

A Study of Korean Refugee Law on International Refugee Issues

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Abstract

Human rights problem of refugee is the most important task to be solved in the international society. The United Nations High Commissioner for Refugees (UNHCR) was established in 1950, with the need for cooperation in the face of the European refugee crisis. In 1951, 'The 1951 refugee convention' was signed for the protection of all refugees. Since the 1951 Refugee Convention, a legal framework has been established for responding to refugees. However, the discrimination and persecution of refugees are still lingering. The interest and the political will of many people in the world are needed to solve this problem. This article analyzes what efforts should be made with respect to human rights issues. This article concludes that, when comparing refugee acceptance and Korea, Korea needs to look at the common denominator of refugee law, human rights law, and international humanitarian law while looking at the treatment of refugees and displaced people from an inclusive approach, and reorganize law and policy. Since Korea is expected to gradually require inclusive policies, Korea should also supplement the legal system and take an inclusive approach. Although Korea as a member of the Refugee Convention, the Geneva Convention, and the Supplementary Protocol, has an obligation to enact domestic implementation laws, it does not reflect all of the obligations required by these conventions, so reorganization is needed.

Keywords: UNHCR, Refugee Convention, Refugees, Korean Refugee Law

1. INTRODUCTION

It will be difficult for anyone to undergo life-threatening situations where they are discriminated depending on their skin color, religion, or political opinions. People who are not be able to be protected by their country for this reason or do not want to be protected by fear are called refugees. According to UN refugees are defined as all those who have left their home countries due to disputes, persecution, violence, and human rights violations [1].

Human rights problem of refugee is the most important task to be solved in the international society. In 1931, the International Relief Association (IRA) was established to help European refugees avoiding Nazi persecution [2]. In 1942, IRA and Emergency Rescue Committee (ERC), a Jewish rescue organization formed the International Rescue Committee (IRC) [3]. After the World War II, following a direction of a resolution of the United Nations General Assembly, the United Nations High Commissioner for Refugees (UNHCR) was established in 1950 for international cooperation in the face of the European refugee crisis. In 1951, 'the 1951 refugee convention' being considered to be the first international law, was signed to protect refugees internationally [4]. Since the 1951 Refugee Convention, a legal framework has been established for responding to refugees. However, the discrimination and persecution of refugees are still lingering. The

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interest and the political will of many people in the world are needed to solve this problem. This article analyzes what efforts should be made with respect to human rights issues.

2. ISSUES OF REFUGEE IN THE INTERNATIONAL COMMUNITY

2.1 The Number of Refugees in the World

All people who left their home countries due to disputes, persecution, violence, and human rights violations are defined as refugees. The number of refugees in the world reached 82.4 million in 2020, which is the largest ever [5]. According to a UNHCR report, there are more than 1.4 million people over 60 refugee-hosting countries in need of resettlement [6]. Three east African countries - Ethiopia, Sudan, and Uganda – hosted 4.5 million refugees in 2020, in other words, they take up 13 percent of all refugees worldwide [7]. Southeast Asian countries have a high rate of refugee in Asia. For example, the number of refugees has increased in Myanmar, which consists of more than 130 ethnic groups after the recent military coup.

2.2 Issues of Refugee in Developed Countries

According to a statistic, 84 percent of refugees remain in developing countries, including 28 percent in underdeveloped countries [8]. The reason why developing countries accept more refugee may be that refugees are considered to be human capital for the economic growth of host country as they can supply labor force and technology, as well as refugees attract international support from various organizations or other countries [9]. On the other hand, developed countries had approached to refugee issues in connection with political reasons as well as humanitarian ones. For example, the United States' federal legislators passed the Refugee Relief Act of 1953 to admit 214,000 persons to the United States mainly from southern Europe including Italy, Greece, the Netherlands and countries under communist control [10]. However, developed countries changed their strategies for refugees by installing refugee camps to hold refugees near refugee-producing countries or repatriating them. As a result, seeking asylum by refugees has been more difficult than before in many developed countries. Japan and Korea both have received small number of refugees in the last decade, accounting for similarly low level of around 0.001 percent of their population. Although the EU member countries as a whole had received refugees corresponding to 1.63 percent of the population over the past ten years before the war in Ukraine began in 2022, many countries had not reached that average level. In addition to the difficulties in seeking asylum by refugees, it is worth noting that, particularly in Europe, there are different treatment for refugees from Ukraine compared to those from outside Europe [11]. However, as the United Nations High Commissioner for Refugees said, it is not too late if the right actions are taken now [12].

