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Monden, Takashi

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What can Japan learn from the “European migrant crisis”?

Takashi MONDEN¹

I. Introduction

The so-called “European migrant crisis”, caused by influx of large number of asylum seekers into Europe, has posed a big challenge for the European Union. In the face of nearly 2 million refugees from across the Mediterranean Sea or overland through Southeast Europe in 2015, EU and its member states were obliged to decide whether and how they should accept such a large number of non-EU nationals, and serious conflicts had arose among member states over the share of responsibilities.

These events and problems they posed are by no means matters of irrelevance and indifference also for the countries outside of Europe. In the situation of the present world that regional arm conflicts or some forms of tyranny still persist, large number of politically displaced persons could arise everywhere at any time. Any country that takes human rights seriously should also face the matter of refugees squarely as its own problem.

In this paper, I try to take on this task from the perspective of rethinking the practice in Japan. It is well known that Japanese government has been reluctant to grant refugee status to many asylum seekers, and the rate of refugee recognition remains extremely low level in Japan. This attitude of Japanese government seems to be contrary to the international trend toward the acceptance of more asylum seekers in general. Is Japan’s practice rather an exceptional case about the refugee recognition or are there any common elements with other countries? Is it possible to turn Japan’s asylum policy toward open system? If it is, what step can be taken to construct such a system? The clues to solve these problems may be found through the examination and analysis of “European migrant crisis”, where many problems over refugee recognition are condensed.

In the following passage, I sketch first the *status quo* in Japan concerning the refugee recognition, especially current situation of the legal practice which, I think, is worth introducing (II). Then I turn to the “European migrant crisis” to analyze mainly the responses of EU and its member states to it, focusing *inter alia* on the problem of the relocation of refugees (III). Finally, I try to extract from European experiences some lessons that indicate the course that Japan should take in order to get out of the “underdeveloped country” for the acceptance of refugees (IV).

1 Professor of the Law School, Hiroshima University.

II. Negative attitude of Japan toward refugee recognition

From the point of international comparison, the number as well as the rate of refugee recognition in Japan are ranked near the bottom among contracting parties of the “Convention relating to the Status of Refugees” in 1951 (Refugee Convention) and “Protocol relating to the Status of Refugees” in 1967. According to the statistics by the Office of the United Nations High Commissioner for Refugees (UNHCR) in 2014², a year before the “European migrant crisis”, only 12 persons were recognized as “refugee” from 7,533 applicants in Japan, which means only 0.16% of applicants ---even if 110 applicants who were covered under the “complementary protection” were included, still 1.62%--- had obtained the status of residence. These number and rate of refugee recognitions seem to be considerably low compared to those of western EU member states like Germany (33,310; 16.42%), France (16,636; 16.33%), United Kingdom (10,762; 26.09%), Sweden (10,692; 11.19%), Austria (8,734; 31.12%) or Belgium (6,864; 23.80%), as well as late-joined eastern member states --- though the gaps generally become somewhat closer--- like Bulgaria (5,162; 45.46%), Romania (379; 22.83%), Poland (267; 3.62%), Hungary (240; 0.56%) or Czech Rep. (82; 7.09%) in the same year.

In Japan, refugee recognition procedure is mainly regulated by the Immigration Control and Refugee Recognition Act (ICRRA) and its delegated order, Ordinance for Enforcement of the Immigration Control and Refugee Recognition Act (OICRRA).³ The department which is responsible for refugee recognition is Immigration Services Agency (*Shutsunyūkoku zairyū kanri-tyō*)⁴, an external organ of the Ministry of Justice, and The Minister of Justice is to recognize an asylum seeker as a refugee based on an application he or she has made (ICRRA Art.61-2 (1)). To the denial of recognition as a refugee, the applicant concerned can request an administrative review to the Ministry of Justice (ICRRA Art.61-9 (1)), and/or file an action for revocation of “administrative disposition”, namely disposition of denial of refugee recognition, to the court pursuant to the provisions in Articles 8 and the following of the Administrative Case Litigation Act⁵. Even if the refugee recognition is denied, the Minister of Justice is to examine whether there are grounds to grant special permission to stay to the applicant and may grant him/her special permission to stay if such grounds are found (ICRRA Art.61-2-2 (2)). This system, which is called the “special residence permission” based on the humanitarian consideration, corresponds to the “complementary protection”.

