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Double Master's Degree Programme in International Relations  
Major in Diplomacy

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The New Era of Japan's Immigration Control and  
Refugee Recognition: Analysing the Diachronic  
External and Internal Impact on Japan's ICRRA

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## Abbreviation Index

ASEAN: Association of Southeast Asian Nations

ICRRA: Immigration Control and Refugee Recognition Act

1951 Convention: Convention Relating to the Status of Refugees (1951)

MOFA: Ministry of Foreign Affairs

MOJ: Ministry of Justice

EU: European Union

ISA: Immigration Services Agency

DA: Designated Activities

SPS: Special Permission to Stay

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

VCLT: Vienna Convention on the Law of Treaties

WB: World Bank

## Summary

The Russian invasion of Ukraine has seen many victims and has impacted more than the West. To the surprise of many, Japan has welcomed many asylum seekers, so much so that it has made academics, journalists, and political researchers witness a new era for the Japanese Immigration Control and Refugee Recognition Act. However, many are also sceptical and have denoted this Japanese intervention as an ‘extraordinary event’ and argue that Japan has not changed its views on refugees and that the country continues to ‘free ride’ regarding such humanitarian issues. This is mainly because the majority of Ukrainian asylum seekers were accepted as evacuees and not refugees which limits their rights and liberties. Most of the existing literature blames Japanese ‘scepticism’ towards asylum seekers on ethnonationalism. But is ethnonationalism the only valuable explanation for this ‘phobic’ attitude? Is Japan truly entering a new era of refugee recognition or has little to nothing changed during these troubled times? And if there has been a permanent change, how has the recent refugee crisis in Myanmar, Afghanistan and particularly in Ukraine impacted the ICRRRA? This thesis aims to answer these questions and to test the hypothesis that Japan is indeed witnessing the dawn of a new era and that both external factors, such as the refugee crisis, and internal factors, such as NGOs, Japanese demography and the creation of new provisions for asylum seekers have opened the door to this new epoch. By adopting a two-level game theory, a theoretical framework introduced by Robert D. Putnam in 1998, I will analyse how both external and internal variables have played in inducing dramatic change. The two-level game theory perspective constitutes a distinct approach in foreign policy analysis and serves to reintegrate the subfields of comparative politics and international relations (Conceicao-Heldt & Mello, 2017). The reason as to why this framework is particularly useful in the context of this dissertation is that it recognises the inevitability of having to recognise that countries decision makers need to strive to reconcile domestic and international imperatives simultaneously (Putnam, 1988). To test the main hypothesis, I will conduct both a qualitative and quantitative analysis. The first is by performing a discourse analysis on the speeches of the Minister of Justice and the Prime Minister referencing refugees and asylum seekers. The latter will be done by carrying out data analysis on the actual number of refugees recognised for each refugee crisis selected and providing a detailed

review of the different visas the asylum seekers of each country were provided and on what basis. By conducting both qualitative and quantitative analysis, this dissertation will provide a vast but at the same time detailed proof and documentation to test the main hypothesis and ultimately answer the research questions. Furthermore, the thesis will explore the concept of Japanese identity and study from a sociological point of view what lies behind and within Japanese identity and the concept of ‘和’(harmony). By taking into consideration the symbolic dimension of identity and by reifying said concept it will be possible to further comprehend the dynamics at play, explore the concept of identity from a new point of view, and observe how Japanese identity affects change in the country’s policies. Finally, the thesis will also include a chapter featuring the opinions and stances of the leading experts on the topic of both immigration control and refugee recognition in order not only to enrich the thesis but also to provide new, original literature that analyses the connections and political dynamics between such distant countries and regions. To conclude, the final chapter will analyse the various findings, answer the research questions proposed, integrate the scholar’s opinions to provide a complete bigger picture of the state of play and the way ahead and understand whether or not Japan is approaching a new era of Immigration Control and Refugee Recognition.

# Introduction

The Taliban takeover in Afghanistan in 2021, the coup d'état in Myanmar in 2021 and the Russian invasion of Ukraine in 2022 have generated an immense number of refugees and with them, a humanitarian crisis. Several countries from different continents have provided financial and foster aid, but many were surprised to see that one of the countries which took part in the most recent, Ukraine humanitarian crisis was Japan. The Japanese Ministry of Justice states that as of June 2023, Japan has provided Ukraine with diplomatic, financial, humanitarian and military support and has been implementing assistance of the value of US \$7.1 billion (MOJ, 2023). However, Japan has provided much monetary aid in the past to entities such as the UN, such as in 2021 when Japan ranked second in the top contributors of the UNDP. Many have criticised Japan for 'free riding' international efforts and only contributing monetarily throughout the years (Takizawa, 2021), so many were even more surprised to see that Japan was accepting a never-before-witnessed number of Ukrainian refugees within the country. Some are hopeful that this marks the beginning of a new chapter in the book of Refugee Recognition in Japan, but many are sceptical and condemn this as a one-time event (The Japan Times, 2023).

This thesis aims to determine whether the recent refugee crises generated by the conflicts in Afghanistan, Myanmar and especially that in Ukraine have influenced Japan's Immigration Control and Refugee Recognition Act. By conducting a detailed quantitative analysis, followed by discourse analysis and finally a collection of the transcripts of the interviews I have personally conducted in both English and Japanese, with the top experts in Japan in the matters regarding the ICRRA, I will be demonstrating through this research that Japan is indeed entering a new era of Immigration Control and Refugee Recognition.

This thesis contains both primary and secondary sources, to provide as much material as necessary to conduct in-depth and comprehensive research. For what concerns secondary resources, the dissertation will feature a vast literature which bibliography will be cited at the end which will be of both Japanese and not articles, papers and research. This is to be able to provide not a one-sided view and to instead analyse various opinions and research done on the specific topics to prevent any bias or narrow narratives. Aside from the literature, to be



able to conduct a quantitative analysis for Chapter 2 of this dissertation, specific data regarding the number of asylum seekers, refugees and evacuees will be used to examine how many individuals from each refugee crisis of Myanmar, Afghanistan and Ukraine have obtained protection from the Japanese government and specifically what kind. As a matter of fact, the thesis will go on to explain that Japan has an intricate system of refugee recognition and while many asylum seekers are not recognised as Convention refugees, many, especially in recent years, have received some forms of complementary protection. While, as it will be shown, the coverage of rights and privileges of the different categories differ, these categories have been a way to provide asylum seekers who are not recognised officially as refugees with some kind of protection.

This thesis will aim to understand whether or not Japan is indeed entering a new era regarding Immigration Control and Refugee Recognition and to test whether the recent changes which were introduced with the approval of the ‘Proposed Bill for the Partial Revision of the Immigration Control and Refugee Recognition Act’ were influenced by the recent external refugee crisis of Afghanistan, Myanmar and Ukraine. The research questions and the derived hypothesis will therefore be:

RQ1: Is Japan entering a new era regarding Immigration Control and Refugee recognition?

RQ2: How have the recent refugee crises of Afghanistan, Myanmar and Ukraine influenced the expansion of human protection of the Japanese ICRRA?

The hypothesis which was derived was: The recent refugee crises, particularly the Ukrainian refugee crisis has influenced the creation of an alternative mean of protection in Japan’s ICRRA.

By adopting a two-level game theory, a theoretical framework introduced by Robert D. Putnam in 1998, I will analyse how both external and internal variables have played in inducing dramatic change. The two-level game theory perspective constitutes a distinct approach in foreign policy analysis and serves to reintegrate the subfields of comparative politics and international relations (Conceicao-Heldt & Mello, 2017). The reason as to why this framework is particularly useful in the context of this dissertation is that it recognises

the inevitability of having to recognise that countries decision makers need to strive to reconcile domestic and international imperatives simultaneously (Putnam, 1988).

The thesis will obtain data from the Minister of Justice in order to examine the numbers and categories of protections for each of the refugee crises selected for this study, for it to be compared and further analysed. The information extrapolated will not only include numerical data but also discourses and specifics regarding the characteristics of each 'status of residence' which will be necessary in order to compare the differences and similarities of the protection which is granted to each refugee. This data will be then re-elaborated by providing numerous visual representations of the data and calculations will be made in the chapter regarding quantitative analysis to answer the main research questions. In particular, I will be conducting a diachronic comparative quantitative analysis to show the developments over time, so as to test whether the main hypothesis is true or false. As a matter of fact, in order to verify whether Japan is indeed entering a new era regarding the ICRRA, it is necessary to conduct an analysis over time. I will be concentrating specifically on the years from 2020 to 2022, considering that the selected refugee crises of Afghanistan, Myanmar and Ukraine have occurred within these years. However, to provide further context and additional data to show the evolution of the acceptance or non-acceptance of refugees, the analysis will at times include data from previous years. This will provide further accuracy and additional data to compare with recent developments which will strengthen the final claims. As aforementioned, the numerical data will be proposed visually, specifically using linear graphs to show the progression over the years. Other numerical data will be used for calculations for comparisons and to calculate percentages and probabilities.

Other secondary sources will include public speeches and announcements made by the Minister of Justice, which transcripts have been made available on the official website of the Ministry of Justice (MOJ). This will be done to conduct discourse analysis which will be done to scrutinise the use of specific words and the meaning behind them. By taking into consideration the symbolism behind the language used, it will be possible to look beyond the mere meaning and to understand the depth of Japanese identity which will be useful in answering the main research questions. Furthermore, the discourse analysis will attempt to deepen the understanding of the hidden meaning by comparing various terms of the Japanese

vocabulary and their meaning. This will be done in order to show the perception of ‘refugees’, ‘immigrants’ and social concepts surrounding the ICRRA. Terms such as ‘immigration’ and ‘international human resources’ will be put next to one another and a discourse analysis will be conducted to analyse the change of terminology and how these changes could have led to greater change within the creation of new provisions such as the ‘Guideline on refugee recognition’ and the recent amendments of the ICRRA.

Another secondary source which will be employed is the transcript of the Diet Meeting for the Amendment to the Immigration Control Act. Similarly, discourse analysis will be conducted for the same purposes as stated above.

As for the primary sources, the thesis will feature interviews with different Professors, all from different backgrounds who have great expertise regarding immigration and refugee recognition.

The greatest challenge during the creation of this thesis has been the collection of data and sources regarding both the data on refugee crises and the recent internal developments regarding the ICRRA. Due to the nature of the research being such recent topics, little to no information was available for this study. Much of the literature regarding the history of the ICRRA and the difficulties of Japan in welcoming refugees has been provided in Chapter 1 which provides a literature review on the ICRRA. However, much of the documentation was outdated and there is little research available on the recent developments regarding the recent refugee crisis.

Furthermore, having scouted a long time through databases in different languages, I have not found any research such as the one I am proposing in the thesis ever being done. This is of course due to the developments of the refugee crisis being so recent, but as far as I have witnessed, the analysis here presented is unprecedented and has not been done. The recency of these both internal and external developments have constituted many difficulties in retrieving necessary data to conduct a reliable and accurate analysis, but have also ensured the pure originality of this thesis. Furthermore, with the author being completely bilingual, all the Japanese data which had not been translated in any other language was translated and employed for this research. Therefore, despite there being little to no historical analysis specific to the comparison of the Afghanistan, Myanmar and Ukraine refugee crisis, this

thesis will be able to conduct accurate and detailed analysis including both quantitative and qualitative analysis and utilising newly previously untranslated data. There have been of course studies done separately on the refugee crisis of Afghanistan, Myanmar and more recently on Ukraine evacuees but as far as I have managed to verify, there is no research comparing the three.

So, to provide further original data, I have reached out and interviewed three expert Professors who are known academic exponents in both Immigration and Refugee Recognition. The Professors who have graciously accepted have been asked the same questions so as to conduct a comparative discourse analysis on their answers and so as to provide further information on the recent and future possible developments of the ICRRA and the evolving perceptions of immigration and refugees in Japan.

The interviewed experts are Professor Takizawa from Toyo Eiwa University, who worked as the Controller and Director of Finances at the United Nations High Commissioner for Refugees (UNHCR) headquarters in Geneva and was appointed as the first Japanese UNHCR Representative in Japan; Professor Akashi from the University of Tsukuba who is also currently employed at the Immigration services Agency as a refugee examination counsellor, and Professor Gracia Liu-Farrer from Waseda University who is also the Director of the Institute of Asian migrations. With their permission, I will include their answers in Chapter 4 of this dissertation and I will be conducting a comparative discourse analysis on their responses.

The data collected from the quantitative analysis in Chapter 2, the discourse analysis conducted in Chapter 3 and the interview responses from the three professors will then be discussed in the following chapter where I will discuss the findings and compare the various results from the different analyses conducted throughout the thesis. By doing so, it will be possible to draw the final conclusion while having elaborated data of both quantitative and qualitative analysis so as to provide a vast quantity of material and evidence to finally test the hypothesis answer the research questions and conclude the dissertation.

In the conclusion, I will be recollecting the findings elaborated in the previous chapter, and on the basis of the data collected and the research conducted I will provide a definitive, positive answer to the question of whether Japan is entering a new era of Immigration Control

and Refugee Recognition, and that the recent refugee crisis of Afghanistan, Myanmar, and especially that of Ukraine have impacted the ICRRA and finalised the creation of the new category of 'Subsidiary Protection' which is meant to protect those who do not qualify for refugee recognition by providing an alternative measure of protection.

# Chapter 1: Overview of the Immigration and Refugee Recognition Act

## Introduction

This first chapter will overview the general history of the Japanese Immigration Control and Refugee Recognition Act and highlight the amendments and historical events. By doing so, I will show how immigration and refugee recognition are closely intertwined and how the development of one greatly affects the other. The chapter will cover the timeline from the creation of the Act in 1951 to 2021 as later developments will be discussed further in the following chapter of the dissertation. The chapter will only briefly mention current events only when necessary to provide context.

Before discussing the issue of why Japan has built up a reputation of not accepting refugees it is fundamental to analyse the data. Japan has been denoted as a country with a big “refugee problem” which refers to the fact that Japan has several refugees that are few by international standards (Takizawa, 2017).

Indeed, Japanese immigration management and refugee recognition have been a complicated and continuously changing subject. Japan became a *de facto* immigration country in 1990 but with the presumption for it to be temporary which is one of the issues to which Japan had to continuously amend and adapt their immigration policy as the country was too interested in temporary migrants who were, simply put, “expected to make their economic contribution and go back home afterwards” (Komine, 2014). And if Japan had a complicated relationship with foreign workers, the one with refugees has been even more troubled.

But what is the actual reason why Japan has a low number of refugees?

The literature on the topic provides different interpretations, but due to the lack of translation of many documents regarding the topic, not much of the Japanese research has been available to the rest of the world. In this thesis, and specifically in this chapter, I will be integrating both Western and East Asian literature in order to provide a wide and more in-depth analysis

of the Japanese Immigration Control and Refugee Recognition Act and the reasons behind the Japanese 'refugee problem'.

## The reasons behind the Japanese ‘refugee problem’

Much of the literature which discusses Japanese identity is rather focused on ethnonationalism and much of it tends to blame ethnonationalism for the low refugee and immigration rate. Japanese ethnonationalism was institutionalised with the Meiji Restoration in 1868 in order to create a unified nation-state that has an interrelated family-state-emperor trinity as a socio-political structure through an ethnonationalist education (Fujirani, 1993). The idea of being a mono-ethnic nation-state and the perceived threat of immigration may have been influenced by the memory of the isolation period, but there is proof that in recent years, Japan has been turning to cultural pluralism from the mono-ethnic state (Kondo, 1999). This is mostly due to demographic considerations as the population ages and the country is being afflicted by a low fertility rate (National Institute of Population and Security Research, 2002). Japanese immigration policy has also become markedly settlement oriented since the mid-2000s. However, economic migrants are never immediately admitted as permanent residents and are rarely seen as immigrants afterwards. It is interesting to understand why Japan’s immigration policy has become a settlement despite it still being based on the principle of non-immigration (Komine, 2014).

This could be explained by the fact that Japan seems to have become the target of immigration management. When discussing immigration management it is fundamental to distinguish denizens from immigrants. Tomas Hammar defines a denizen as a foreign national who resides in the destination country as a permanent resident and analytically occupies an intermediate status between the temporary migrant and the naturalised citizen. There are fundamental differences in the rights that a denizen holds compared to those of a migrant as a denizen benefits from a full range of social and civil rights which are not accessible to migrants (Rosbrook-Thompson, 2015).

Proof that Japan has been acting on this already in 2000 can be witnessed by the words of the Prime Minister's Commission which stated that: “we should set up a more explicit immigration and permanent residence system so as to encourage foreigners who can be expected to contribute to the development of Japanese society to move in and possibly take up permanent residence here (Prime minister commission on Japan’s goals in the 21 century,



2000). But making such claims possible has been challenging also due to a very clear issue in the context of immigration and refugee policies in Japan is the lack of coordination between ministries on the adjustments within the alien policy.

Furthermore, the early to mid-2010s migration flow has produced a substantial level of migrant settlement and as of 2014, denizenship was the predominant mode of settlement rather than naturalisation. (Komine, 2014) (Lu & others, 2005).

Now, despite Japan having since then made progress and has been developing and amending the ICCRA, by comparing both the numbers of immigration and refugee recognition to those of other countries, the difference is quite clear. In 2000, the Japanese net migration rate was 1.34 while Italy's was 3.71 (The World Bank, 2000). In the year 2010, they respectively had 1.68 and 9.71 (The World Bank, 2010).

As previously mentioned, many researchers tend to explain this reluctance to welcome immigrants and refugees with ethnonationalism (Farrer, 2020) (Kang & others, 2010). However, other academics tend to disagree: their research has shown that ethnonationalism is not the reason as to why Japan is reluctant to welcome foreign people, them being either workers or migrants. What is instead analysed is the idea that much of the collective identity of the Japanese people is based on 安全 (security). (Horiuchi & Ono, 2018) (Laurence & others, 2022).

Nicki Abel (2006) defines collective identity as “a social category that varies along two dimensions – content (the meaning of identity) and contestation (the degree of in-group agreement over the content). Because the self-concepts that make up the identity of one individual are bound to interact with those of others, the concept of collective identity reifies. These multiple self-concepts which interact with those of one another are also influenced by the culture and institutional settings surrounding the individuals (Ashizawa, 2008). State identity connotes a conception of what the country is and what it represents. Self-concepts of statehood are generated both by external and internal factors. Externally, this happens over time through relations and interaction with other states while internal cultural and institutional elements of states' internal environments help construct a concept of state identity, therefore, state identity is a social and relational conception referring to the state in

a way to reflect existence or identity (Tamaki, 2015) (Ashizawa, 2008). In the case of Japan, state identity rests mostly on the pillars of order and security which the Japanese people are trying to protect by disregarding change (Walters, 2010).

