the adoption of the Protocol, other instruments have emerged in several regional systems, such as the 1992 Declaration on the Protection of Refugees and Displaced Persons in the Arab World and the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, to supplement the Refugee Convention. Asia-Pacific, in contrast, has not yet seen similar developments. Furthermore, the Refugee Convention, even amended by the Protocol, often has a strong connotation in the Asia-Pacific as being primarily a European instrument.

Lukewarm Support in the Asia-Pacific

Compared to other regions in the world, the Asia-Pacific counts the lowest percentage of state parties to the Refugee Convention and Protocol – only 20 out of 48 [4]. Often, the state is not a party to the Refugee Convention and Protocol, such as Vietnam, Laos, Thailand, Myanmar, Bangladesh, Nepal, India, Pakistan, Brunei, Indonesia, Malaysia, Singapore, North Korea and Mongolia. Alternatively, the state is a party, but its refugee law is so restrictively applied domestically that it offers little protection in practice, as in the case of China and also Japan (as previously discussed by Sohrab Ahmadian and Ilaria Canali in this issue).

The Chinese government routinely labels North Koreans who flee prosecution in China as “economic migrants” and forcibly repatriates them under a bilateral border control agreement [5]. As a party to the Refugee Convention and Protocol, China is legally obliged not to forcibly return any individual who would be at risk of irreparable harm upon return. China, however, does not recognise North Koreans who flee as having a “well-founded fear of being persecuted” and routinely repatriates them to North Korea. This contravenes Article 33 of the Refugee Convention on non-refoulement, which means that no one should be returned to a country where he or she would face torture, cruel, inhuman, or degrading treatment or punishment, and other irreparable harm.

Neighbouring Japan, a state party to both the Refugee Convention and Protocol and a major donor to the UN Refugee Agency, grants asylum to less than one percent of asylum seekers who applied in 2019 [6]. In 2017, the UN Refugee Agency criticised Japan for its low asylum acceptance rate and urged the country to do more for the world’s refugee population [7]. The dichotomy of Japan being a key donor to the UN Refugee Agency, especially since the days of the UN High Commissioner for Refugees Dr. Sadako Ogata (a Japanese diplomat and academic) versus its poor track record of accepting those who apply for asylum is telling. This theme frequently arose in the webinar that preceded this policy brief series, namely that the “refugee problem” in Japan is seen as a situation that is outside and far away. Popular support for refugee assistance exists, so long as it remains a humanitarian issue and does not impinge on the difficult questions of acceptance, resettlement, and integration into one’s own society.

Unique Context of Taiwan

For long, Taiwan has existed outside the UN system. It does not have the option of formally becoming a state party to the Refugee Convention and Protocol by depositing instruments of ratification with the UN. Getting Taiwan to consider itself bound, as if it were a state party, requires a unique procedure akin to what domestic lawmakers used for the two human rights covenants (International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights). Taiwan must be forward leaning in accepting international legal obligations on refugee protection, even when it exists outside the UN. E-Ling Chiu’s policy brief in this series illustrates the difficulties that Taiwan faces and the novel ways that civil society organisations in Taiwan deploy to mobilise public support for a domestic refugee law that can offer genuine protection for the stateless individuals and asylum seekers that come to Taiwan.

“People of Concern” in the Asia-Pacific

The abovementioned countries are not the only examples in the Asia-Pacific where the international refugee regime does not provide meaningful protection. This can be either through non-ratification (in Taiwan’s case, inability to formally ratify through the standard procedures owing to its political status) or through non-implementation of the Refugee Convention by restricting those who can claim and be granted asylum. We only have to look to events of August 2021 to see this problem played out in and around Afghanistan, as borders shut to those fleeing in fear of violence. There were reports of refugees seeking out smugglers or traffickers to help them cross the border. Afghan families that have entered a life of irregularity in neighbouring countries or elsewhere are increasingly coming up against national immigration systems that are openly hostile to refugee protection, as in the case of the United Kingdom’s recently passed Nationality and Borders Act.

The lack of genuine and sustained support in the Asia-Pacific for the Refugee Convention is very problematic because the region has one of the largest refugee populations in the world. UNHCR estimates the number of “people of concern” in the Asia-Pacific is around 9.2 million (roughly the population of London for comparison), including the 4.4 million refugees who are mainly from Afghanistan and Myanmar [8]. In the work I do on migrant rights in the Asia-Pacific to change the discourse and the way that recruitment is done for low-wage migrant workers that sustain the global supply chain, “refugees” do not often come up. This is despite the fact that there can often be cases of undocumented workers, who carry lived experiences of prosecution and displacement, like refugees, if only one probes behind their irregular status.