2 The statistical figures can be downloaded from the web site of “UNHCR Statistical Yearbook 2014”: <https://www.unhcr.org/statistics/country/566584fc9/unhcr-statistical-yearbook-2014-14th-edition.html>.

3 English Translations of most of the Japanese statutes translated by the by Ministry of Justice are accessible online: <http://www.japaneselawtranslation.go.jp/law/?re=02>.

4 Before the amendment of ICRRA in 2018, this department was called “Immigration Bureau” (*nyūkoku kanri-kyoku*) and was positioned as an internal bureau of the Ministry of Justice.

5 Actually, there are many different patterns to file an action through the administrative case litigation concerning the refugee recognition in response to many possible combinations of administrative dispositions. See e.g., Kikumi Noguchi, “*Nyukan-ho-ni-okeru nanmin-nintei-seido*” (Refugee recognition system in ICRRA) in: Houritsu-Jiho vol.86 no.11 p.16, at p.19 (2014).

In defining the term “refugee” (*nanmin*), ICRRA adopts the definition by the Refugee Convention or the Protocol relating to the Status of Refugees directly.⁶ And the recognition of refugee status is regarded not as a discretionary act, but as a ministerial act, namely a finding of fact by the agency concerned⁷. So theoretically, the concept of “refugee” in ICRRA should not differ from that of international norms. How can we explain the wide gap between Japan and other countries concerning refugee recognition practice then?

It has been pointed out several reasons concerning administrative and judicial practices as the accounts for the low refugee recognition rate in Japan⁸. Legal interpretational problems can be summarized in the following two elements.

First, the interpretation of what amounts to “refugee” is very stringent in Japan. Especially as to the meaning of “persecution”, a component of the definition of “refugee” by the Refugee Convention⁹, the Ministry of Justice has argued that it means “an assault or an oppression that cause intolerable suffering for normal people, which amounts to *violation or suppression to life or freedom of person*” (emphasis added), and many judicial precedents has also adopted this position¹⁰. This interpretation is, however, quite narrow compared to that of UNCHR for example, which includes also “[o]ther serious violations of human rights”¹¹ to the “suppression”. The way to determine the “well-founded fear” adopted by Japanese authority as well as many judicial precedents, which requires that the person concerned should be under “particular set of circumstances to draw attention of his/her home countries government”¹², is also problematic, considering the difficulty to prove the existence of such a set of circumstances.

Second, there are problems concerning the burden and degree of proof. The recognition of refugee is performed “based on the data submitted”¹³, which means the applicant, the asylum seeker, must submit the data which proves he or she is a refugee. This requirement itself conforms to a general legal principle, according to which the burden of proof lies on the applicant. But as it is usually too hard for the applicants to meet this requirement, “the duty to ascertain and evaluate all the

6 ICRRA Art.2 (iii)-2 (“[T]he term ‘Refugee’ means a refugee who falls under the provisions of Article 1 of the Convention relating to the Status of Refugees ... or the provisions of Article 1 of the Protocol relating to the Status of Refugees.”)

7 Shigeki Sakamoto, “*Nihon no nanmin-nintei-tetsuzuki no genjo to kadai*” (Current situation of refugee recognition procedure in Japan and its problems) in: *Global-ka suru sekai to hō no kadai* (The globalizing world and its legal problems) (Yoshiro Matsui et. al. eds., Toshindo, 2006) p.389, p.391.

8 See e.g., Sakamoto, supra note 7, Shogo Watanabe, “*Nihon-no nanmin-nintei-tetsuzuki-no jissai*” (Current situation of refugee recognition procedure in Japan) in: Houritsu Jiho vol. 86 no.11 p.10.