It is common knowledge that Japan has historically been reluctant to change, with the greatest example being the Sakoku, which is the Isolationist foreign policy period that covers 265 years of the Edo period (from 1605 to 1868) and the continuous difficulties in amending Art. 9 of the Japanese Constitution (Constitution of Japan, 1947). The reason behind the reluctance to amend Article 9 is mainly the fear of losing the peace and security that the country has worked to maintain following the events of World War II. The protection of said security has earned the admiring moniker of ‘peace constitution’ (Dixon, 2019). The concept of Japanese security identity has been studied more and more in recent years, especially regarding said Article 9 which stipulates the renunciation of war and the non-possession of armed forces (Akimoto, 2013). Japanese pacifism has been a central theme of Japanese politics and identity and it is very much arguable that many nationals have been and are worried that foreign nationals, workers and refugees could disrupt Japan’s ‘sacred’ security and peace. In an Ipsos survey conducted published in 2019 on ‘Global attitudes towards Refugees’ when asked ‘Thinking about your country, do you agree or disagree with the following statements? People should be able to take refuge in other countries, including in [Japan], to escape from war or persecution, only 23% agreed while 40% disagreed (Ipsos, 2019). Some of the research also tends to show that Japanese people are inclined to free-ride other countries' efforts to address the global refugee crisis as the respondents of a survey conducted on Public Opposition to Refugee Resettlement (Yoshikumi, 2018) tend to agree that developed countries should accept more refugees out of humanitarian concerns. This feeling however wavers when questioned on whether Japan, a developed country should accept refugees.

There are arguments that Japanese citizens are not able to develop realistic images of accepting refugees in Japan. It can then be argued that because of this incognita, many are hesitant to support the settlement of refugees as they do not have a clear image of what a refugee is. What the Japanese fear most is the loss or damage of 秩序 (order), internal peace and most of all 安全 (security). Japanese people may be less self-centred and consider

collective -rather than individual. Benefits and costs of policy changes. Because of this fear of the damage that could come to the collective, rather than to the individual, Japanese people's level of opposition to resettlement in their local community is not significantly different from their opposition to resettlement elsewhere in Japan (Yoshikumi, 2018).

This fear of threat also makes it so that Japanese people are more opposed to resettlement when exposed to frames that portray refugees as a threat, regardless of whether the threat is directly relevant to Japan or not as they appear to be highly susceptible to any threatening frame regardless of the context (Horiuchi & Ono, 2018).

However, with recent developments, especially following the Ukraine invasion and the arrival of several Ukrainian refugees in Japan, the attitude towards refugees has drastically changed. So much so that when the same Ipsos survey was conducted in 2022, the Japanese response had become much more positive with 73% agreeing and 19% disagreeing (Ipsos, 2023). Previously, many studies had been conducted on the topic of Japanese identity and the Japanese attitude towards migrants and refugees. The Western perception shared by many is that Japan remains a culturally xenophobic country and that there is much resistance towards foreigners especially within the municipalities they reside in. However, recent research shows that exposure to threatening information does not change attitudes toward refugee resettlement among those living in municipalities where the number of foreign-national residents is rapidly increasing. Moreover, the study shows that natives with conscious and positive interactions with out-group members may be unaffected by anti-refugee rhetoric and threatening frames (Horiuchi & Ono, 2023). Arguably, after witnessing the Ukraine refugee crisis, Japanese people have been exposed to a "new" image of refugees. This new image of refugees has changed the perception of what a refugee is, and it could be argued that because of this change in image and perception, Japanese citizens have become less fearful of refugees.

Because the idea and perception of refugees have changed in a manner that does not contrast but instead aligns with the concept of Japanese identity, Japanese people have acquired a new perception of refugees and have become more tolerant and more welcoming towards them (Ashizawa, 2008). There has been much research done regarding the public opposition to refugee resettlement and said results have changed much in the course of the years. The

common agreement rests in the fact that aside from the geographical and political affiliations that one of the interviewed subjects is subjected to, there is a great need to pay close attention to the nature of the contact between Japanese citizens and refugees. While Japan being an ethnonationalist state surely influences its immigration rate, considering this new perspective and integrating the sociology behind the concept of collective Japanese identity, this can be considered a more satisfying reason as to why Japanese citizens are wary of refugees. There has been much research done regarding the public opposition to refugee resettlement and said results have changed much in the course of the years (Akashi, 2021).

## The Intricacies of the ICCRA regarding Immigration

The immigration control order was enacted in 1951 and the Alien registration law was enacted in 1952 but it is important to note that both were revised multiple times. Since the beginning of the recruitment of foreign workers, Japan has had very distinctive treatment of low-skilled and high-skilled workers, so much so that the government's attitude towards foreign workers has been described as two-fold (Yamanaka, 2008). While the government seems worried about the high admission of unskilled labourers, the common consensus is that foreign workers with great skillset, the so-called “high-skilled workers” are to be admitted as much as possible (Kondo, 1995) for whom the government has to “roll out the velvet carpet all the way leading up to denizenship as the ultimate enticement (Komine, 2014).

The laws and policies concerning foreign workers and overall immigration have been subject to many changes (Medrzycki, 2017). Most notably, much of the ratification of many of the Japanese social security laws derived from the ratification of the International Covenants on Human Rights in 1979 and the Refugee Convention in 1981 as both conventions worked towards the equality of social rights between nationals and non-nationals (Kondo, 1995). The signing of the Human Treaties prompted a great change in the area of policies and lawmaking. In 1992, the National Pension Act began to apply to foreign residents who have had resident status for more than one year. Moreover, the Citizenship Act also changed after the ratification of the Convention on the Elimination of all Forms of Discrimination against Women and made the principle of patrilineal *jus sanguinis* changed to patrilineal and matrilineal *jus sanguinis* which made it so that children of Japanese mothers could have Japanese citizenship (Nationality Law, 2008). This also led to the increase of individuals who possess dual citizenship as a result of international marriages.

During this time an interesting detail to note which will be a key feature in this thesis later on, is that as for the Immigration Control and Refugee Recognition Act, the main idea of the national government alien policy was to *control* resident aliens and many of the “internationalisation” policies were as a matter of fact initiated by local governments. This also led to some local governments which hosted many alien residents to create a “symbiosis”

policy or a multicultural symbiosis policy (Kondo, 2002). Some of the examples are Kawasaki City and Hamamatsu City which both worked to an integrative community. Many of these local governments also opened the doors of the civil service to permanent residents and have established their international associations to promote international exchange and provide a welcoming and positive environment for alien residents. These include Japanese language education classes and international mutual understanding education. Since the early 2000's many NGOs have begun promoting the discussion on multiculturalism and the concepts of "multicultural symbiosis".

In the Japanese context, immigration policy and integration policy are synonymous. As mentioned previously, the Immigration Control Act was issued in 1951 and was heavily influenced by the immigration policy of the US. However, the terminology was different: what in the 1951 Immigration Control Act was labelled as "permanent residents" corresponded to the "immigrants" category of the US policy. This all changed, however, as the new immigration control and Refugee Recognition Act was enforced in 1982. This was because the first order was highly impractical, especially after Japan's signature of the International Human Rights Conventions. Moreover, no individual was ever accepted in the aforementioned "permanent residents" category. The new Japan integration policy was established in 2006 and gradually thickened as new measures continuously layered on top of old ones (Komine, 2014). Shortly after the enactment of the immigration control and Refugee Recognition Act, reforms eased the migrant resettlement while immigration control remained "as strict as ever" (Kondo, 2002). From 1990 onwards, Japanese migrant resettlement has become more visible and there is a move towards a "symbiosis" policy.

However, researchers show Japan's immigration policy is fraught with contradictions. This could arguably be due to trying to adapt another country's immigration policy to their own as the need to continuously amend shows. Because of this, since the legal amendment in 1989, pre-existing immigration loopholes have been extended while new ones have been added such as the migration admission channels of technical interns and trainees and co-ethnic migrants. Because of this, the number of registered foreigners which describe foreign nationals who legally reside in the country for 90 days or more, has approximately doubled in approximately 15 years starting from 1990. (Komine, 2014).

Another unexpected problem that led to further revision of the immigration admission rules which was installed with the intention of migrant workers was that of the pension. Because the Japanese social insurance system lacked incentives for migrant workers to enrol in the less fiscally burdensome, packaged schemes operated at the firm level. To address this issue and the related complication of the social integration of migrants, local authorities established the Council of Authorities with a large number of foreigners to improve coordination, and consequently prompting the central government for greater involvement and improved horizontal knowledge sharing. Alongside the establishment of said council in 2001, the Hamamatsu Declaration was adopted. Said declaration pushed national and prefectural governments to give special support for migrant children's education, asked for a reform of the health insurance system and finally for a review of the Alien Registration Act which created inefficiency in the organisation and information regarding foreign residents who moved municipalities (Razum & others, 2016) (Komine, 2014). This not only creates difficulties for the administrations but also makes it extremely challenging to keep track of the number of foreign workers residing in Japan.

Because of the many existing challenges, the Ministry of Internal Affairs and Communications circulated the plan for the promotion of multicultural co-existence in local communities (Komine, 2014). All these events and new provisions made for the establishment of the first cross-ministerial immigrant integration policy.

The number of registered foreigners in Japan has continuously increased since 1947, so much so that these can be divided into different categories depending on the various immigration flows which extend from 1947 to 2002. Since the end of World War II, different countries experienced major economic growth but what makes Japan stand out in this context is that Japan's economic growth transpired without importing foreign workers. Sociologists have selected several factors as to why which are: large domestic migration, automation, utilisation of homemakers, students, and elderly people as part-time labour, and long working hours (Stuchlikova, 2013).

In 2000, the Ministry of Justice (MOJ) published the second basic plan for immigration control. The plan provides new guidelines for immigration control and the admission of foreign workers to Japan. Mainly, the category of "technical Internship program was adapted

to respond more adequately to requests for more advanced skills from companies and organisations which adhered to this program.

One of the main issues Japan has and has been facing regarding immigration has been the amount of unauthorised or irregular migrants who enter Japan through what has been defined as the “back door”. Because requirements to enter as a worker in Japan are very strict and demanding, foreign workers have looked for alternative ways to enter the country. According to the Ministry of Justice, as of January 1, 2001, there were about 230000 overstaying individuals in Japan. As of 1998, it was 300000. The number has since decreased as of January 2022 the number of overstaying foreign nationals is down to 66,759, a decrease of 19,4% compared to the previous year (Immigration Services Agency of Japan, 2022). It must be also noted however, that it is difficult to calculate the exact number of irregular residents as there is no official estimation of the number of irregular entrants mainly due to the fact that most irregular residents step foot in Japan legally as tourists and begin to work illegally and consequently overstay.

However, in 2009, due to the impact of the Lehman Shock and its effect on the dispatched workers, the Japanese government came up with a publicly funded scheme which aimed to repatriate unemployed 日系人 [Nikkeijin] (Japanese individuals who have emigrated and obtained a foreign nationality), and their families accompanied by monetary aid and prevented their re-entry in Japan at the same time. The repatriation scheme was completely voluntary and it was part of a group of measures which included education, housing, crime and disaster management and re-employment. This did not prevent harsh criticism from the international community which considered this a way to refuse immigration. (Komine, 2014).

Despite the country’s traditional policy of not admitting foreign workers for unskilled jobs remained unchanged since the 1980s there have been ways to enter Japan as an unskilled worker (Sekime, 1990). Nikkieijin are allowed to enter legally without any restrictions on their economic activities, the rest enter through the trainee program or as unauthorised migrants (back door). However, in 2018 the ICCRA was slightly amended and starting in April of 2019, a new category has been introduced called 特定技能 (specific skills) which is in some ways set to allow more unskilled workers into the country. This category is translated



into 'specified skilled worker' and despite the category featuring the word 'skilled', there are no educational qualifications required. And despite the government denying a change of policy for low-skilled workers, some academics argue that this could be interpreted as Japan starting to accept more unskilled workers (Hayakawa, 2019).

The issues of illegal migration became so complicated that in 1988 the Council for inter-ministerial Communications on the foreign worker problem was created in order to deal with the problem at hand. The council not only worked on barring the admission of foreign unskilled workers but pressured the amendment of the 1989 amendment of immigration control act and introduced a new punitive measure which made the abetting of illegal employment by employers and job brokers an immigration violation (Komine, 2014). This is where immigration and refugee law once again intertwine and both the developments and failures of one influence the other. It is fundamental to address and have a deep understanding of the Japanese immigration laws as to understand the refugee system and most importantly why the numbers of asylum seekers have grown and decreased incredibly. An argument to be made is that by bettering the immigration policy it will be possible to dismantle the problem of masked refugees. This is because many try to abuse the loophole in the system due to the difficulty of being accepted through Japan's strict immigration system.

Because many workers did not meet the criteria to enter Japan as de facto workers, many have tried to enter as refugees, especially following the changes of 2010 when the government, short on labour, decided to allow asylum seekers waiting on their recognition status approval to work in the country. From March 2010 to January 2018 asylum seekers in Japan had permission to work if their request had not been processed within six months since their arrival. This created much confusion as it became evident that most asylum seekers were economic migrants who were aiming to work in Japan by disguising themselves as refugees as they did not have access to a legitimate pathway.

## The Intricacies of the ICRRRA regarding Refugee Recognition

Having discussed the immigration side and its issues, I will now move on to articulate the case of refugee recognition and how this affected immigration.

Japan was quite quick to ratify both the Convention relating to the status of refugees in 1981 and the related protocol in 1982 and it has been clear since the beginning that for Japan to recognise refugees, the recognition must be made according to the convention. (Kondo, 2002).

Many countries have criticised Japan for not accepting many refugees and one of the problems resides exactly within the issue of refugee status recognition. Because it is necessary and absolute that refugee recognition is to be made according to the Convention, and due to the many requisites imposed by the convention itself, it has been extremely hard for Japan to recognise many asylum seekers as Japanese. However, this does not mean that Japan is against accepting them or helping asylum seekers as Japan has made it possible for asylum seekers to enter the country under other conditions. As a matter of fact, under specific, special circumstances, asylum seekers can be granted special resident permission to remain in the country even when their refugee application is rejected (Kondo, 2002).

Because there is an extremely high standard of proof which includes specific documentation alongside a strict time limit to complete an asylum application, the number of accepted refugees has been extremely low (UNHCR, 2000:182-183). These very limiting conditions have made it so that very few apply for asylum in Japan in the first place. In order for Japan to be able to accept more, the Minister of Justice's Commission on immigration policy discussed amending the immigration control and Refugee Recognition Act for more liberal refugee recognition procedures such as extending the application period from 60 days to 180 days. (Asahi Shinbun, 26 October 2002).

As time has gone by and has steadily become clearer that Japan is still and will still be in need of migration, both unskilled and high-skill migrants have steadily become the target of immigration management as the government made reactive and incremental and almost continuous adjustments to amend and correct previous policy failures resulting from earlier

decisions as those were aimed to admit and only host temporary migrants (Komine, 2014). In all of this, denizenship has become the norm of economic migrants who are enticed to remain in a limbo between temporary residents and naturalised citizens.

When academics argue that the Japanese refugee interpretation is narrow and restrictive, they are inevitably also implying that the definition the Japanese interpretation is based on, which is the definition of refugees cited in article 1 A (2) of the 1951 convention relating to the status of refugees is narrow and restrictive. (Aycock & Hashimoto, 2021).

And because the convention's definition is so selective, the alternative which many states have chosen is to devise alternative protection schemes to cover the individuals who do not qualify for refugee status. This is also the case of Japan which adopted what is known as 'Special permission to stay' and therefore provides many asylum seekers with complementary protection as it currently cannot accept many asylum seekers as refugees. Research shows that Japan has provided more protection through SPS than it has recognised asylum seekers as refugees, so much so that some argue that SPS could be considered to be the primary form of international protection offered in Japan, this is because SPS has indeed provided a certain degree of protection to a larger number of asylum seekers than the formal asylum refugee system has. The first case when SPS was provided was in 1991 under Article 50 of the aforementioned first immigration control and Refugee Recognition Act. SPS was soon later modified so it could be provided to asylum seekers and not, following Japan's adherence to the refugee convention. The idea of SPS had already been in motion since 1985, following the events of the Indochinese refugees which are considered the first big refugee crisis Japan had to deal with, and the immigration bureau started to feel the need to be able to provide for the future similar scenarios the possibility to provide asylum seekers with some kind of residence permission status in case they could not qualify for refugee status (Yamagami, 1995) (Aycock & Hashimoto, 2021). Following these events, a total of 284 individuals were granted SPS during the years between 1991 and 2004. 2004 represents a peculiar year, as beginning that year the ICCRA began a series of major amendments. Regarding specifically asylum seekers, article 61-2-2 was implemented in order to improve the regulation of asylum seekers and it states: if a foreign national without a status of residence has filed the application outlined in paragraph (1) of the preceding article and the

minister of justice denies recognition as a refugee or does not grant the permission set forth in the preceding paragraph, the minister is to examine whether there are grounds to grant special permission to stay to the foreign national without a status of residence, and if the minister finds the grounds, may grant special permission to stay in Japan.

This particular article was issued to regulate the post facto practice of granting special permission of residence for asylum seekers not meeting the refugee definition and to ‘streamline and combine’ the refugee status determination procedure on the one hand, and the question of granting of residential status on the other. This was necessary, especially considering that before this article was implemented, even individuals who were recognised as refugees were not automatically given a residential status which led to a great number of refugees who overstayed without permission from the government and left convention refugees in a legal limbo (Aycock & Hashimoto, 2021). Furthermore, the addition of article 61-2-2 also served the purpose of differentiating between the SPS specifically targeting asylum seekers from the special permission of residence for general migrants provided in art. 50. (Aycock & Hashimoto, 2021) (ICCRA, 2008). Despite this article’s implementation aiding the process and laying the basis for SPS, the argument remains that the definitions of the procedure remain somewhat ambiguous and not clear. As a matter of fact, there are no specific eligibility requirements, and as mentioned in the cited article 61-2-2 above, the overall judgement is left in the hands of the minister of justice. And because the requirements are not specified or defined, said minister is only asked to evaluate whether or not the grounds for granting SPS are there. However, because said grounds are never defined, it can be considered an inconsistent and vague provision which is beyond any doubt problematic. Simply put, the objective standard for granting SPS does not exist and the decision-making progress lies in the hands of the minister who is legally not required to grant it.