Conclusions: Awareness is Key

The Refugee Convention and Protocol are international legal instruments. They do not just belong to Europe. But Western countries backsliding on their commitments on refugee protection means governments in the Asia-Pacific can look to Europe and others and conveniently find little reason to support refugees and offer resettlement. The result is that the Refugee Convention will continue to remain marginal in intergovernmental discourse in Asia, to the detriment of refugees in the region who need international protection. The irony I see is that refugee law is almost bucking the international trend whereby soft obligations gradually become more concrete, as in the field of business and human rights that first began as voluntary principles for companies under the Global Compact in 2000.

Now, two decades later, in addition to the Global Compact, we have the UN Guiding Principles for Business and Human Rights (UNGPs), a normative framework for addressing human rights risks linked to business activities, as well as intergovernmental negotiations for a binding, international treaty on business and human rights.

In global refugee protection, coming to take the place of treaty law are voluntary standards, such as the Global Compact on Refugees and the Global Compact for Safe, Orderly, and Regular Migration, both adopted in 2018. These are declaratory statements outside the realm of legal obligations but are getting more intergovernmental traction than the Refugee Convention. For instance, the Global Compact for Safe, Orderly, and Regular Migration has recently received more coverage in Asia. In 2021, there was a Regional Review of the Global Compact for Safe, Orderly, and Regular Migration in the Asia-Pacific, which concluded that more cooperation was needed (and not that more states from the region need to ratify the Refugee Convention and Protocol). It is a problem to rely on a set of voluntary, non-binding principles, especially when we have treaty law – instruments of public international law that are as foundational in the post-war order as the Refugee Convention and the Protocol.

It is simple to ask the question, what is then a solution forward for Japan and Taiwan, as well as for the broader Asia-Pacific? Much harder to offer change where and at a timeframe it matters most to those fleeing and suffering trauma and displacement. At the minimum, there must be more awareness and empathy for the plight of the world’s forcibly displaced people. In August 2021, during the fall of Afghanistan, a commentator on TV spoke of the ‘movement’

of people in the country. I asked then that we do not sanitise the situation. It is not just the movement of people. I wrote: “It’s forced migration. It’s a wretched way to leave. A pitiless flight. It’s the uncertainty of living. Of hoping for a quick passing, should it comes” [9].

Without a wide base of public awareness and support, there will not be meaningful refugee protection beyond in name, as in the case of China and Japan, both states parties to the Refugee Convention but with high barriers for an asylum seeker to be accepted. At the same time, lawmakers need to lead and help to create a local culture of diversity, even when such policies may not be popular electoral platforms. The tension requires sustained and conscientious civic engagement, where concerned individuals and groups actively promote human rights education and commit to the ideals of a plural society. Only in this space can issues like the social-economic marginalisation of vulnerable groups, such as asylum seekers and others, be discussed in all their nuanced complexities; and policies reformed against our ideals of inclusion and sanctuary.

Taiwan is no doubt at a crossroads regarding how it wants to engage with the question of refugee protection. In the past year, the question of how Taiwan will offer asylum has become ever-pressing with the deterioration of the political situation in Hong Kong, with more Hong Kongers finding temporary, de facto refuge in Taiwan. Yet, Taiwan is not immune to the dangers of populism and the xenophobic fear of new arrivals that we see in other receiving communities. In early May 2022, the Taiwanese Executive Yuan announced the release of Taiwan’s first national human rights action plan to raise human rights standards in Taiwan [10]. The

action plan addresses eight major human rights issues, including a review of its refugee protection policies during the next two years [11].

It won’t be easy, but the way forward for Taiwan is its own way. Neighbours in the Asia-Pacific have not charted a straightforward course for refugee protection and left markers for others to follow. There is no coordinated regional mechanism to address burden-sharing and refugee resettlement. Refugees, like the Rohingyas that fled Myanmar by boat in 2015 and stayed on the perilous Andaman Sea for many months before Malaysia finally allowed them to come onshore for humanitarian assistance, often are accepted as a time-bound act of charity, not of long-term legal obligation [12]. Taiwan, as difficult as it is, needs to find its own way. Yes, ratifying (or, more precisely for Taiwan, considering itself bound by) the Refugee Convention. Nevertheless, there needs to be creative legislative proposals that adapt to contemporary challenges, such as climate displacement, while not leaving the public far behind for awareness and support.

The uncomfortable truth is – the one that our rational mind shuts out because the emotional ramification of that scenario would be too straining for any family to bear – a refugee could be any one of us. Circumstances can change on a dime. As I see the pictures of the long queues of cars leaving cities in Ukraine, families on foot making their way to the border in the cold winter with their young and elderly, this is what I know: the asylum question is already at the door. There is no time to waste. One day it could be any one of us, longing for refuge, international protection, and the chance to be free.

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