2.3 Refugee Issues Worsened during the COVID-19 Pandemic

The COVID-19 pandemic has been the biggest crisis for refugees. Ahead of World Refugee Day on June 20, 2021, Jagan Chapagain, the International Federation of Red Cross and Red Crescent Societies (IFRC) raised the alarm about the situation of refugees who were facing severe humanitarian hardships, which had been aggravated by the COVID-19 pandemic. As Chapagain pointed out, refugees are one of the groups which have been affected the most by the impact of the COVID-19 pandemic. Many refugees around the world are unable to pay for food and are struggling to gain access to health care and education [13]. In order to cope with the COVID-19 pandemic, refugees have to reduce food consumption or have to buy cheaper food, which cause health problems [14]. Situations are worsened to many refugees around the world. The COVID-19 pandemic has increased barriers to provide care and social support, and it has impaired progress toward social justice [15]. According to a UNHCR report, over 160 countries have shut down their borders, and among them, 99 countries have no exceptions to refugees [16].

2.4 Countries That Are Supportive of Taking in Refugees

Germany is a strong supporter of the Global Compact on Refugees, which is a framework for more predictable and equitable responsibility-sharing. Germany was short of skilled workers during the Cold War, so Germany adopted human rights standards and recognized the need for protection of all human including refugees. By doing this, Germany has willingly engaged in voluntary work on its behalf [17]. Over the years, Germany has broadened its participation in refugee protection works. Germany is the second biggest bilateral humanitarian donor. In the middle of 2021, Germany reported almost 1.24 million refugees and 233,000 asylum seekers, making it the biggest host country for refugees in Europe [18].

The number of immigrants flowing into Turkey over the past few decades has been identified as 3.7 million, including illegal immigrants. It has accommodated the world's largest number of refugees over the past seven years [19]. Turkey's economy and society have implemented an active refugee acceptance policy since 1980, but Turkey has not had a big problem despite such a large influx of immigrants [20]. Like the German refugee camp, there was an imbalance between labor demand and supply, as immigrants provided inexpensive labor in these fields, beneficial to Turkish society and the economy. In addition, Turkey is estimated to have more than 1.6 million refugees from the recent Syrian crisis, and Turkey has accepted large-scale immigrants and legislated New Asylum Laws to manage them. According to UNHCR report, Turkey also adopted Temporary Protection Regulation on 22 October 2014, which sets out the rights and obligations along with procedures for those who are granted temporary protection in Turkey [21]. As a result, Turkey's large-scale acceptance of Syrian refugees is receiving great response from the international community.

3. KOREAN REFUGEE LAW

3.1 History of Refugee System in Korea

Korea is a member of the UNHCR. In the 1950s, the UN Korea Reconstruction Agency (UNKRA) was established to protect and rebuild the Republic of Korea and took care of displaced people in the Korean War [22]. In 2001, the UNHCR office was opened in Korea, and refugees in Korea were recognized for the first time. In 2007, the UNHCR was promoted to the Korean delegation and began refugee relief activities in earnest by covering the first refugee plan (Africa: Ethiopia, Uganda, Tanzania) with the help of the Korean Press Foundation. After 2008, thousands of people began to request applications for protection. However, there was around 100 refugee recognitions. Following the Refugee Act enforced in July 2013, the Korean delegation is working closely with the Korean government to improve refugee application and recognition procedures and the treatment of refugee applicants and recognized persons.

3.2 Limitations of the Refugee Act in Korea

In Korea, when the Refugee Act was enacted in 2013, the introduction of refugee recognition application procedures at immigration ports was highlighted as an advanced aspect in the existing immigration law. In the process of deciding whether to refer refugees to the refugee recognition review during the immigration procedure, the administrative agency can make a decision to refer them to a certain place in the immigration port within 7 days, which causes two problems.

According to Article 5 (4) of the Enforcement Decree of the Refugee Act, the administrative agency must allow the applicant to enter the country at least conditionally, and in the case of a decision not to return, it was divided into separate procedures that allow entry or non-entry. The rejection decision lists the reasons in Article 5 (1) of the Enforcement Decree of the Refugee Act, and the problem is that there are no provisions on objections or procedures to the rejection decision, and the rejection decision is made within seven days. It may be directly contrary to the purpose of the Refugee Convention and the Refugee Act to immediately invalidate the refugee application form without screening. Rather, there are opinions calling for legislative improvement as it is reasonable to assume that the administrative agency is responsible for proving the

decision of rejection. The other is a discussion on whether oral notification is a correct administrative procedure, not written, on the decision to reject the refugee recognition review. The 2015 cancellation lawsuit said, "If a foreigner who is not allowed to enter the country decides not to submit refugee recognition at the port of departure, the result should be notified only to the applicant for refugee recognition without delay."