This led to major disruption as the vagueness, alongside the fact that art 61-2-2 was meant to aid with multiple issues which varied from the abolishment of the 60 days rule to establishing a status of provisional stay for asylum seekers under certain, not very detailed specified conditions, was too much to be contained and held only by this new article. Due to said issues, article 61-2-2 became somewhat of an unstable provision which was abused and SPS began to be implemented without detailed criteria or procedures specifying the conditions under

which SPS would and should have been granted to asylum seekers. This means that the country has not codified specific conditions which make one eligible for humanitarian status. This would be incredibly problematic at the international level if only this was the case of officially recognised refugees under the convention, but because said asylum seekers are not refugees Japan is not legally breaching the convention. This is a key point of the research: because other references to refugees in the ICCRA do not explicitly apply to the individuals who are granted SPS and articles specifically targeting recognised refugees do not include said individuals who are granted SPS, the rights and responsibilities regarding these two different groups are significantly different.

Professor Hashimoto who is nowadays considered one of the experts in the field of refugee recognition in Japan, argues however that this vagueness turned out to be a double-edged sword (as it has in similar cases regarding refugee laws in Japan) and aided in granting humanitarian and complementary protection in other instances.

Now, returning to the issue of interpretation, let us analyse more in-depth what is the problem of interpretation regarding refugee recognition. The definition of a refugee provided in the Convention and protocol relating to the status of refugees is a person who: ‘owns to a 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 former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. Japan makes it clear in Article 2-3-3 of the ICRRA under Chapter 1 of General Provisions, that ‘the 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 Refugee.’ (ICRRA, 1951).

In the European Qualification Directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection, and the content of the protection granted meaning of article 1 of the Geneva convention is the existence of a causal link between the reasons for persecution, namely race, religion, nationality political opinion or membership of a particular social group, and the acts of persecution or the absence of protection against such acts.’ The Directive is also quite extensive in regards to the definition

and scopes of subsidiary protection: a person eligible for subsidiary protection means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country (European Qualification Directive, 2011) (Aycock & Hashimoto, 2021)..

In the United States's Immigration and Nationality Act it is clarified that: 'The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilisation, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well-founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well-founded fear of persecution on account of political opinion (Immigration and Nationality Act, 1964).

Just by evaluating the various additions that other countries within and outside the EU have adopted it becomes evident that the Japanese criteria are as limited as the Covenant is. Despite there being an agreement that all signing countries must respect and have said

covenant as the main reference, it is clear that the covenant remained restrictive, which is why many countries have felt it necessary to in a way extend or better amplify the criteria for refugee status recognition and those in need for subsidiary or complementary protection. However, as extensively explained above, the Japanese ICRRA had not done much to expand the scope of their protection, especially considering that the decision-making is left solely to the Minister of Justice. However, as the thesis will go on to explain in the next chapters, the Japanese refugee laws are changing and the dissertation will go on to prove that said change has been ongoing for several years and that now, following the refugee crisis in Myanmar, Afghanistan and Ukraine the landscape of refugee law is set to welcome a new era for Japan's immigration and Refugee law (Martin, 2022).

As demonstrated by Prof. Hashimoto through the research she conducted on the adjudicated cases of refugee status recognition, she studied and proved how the vagueness of the ICCRA can at times prove to be useful in the sense that the vagueness translates into flexibility, allowing for a more inclusive model able to grant complementary protection. Japan does not require the threat of indiscriminate violence to be specific to the individual and indiscriminate violence of the conflict seems in many cases not to qualify as persecution. Furthermore, regarding the role of non-state actors in persecution, Japan does not provide clear guidelines on the interpretation and studies show that Japan's interpretation focuses more on the role of the state in protection or persecution within the country of origin (Aycock & Hashimoto, 2021).

The ICRRA is so focused on the convention that in many instances, the ICRRA document simply references the 1951 convention without providing further interpretation or clarification such as in the case for cessation and exclusion. In the case of the cessation of SPS, there are no mentions of what ground it would take. It also fails to explain if and how individuals who have been granted SPS should be treated similarly as recognised refugees which once again may create further vagueness and consequently inconsistency in their treatment (Hashimoto, 2019). And because research does show that the individuals protected by SPS receive a noticeably lower standard of reception, SPS and refugee status do have to be looked at separately indeed.

## Conclusions

To overcome the weaknesses of the ICRRA and the quality of protection for both recognised refugees and individuals who are granted SPS, there is a great need for overall clarity and a set of clear criteria for eligibility and treatment which can be obtained with meticulous specificity of the law. As we have shown, vagueness can be a double-edged sword, but the inconsistency derived from the lack of specificity is dangerous especially in the long run as ad hoc decisions are implemented. While SPS has proven to be a useful and effective tool on humanitarian and moral grounds as allows for the country to welcome asylum seekers who would not be welcomed as they do not fit the refugee recognition criteria, the category remains vague and its eligibility criteria unknown. For SPS to be considered a full protective measure and a genuine measure for subsidiary protection much is to be done and overall added within the ICRRA. This goes from adding specific eligibility criteria to clarifying their rights and differences between SPS and refugee status. This will ensure consistency for future cases and future asylum seekers will be able to better understand their rights and whether or not they could fit in either of these categories.

However, while this vagueness can a times grant flexibility, it also subsequently creates inconsistency.

To conclude, the first chapter has shown how analysing not only the structure but also the history of the immigration and refugee laws in a diachronic manner, it becomes clear how the two are very tightly intertwined and influence one another greatly. Therefore, for future developments in refugee status recognition, it can be assumed that the changes that are currently undergoing which will be analysed in further chapters will consequently affect Japanese immigration greatly and will be likely to start a new era for the Japanese Immigration Control and Refugee Recognition Act.



# Chapter 2: Quantitative Analysis of the refugee crisis in Afghanistan, Myanmar and Ukraine

## Introduction

In this chapter, I will be conducting a quantitative analysis by comparing the numbers of asylum seeker requests, refugees and individuals who have obtained some kind of complementary protection, all from the three refugee crises selected for the study which are those of Myanmar, Afghanistan and Ukraine. Before diving into the data, there is a need to provide context around asylum requests and to specify the differences between the categories of protection.

As it has been explained in the previous chapter, asylum requests in Japan have had a peculiar history, as they have experienced highs and lows. Simply by looking at Fig. N1 which shows the number of asylum requests between 2013 and 2022, it can be witnessed that the numbers have floated within the decade. As I have briefly explained earlier, around 2007, Japan began to experience a great labour shortage as can be seen in Fig. n 2 which data was extrapolated by the World Bank.

To resolve this situation, the government decided to allow asylum seekers awaiting their refugee status recognition to work in the country. From March 2010 to January 2018 asylum seekers had therefore permission to work in case their request had not been processed within six months since their arrival. This plan however backfired quickly, as many individuals who aimed to work in Japan but did not qualify for a working visa, as Japan requires high skills to obtain such a visa, started to apply for refugee status so as to be able to work as they awaited the verdict. This loophole made it so that many began to apply for refugee status which made it extremely difficult to distinguish 'real' asylum seekers from 'masked' economic migrants.

This not only slowed down the process of recognition but also affected the recognition process as it became extremely hard to recognise authentic refugees. To solve the situation, starting in January 2018, the Ministry of Justice began conducting document reviews within two months of the application and prevented those who did not have 'justifiable reasons'

from working. Also, much focus was put on the ‘designated activities’ status of residence which would allow the applicant to work immediately after the application is sorted out. The document processing reviews became far stricter, and the selection process was specified in a document published by the Ministry of Justice (Ministry of Justice, 2018).

By revising the bill and implementing the new changes, the number of asylum requests quickly started declining, and as Fig. 1 clearly shows, at the end of 2018, the number of asylum requests had dropped by 9, 136 since the previous year. From 2017 to 2022 there has been a decrease of 15,857 requests. The results therefore supported the claim that many of the requests did come from foreign workers trying to find jobs in Japan.

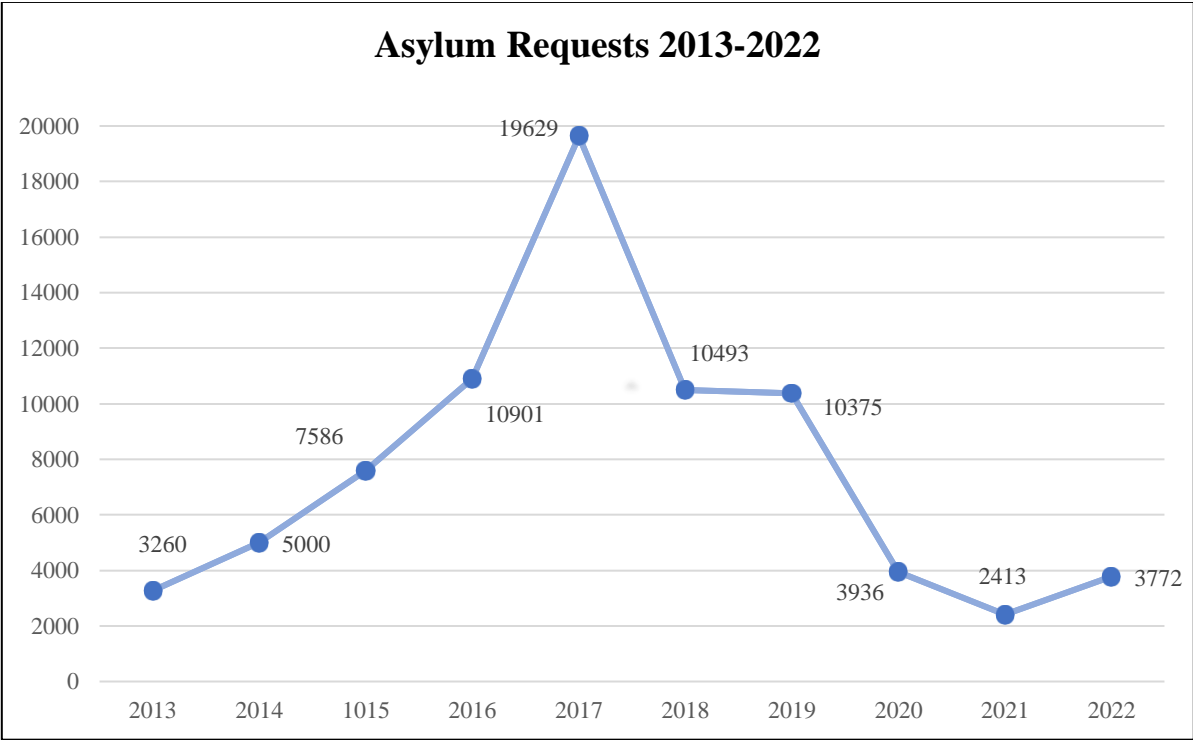


Fig. n 1 Asylum Requests in Japan from 2013 to 2022 Data from the Immigration Services Agency (MOJ)

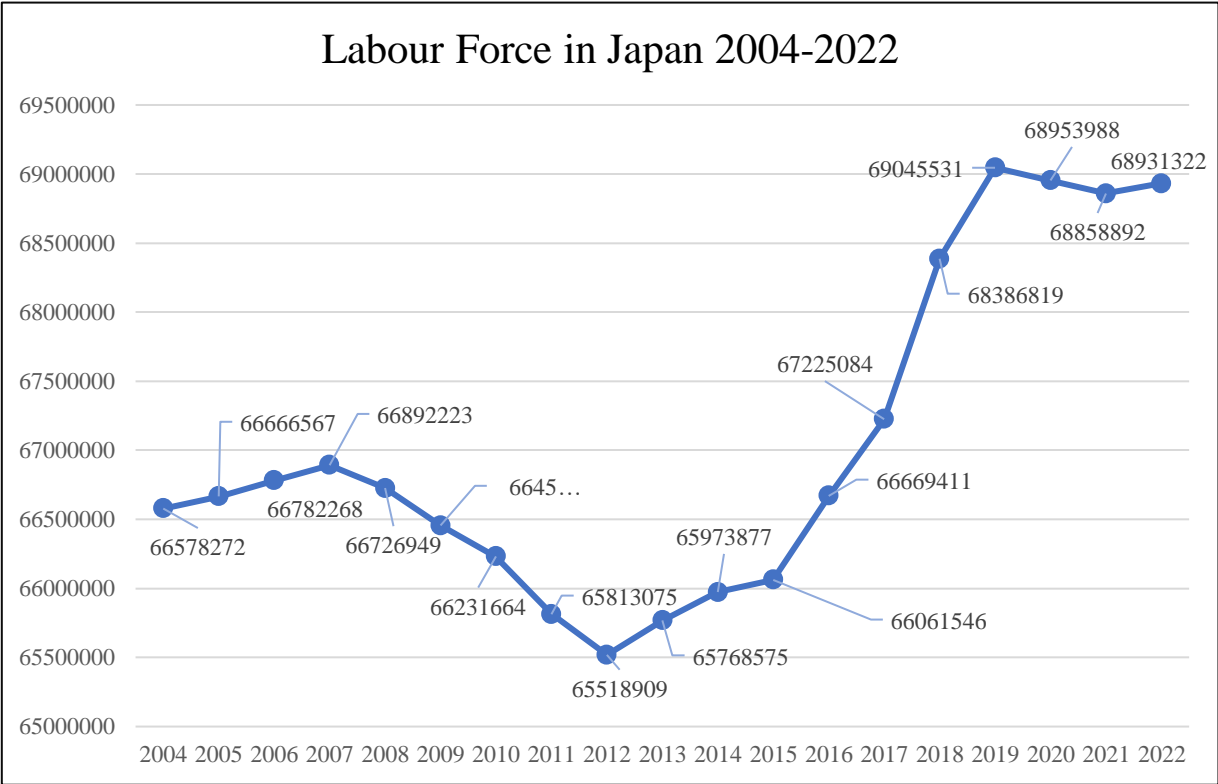


Fig. n 2 Labour force in Japan from 2004 to 2022 Data from the World Bank

Having now explained more in detail the reason behind the fluctuating numbers of asylum requests in Japan, and having understood that not all asylum seekers came from authentic refugees, I will go on to explain the intricacies of the different visa categories of the Japanese immigration system.

Before continuing further, it is important to make a clear distinction between ‘visa’ and ‘status of residence’ as the two have very different purposes. The jurisdiction is also different, as the Immigration Services Agency of the Ministry of Justice has jurisdiction over the status of residence while the Ministry of Foreign Affairs has competency over the visa. A visa is a type of guarantee that the foreigner arriving in Japan possesses an authentic passport and that its entry to Japan can be validated and assures that the foreigner's entry is appropriate under the conditions set by the Ministry of Foreign Affairs. On the other hand, the ‘status of residence’ is a document which proves that the foreigner in question has a right to stay within

the country. And because the visa is a document that allows entry into the country, it expires and in turn, the ‘status of residence’ becomes the evidence for the righteous residence of the foreign individual in Japan. Now, it must be specified that even if one has managed to obtain a visa, this does not automatically guarantee a status of residence which, unlike the visa for which one needs to apply at a Japanese embassy or consulate overseas, is applied for at a regional immigration office.

Japan’s immigration system has been deemed one of the most complicated immigration systems, and much of this reputation is derived from the number of visa categories that make up the system. Without counting each sub-category, the number of residence statuses is 29 but these 在留資格 (status of residence) can be largely divided in two, in 居住資格 (Status of Residence) and 活動資格 (Permitted activities). Furthermore, it is possible to distinguish three main types of status of residence for working which are: Technical Intern Training, Specified Skilled Worker, and Engineer/Specialist in Humanities/International Services. On the website of the Japanese Immigration Services Agency, the categories are divided into 5 main groups which are: 就労資格 (Employment Qualification), 就労資格、上陸許可基準の適用あり (Employment Qualifications, Landing Permission criteria applied) 非就労資格 (Non-working status), 非就労資格、上陸許可基準の適用あり (Non-working status, Landing permission criteria applied) 特定活動 (Designated Activities), 入管法別表第二の上覧の在留資格 (居住資格) (Status of residence of the Appended Table 2 of the Immigration Control Act) (Immigration Services Agency, 2023).

Each of these categories has a different period of stay, some of which are specific to each category and already defined, while others are ‘A period specified by the Minister of Justice (within a range which does not exceed one year’. It is worth pointing out that out of all the 29 categories, only two have a ‘no limit’ period of stay which are the ‘Long Term Resident’ and ‘Highly Skilled Professional’ categories. In the case of the ‘Highly Skilled Professional’ category, there are two different ‘periods of stay’ allowed which are of five years and no limit. All the different categories have different qualifications which are needed to obtain the desired status of residence and they can be found on the website of the Japanese immigration services agency.

An important category that needs to be discussed for the advancement of this analysis is the category known as ‘特定活動’ which is translated to ‘Designated Activities’. This category has seen a growth in recent years and has played a fundamental role in the recent arrival of refugees from various countries and more on this specific category will be discussed later on.

In a file provided by the UNHCR titled ‘Information for Asylum Seekers in Japan’, there is a chapter on ‘General Provisions’ regarding the Japanese asylum system. While the first half and majority of the file are focused on helpful indications on how to proceed to secure refugee status recognitions, the file also provides alternatives. There is a subsection titled ‘Other Form of protection: Special Residence permit on humanitarian Grounds’, where the UNHCR presents the Special Permission to Stay (SPR/SPS) which is said to be provided to those who are not eligible for refugee status but are not able to return to their country of origin for similarly compelling reasons.

A shorter paragraph featured towards the end notes that: ‘ The asylum-seekers who applied for asylum while their stay permit is still valid can request a work permit (Designated Activities Permit) which will enable them to be employed in order to support themselves until the decision in the first instance. However, the Designated Activities Permit is not provided during the appeal and judicial review process (UNHCR, 2023).

As far as this file indicates, and the definitions of the Special Permission to Stay, SPS seems to be the most appropriate form of protection that should apply to asylum seekers who are not eligible for refugee recognition. Then why is it that on the website of the Immigration Service Agency, specifically on the webpage dedicated to ‘The Ukraine people who are residing in Japan’ there is no mention of SPS but there is a section titled ‘Regarding the procedure for residence permission to “Designated Activities” [1 year]’? Why is it that Ukraine asylum seekers have been welcomed in Japan mostly through the category of Designated activities rather than on the grounds of SPS?