9 Refugee Convention Art. 1 A (2) (the term “refugee” shall apply to person who has “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”)

10 See e.g. Judgement of Tokyo District Court of 5 July 1989, *Gyoshu* 40-7-913; Judgement of Tokyo High Court of 26 March 1990, *Gyoshu* 41-3-757; Judgement of Tokyo District Court of 29 October 2010 *Shogetsu* 57-1-1.

11 UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees; Reissued 2011 (<https://www.refworld.org/docid/4f33c8d92.html>; accessed September 30, 2019; hereinafter cited as “UNHCR, Handbook”) para.51.

12 See e. g., Judement of Nagoya High Court of 24 February 1995.

13 ICRRA Art.61-2 (1) (“If a Foreign National in Japan submits an application [for the recognition of refugee status] ..., the Minister of Justice may recognize such person as a Refugee ... based on the data submitted.”)

relevant facts is shared between the applicant and the examiner”¹⁴. The ICRRA recognizes the inquiry by the examiner too, stipulating that “[t]he Minister of Justice may have a Refugee Inquirer inquire into the facts if necessary for the Recognition of Refugee Status” (Art. 61-2-14 (1)), but as a special feature of the practice in Japan, it is said that this inquiry of facts tends to be performed for the purpose of not to recognize non-refugee erroneously as a “refugee” rather than finding firm evidences to prove that an applicant is a refugee¹⁵. Based on the understanding that refugee recognition is a beneficiary disposition, the burden of proof is often imposed to the applicant alone¹⁶. The benefit of the doubt¹⁷, also known as a “gray benefit”, has not been given to applicant in Japan.

Behind these administrative and judicial practices, we can see clearly the negative attitudes of the government of Japan toward refugee recognition¹⁸, and there is no denying that there exists as an undercurrent, at least among policymakers, the mentality to refuse the immigrants in general. Any attempt to accept “immigrants” (*imin*) sparked a backlash¹⁹, and Japan hasn’t formally been allowed foreign simple laborers, although it is said that many “side doors” exist. Against this background, administrative authorities are also negative in the area of refugee recognition, and judiciary tend to, with relatively few exceptions²⁰, approve the administrative decisions.

III. The impact of the “European migrant crisis”: Conflicts over the relocation of refugees

The causes and consequences of the “European migrant crisis” is well known²¹. The roots of this crisis are traced back mainly to civil wars and political turmoil in the countries of North Africa and the Middle East that had resulted from the democratization movements known as “Arab Spring”. In 2015 the influx was in its peak; according to the statistic by FRONTEX, the number of “Illegal border-crossing” in the same year has amounted to 1,822,337, main nationalities of which are Syria (594,059; 33%), Afghanistan (267,485; 15%), Iraq (101,285; 5.6%), Pakistan (43,314; 2.4%), Eritrea (40,348; 2.2%), Iran (24,674; 1.4%), Kosovo (23,793; 1.3%), Nigeria (23,609; 1.3%) , Somalia (17,694; 1%) and others (129,645; 7.1%) in addition

14 UNHCR, Handbook, supra note 11, para. 51.

15 Sakamoto, supra note 7, p.392.

16 See e. g., the argument of the Minister of Justice in Judgement of Tokyo District Court of 9 April 2003, *Hanrei-Jiho* 1819-24, p.33.

17 UNHCR, Handbook, supra note 11, para. 203.

18 In revising the refugee recognition system, for example, more stress is laid on the necessity to “curb the abuse or misuse of applications for refugee recognition status”. See, Ministry of Justice, “Further revision of operations to optimize the refugee recognition system” (2018) (<http://www.moj.go.jp/content/001245052.pdf>)

19 See e.g., *Asahi Shimbun*, 19 May 2019.

20 Shogo Watanabe & Daisuke Sugimoto (eds), *Nanmin Shōso Hanketsu 20-Sen* (20 Judgements Ruling in Favor of Asylum Seekers) (2015, Shinzansya)

21 See e.g., Douglas Webber, *European Disintegration?: The Politics of Crisis in the European Union* (2019) p.135

to 556,432 unspecified migrants (31%)²².