The Refugee Convention stipulates the guarantee of effective refugee application procedures, and the Geneva Convention or additional sentiment does not stipulate refugee application procedures, but only requires registration of personal relations in writing. As a member of the Refugee Convention, the Geneva Convention, and the Additional Protocol, Korea is obligated to enact domestic implementation laws, but it does not reflect all the obligations required by these conventions, so it needs to be reorganized.

3.3 Response to Refugee System in Korea

Firstly, support for legal status is needed. Refugee applicants have the right to ask lawyers for help. In addition, if a refugee applicant applies, the admission of a person in a trust relationship may be allowed to the extent that does not interfere with the fairness of the interview. During the interview process, a qualified interpreter must interpret, and when a refugee applicant applies, a refugee interpreter will interpret. The contents of the interview report can be checked through interpretation or translation after the interview, and the materials submitted by the person or interview survey data can be viewed and copied. And the registration of ID cards should be done smoothly. Korea's refugee law requires the detainee to issue a receipt when he or she confiscates documents or identification cards of his or her family. If the detainee does not have an ID card at all times, the detention authorities must issue a special certificate and require the detainee to replace it until the detention is over. The Minister of Justice immediately issued a receipt for the issuance of an identification card. To protect refugee applicant's right to ask lawyers for help concretely, the Refugee Act may be amended to introduce the public defender for refugee applicants [23].

UNHCR Decision No. 82 emphasizes the "state's obligation to deal with the standards of the Human Rights and Refugees Convention, an international document on asylum seekers and refugees." Basic treatment is presented in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). In addition to these decisions, declarations and conventions, resolutions of the United Nations General Assembly, the United Nations Economic and Social Council, UNHCR Committee and the International Committee of the Red Cross (ICRC) resolutions reflect international standards for protection claimants and refugees.

Secondly, the right to live and dignity must be guaranteed. First of all, the issue of freedom of movement and residence is the most basic right, and Article 13 (1) of the Universal Declaration of Human Rights and Article 12 (1) of the Civil Political Convention stipulate freedom of movement. Freedom of movement is bound to be restricted from the time refugees arrive in other countries. The reason is, of course, that the facilities that can provide services are limited to specific areas. As a result, an environment in which freedom of movement is unintentionally restricted is created, and future employment is restricted. Freedom of consent must be guaranteed to maintain contact between relatives. Therefore, restrictions on freedom of movement should not be arbitrary and should have a legal basis, and at this time, the right to unite and reunite the family must be respected within a limited period of time. Although the Refugee Act and the Enforcement Decree of the Refugee Act have provisions for subsidization of living costs, provision of residential facilities, medical services, and assurance of education for children, these regulations lack the assurance of freedom of movement, residence, and right to unite family. Thus, detailed assurance of freedom of movement, residence, and right to unite family, and detailed criteria for the determination of restrictions on such rights should be included in the Refugee Act and the Enforcement Decree.

Finally, refugees have the right to receive support for certain services. Certain services include the provision of basic food, medical services and clothing. It is a right stipulated in Articles 11 (1) and 12 (1) of the International Covenant on Economic, Social and Cultural Rights, and Article 25 (1) of the Universal Declaration of Human Rights. Basic medical, food, and medical services should be provided to all mental

listeners who are refugees in need, whether they are support facilities or individual facilities. In Korea, the Yeongjong-do Immigration Support Center (refugee center) was established in 2013, and refugee applicants who applied for refugee recognition at the port of entry (Guideline No. 910) can stay at the refugee center for 90 days to raise or conceive [24]. It provides lodging and lodging in dormitories, provides medical support services in cooperation with nearby hospitals, provides religious rooms, and provides educational support services to ensure religious freedom. Livelihood support is also being provided.

4. CONCLUSION

In conclusion, when comparing refugee acceptance and Korea, Korea needs to look at the common denominator of refugee law, human rights law, and international humanitarian law while looking at the treatment of refugees and displaced people from an inclusive approach, and reorganize law and policy. International humanitarian law stipulates that immediate intervention is necessary to protect civilians and civilians in the event of armed conflict. Therefore, displaced people and refugees can be guaranteed non-discrimination against civilians, the right to live and dignity, the right to family members, the right to write, property ownership, labor and social protection, education, prohibition of forced migration, and voluntary repatriation.

As UNHCR and ICRC, which act as practical organizations to protect refugees and displaced people, are organically performing or supporting UNHCR's work, Korea is expected to gradually require inclusive policies, so Korea should also supplement the legal system and take an inclusive approach. As a member of the Refugee Convention, the Geneva Convention, and the Supplementary Protocol, Korea has an obligation to enact domestic implementation laws, but it does not reflect all of the obligations required by these conventions, so reorganization is needed.

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