## Special Permission to Stay

To answer the question of why SPS, which jurisdiction is in the hands of the Immigration Agency of the Ministry of Justice, just like the ‘status of residence’, is not ‘publicised’ as a form of alternative, effective protection to Ukraine refugees arriving to Japan, is because SPS is not a ‘status of residence’ as it is a permission. As I have briefly touched on in chapter one, SPS has indeed provided great protection to those who have fallen out of the definition of the Refugee Convention, but up to very recently, there was no procedure that grants directly SPS as it is granted. As it was specified within Article 50 “Special Cases of Determination by the Minister of Justice” of the Immigration Control and Refugee Recognition Act:

‘The Minister of Justice may, even if he/she finds that the objection filed is without reason, in making the determination outlined in paragraph (3) of the preceding Article, grant the suspect special permission to stay in Japan if the suspect falls under any of the following items:

- (i) He/She has obtained permission for permanent residence.
- (ii) He/She has had in the past a registered domicile in Japan as a Japanese national.
- (iii) He/She resides in Japan under the control of another due to trafficking in persons.
- (iv) The Minister of Justice finds grounds for granting special permission to stay, other than the previous items.

(2) In the case referred to in the preceding paragraph, the Minister of Justice may impose conditions, which he/she may deem necessary such as on the period of stay, pursuant to the provisions of a Ministry of Justice ordinance.

(3) The permission set forth in paragraph 1 shall be regarded as a determination that the objection filed is with reason with respect to the application of paragraph (4) of the preceding Article.

SPS is also mentioned in Article 62-2-2 where it is stated that:

‘The Minister of Justice shall, when he/she recognises an alien as a refugee pursuant to the provisions of paragraph 1 of the preceding Article and the alien who has filed the

application set forth in the same paragraph falls under the category of an alien without a status of residence aliens other than those who are staying in Japan under a status of residence listed in the left-hand column of Appended Table I and Appended Table II, those who have been granted permission for landing for temporary refuge and have not stayed in Japan beyond the period stated in the permit, and special permanent residents; the same shall apply hereinafter, permit the alien to acquire the status of residence of "Long-Term Resident," unless the alien falls under any of the following items:

- (i) The alien has filed the application set forth in paragraph 1 of the preceding Article 6 months after the date on which he/she landed in Japan or the date on which he/she became aware of the fact that the circumstances in which he/she might have become a refugee arose while he/she was in Japan unless there were unavoidable circumstances.
  - (ii) The alien has not entered Japan directly from a territory where his/her life, body or physical freedom was likely to be persecuted on the grounds as prescribed in Article 1, paragraph A- 2 of the Refugee Convention unless the circumstances in which he/she might have become a refugee arose while he/she was in Japan.
  - (iii) The alien falls under any of the persons listed in item iii or sub-items c to o of item iv of Article 24.
  - (iv) The alien has been sentenced, after entering Japan, to imprisonment with or without work on the charge of a crime provided for in Part II, Chapter XII, XVI to XIX, XXIII, XXVI, XXVII, XXXI, XXXIII, XXXVI, XXXVII or XXXIX of the Penal Code of Japan, or in Article 1, 1-2 or 1-3 except for the parts pertaining ( to Article 222 or 261 of the Penal Code of Japan of the Act on Punishment of ) Physical Violence and Others, the Act for Prevention and Disposition of Robbery, Theft, and Other Related Matters, or Articles 15 or 16 of the Act on Prohibition of Possession of Special Picking Tools and Other Related Matters.
- (2) When an alien without a status of residence has filed the application set forth in paragraph 1 of the preceding Article and is denied recognition as a refugee or the permission set forth in the preceding paragraph is not granted, the Minister of Justice shall examine whether there are grounds for granting special permission to stay to the

alien without a status of residence, and may grant special permission to stay if he/she finds such grounds.

- (3) When granting the permission set forth in the preceding two paragraphs, the Minister of Justice shall decide the status of residence and the period of stay and have an immigration inspector issue to the alien without a status of residence a certificate of status of residence that states the status of residence and the period of stay. In this case, the permission shall become effective with the contents thereof and as of the time of issuance.
- (4) When granting the permission set forth in paragraph 1 or paragraph 2, the Minister of Justice shall revoke the permission for provisional landing or permission for landing pursuant to the provisions of Chapter III, Section IV, which has been granted to the alien.

As it is specified in both articles, the jurisdiction of granting SPS is completely within the hands of the Minister of Justice. Similarly, for what concerns the ‘designated activities’ status of residences, the activities are specifically to be assigned by the Minister of Justice. Now, the Minister of Justice can grant SPS to foreign nationals who are under the category of ‘Deportation’ who have a desire to remain in the country.

And previously to the revision bill of June 2023, one could not simply apply for SPS, as SPS could only be granted when deportation proceedings are initiated. For what concerns the criteria, they are specified in the ‘Guidelines on Special Permission to Stay in Japan’ which are provided by the Immigration Services Agency of the Ministry of Justice. I will include only the short introduction of said Guidelines as to provide context:

“When judging whether to grant special permission to stay in Japan, a comprehensive appraisal is made of all relevant circumstances for each individual case. These include the reason for the requested stay, family circumstances, the applicant’s conduct, situations in Japan and abroad, consideration of humanitarian grounds, and, moreover, the potential impact on other persons without legal status in Japan. When doing so, the following specific matters are taken into account”.



‘The following sections include the Positive and Negative Elements that are to be taken into consideration when considering the grant of SPS and some examples in which an application for special permission to stay in Japan is given favourable or unfavourable consideration’ (Immigration Bureau, 2009).

Finally, it must be noted that if and when SPS is granted, the individual at hand will be then given a regular status of residence such as those of ‘spouse of Japanese national’, ‘permanent resident’, etc. As a matter of fact, given that SPS is not a status of residence, it is not listed as one of the 29 main categories of status or residence, nor in the reports regarding the number of foreign residents in Japan divided by the status of residence and they are to be included in other categories such as the one mentioned above.

What is most interesting about SPS is that, as I mentioned above, SPS could previously only be granted in the very specific circumstances listed in Art. 50 and Art. 61-2-2 of the Immigration Control and Refugee Recognition Act and it can only be granted directly by the Minister of Justice when the deportation procedures are initiated. It could have been consequently said that despite the fact that SPS had historically provided protection to more individuals than refugee recognition has, it was a complicated kind of permission. However, in the recently approved revision bill which passed on June 9<sup>th</sup> 2023, changes were made regarding the grant of SPS. A core point of the revision consisted of being able to provide some kind of complementary protection to those who could not qualify for refugee status. And to do so, the possibility of applying for SPS was introduced. The website of the Immigration Services Agency provides a page for the ‘Outline of Japan’s Immigration and Residency Management System’ on which there is a section dedicated to the revised matters regarding SPS where it is stated that in order to ensure protection for those who need it, the procedure to obtain SPS was revisited and that there was:

- (1) ‘The establishment of an application procedure for a special residence permit.
- (2) Clarification of the circumstances taken into consideration when evaluating the assignment of SPS.
- (3) The notification of the reasons behind the verdict in the event that SPS is not granted.’

This goes on to show that despite the acquirement of SPS was extremely difficult as it was possible to have it granted by the MOJ following the initiation of the deportation process,

with the recent revision bill which was passed on the 9<sup>th</sup> of June 2023, to ensure protection to those who are in need of it, the possibility of application of SPS was introduced as a new possible way to obtain SPS.

## Designated Activities

So, why is it that on the webpage of the Immigration Services Agency of the Ministry of Justice titled ‘Information regarding Ukraine evacuees’ under ‘Current Ukraine evacuees residents’, out of 2,094 residents, 1,938 are residing under the category of 特定活動 Designated Activities?

As I have explained above, SPS is not a ‘status of residence’ and up until the revision bill, it was to be granted only under specific circumstances to foreign nationals who were undergoing deportation. And in order to answer the question of why Ukrainian evacuees are directed to apply for the Designated Activities ‘status of residence’, I will now dive deeper into the category.

Now, I must specify that, when certain individuals are assigned to this category, it is done out of necessity, as it is often assigned for the departure Preparation period. In the instance which a foreign national who was already residing in Japan has been denied a change or renewal of their residence status, and the allowed residence period of the status of residence they currently hold has expired, they will be granted specially designated activities as to grant the individual enough time to prepare what is necessary to depart.

On the website of the Ministry of Justice, the **visa** of ‘Designated Activities’ is said to apply to ‘foreign nationals who wish to enter Japan as personal help privately employed by diplomats, etc., foreign nationals who wish to enter Japan for a working holiday or for paid internships, candidate nurses and care workers who wish to enter Japan based on an EPA, etc.). The period of stay indicated is that of 6 months, but it is noted in parenthesis that ‘a maximum one-year period will be granted if eligible individuals apply for the extension of the period of stay to the Regional Immigration Bureau, Ministry of Justice, before the six months of permitted stay is to expire’. The eligibility criteria for the applicant are that ‘individuals of the age of 18 years or older who have savings equivalent to more than 30 million Japanese yen owned by them or their spouse’ and ‘the accompanying spouse aforementioned (he or she must have the same place of residence and travel together with their spouse throughout Japan). It is also important to point out that while the website of the Ministry of Justice provides this information, the specific intended activities are not

specifically stated within the Immigration Control and Refugee Recognition Act and recent events suggest the idea that this vagueness has once again proved to be a double-edged sword just as the case of the ‘Special Permission to stay’ permit that was explained in the aforementioned chapter.

When looking up the ‘Designated activities’ **status of residence** on the Immigration Services Agency Website, it is specified that they are ‘Activities specifically designed by the Minister of Justice for each foreign national’ and that the ‘period of stay can vary from 5 years to 3 years to 1 year to six months to three months or a period specifically assigned for each individual (they are not to be longer than 5 years)’ (Immigration Services Agency, 2023).

The ‘Designated Activities’ category can be divided into smaller, intricate sub/sub-categories. It wouldn’t be wrong to say that this residence status is one of, if not the most complicated of all. Historically, this category has been granted to those foreign nationals who engage in activities that cannot technically be classified under any of the other existing status of residence categories. So it has been a ‘loophole’ for those who cannot be granted any other permit as they wouldn’t be able to qualify for it. Because introducing a new category of the status of residence is extremely difficult, it has been easier to grant the status of designated activities to those in need on various occasions, as the Minister of Justice has all the authority to make any decision for granting the ‘Designated activities’ status.

An example of this would be the instance in which during the Coronavirus pandemic, many trainees who were unable to return to their home country because of the infection were having issues with their residence status to remain within the country. So these foreign nationals had been granted the -Designated activities status of six months or the ‘Short-term Visitor Status’ within 90 days. A following revision made in May 2022 made it so that they could also extend said period of stay (Immigration Services Agency, 2023) (Immigration Services Agency, 2020).

It must be specified that in the ICRRA there are three types of designated activities stipulated which are designated activities which are indicated in the ICRRA, notified designated activities and non-notified designated activities. The difference between the last two is that the second is announced in advance, while the latter is not. The designated activities which are of interest for this thesis are the non-notified designated activities since these are the type

of designated activities status of residence which is granted to Ukraine evacuees and they are granted by the Minister of Justice under special circumstances.

Much more could be said about the 'Designated activities' category itself, but for the sake of the structure and the scope of the thesis, I have provided the information necessary to provide context for the quantitative analysis which follows in the next sub-chapter.

## Comparing the Afghanistan, Myanmar and Ukraine refugee crises

Now, I will proceed by conducting a quantitative analysis by comparing the three refugee crises of Afghanistan, Myanmar and Ukraine. This will be done not only by comparing the number of refugees/evacuees accepted and protected but also by comparing the nature of said protection. Because, as I have explained, many are not protected by refugee recognition but rather through other channels, it is of great importance to compare the categories of 'status of residence' that they have been assigned to. This is because depending on the category, their rights, such as those regarding the working hours permitted, change. As I have previously shown, one of the main two groups in which status or residence can be divided is that of 'permitted activities' and one of the, if not the most important factor that differentiates them is the permitted working hours and working permit. Therefore, a comprehensive analysis when answering the research question on how the three different refugee crises have impacted Japan's ICRRA must include both a comparative analysis of the numbers of people who have been and are being protected and also the type of protection they have and are being granted.

First starting with the number of recognised Convention Refugees, there are great differences to be witnessed just by considering the numbers of refugees recognised from Afghanistan, Myanmar and Ukraine between the years of 2020 to 2022.

It is a matter of fact that the Japanese refugee recognition rate is quite low by international standards. Just by looking at the number of accepted refugees in Japan in the last decade, it is clear that only a handful are accepted under this status. To provide some context, here is a breakdown of the refugees recognised between the years 2018 to 2022:

## Recognised Refugees in Japan 2018 - 2022

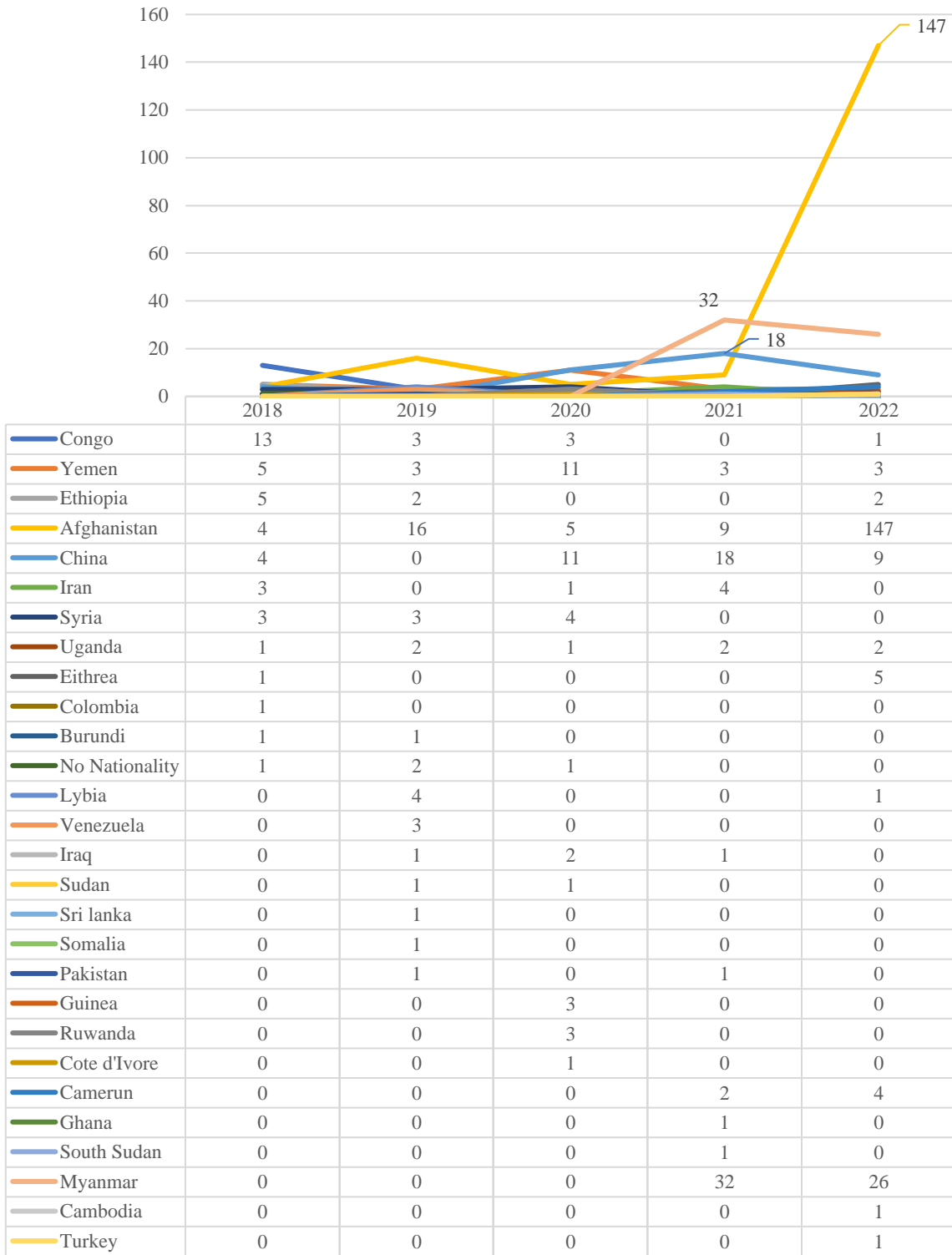


Fig. n. 3 Recognised Refugees in Japan 2018 - 2022 Data from Immigration Service Agency (MOJ)

By analysing Fig. 2. It can be understood that despite the number of refugees has remained quite low by international standards throughout the years, in the last two years of 2021 and 2022, there has been a clear increase in recognised Convention refugees. I have included this graph also to visually showcase how astounding the recognition of the 147 Afghan refugees in 2022 has been. Taking into account that in 2022 the number of refugees recognised by Japan was 2022, the number of recognised Afghan refugees has been unprecedented and made up 72,22% of the total sum.

Fig. n. 3 shows that between the three years of 2020 to 2022, the highest number of recognised refugees has come from Afghanistan. The difference between the accepted numbers is quite staggering. The sum of recognised Afghan refugees in the selected years is 161, with 5 recognised in 2020, 9 in 2021 and 147 in 2022. This means that since 2020 the amount of recognised refugees has increased by 97.93% in just three years.

*But how could it be that while Japan has accepted a great number of foreign Ukraine individuals compared to the previous years, and considering the ongoing Ukraine invasion, zero Ukrainians were recognised as refugees?*

This is where the previous notions aid in providing an answer. As I have discussed, the numbers have shown that throughout the years, Japan has provided protection to more individuals under different categories than to Convention refugees. As a matter of fact, the majority of Ukraine refugee asylum seekers are momentarily being protected under the category of ‘Designated Activities’. The numbers already suggest that the majority of Ukrainian asylum seekers are being protected by said category as simply by looking at Fig. n. 5, it can be observed that there has been a great increase in Ukrainians residing under the status of ‘Designated Activities’. Despite the slight decrease between 2020 and 2021, where the numbers of Ukrainians under said category were of 44 and later of 35, in 2022 the number inflated to 2015 resulting in a difference of 1980 from the previous year. Interestingly enough, the number of Afghanistan individuals residing in Japan under the category of ‘Designated activities’ has increased steadily but not as exponentially. As Fig. n. 5 shows, they amounted to 40 in Japan, 247 in 2021 and finally 399 in 2022. On the other hand, Myanmar residents under ‘Designated activities’ have skyrocketed, as while in 2020 they corresponded to 3358 individuals, in 2021 they more than doubled to 6920 and in 2022 they



amounted to 10707, which is a difference of 7349 individuals since 2020. This is somewhat congruent to the exponential increase in the number of Myanmar residents over the selected years, as they grew from 35,049 in 2020 to 37,246 to 56,239 in 2022, resulting in a difference of 21,190 since 2020 which is a 37.67% increase.