Among several migration routes into the EU, the “Central Mediterranean route”(sea route from North Africa towards Italy and Malta across the Mediterranean Sea) was much-used at first, then more and more asylum seekers took the “Eastern Mediterranean route”(sea route crossing from Turkey towards Greece, Bulgaria or Cyprus) and the “Western Balkan route”(mostly land passage from the Greek-Turkish border through Macedonia and Serbia into Hungary or Croatia) in 2015²³.

According to the Dublin Regulation, the first member state where an asylum claim is lodged should be responsible for the examination of that application. This principle, however, is to place a heavy burden to “frontline” states, in this case mainly to Greece and Italy, especially at the time of emergent situations like “European migrant crisis”. Indeed, the Dublin Convention was said to have been “largely ceased to exist except on paper”²⁴ by September 2015. Greece allowed the refugees arriving in the country to travel further into other states without being registered. Hungary, led by national-populist government, had built a fence on its southern border with Serbia and later decided to transport asylum seekers from Budapest to Austria and Germany without Schengen visas. Most of the political asylum claims in the EU, as a result, have been filed in Germany.²⁵

Under these circumstances, the plan to relocate asylum seekers among EU member states came to the forefront. In September 2015, the Justice and Home Affairs Council of EU approved the plan to relocate overall 160,000 asylum seekers in two decisions²⁶, though the second decision was adopted by a qualified majority, with the Czech Republic, Hungary, Romania and the Slovak Republic voting against the measures and Finland abstaining. These two decisions, based on Article 78(3) of the Treaty on the Functioning of the European Union (TFEU)²⁷, intended to establish “provisional measures in the area of international protection for the benefit of Italy and of Greece in view of supporting them in better coping with an emergency situation characterised by a sudden inflow of nationals of third countries in those Member States”²⁸, and prescribe relocation of applicants who are in clear need of international protection --- 40,000 applicants by the decision of 14 September 2015²⁹ and 120,000 applicants by the decision of 22 September 2015³⁰--- primary from Italy

22 Frontex, Risk Analysis for 2016” p.63 (https://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf).

23 Ibid., p.16.

24 Webber, supra note 21, p.153.

25 Ibid., p.156.

26 Council Decisions (EU) 2015/1523 of 14 September 2015 and 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

27 Art. 78(3) TFEU provides that “In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.”

28 Council Decisions (EU) 2015/1523, Art.1 and 2015/1601, Art.1.

29 Council Decision (EU) 2015/1523, Art.4. The breakdown is: 24,000 from Italy and 16,000 from Greece.

30 Council Decision (EU) 2015/1601, Art.4. The breakdown is: 15,600 from Italy, 50,400 from Greece and 50,400 “shall be relocated to the territory of the other Member States, proportionally to the figures laid down in Annexes”.

and Greece to the other member states.

As mentioned above, Hungary, Czech Republic, Poland and Slovakia --- also known as “Visegrád Group” named after a Hungarian castle town --- had strongly opposed the Council Decision 2015/1604 (the Relocation decision), and the Slovakia and Hungary brought actions to the Court of Justice of the European Union (CJEU) respectively, seeking annulment of the Relocation decision. The applicants were supported by Poland as intervener, while the Council was supported by Belgium, Germany, Greece, France, Italy, Luxembourg and Sweden alongside the Commission.

In its judgment of 6 September 2017, CJEU dismissed the actions³¹. Although this judgement covers wide range of issues, the substantive problems can be classified into 2 categories³²: whether the Relocation decision violates the principle of proportionality³³, and whether it violates the principles of legal certainty and of normative clarity, and also of the Geneva Convention³⁴. For the purpose of this paper, I’ll pick up here only 2 points.