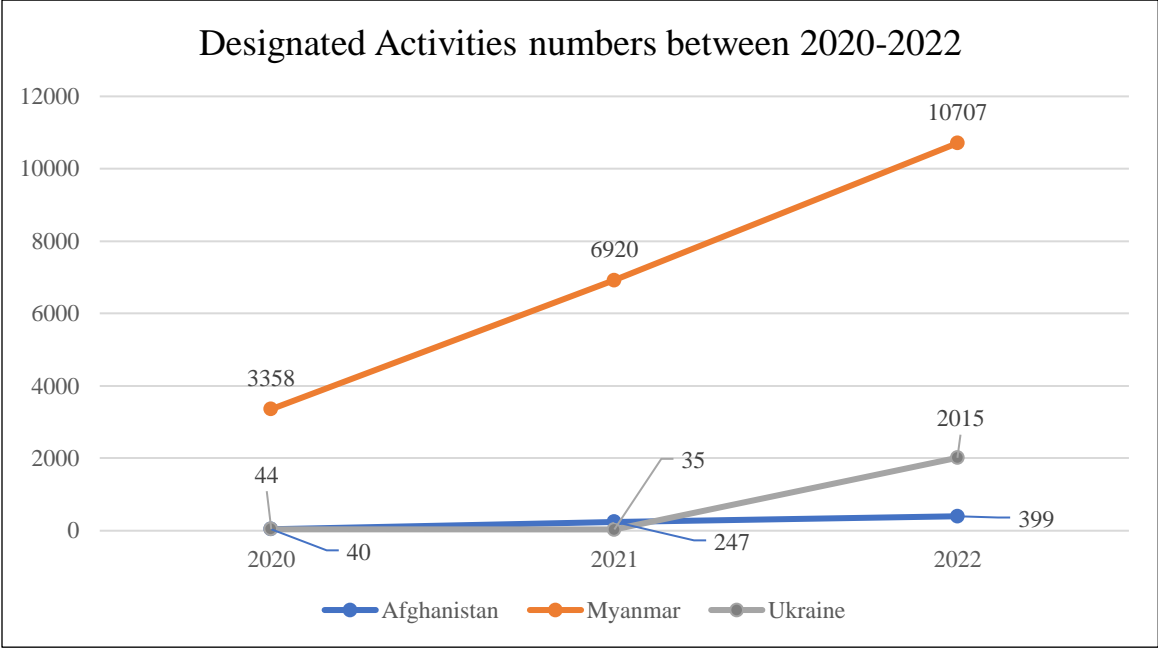


Fig. n 4 Designated Activities numbers between 2022–2022 Data from the Immigration Services Agency (MOJ)

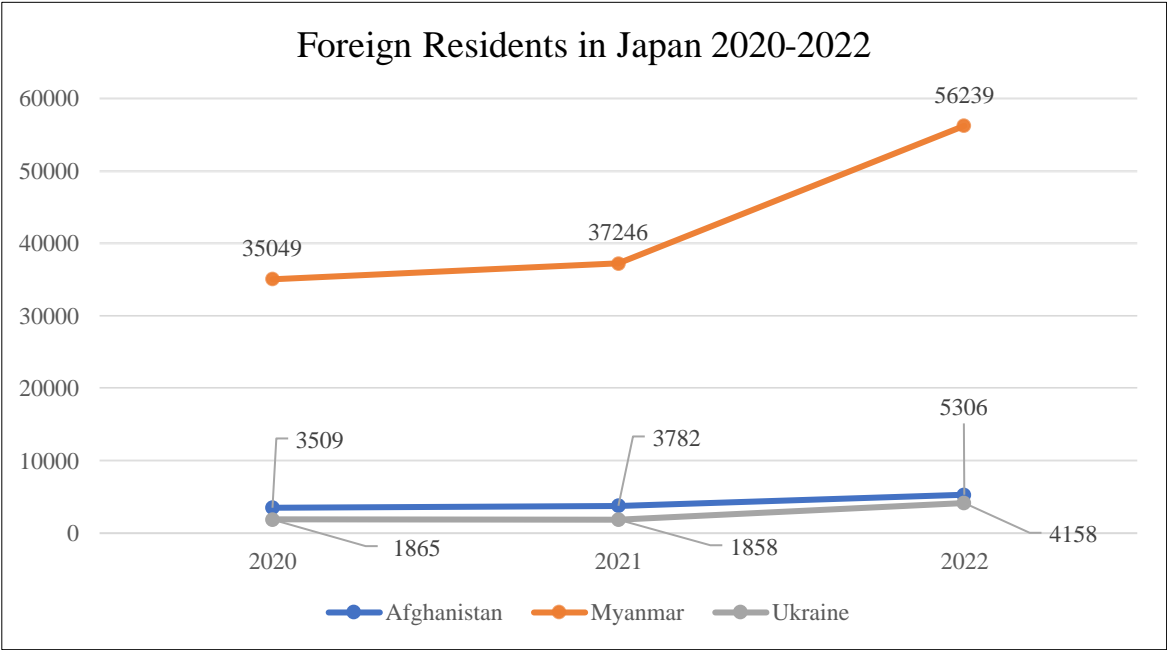


Fig. n 5 Foreign Residents in Japan 2020 – 2022 Data from the Immigration Services Agency (MOJ)

It must be noted however that while the number of Myanmar individuals who have obtained the status of ‘designated activities’ has increased, the number of Myanmar people who were recognised as refugees has declined. As a matter of fact, while the increase of Myanmar people who are under ‘designated activities’ has grown by 68,63% in the span of three years, the percentage of recognised Myanmar Refugees has declined by 71,46% as they were 1476 in 2020, 1053 in 2021 and only 391 in 2022.

Out of the 4,158 number of Ukrainian foreign residents registered in 2022, the majority, so 2,015 Ukrainians, have obtained the ‘designated activities’ status of residence.

Having shown the bigger picture of the recognised refugees, I will now focus on the three refugee crises selected for this study and subsequently answer why the Ukrainian refugees are being protected under the category of ‘designated activities’ and are not recognised as convention refugees.

I will now analyse the asylum requests for each selected refugee crisis so to be able to compare the number of asylum requests to the number of recognised refugees.

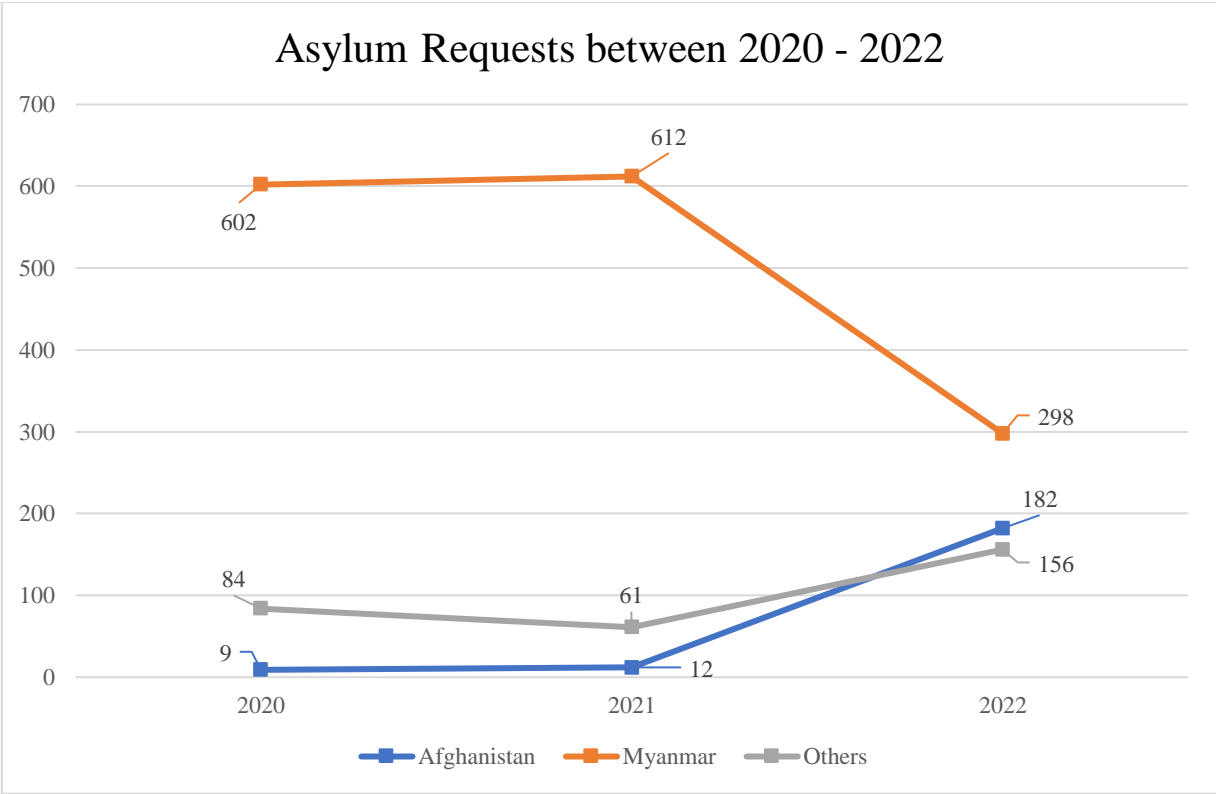


Fig. n. 6 Asylum Requests between 2020 – 2022 Data from the Immigration Services Agency (MOJ)

Before I proceed with this section, however, I must specify that the data I have obtained through the Immigration Service agency of the Ministry of Justice of Japan was at times unclear. When providing the numbers of asylum requests of each year, while the majority of the countries of origin of the asylum requests were provided, some have remained in the grey and have been listed as 'others' and there was no clarification regarding what 'others' meant. I must provide this clause as there were no data regarding the number of asylum requests originating from Ukraine individuals but as the official data was not accurately provided, said individuals could have been listed under 'others'. Now, the number of asylum requests under the category of 'others' was relatively low, but I will nonetheless include them in this study to provide as much data and context as needed for completing said research.

In 2020, there were 9 asylum requests submitted by Afghan individuals while 602 were submitted by Myanmar individuals, making up respectively 0,22% and 15,29% of the total number of asylum requests of 2020 which amounted to 3936. In 2021, there were 12 asylum requests from Afghanistan and 612 from Myanmar which translated to 0,49% and 25,36% respectively of the total number of 2413. In 2022, the asylum requests from Afghanistan were 182 and 298 from Myanmar which made up 4,82 and 7,90% respectively of the total of 3772. So, summing up the asylum requests from both Afghanistan and Myanmar between the years 2020 to 2022, the total of asylum requests from Afghanistan amounts to 203 and 1512 from Myanmar. They made up 2% and 14,93% of the total number of 10121 which is the sum of the asylum requests submitted in the years 2020, 2021 and 2022. Together they made up for 16,94% of 10121.

Focusing now on the number of asylum requests sent by those under the category of 'others', the number of asylum requests originating from this category amounted to 84 in 2020, making up for 2,13% of the total asylum requests made within that year. In 2021 they were 61 which corresponded to 2,52% of the total. In 2022 they were 156, making up for 4,13% of the total. The sum of the asylum requests made by 'others' between the years from 2020 to 2022 amounts to 301 which translates to 2,97% of the total number of asylum requests during this period which was 10121. In Fig. N 7 I have separated the number of recognised refugees between the years from 2020 to 2022 from Afghanistan, Myanmar and Ukraine. As

I have previously mentioned, the number of Afghan refugees who have been recognised in 2022 has been an unprecedented and distinctive event.

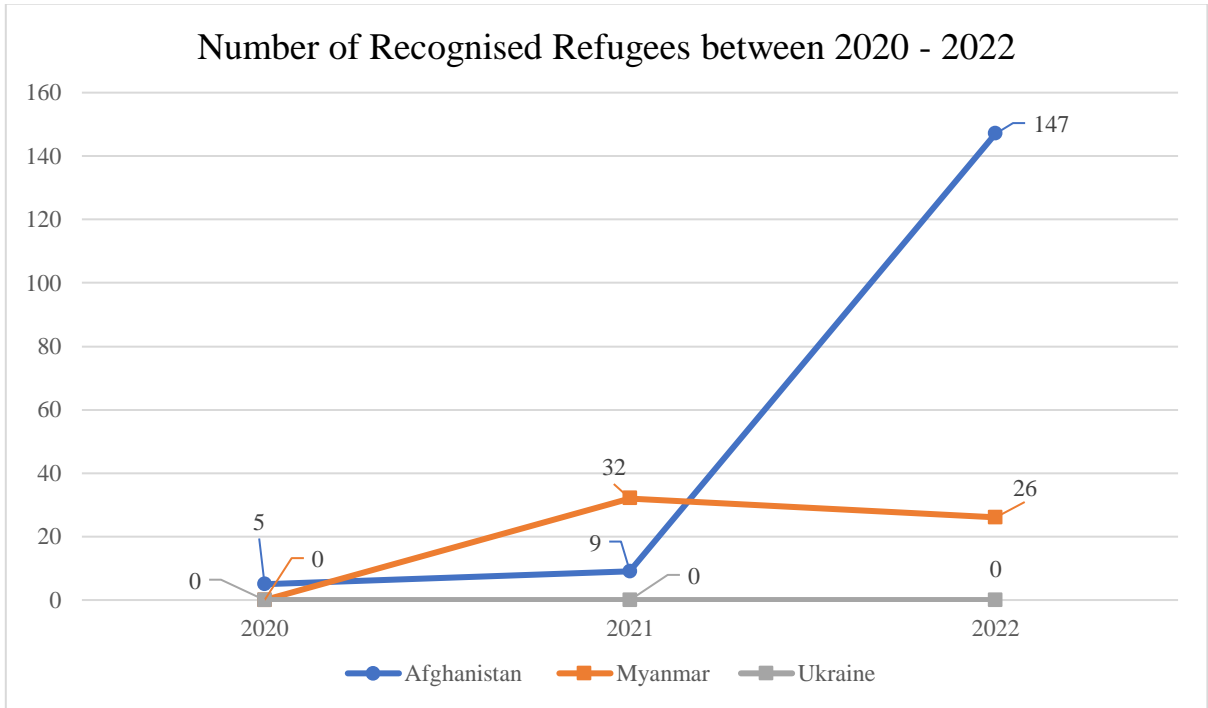


Fig. n 7 Number of Recognised Refugees between 2020 – 2022 Data from the Immigration Services Agency (MOJ)

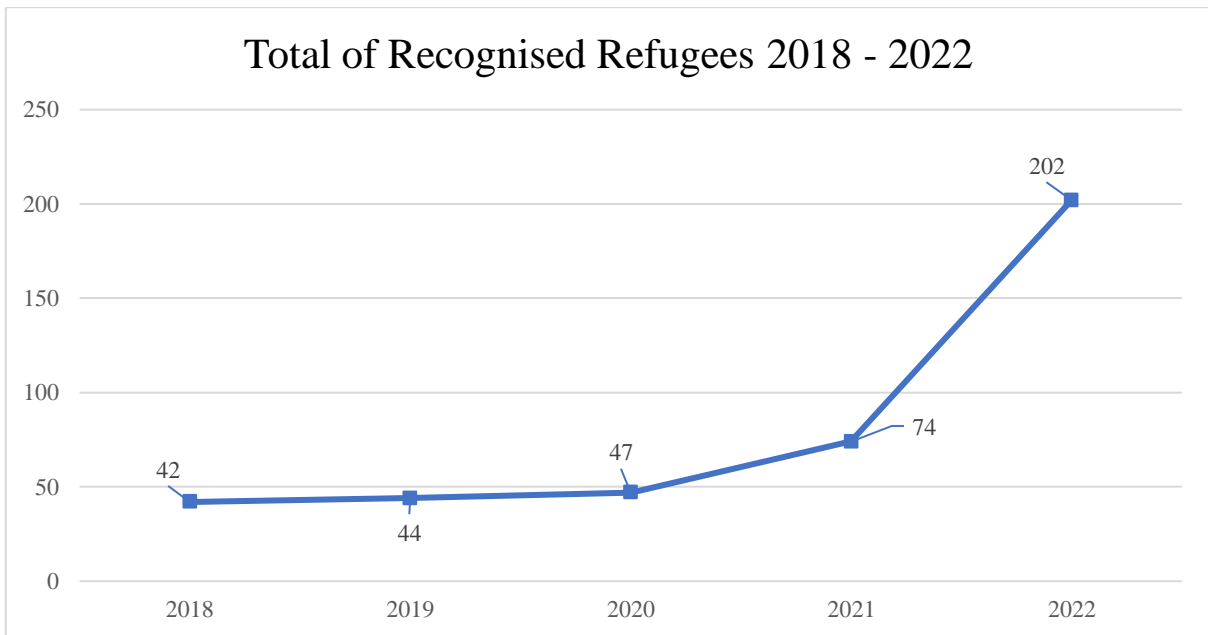


Fig. n. 8 Total of Recognised Refugees 2018 – 2019 Data from the Immigration Services Agency (MOJ)

In Fig. N. 8 I provided the total number of refugees recognised between the years 2018 to 2022. Similarly to other sections, I have provided the years 2018 and 2019 for context.

In 2018, Afghan refugees made up 9,5% of the total number of refugees recognised. Respectively, they made up 36,36% in 2019, 10,63% in 2020, 12,16% in 2021 and 72,77% in 2022. It can be therefore said that in recent years the numbers have fluctuated, but that the growth seen in 2022 has been grand compared to the past numbers. It must also be said that Afghan refugees are the only ones who have been consistently recognised throughout the years from 2018 to 2019 out of the refugee crisis selected for this study.

For what concerns Myanmar, there were no refugees recognised in the years 2018, 2019 and 2020. In 2021, Myanmar refugees have made up 43,24% of the total number of refugees recognised within that year while in 2022 they have made up 12,87% of the total. Summing up the percentages of the Afghan and Myanmar recognised refugees in 2022, they have made up 85,57% of the total number of refugees recognised in 2022.

In the case of Ukraine, there have been no refugees recognised between the years from 2018 to 2022.

Now, focusing again on the analysis of the years 2020 to 2022, I will now provide the calculations made based on the number of individuals successfully recognised as refugees compared to the number of asylum requests sent from each selected nationality.

I will now start by analysing the acceptance rate of Afghan refugees throughout the years between 2020 to 2022. Considering that 5 Afghans were recognised as refugees out of 9 asylum requests, the acceptance rate in 2020 was 55,55%. In 2021, 9 were recognised as refugees out of the 12 requests submitted, which takes the acceptance rate of 2021 to 75%. In 2022, 147 were recognised as refugees while the asylum requests amounted to 182, so the acceptance rate was of 80,76%. Summing up the recognised Afghan refugees, the total comes out to be 161 while the sum of asylum requests is 203. So, the acceptance rate of the numbers of the three years combined is 79,31%.

In the case of Myanmar, 0 refugees out of 602 asylum requests were recognised in 2020, setting the acceptance rate to 0%. In 2021, 32 refugees were recognised over 612 asylum requests submitted, which takes up the acceptance rate of 5,22%. In 2022, the recognised

refugees were 26 out of 298 asylum requests making the acceptance rate 8.72%. The sum of recognised refugees between the years 2020 to 2022 is 58, while the sum of asylum requests is of 1512. The overall acceptance rate of these three years is therefore 38,41%.

Now, comparing the probability rates of Afghanistan and Myanmar, there are many similarities and differences to be witnessed. First of all, in both cases, the acceptance rate has grown throughout the three years selected for the analysis. In 2020, the acceptance rate of Afghan refugees amounted to 55,55% and in 2022 it amounted to 80,76%, showing a growth difference of 25,21%. Similarly, the acceptance rate of Myanmar refugees went up from 0% in 2020 to 8,72% in 2022, which results in a growth difference of 8,72%.

As for differences, it is interesting to see how while the asylum requests from Afghanistan were lower in number compared to those from Myanmar, the number of recognised refugees is higher. While between the selected years 161 Afghan refugees were accepted out of 203 asylum requests, only 58 Myanmar refugees were recognised out of 1512 asylum requests submitted. As a matter of fact, the overall acceptance rate of Afghan refugees is higher than that of Myanmar, as they are respectively 79,31% and 38,41%.

So, returning to the question of *‘How could it be that while Japan has accepted a great number of foreign Ukraine individuals compared to the previous years, and considering the ongoing Ukraine invasion, zero Ukrainians were recognised as refugees?’* And if it so, how is it possible to prove that the recent refugee crises are in fact changing Japan’s views on immigration and refugees?

The reason why Japan is not accepting Ukraine asylum seekers as refugees is simply because it cannot. As I have explained numerous times, the Japanese refugee recognition requirements are many and difficult to obtain. This is clear by taking a look at the ‘Guide to the Procedure for Recognition of Refugee Status’ provided by the Immigration Bureau of which the latest version is of April 2016. Under section 3 of said document, named ‘Procedure for Recognition of Refugee Status’, the application procedures are listed, which include the ‘Necessary Documents for Application’.

The document quotes:

‘The following documents should be prepared for an application. An alien who cannot fill out an Application Form because of an injury or physical disability may make oral statements on the matters to an immigration inspector or to a refugee inquirer instead of the application form.

(i) Documents to Submit

a. Application for Recognition of Refugee Status (The application form is available at the office of application.) 1 copy

b. Material showing that the applicant is a refugee (Including the statement to assert that he/she is a refugee.) 1 copy

c. Photographs (Must meet all of the requirements listed below, with the applicant’s full name written on the back.) 2 copies (However, an alien without a legal status of residence must submit 3 copies of his/her photograph.) –

(Requirements)

(a) The photo must cover the applicant him/herself, and the applicant only.

(b) The photo’s dimension: The main portion of the photo, excluding the margin, must meet the following dimensional specifications. (It must show the applicant’s whole face, from the top of the head (including the hair) through the end of the chin.)

(c) The applicant must look straight ahead, without a cap or hat. (In case the applicant is unable to submit such photos, for some religious or medical reason, he/she is to submit a written statement [with no specified format] explaining such a reason.)

(d) The photo must not have any background or shadow.

(e) The photo must contain a clear image. (In focus, without stain, blemish, or a hole. No shadow. No part of the face covered by clothes or hair. No background. For samples and examples, please see the application photos in the Immigration Bureau’s website.)

(f) The photo must be taken within 3 months before the submission. (In case the applicant is unable to submit such a photo for some justifiable reason, for instance he/she was long hospitalized, he/she is to submit the latest photo available.)

d. In case the applicant is unable to show his/her passport or Certificate of Status of Residence, he/she must submit a written document why he/she is unable to. 1 copy

(ii) Documents to Show

a. Passport and Resident Card, if the applicant is a medium-to-long-term resident

b. Passport and Certificate of Special Permanent Resident, if the applicant is such a resident

c. Passport or Certificate of the Status of Residence, if the applicant is neither a medium-to-long-term resident nor a special permanent resident (If the applicant is on a provisional release, the certificate of provisional release)

d. If the applicant is permitted to land in Japan on a provisional landing permit, a landing permission for crew members, an emergency landing permit, a landing permission due to distress, or a landing permission for a temporary refuge, the certificate of the relevant permission

(4) Proof of Refugee Status Recognition of refugee status will be based on the materials submitted by the applicant. Therefore, an applicant him/herself is expected to prove that he/she is a refugee by substantial evidence or by testimony of persons concerned. In case such evidence documents (including the relevant written statements) are in a language other than Japanese, an applicant must submit their Japanese translations as well.

When sufficient proof cannot be established from the materials submitted by the applicant, a refugee inquirer will inquire into the facts stated by the applicant through interview with the applicant or reference to public offices, etc. and make efforts so that an appropriate recognition of refugee status could be granted’.

As it is clear from these documents, while some of the required documentation is necessary to evaluate whether or not one is to be considered a refugee, the requirements for each document are very specific, such as the need for the photo taken to be ‘within 3 months before submission’ or that the exact margins are to be expected. Other requirements such as a



‘Certificate of Special Permanent Residence’ are in most cases obtained at city halls or government institutions and it is easy to imagine how difficult obtaining such a document can be during a coup d’état or state of emergency.

But aside from the difficulty of obtaining the documentation, the real issue is that the Japanese Refugee Recognition evaluation is based on the criteria of the Convention Relating to the Status of Refugees of 1951. It must be noted, however, that originally, the Convention was limited to protecting European refugees from before the 1<sup>st</sup> of January 1951, so refugees of World War II and because of this, the definition of refugee is quite *outdated*.

In section 1 of the ‘Guide to the Procedure for Recognition of Refugee Status’, it is specified that: ‘The word “refugee” in this Guide means a refugee as defined in Article 1 of the Refugee Convention or in Article 1 of the Protocol: a person who is outside the country of his/her nationality owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion and is unable or, owing to such fear, is unwilling to avail him/herself of the protection of that country’ (guide to the Procedure for Recognition of Refugee Status, 2016).

It is therefore clear that the definition used in the Guide is exactly the same definition provided in Article 1 of the Convention Relating to the Status of Refugees of 1951 and because of this, it does not include ‘those facing serious harm from war and generalised violence, as they are seen as falling outside the refugee definition’ (Aycock & Hashimoto, 2021).

Therefore, Japan is technically speaking, incapacitated to recognise asylum seekers such as the victims of the Russian invasion as they technically fall out of the definition of refugee employed by Japan, which is based on that of the Convention. That is why Japan has been labelling them as ‘evacuees’ and has been providing an alternative form of protection. This is shown by the number of Ukrainian individuals who during 2022 have been granted the Designated Activities Status. As it is shown in Fig. n 4 which I will be repurposing below, the number of individuals in all three refugee crises of Afghanistan, Myanmar and Ukraine under Designated Activities has increased greatly.

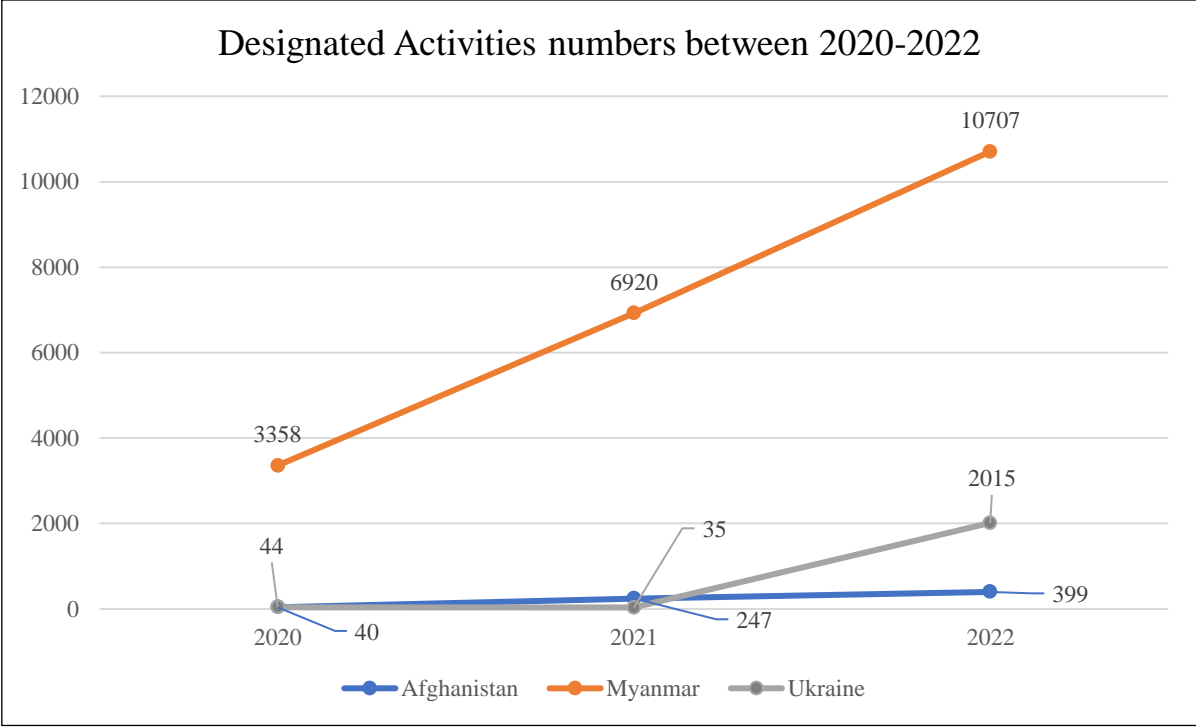


Fig. n 4 Designated Activities numbers between 2020 – 2022 Data from the Immigration Services Agency (MOJ)

## Findings

Since 2021, the number of Ukraine residents in Japan, as shown in Fig. n 5, has grown by 2300, and since 2021, the number of Ukraine individuals who reside under the status of 'Designated Activities' has grown by 1980. This means that since 2021, the number of Ukraine residents has grown by 55,31% and that Ukraine individuals under Designated Activities have increased by 98.26%.

Therefore, out of the 4158 Ukraine residents registered in 2022, 2015 are under Designated Activities, and since that since the number of Ukraine residents grew by 2300 in one year and the ones under Designated activities grew by 1980, it can be speculated that many, if not the great majority of the newly arrived Ukraine residents under Designated activities are Ukraine evacuees who did not qualify for Refugee Protection as they do not fall within the scope of the Refugee Recognition Criteria employed by Japan which are based on the Convention of Refugees and they have been granted the Designated Activity status of residence as a mean to reside within Japan.

And considering that Japan claims very clearly on the Immigration Services Agency website and official documents that the evacuees who have been welcomed to Japan as of September 6<sup>th</sup> 2023 are 2,493, the numbers suggest that the majority of those are protected under Designated Activities. It is not possible, however, to declare that all Ukraine individuals who reside under Designated Activities are indeed an evacuee, mostly due to the fact that the 'Designated Activities' status is not a *de facto* protection category.

But this is where the quantitative analysis conducted in this thesis becomes key in answering the main research question of this dissertation. The numbers here shown, do clearly indicate that in the past years, during when the refugee crisis in Afghanistan, Myanmar and Ukraine took place, there has been an exponential increase of protection which has been granted by the Japanese government. The number of those Japan protects is indeed very low by international standards, but the research shows that compared to the past numbers, even since 2018, there has been a steady increase, particularly in the years 2021 and 2022 which indicated that for Japanese standards, the country has indeed been fostering more and more individuals in need. The issue with evaluating *how much* protection resides in both the

terminology and the nature of protection that Japan provides. This is because as I have demonstrated through this chapter, despite Japan having welcomed individuals fleeing Afghanistan, Myanmar and Ukraine, there is no common terminology with which to address them. As I have shown, in 2022, 147 Afghan refugees were recognised in Japan, out of the 202 refugees recognised during the same year, a number that is unprecedented in Japanese history. However, none of the recognised refugees in 2022 were Ukrainian, despite Japan clearly stating that they have welcomed Ukraine more than 2000 Ukrainians fleeing Ukraine. This is because, they are not considered refugees but evacuees, as they do not qualify for refugee status in Japan since they fall out of the ‘refugee’ definition of the 1951 Convention Relating to the Status of Refugees. Furthermore, as I have shown, many of those evacuees have not officially requested asylum in Japan and cannot therefore be considered asylum seekers. Because the way in which the individuals who have fled their own country cannot be labelled in the same manner and are not protected in the same manner, it is extremely difficult to identify and quantify the amount of protection that Japan has been providing in recent years.

But by breaking down the numbers as I have done in this Chapter, the numbers clearly show that Japan, whether it is through refugee recognition or the assignment of the ‘Designated Activities’ status, has indeed provided some kind of protection to those fleeing from difficult circumstances, whether or not they fit the definition of refugee of the 1951 Convention which Japan employs for their recognition. This suggests that Japan is indeed beginning to bend the system for protection, and the numbers clearly show that there has been a steady increase in the number of foreign individuals in need.

## Conclusions

Therefore, to conclude this chapter, the quantitative research here conducted shows that Japan has in recent years employed different means for protecting those falling out of the scope of protection for refugee recognition and has also increased the number of recognised refugees, so much so to set a record in recognised refugees in 2022. The reason why it is so difficult to quantify the protection provided is because of the different means said protection is provided, but by conducting a detailed quantitative analysis it has been possible to show a steady increase in the numbers of those who are being protected. Furthermore, all selected refugee crises in Afghanistan, Myanmar and Ukraine have shown that there has been an increase in fostered individuals whether that protection is given through refugee recognition or through an alternative mean of protection.

The numbers therefore suggest that the external impact of the recent refugee crises has indeed impacted Japan's protection system, as the recognised number of refugees has increased to an unprecedented level and Japan has officially welcomed Ukrainians fleeing from Ukraine as evacuees and has granted them a 'Designated activities' status of residence.

## Chapter 3: Analysis of the Declarations of the Minister of Justice, the Speeches of the ICRRA Revision Bill on April 21<sup>st</sup> 2023, the Guideline on the Determination of Refugee Status and the Report on the Direction of the Refugee Recognition System

### ‘Japan is a *good* country’

Regarding the concept of Japanese identity which I have introduced in the first chapter, by analysing the comments of Mr. Suzuki Yoshi of the Diet Session on the ‘Proposed Bill for Partial Revision of the Immigration Control and Refugee Recognition Act’, it is possible to indeed find that security is at the centre of Japanese identity. When asking the experts his first question, Suzuki interrogates them on whether they believe that Japan is a *good* country without specifying what the world entails. After hearing the responses, Suzuki followed up with ‘When earlier I asked whether it (Japan) was a good country or a bad country, (I meant it as whether) it is a country with *good public order*, and I believe our duty is to think about how we can maintain it that way’.

In the case of the first respondent, Professor Yasutomi answered ‘I am confused as to how to answer such a difficult question’ and proceeded to say that he does believe Japan is a good country, keeping his response quite short.

Next, when answering the same question, Professor Takizawa stated: ‘Yes, it's a big problem. (Whether you believe Japan is a good or a bad country) I think probably depends on your age. When I was younger, 10, 20, 30 years ago, I used to always think about the bad things of Japan. However, there are many good things about Japan. I'm sure the teachers feel the same way, but it's unlikely that you'd feel in danger when you're in Japan. I've lived abroad for a long time, but I always feel nervous when I leave my house because I never know what could happen. Of course, if you go to war-torn Lebanon, you really have to wear a bulletproof vest and absolutely be equipped with a bulletproof vehicle. It's an extreme

example, but I think Japan is a country where safety and security are able to be taken for granted. Therefore, we have to keep this in mind when it comes to refugee policy.'

Professor Hashimoto abstained from this question: 'I have been called here today as an expert on the refugee recognition system and international refugee law. For such a young person like me to judge whether Japan is a good or bad country, it would be, how to put it, I cannot do such an arrogant thing, so I hope you will excuse me'. She then proceeds to focus on what 'good' is when referring to refugee recognition and human rights.

Lastly, Professor Fukuyama begins his answer by stating: 'For what concerns me, I have lived in Germany for two years on my own accord. After that, I lived in America for three years. Based on this experience of mine, I am convinced that Japan is the *best* country'. Professor Fukuyama concludes his answer after commenting on various refugee-related incidents that occurred in Germany following Angela Merkel's decision to accept Syrian immigrants on August 31, 2015.

Now, out of the four professors, three have shared a positive impression of Japan, with Professor Hashimoto abstaining. Both Professor Takizawa and Fukuyama cited Syrian refugees in their answers. Out of the three professors who did answer, only Professor Takizawa expressed both positive and somewhat negative aspects of Japan regarding refugee acceptance: 'When Chancellor Merkel accepted all (a lot of) Syrian refugees, I applauded that, I thought 'How wonderful!'. But what happened after that? In European countries, there is now a refugee 'elimination' process, and I believe Chancellor Merkel holds some responsibility regarding that. This is to say that I did believe Germany ('s actions) were great, but it does not necessarily mean that it was. Conversely, there is a narrative of Japan being a terrible country, a country that does not accept refugees. However, I believe there is an issue of information divulgence and an issue of the Immigration Bureau, as I have mentioned earlier, as I would like for them to announce the facts/truths a bit more. I have been saying this for a long time, but are there no public relations officers within the Immigration Bureau? For them to give briefings every day. I would like them to announce both the good and the bad. Ensuring transparency also creates accountability, and I believe that with this it would be possible to further the understanding of refugee policies. Therefore, I would like for both the Immigration Bureau and the government to take this opportunity to strengthen/improve

the divulgation and explanation of immigration and refugee policies. By doing so, I believe this will become a *good* opportunity as the positive aspects of Japan would spread and Japan itself will improve (as a country)'.