First, CJEU refers to the “principle of solidarity and fair sharing of responsibility” to justify the Relocation decision. In the context of Slovak’s plea, alleging that the Relocation decision is not necessary in the light of the objective which it seeks to attain, CJEU maintains that “... the Council, when adopting the contested decision, was in fact required ... to give effect to *the principle of solidarity and fair sharing of responsibility* ... between the Member States, which applies, under Article 80 TFEU, when the EU common policy on asylum is implemented” (para.252, emphasis added)³⁵. Also, to the Hungary’s plea that argues the Relocation decision gives the particular effects on Hungary, CJEU appeals to these principles again, saying “[w]hen one or more Member States are faced with an emergency situation within the meaning of Article 78(3) TFEU, the burdens entailed by the provisional measures adopted under that provision for the benefit of that or those Member States must, as a rule, be divided between all the other Member States, in accordance with *the principle of solidarity and fair sharing of responsibility* between the Member States, since, in accordance with Article 80 TFEU, that principle governs EU asylum policy”(para.291, emphasis added).

Second, the problem of culture and ethnicity raised by Poland is worth noting. Poland has argued, on the basis of Hungary’s plea mentioned above, that the imposition of binding quotas by the Relocation decision imposes far greater disproportionate burdens to the “Member States which are ‘virtually ethnically homogeneous, like Poland’ and whose populations are different, from a cultural and

31 C-643/15 and C-647/15, *Slovak Republic and Hungary v. Council of the European Union*, 6 September 2017.

32 Ibid., III E. Besides these “substantive pleas in law”, CJEU also judged the “pleas alleging that Article 78(3) TFEU is not a proper legal basis for the [Relocation decision]”(ibid., III C), and the “pleas relating to the lawfulness of the procedure leading to the adoption of the [Relocation decision] and alleging breach of essential procedural requirements” (ibid., III D).

33 Ibid., III E 1.

34 Ibid., III E 2.

35 Art. 80 TFEU provides that “The policies of the Union set out in this Chapter [entitled “Policies on Border Checks, Asylum and Immigration”] and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.”

linguistic point of view, from the migrants to be relocated”(para.302). CJEU, however, rejects this argument:

“If relocation were to be strictly conditional upon the existence of cultural or linguistic ties between each applicant for international protection and the Member State of relocation, the distribution of those applicants between all the Member States in accordance with the principle of solidarity laid down by Article 80 TFEU and, consequently, the adoption of a binding relocation mechanism would be impossible.

It should be added that considerations relating to the ethnic origin of applicants for international protection cannot be taken into account since they are clearly contrary to EU law and, in particular, to Article 21 of the Charter of Fundamental Rights of the European Union ...” (paras.304-305)³⁶

The Relocation decision, thus approved by CJEU, was in fact far from being fully implemented. As of 2017, two years after the Relocation decision, fewer than a fifth of 160,000 refugees had been relocated³⁷. According to the report of European Commission in 2017³⁸, however, “[t]he pace of relocation continues to show a positive trend, with an average of 2,300 relocations per month since February 2017, confirming the significant acceleration of relocation in 2017”, although “Hungary and Poland remain the only Member States that have not relocated a single person” The cleavage among EU member states over the refugee relocation seems not to have been fully resolved.

IV. What can Japan learn from the “European migrant crisis”?

The “European migrant crisis” have also attracted much attention of the political or juristic researchers in Japan³⁹. But because of the big differences between EU and Japan concerning the practices and attitudes toward refugees or asylum seekers as well as geographic location and historical contexts, as one can easily imagine, it could hardly be denied that academics in Japan tend to describe and analyze the event merely as an object of observation, not as a matter of their own problems.

From the external point of view, one could point out some problems of the EU system highlighted by the “European migrant crisis”⁴⁰. First of all, it has revealed again the problems inherent in the Dublin Regulation, which had already been

36 Art. 21 (1) of the Charter of Fundamental Rights of the EU provides that “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”

37 Webber, *supra* note 21, p.162.

38 COM (2017) 465: Fifteenth report on relocation and resettlement (<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52017DC0465>)

39 See e.g., “Topics: Area of Freedom, Security and Justice: Refugees, Terrorism and the EU”, *EU Studies in Japan* No.37 (2017); “Topics: Global Politics on Migrants and Refugees”, *International Relations* Vol. 190 (2018).