What is also extremely interesting is that out of the three professors, three of them mentioned the future prospects of Japan in their answers, and the one who expressed the strongest opinion by stating that in his eyes, based on his personal experience Japan is the *best* country, Professor Fukuyama, did not and mostly referred the aforementioned past cases relating to refugee issues in Europe. Professor Fukuyama concluded his speech with a remark on how there have been many critics of how Chancellor Merkel's decision was unconstitutional and ended with 'It might be a consequentialist thought, but I would appreciate if we could keep in mind that there is such a discussion in the corner (of our minds)'.

Other general differences are in the length of their response with Professor Takizawa's being the longest, followed by Professor Fukuyama, then Professor Hashimoto and finally Professor Yasutomi. The term *good* in the professor's responses was used respectively, once by Professor Yasutomi, twice by Professor Takizawa, four times by Professor Hashimoto and twice by Professor Fukuyama (one of which time *good* is intended as *best*).

Having now observed the general and most obvious characteristics of the Professor's answers, I will now focus on the meaning of 'good'. In Japanese, the word *good*, as in this case, is translated as いい or 良い. It is a word with a vast meaning and as such, it is somewhat vague. And accordingly, when Suzuki Yoshi asked this question, he did not specify what he had meant by using the word *good* and as shown previously, he only later on specified he was entailing *good public order*. And even if Suzuki had not specified the meaning when asking the question in the first place, by analysing the responses of the Professor it appears as if this entailed meaning was somewhat clear. This is more specifically the case for Professor Takizawa and Fukuyama who both hint, if not directly mention, the concept of security. Professor Takizawa used words such as *danger*, *safe* and *security*. Professor Fukuyama addressed cases of violence and used the word *crimes* in his response.

Furthermore, in the following question, Suzuki Yoshi asked the professor for each of their view on his comment which in the last part states: 'I believe that from now on, as COVID



regresses, a number of people above 21 million including people coming for leisure, business or study will arrive in Japan. Regarding that, I believe it is all about how we can address the current situation of the 1,400 people who have escaped and their whereabouts are unknown. Some of them may have committed crimes. That is why earlier I asked whether it (Japan) was a good country or a bad country, (meaning) it is a country with *good public order*, and I believe our duty is to think about how we can maintain it that way. I think it would be great if *good* people keep coming. It is not as if there were no existing system for people in a disadvantaged position to come and live in Japan that can provide humanitarian assistance. I personally interpret this bill revision as a ‘what are we going to do?’ regarding people who, despite Japan providing a proper system, take advantage and abuse the refugee recognition system’. Here, once again the term *good* is employed and this time it is also used when referring to the people who, according to Suzuki, should come to Japan. By analysing the context, once again, even if it is not specified, the term *good* appears to be referring to *people who would maintain public order*.

No Professor asked Mr. Suzuki to specify what good meant when he first asked his question, although Professor Yasutomi stated confusion at the beginning of his answer. This would entail that if not all, the majority of the Professors had an idea of what the word *good* meant in this instance and answered accordingly to what their interpretation of the word was. As shown above, the discourse analysis would suggest that at the very least Professor Takizawa and Fukuyama had understood it similarly as Mr. Suzuki had meant it, which is *good* as in *good public order, security, and safety*.

This would go on to show how even when there is no specific when using the word *good*, there was an association with security. At the risk of sounding repetitive, this strong association between the word *good* and *security* would then subsequently suggest that at the centre of what is associated with *good*, there is a pillar of *security* and considering that in this context, the word *good* was used to describe the words *country* and *people*, the analysis would suggest that *security* is extremely important when defining these terms.

Put it simply in a formula it would be:

$$good = security$$

and

$$people/country + good = people/country + security.$$

Based on this connection, if *good* is equal to *security*, a *good country* would be equal to a *secure country*. And since, naturally, all should strive for good rather than bad and if such a basic but fundamental term is associated with security especially when referring to the words *country* and *people*, this could be considered proof that security is central to Japanese society. The Cambridge Dictionary defines the word society as ‘a large group of people who live together in an organised way, making decisions about how to do things and sharing the work that needs to be done. All the **people** in a **country**, or in several similar countries, can be referred to as a society’.

To summarise: *good = security*, **so** *good + people/country = security + people/country*, *people + country = society*, so *security + society = good + society*.

By having conducted both discourse analysis and association analysis, the findings would seem to suggest that *security* is central to Japanese society. And while it could be argued that security might not be the *most* central characteristic of Japanese society, it is surely one of the main ones. This analysis was done in order to verify whether security is indeed a fundamental characteristic of Japanese society and identity and the analysis conducted would strongly suggest so.

## ‘Refugee’ vs ‘Evacuees’

For this section of discourse analysis, I have selected the summaries of the public press conferences of the Minister of Justice from January 6<sup>th</sup>, it being the first of 2023 to the 1<sup>st</sup> of August 2023. The reason why I have chosen this specific period for this discourse analysis is because in order to show that it is during this time frame that the Revision of the Immigration Control was processed, and this is reflected in the Minister’s speeches. Furthermore, in order to showcase the connection between the revision of the bill and the external events of the Afghanistan, Myanmar and Ukraine refugee crises, it is necessary to consider this time frame. Furthermore, by showcasing that the discourse around the refugee crises has continued and not being limited to the year 2022, it is possible to convey that the changes have been continuous and have not been limited to a short span of time covering the beginning of the crises.

Before conducting an analysis of the discourse, it is important to analyse the keywords themselves, in this case, the words ‘refugee’ and ‘evacuee’. In Japanese, they are respectively written as ‘難民’ and ‘避難民’. The first kanji of the word ‘refugee’ is ‘難’ which is translated in Japanese as ‘difficult’. The word ‘evacuee’ has an additional kanji at the beginning which is ‘避’ and it is translated as ‘avoid’. On paper, the distinction between the two words is little, but often times in research papers and newspaper articles the Ukrainian evacuees are addressed as refugees when in reality, in the Japanese context they are to be considered evacuees, as they fall out of the definition of the 1951 Convention.

For this section, I will be comparing the discourse used when the words ‘refugee’ and ‘evacuee’ are featured in the Minister’s speeches and compare not only the coverage but also the context in which they are used. Furthermore, I will analyse the keywords which have been used on multiple occasions by both the journalists asking the questions and the Minister himself, to identify the narratives and the symbolisms at play.

During the selected span which covers roughly an eight-month period, the word ‘refugee’ was used 338 times between the Minister and the journalists. The journalists have used the

word 144 times when asking their questions and the Minister has used it 194 times between official announcements preceding questions and within his answers.

The word 'evacuee' on the other hand, was used comparatively less, only 22 times during the same period. The journalists have used the word 7 times, while the Minister has used it 15 times.

It is therefore clear that the word 'refugee' was comparatively used much more, despite the most recent refugee crisis being the Ukrainian one, for whom they have been only addressed as 'evacuees' and not 'refugees'. Still, between the usage of the two words, there is a difference of 175%.

When talking about refugees specifically or asylum, on many occasions the word used next to it is '真' which means 'true'. An example of this can be witnessed on the 1<sup>st</sup> of August when the Minister declared that:

'For what concerns our country, the taking advantage and misuse of refugee recognition applications for the purpose of working, etc. has hindered the prompt protection of true refugees.'

On April the 25<sup>th</sup> he said:

'I have explained this numerous times in the Diet, but the basic idea of the bill we are putting out is to provide protection/asylum to those who truly are to be protected and take firm action according to the rules in cases that are not within the rules. We are now deliberating the bill based on this idea and I personally want to work hard in order to realise this as soon as possible'.

On March the 24<sup>th</sup>:

'We also hope that the Immigration Services Agency will be able to achieve more appropriate and efficient reviews, and that applicants will be able to more easily prepare their applications. We, as the Ministry of Justice, will continue to work on the prompt and secure protection of foreigners who truly need asylum'.

On March the 10<sup>th</sup>:

‘As I have been saying since the beginning, the purpose of this bill is to avoid problems regarding repatriation and long-term detention which must be resolved soon. At the same time, as I have just said, we must face the humanitarian crisis, and I believe we can address those problems through the development of a system which will protect those who truly need asylum, and so I will be discussing it in the Diet’.

On March the 7<sup>th</sup>:

‘Repatriation and long-term detention problems that occur under the current incidental law are to be resolved immediately while at the same time the creation of a system which ensures protection for those who are truly to be protected is another important issue’.

On March the 3<sup>rd</sup>:

‘For what concerns the children, if there are cases in which they cannot be recognised as refugees, but it is deemed that consideration (protection) is necessary on humanitarian grounds, we allow them to reside in our country, and as the Ministry of Justice, we believe that we must work on the protection of those who are truly in need of asylum’.

On February the 28<sup>th</sup>:

‘As I have said repeatedly, the repatriation and long-term detention problems that occur under the Immigration Control Law are challenges to be resolved as soon as possible, alongside the creation of a system that protects those who are truly in need of protection which is an extremely important task.’

‘First and foremost, the problems concerning repatriation and long-term detention which occur under the current Immigration Control Act are to be resolved as soon as possible alongside the establishment of a system which ensures protection to those who truly need to be protected as they are facing a humanitarian crisis. I believe it is an important job to ensure that these two issues are resolved and I believe it is necessary that we improve the legislation to resolve this [...] to ensure protection to those who need to be protected and to be able to act strictly to those who violate the rules.

‘In any case, as I have said in my responses several times, the basis on which we are building the revision bill is the repair of the repatriation issues that are occurring under the current immigration Control Act, and the establishment of the protection of those who truly are to protect on humanitarian grounds.’

On February 14<sup>th</sup>:

‘I believe it is imperative that we solve quickly the issues around repatriation and long-term containment and that we ensure the creation of a system which ensures protection for those who are truly to be protected. [...] I believe it is essential to carry out a legal development that will solve these problems lawfully in a uniform manner.’

These are only to quote a few, as also on February 10<sup>th</sup>, February the 7<sup>th</sup>, February the 3<sup>rd</sup>, January the 20<sup>th</sup>, the Minister has insisted on the protection of individuals who ‘truly’ need protection.

Now, by conducting a more in-depth analysis of both the context and the content, it can be noted that out of all the instances, during which the Minister has used the expression ‘those who truly need asylum’ the Minister was answering the questions asked by the interviewers with the exception of only two occasions during which he was announcing the matters at hand at the beginning of the press conference. Overall, it is clear that the context in which these words are used is very similar and the structure of the sentences in which they are featured is almost identical. So much so that in various instances such as on February 28<sup>th</sup>, March 10<sup>th</sup>, April 25<sup>th</sup> etc., the Minister himself notes ‘as I have said numerous times already’. The emphasis put on these words indicates the gravity and urgency of these matters, and each time the word ‘those who truly need protection’ is used, the focus is put on the importance of ensuring said protection and the Minister specifies that this issue is at the basis of the revision bill. On various occasions, the Minister also says that it is important to address the protection of ‘those who are truly in need of it’ alongside the problems regarding deportation and long-term detention and to solve them ‘lawfully in a uniform manner’. This is because the revised bill included changes regarding both issues.

What is most interesting about the Minister’s speech is that if the translation is done literally and with little freedom of interpretation, when addressing the protection issue, the Minister

does not address them either as ‘refugees’ or as ‘evacuees’. While I have specified that the two are extremely different and address different groups of people, the Minister does not choose to address only one of them and uses instead the expression ‘真に庇護を必要とする方’ (those who are truly in need of protection). If the Minister is purposely not addressing only one of the groups it could be speculated that this form of expression is meant to address both. By using the expression ‘those who truly need protection’ he is excluding the ‘fake’ asylum seekers which he had addressed in his speech on the 1<sup>st</sup> of August 2023 and he is at the same time, including all possible individuals who are indeed in need of protection, whether they are refugees or evacuees. This is also supported by the fact that in a press conference of a year prior, on the 28<sup>th</sup> of April 2022, he stated that:

‘The Ministry of Justice is currently considering the creation of a system which can protect those who need protection for reasons other than the so-called five requirements/reasons featured in the 1951 convention. It would be ‘difficult’ to protect them as refugees given the requirements of refugee recognition and there would be inconsistencies. In instances where one cannot be recognised as a refugee, *we have been protecting them* by granting them SPS or other kinds of status of residences based on humanitarian grounds. So there is a track record of acceptance for those who fall out of the refugee recognition criteria.’

In this speech, various keywords are to be noted. First of all, it must be specified that this was taken from the answer of the Minister to a reporter’s question regarding Ukrainian evacuees. So it is fair to say the Minister was addressing said evacuees as well as possibly others, when he stated that Japan has shown a track record of granting alternative means of protection to those who fall out of the 1951 Convention refugee recognition criteria. Furthermore, in this discourse, he employed the same word for ‘protection’ which was also used in the above-analysed speeches of 2023 when addressing individuals who ‘truly’ need to be protected.

Therefore, if we have established that when addressing evacuees, within whom Ukrainian evacuees are included, the Minister has explicitly said that there has been a track record of protecting them even when they cannot be recognised as refugees, and if the word ‘protection’ which was employed corresponds exactly to the word which has been used in

2021 when characterising ‘those who truly need protection’, it would subsequently mean that Ukrainian refugees are to be included in those who ‘truly need protection’.

So, if the Minister kept addressing the issue of creating a system which can ensure the protection of those ‘who truly need protection’ within which we have established that Ukraine evacuees are included, it results in the connection that the system which was proposed and subsequently approved within the revision bill is meant to protect evacuees such as Ukrainian evacuees, who cannot be recognised as refugees.

By proving this point, and considering that the mentions of this new system of protection, the 補完的保護 (subsidiary protection), resurfaced in 2023 (after almost a decade), the same year in which the Russian invasion of Ukraine began and that tracing the dots and making the connections proving that the Minister of Justice has stated that this category is meant to protect those who fall out of the 1951 Convention’s definition of refugees, it can be therefore demonstrated that part of the reason of the creation of this new system of protection was derived out of the necessity to protect evacuees such as Ukrainian ones as a result of the Russian invasion of Ukraine. So, simply put, the discourse analysis of the speeches delivered in the press conferences by the Minister of Justice suggests strongly that the recent Ukraine refugee crisis has pushed Japan to the creation of a new category of protection for those who cannot qualify for refugee protection as they do not fulfil the definition of ‘refugee’ featured in the 1951 Convention, the very same definition that Japan employs when evaluating whether an asylum seeker is to be recognised as a refugee.

This claim is further supported by a section taken from the response of the Prime Minister to a reporter’s question on the approval of the revision bill on the 13<sup>th</sup> of June 2023 in which the Minister said:

‘Also, for Ukraine evacuees, who the press is righteously, I think, addressing as ‘quasi-refugees’, we are creating a new system, the ‘complementary protection’ which is made to be system design for better acceptance’.

In this very brief section, which is part of a longer and broader answer which addresses many more issues regarding the ICRRA revision bill, the Minister clearly states a direct connection between the Ukrainian refugees and the new protection system which was approved with the



revision bill of June 9<sup>th</sup> 2023. Furthermore, he shows approval for the ‘terminology picked up by the press when addressing Ukrainian evacuees which is by using the term ‘準難民’ (quasi-refugee) which was first used by the Minister on April 21<sup>st</sup> 2021 when the ICRRA revision was discussed in the Diet (The House of Representatives, 2021).

Having analysed the speeches and terminology used by the Minister of Justice during the press conferences of both 2023 and 2022, I was able to prove that there is indeed a strong connection between the Ukraine refugee crisis and the changes in the Japanese ICRRA. First, I have shown that the protection granted for ‘those who truly need protection’ includes both refugees and evacuees and that Ukraine evacuees are included within those ‘who truly need protection’ and that Japan has indeed granted status of residences and accommodations as an alternative mean of protection to those who did not fit the definition of refugee employed in refugee recognition in Japan which is based on the definition of refugee of the 1951 Convention.

Furthermore, by analysing a section of the Minister’s answer given to a reporter on the 13<sup>th</sup> of June 2022, I have shown there is a clear indication made between the need for protection of Ukrainian evacuees and the creation of a new system of protection, the 補完的保護 (complementary protection), which goes on to demonstrate that the Ukraine refugee crisis has indeed pushed Japan for the creation of a new, alternative system of protection for those who cannot be officially recognised as refugees in Japan. Therefore, the discourse analysis done on the statements delivered by the Minister of Justice shows a distinct correlation between an external event at the international level and a domestic change in Japan of the Japanese ICRRA and shows that the Ukraine refugee crisis has played a strong part in the implementation of the new category of protection included in the revision bill which passed on June 9<sup>th</sup> 2023.

## The Guideline on the Determination of Refugee Status

In this subchapter, I will be conducting an analysis of the recently released ‘Guideline on the Determination of Refugee Status’. This Guideline is not to be confused with the ‘Guide to the Procedure for Recognition of Refugee Status’ which latest version was released in April of 2016. While the latter concerns the steps an asylum seeker needs to take and the documents necessary when applying for refugee status in Japan, the newly released guideline details how the determination and recognition of refugee status is conducted. This guideline aims to aid those who want to apply for refugee status and also to help soften the criteria for refugee recognition. The new guideline was published in March of 2023 and can be easily found online on the Ministry of Justice website.

I will now proceed to analyse the salient points of this guideline, in particular the section regarding 迫害(persecution) in order to show how the release of this guideline could aid in future cases of refugee recognition and how the interpretation of the definition of the term ‘refugee’ has been impacted.

Following the frontispiece, the second page features a short introduction where the general contents and aims are listed. One particular section states that:

‘This document provides, alongside a more specific explanation of the significance of the wording of the refugee definition provided in the 1951 Convention Relating to the Status of Refugees, a guide of the key points considered when examining the applicability of refugee status. [...] This document is intended to invite people to better comprehend the works of our countries refugee recognition system as well as to be employed for refugee status determination at the Immigration Services agency of the Ministry of Justice. This document, based on the report of the so-called ‘Results on the evaluation on the review of the direction of the refugee recognition system’, put together by a group of specialised experts on the matter, relates to the type of persecution such as those based on sexual minority or gender discrimination which were not included in the finalised 1951 Convention Refugee requirements, and may continue to be updated.’

Already in this section, there is a clear reference to the ‘revaluation’ of the term ‘persecution’ and that the persecution described in the 1951 Convention does not include other persecutions such as those due to sexual minorities and gender discrimination. As a matter of fact, the 1951 Convention states in Article 1 under ‘Definition of the term “refugee” that:

‘A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

- (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;
- (2) As a result of events occurring before 1 January 1951 and 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.’