40 See e.g., Rainer Bauböck, “European Duties towards Refugees”, *EU Studies in Japan* No.37, p.1 (2017), p.21.

criticized by that time because of the “unfair burden to frontline states”, as well as the danger of impairing the human rights of asylum seekers as judged by European Court on Human Rights, that prohibited forced returns of asylum seekers to Greece or Italy⁴¹. The relocation of asylum seekers is said to be “temporary” derogation from the Dublin Regulation⁴², but the very reason of derogation should be taken more seriously. Second, the EU system that allows differences among member states concerning the refugee recognition procedure seems to be forced to re-examination. The Common European Asylum System (CEAS)⁴³, which sets the common minimum standards for the treatment of asylum seekers, still leaves a broad discretion to member states, and as a result causes different treatment of asylum seekers and varying recognition rates among member states, although attempts at reform are being made⁴⁴. Under these conditions, it might be, after all, up to individual member state to perform the asylum protection effectively.

As to the individual member states, there is no denying that Germany ---and to the lesser degree, also states like Sweden--- had played a great role and its stance was decisive for the outcome of EU policy struggling against “European migrant crisis”, and it is therefore worth thinking why Germany or Sweden could accept so many refugees. While immigration and asylum policies of industrialized countries are said to be “convergent” in general⁴⁵, the existence of some “variables” is pointed out⁴⁶. Of course, many elements could be given as the reasons for the active attitudes of Germany or Sweden towards accepting asylum seekers and immigrants---it may be true, for example, that there existed more “pull factors” like labor shortage in these countries---but it may not be wrong to point out the “experiences and past achievements in accepting refugees and immigrants” of these countries, which might be a key to the confidence in implementing the asylum policy. If this observation is correct, we might reaffirm the necessity to take a step forward rather than “being frightened to imaginary immigrants”⁴⁷ or refugees. Anyway, the achievements of member states like Germany or Sweden cannot be overemphasized, but if the success of asylum policy depends merely upon the effort of some member states, it may be

41 M.S.S. v. Belgium and Greece, (Application no. 30696/09) judgement of 11 January 2011; Tarakhel v. Switzerland, (Application no. 29217/12) judgement of 4 November 2014.

42 Council Decision (EU) 2015/1601, Recital 23. See also, Council Decision (EU) 2015/1523, Recital 18.

43 https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/common-european-asylum-system-ceas_en

44 European Commission, “Reforming the Common European Asylum System” (2016) (https://europa.eu/rapid/press-release_MEMO-16-2436_en.htm).

45 J.F.Hollifield, P.L.Martin & Pia M. Orrenius, “The Dilemmas of Immigration Control” in: James F. Hollifield et.al. eds, *Controlling Immigration: A Global Perspective* [3d ed] (2014, Stanford University Press) p. 3, at p.3 (explaining this idea as a “convergence hypothesis”).

46 Andrew Geddes, “The European Union: Supranational Governance and the Remaking of European Migration Policy and Politics” in: Hollifield et.al., *supra* note 45, pp.436-437 (pointing out “time and timing”, “the proximity of the migration policy type to the EU’s legal and political framework”, “the experience of similar problem pressures”, “location factors” and “scope for imitation and policy learning” as variables). See also, Webber, *supra* note 21, p.152-153 (giving “the state’s geographic location relative to the Middle East and North Africa”, “the degree of exposure to immigration and immigrants from other ... societies and cultures during the post-World War II period” and “the strength ... of political parties and movements of the national-populist or extreme rights” as variables).

47 Asahi Shimbun, *supra* note 19.

hard to speak of a “European solution”.

Tracing back to the experiences of the EU and its member states at the time of the “European migrant crisis” makes us fully aware of the necessity of “solidarity and fair sharing of responsibility” proclaimed by CJEU in its judgement in 2017 mentioned above. The problem is, however, how to implement this principle effectively in the situation like “European migrant crisis”. In order to resolve the inequalities among asylum seekers in different countries, as well as the disbalance of burden among member states, it seems preferable to share the norms among member states as a common standard of refugee recognition rather than relocating asylum seekers coercively. But given the actual differences in economic situation, demographic composition, or social and cultural background among member states, it may be impossible to share a common standard in a short time. It should take time in this sense to materialize this principle in the area of refugee recognition.

The principles of “solidarity and fair sharing of responsibility” are not legally binding non-EU member states at the present time, but these principles should be applied to all states at the level of political morality. Needless to say, there is no reason that EU alone should bear a responsibility for refugee flood. In that sense, Japan could not escape the same responsibility. At first glance, problems over the refugee recognition that Japan faces now seems to be much modest in comparison to those of EU, but the structures of underlying problems are same, and therefore Japan has much to learn, I believe, from the experiences of EU and its member states, as well as to step forward towards the acceptance of more refugees.

Finally, I want to comment on the problem of culture and ethnicity raised by Poland. CJEU had refused, as mentioned above, to take account of cultural or linguistic ties as well as ethnic origin as a condition for the refugee recognition. This position can be seen as a standard in the EU law today, but it could be a big challenge also for Japan. Ethnically, Japan is a country of pretty high homogeneity, and the notion of Japan as “monoethnic country” (*tan-itsu-minzoku kokka*) is persistent among policymakers, as remarks of some Diet members show⁴⁸. Given the existence of ethnic minorities in Japan like resident Koreans, *Ainus* and *Ryukyuan*s as well as increasing foreign rooted Japanese, it is clear that the “myth of monoethnic country” cannot be maintained any more. But cultural impact as the consequences of accepting immigrants or refugees could be a problem also in Japan. According to a statistic, however, anxieties about cultural impact by the immigrants among Japanese peoples are not necessarily well-founded⁴⁹. Anyway, a non-emotional and scientific analysis

48 For example, it is well known that a remark by former Prime Minister Yasuhiro Nakasone in 1986, which says “as America is multiethnic state, education is not easy to implement and intellectual levels of African-Americans, Puerto Ricans and Mexican are not still so high, whereas education in Japan is well-cared for it is a monoethnic country”, invoked the wrath of citizens of the United States (Information of the conference of House of Representatives, 107th Diet, Plenary Assembly No.5; <http://kokkai.ndl.go.jp/SENTAKU/syugiin/107/0001/10709250001005c.html>). As the relatively new event, a remark by minister for internal affairs Taro Aso in 2005 says, “there is no country but Japan that has one culture, one civilization, one ethnicity and one language.” (Asahi Shimbun, 15 October 2005; <https://web.archive.org/web/20051018033046/http://www.asahi.com/politics/update/1016/001.html>).

49 Akira Igarashi & KikukoYoshinaga, “*Imin Haiseki: Yoron wa ikani seitōka-shite-iruka*” (Exclusion of immigrants: How public opinions justify it) in: *Imin seisaku towa nanika* (What is a immigration policy ?) (Sachi Takaya ed., Jinmon shoin, 2019)

without prejudice seems to be required also here.

Whereas the German Basic Law has a provision that guarantees the right of asylum⁵⁰, Japanese Constitutional Law (JCL) does not directly protect such a right in explicit terms. The preface of JCL however, which is considered to have the character of legal norms as well as the other individual articles⁵¹, proclaims that “[w]e believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations.” (Third Paragraph). This passage could, and must, serve as a guiding norm also in the area of immigration and refugee policy in Japan.

p.145, p.152.

50 Art. 16a (1) of Basic Law for the Federal Republic of Germany (“Persons persecuted on political grounds shall have the right of asylum.”).

51 Nobuyoshi Ashibe (Kazuyuki Takahashi suppl.), *Kenpō [dai-7-han]* (Constitutional Law [7th ed.]) p.37 (2019, Iwanami-Shoten)