When the document refers to persecution, it lists the possible reasons for persecution that are to be considered which are race, religion, nationality, membership of a particular social group or political opinion, being outside the country of his nationality and being unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having

a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. Considering that this definition was provided in 1951 it is arguably outdated, and because Japan references this definition when conducting the evaluation for applicability of refugee status, there have been limitations in accepting refugees, as for instance recognising Ukrainian evacuees as Convention refugees would technically be unlawful, as Japan defines them as 紛争難民 (conflict refugees) and so they technically fall out of the definition of the 1951 Convention.

But the 'Guideline on the Determination of Refugee Status' does reference this issue and dedicates an entire chapter to the issue of persecution and its revision. Aside from the exact procedure for eligibility, there are two sections in which a change in the interpretation of the word 'persecution' can be seen. The first can be found under paragraph one 'Persecution' of Chapter 2 'Clause of applicability (Refugee Convention Article 1A (2))':

'There is no established definition of the word persecution under international law, but there is one in the Convention on Refugees which states that 'Persecution' is a violation of life, body or freedom or oppression and other serious violations of human rights, mainly inflicted suffering that is not normally bearable to humans or the violation of freedom or oppression of life or the person.

Although what is typically considered are killings and unfair detention, other serious violations of human rights and discriminatory measures may also constitute 'persecution' for deprivation of living means and violence against the spirit.

Even if disadvantages and sanctions do not constitute 'persecution' per se, they might constitute 'persecution' as a result of their combined circumstances.

Prosecution and punishment performed in accordance with the procedures of the law usually do not result in 'persecution', but arbitrary and discriminatory prosecution or punishment or unreasonably heavy punishment can be considered as 'persecution'.'

Also, when core points to be taken into consideration for the evaluations are listed, the document states that:

‘When determining whether or not one is a victim of persecution, it is necessary to consider the situation in which the applicant was placed.’

Under the section ‘Subject of persecution’ it is written that:

A subject of persecution is usually considered to refer to a state agency, but a non-state entity (such as Political parties, rebel groups, religious communities, ethnic groups, criminal organizations, groups that effectively control a particular area, local residents, members of the family or individuals) can be considered as a subject of persecution.’

By taking into consideration what is written in both the 1951 Convention and the ‘Guideline on the Detention of Refugee Status’ and by comparing their contents, it is possible to witness a change in the interpretation of the word persecution. This can be witnessed especially where the guideline circumstances and kinds of oppression and persecutions other than those which are stated in the Convention can be considered ultimately as persecution. This is explained further in the above-mentioned section where the guideline states that the circumstances of an applicant are to be considered during the process of determination. This is because in a previous paragraph which I have also quoted above, it is specified that even when a single ‘disadvantage’ might constitute persecution per se, the combined circumstances could collectively constitute a form of persecution.

Simply put, it could be argued that by having slightly expanded the interpretation of the word ‘persecution’, there could be more individuals who would lawfully qualify to be recognised as refugees. This is extremely important, as the interpretation of the word ‘refugee’ itself has not been changed, but by elaborating on the scope of the word ‘persecution’ the number of those who would fit the original term ‘refugee’ could increase. And the guideline acts as written proof of the new definition of persecution which is to be taken into consideration when conducting the evaluation of an applicant for refugee status.

To further support this I will note that on February 24<sup>th</sup>, when asked about the ‘Guideline of the Determination of Refugee Status, the Minister answered that: ‘This guideline is not a criterion of judgement itself, but by clarifying the points to be taken into account when determining refugee status, it will increase transparency and improve credibility, which has the effect I mentioned earlier.’

In this section, I have translated and provided the salient keywords and sections of the recently published 'Guideline on the Determination of Refugee Status' and have compared the definitions of refugee and persecution contained in both the Guideline and the 1951 Convention. By comparing the two, it can be shown that the new Japanese guideline provides a wider scope for what consists of 'persecution'. Despite the definition of a refugee has remained the same, it can be argued that by providing new possible scenarios which can be considered as persecution, it will be possible to lawfully recognise a higher number of refugees which fit the originally and still currently employed definition of the word 'refugee'. More on the significance of this change will be further discussed within the findings.

## ‘Subsidiary protection’

In this chapter, I will be conducting an analysis of a document regarding the category of ‘subsidiary protection’ which was approved as part of the ICRRA revision bill which was approved on the 9<sup>th</sup> of June 2023. This document, titled ‘Report on the evaluation on the review of the direction of the refugee recognition system’ was quoted briefly in the ‘Guideline on the Determination of Refugee Status’ which I have discussed in the previous section. What is most interesting about this particular report is that despite having been released in December 2014, it is of extreme relevance today, so much so that it has been mentioned in the new Guideline.

This dissertation aims to answer the questions of whether Japan is entering a new era of Immigration Control and Refugee Recognition, and whether the recent refugee crises of Afghanistan, Myanmar and Ukraine have impacted Japan’s ICRRA. For a country such as Japan, which, as I have mentioned in the first chapter, has been historically reluctant to change, to adopt a new category of protection, is indeed an incredible, and to many unexpected step. It is no coincidence that the category was finally approved in 2023, following the recent refugee crisis, and I have demonstrated this by conducting a discourse analysis on the press conferences delivered by the MOJ. But through this subchapter, I will be demonstrating that the new, applauded ‘Subsidiary Protection’ category had already been in the works for many years before. This section of the thesis aims to provide additional proof that Japan is indeed entering a new era, and that the impact of the refugee crisis, particularly that of Ukraine, has pushed Japan to take a step forward in protecting ‘those who truly need protection’ on humanitarian grounds. In order to do so, I have hereby selected and translated various sections of the ‘Report on the evaluation on the review of the direction of the refugee recognition system’ and I will be showing how the propositions which were made almost ten years ago have now resurfaced due to the events following the Russian invasion of Ukraine.

The report begins by describing the international situation which was at hand, and expresses concerns derived by the refugee crisis derived by the civil wars in the Middle East and the Syrian refugee crisis:

‘If we take a look at the world situation after our country has inaugurated the refugee recognition system in 1982, In the European region, due to regional conflicts over ethnic conflicts or independence, the situation is causing many displaced people to wander, due to the prolonged civil war in the Middle East and Africa, and in recent years, the Middle East. And due to the outbreak of regional conflicts due to the collapse of the government in the North African region, for example, there have been many displaced people from Syria, both domestically and internationally, and there is a humanitarian need for an urgent response.’

The document then goes on to describe the national situation and summarises the main issues that Japan has been facing regarding refugee recognition and deems the number of recognised refugees in the country to be lower than that of other countries:

‘In situations such as the above, in Japan, due to the increase in the number of applications, the examinations have been taking much longer, and have been challenges in responding to applications properly and quickly. Among them, there were applications for refugee status under the reason of persecution under the 1951 Convention, for the purpose of working and settling in Japan and also there were many who applied as a mean to avoid repatriation having received a deportation order. [...] but despite the recent increase in the number of applications, the number of recognised refugees in Japan is low compared to those of other countries.’

Shortly after, the document proceeds to address the responsibility the country has to be able to provide proper asylum to those in need and underlines the importance of being able to respond to *changes in various situations*.

‘Under such international and domestic trends, to fulfil one of our responsibilities to the international community, which is the proper asylum of refugees, we have recognised the importance of responding appropriately to changes in various situations, and consider reviewing existing refugee status and operations.

Our country has signed, in 1982, the 1951 Convention and its protocol and has consequently implemented the necessary system for refugee status determination procedures, such as establishing a new organisation for refugee status determination in the Ministry of Justice and the Regional Immigration and Residence Administration Office.’



In the next few sections, the document begins to discuss the definition of the word ‘refugee’ cited in the 1951 Convention and brings attention to the fact that some who ‘may be persecuted’ or those who are persecuted based on reasons which are not included in the criteria of persecution in the 1951 Convention.

‘The term ‘refugee’ referred to in the Introductory Law is based on the definition provided in Article 1 of the Refugee Convention which refers to those who have escaped due to persecution or fear of, based on Race, Religion, Nationality, due to being a member of a particular social group or being a stateless person and they cannot receive any protection or they don’t ask for it.’

‘Based on this, in our current refugee recognition system, the risk of ‘ may being persecuted’ is a crucial factor. However, despite some being evacuees who are in need of protection, if the reason for the persecution is, for example, war, catastrophe, poverty, or famine, they are not recognised/interpreted as refugees as they do not correspond to the definition of refugee referred to in the 1951 Convention.’

It is here that the documents discussed the problems related to the narrow interpretation of what persecution consists of and deems evacuees who fall out of the scope of the 1951 to be individuals who need and are qualified to receive protection. And in the next paragraph, discusses the issues regarding the need to clarify the procedure of the procedure for refugee evaluation:

‘In light of such discussions, the expert committee have divided the most important issues to be evaluated into three groups. The first is regarding the ‘Clarification of those who are to be protected’. The second is on the ‘clarification of the procedure’. The third is about ‘the clarification of the accreditation judgement’. By grouping them in this manner, while the number of asylum requests increases and the application contents diversify, it will be possible to identify clearly who are the individuals who are to be truly protected, and then make clear what are the steps to be taken to expedite and properly process the large amount of diverse applications. Furthermore, by clarifying the content of the judgement made by the Minister of Justice, the idea is to be able to clearly identify those who are to be protected and does who do not qualify and to promote a proper and prompt refugee recognition process.’

Furthermore, under the section on the fourth recommendation titled: ‘Proper protection based on the clarification of the subject of protection’ it is stated that:

‘Sixty years after the passage of the 1951 Convention, and about 30 years after Japan joined the 1951 Convention, the Treaty of Refugees was established mainly on the backdrop of refugee issues in Europe, such as Russian refugees before World War II, Jewish refugees during the Great War, and Eastern European refugees after the Great War and so it had as the subjects of protection those who escaped various kinds of persecutions and requested protection.

However, the international situation has changed significantly since then, and there has been protection provided for the victims of armed conflict in their respective regions, the creation of the post-war Universal Declaration of Human Rights, the adoption of various international human rights treaties and the development of international human rights and humanitarian concepts. Therefore, there is a necessity to protect those who meet the requirements of the 1951 Convention, but also those who are not eligible for refugees under the 1951 Convention as they should be protected in an international complementary manner.’

‘It is obvious that there is a need to properly determine the extent of the applicability of refugee protection, but there is an issue around the protection of those who fall out of the definition of refugee as there is no clear indication of the protection to be provided for them. It has since been pointed out that this should be clarified by taking into account other countries as a reference in the process.’

Here, the document again underlines the importance of providing proper asylum to those who need protection but do not qualify as Convention refugees and that the circumstances during which the first definition of refugee in the 1951 Convention were extremely different from that of 2014 and that new forms of persecutions should be considered when discussing refugee recognition. At the end of this section, the document provides a section regarding the recommendation on the matters discussed for future developments, and it states:

‘There is a need to undertake the following efforts and promote the appropriate form of asylum for those who are truly in need of international protection.

- (1) For what concerns the so-called ‘new forms of persecutions’, there is a need to provide a clear interpretation of the treaty by, for instance, evaluating whether persecution based on gender is to be recognised based on the ‘Vienna Convention on the Law of Treaties’ and the 1951 Convention and the meaning behind the terminology employed.
- (2) [...] First, even in the event that after being evaluated, one is not recognised as a Convention refugee, there is a need to clarify the subjects of protection by establishing a new framework to grant residence permits to allow for their permanence for those who are in need of protection under humanitarian grounds.
- (3) In order to do so, one example which should be taken into consideration to fulfil the above-mentioned recommendation, is the Qualification Directive adopted by the EU, which has rules for international protection of the European Union, the ‘complementary protection’ for those in ‘serious harm’.
- (4) For the introduction of the (2) recommendation, [...] the impact on the lives of the people of our country is to be considered, such as the safety and security of the population.’

Now, in this last section, there are mainly two recommendations that I want to bring attention to, which are the need to provide a clear interpretation of what the term persecution entails, alongside providing a clear evaluation process for refugee recognition, the need to establish a new framework to grant a form of subsidiary protection to those who could be subject to serious harm but cannot be recognised as refugees. A fundamental keyword to note is that when referencing the example of the ‘complementary protection’ which was adopted in the EU, the term used in Japanese is 補完的保護, which as I have shown in the previous analyses, is the *same exact term and kanjis* which were used for the new category of protection which was approved in the revision bill on the 9<sup>th</sup> of June 2023. Furthermore, the

new ‘Guideline on the Determination of Refugee Status’, which was released in March 2023, fulfils the recommendation on the need to provide a clear guideline on the evaluation process of refugee recognition. Finally, within said guideline, as I have shown in the previous subchapter, there is a clear, updated interpretation of the term ‘persecution’, which, as I have reported previously, the Minister of Justice himself has stated that the ‘guideline is not a criterion of judgement itself, but by clarifying the points to be taken into account when determining refugee status, it will increase transparency and improve credibility, which has the effect I mentioned earlier. However, now that the points to be taken into account when determining refugee status have been sorted out, it is expected that applications for refugee status will be made based on these points, and as a result, there is a possibility that the number of cases of recognised refugees will increase’

To sum up, in this section of the dissertation I have shown that the ‘Guideline on the Determination of Refugee Status’ which features the newly revised interpretation of the term ‘persecution’ which aims to soften the narrow interpretation of the word refugee in order to provide further protection to those in need, and that the creation of the new category of ‘subsidiary protection’ had already been discussed in 2014. Further discussion on the reasons why these recommendations were implemented almost ten years later, in 2023, will be provided in Chapter 5.

## Chapter 4: Interviews of the experts on the ICRRA

### Transcription of the interviews with Professor Akashi, Professor Farrer and Professor Takizawa

For this chapter, I have conducted interviews with experts on refugee recognition and migration in order to deepen the understanding of these issues and as an ulterior mean to argue whether Japan is indeed entering a new era regarding ICRRA.

As I have already mentioned in the introduction, the professors who have agreed to the interviews are Professor Takizawa from Toyo Eiwa University, who worked as Controller and Director of Finances at the United Nations High Commissioner for Refugees (UNHCR) headquarters in Geneva and was appointed as the first Japanese UNHCR Representative in Japan; Professor Akashi from the University of Tsukuba who is also currently employed at the Immigration services Agency as a refugee examination counsellor, and Professor Gracia Liu-Farrer from Waseda University who is also the Director of the Institute of Asian migrations. I have obtained their permission to feature their responses within this dissertation on which I will be conducting a comparative discourse analysis. The listed professors have all been asked the same exact questions so to make the analysis as fair and accurate as possible.

I have divided the questions based on whether they concern the past, the present or the future so as to cover an extended span.

The first question which was asked to the Professors was whether they believed there had been progress regarding Immigration Control and Refugee Recognition in the last years since 10 to 20 years ago and the Professors all seemed to agree that indeed progress, however small compared to other countries, was made. Professor Farrer stated that:

‘I think there has been progress in terms of migration and foreign workers. Also, in terms of labour migration, I think Japan has been moving forward because due to the demographic crisis Japan needs workers’.

Having confirmed that all professors believe progress was made, I followed up by asking a second question.

Q: So you believe the image of ‘refugee’ in Japanese people’s minds has changed?

Professor Farrer: ‘There is a leap forward regarding public sentiment, especially with Ukraine refugees. There is awareness that refugees need protection. There was surprise by how quickly the Japanese government and the public moved to accommodate Ukrainians. Yes, before refugees were considered to be only from developing countries and Ukrainian refugees give this impression that they are skilled even if that might not always be the reality. And the publicity of the war moved sympathy and the Japanese public has now a better understanding (of who refugees are). The war reportage of Myanmar or Afghanistan could not compete with that of Ukraine.’

Professor Akashi: ‘I did say the image of refugees hasn’t really changed but it was because I don’t think that they (the Japanese government) framed it as a ‘refugee crisis’. The Ukraine crisis was an irregular event which I think would affect Japan’s refugee recognition, but it is difficult to think of how the image of refugees could change. It is difficult to say. I feel that Japanese people tend to forget easily. People are not talking about this anymore and the media is not covering it as much as they did before.’

Professor Takizawa: ‘Most of the Ukraine evacuees are women and children and there is a reassurance that the public order and security, which are extremely important to Japanese people, won’t be disrupted. Also, because the government is managing the welcoming of Ukraine evacuees, the Japanese people feel 正当性 (legitimacy) and so the population feels safe. It must also be noted that there was a ‘first aid boom’ towards Ukrainian evacuees. Japanese people used to have a different image of refugees, such as those of refugee camps somewhere far away, but after the Russian invasion and having seen the Ukraine refugee crisis, their idea of refugees in their minds has changed.’

Q: Do you believe the reasons why Japan is reluctant to welcome refugees are the same as the reluctance to welcome immigrants?

Professor Akashi: ‘I would say that Japanese people are not really able to distinguish between immigrants and refugees. So I would say this depends on the person, But the image of

refugees is quite negative so there might be a difference there. Japanese people are generally of the idea that refugees should be helped, but are reluctant when it comes to welcoming them into Japan.'

Professor Farrer: 'The word 'immigrant' is not really a notion that Japanese people accept because they don't think that immigration is something that Japan has. They do however have more of a class distinction of people and maybe also a racial hierarchy. The highly educated, preferably white, associated with wealth and education are not seen as threatening. There is a legacy of colonial history. Within this hierarchy, 'refugees' are the least desirable. They do not come to contribute, to offer, but rather they come to take something. The Japanese word 'refugee' literally has the word difficult in it. So these 'difficult people' have a bad connotation. That's why Ukrainian refugees have created a complexity in this classist, racial hierarchy. Japan will have a different opinion of immigrants and refugees, not only regarding skill levels but also of different national backgrounds.

Professor Takizawa: 'Well, Japan is now accepting foreign workers. The numbers do show that Japan has now de facto immigration. Clearly, the reason why they are being accepted is purely economic reasons. The fact that 'Japan does not accept immigration' is changing. Japan used to not accept them. Japan used to say they wouldn't accept immigration but I mean, it was in one way or another. Now Japan needs foreign workers to maintain its economy. But the reason why they would say they would not have immigration was to put people's minds at ease and put rest to their anxiety regarding accepting immigration.'

Q: What do you think is Japanese identity?

Professor Farrer: Identity depends on who defines it. There are many readings about what is 'Japaneseness'. I think people often point out indicators. I believe the notion of identity is changing so I don't want to reify the concept of Japanese identity. People come up with notions of it but they are never true. Japan is attractive because of its image of safety. It is not a bad thing that security is at the base of living peacefully, it is a basic need. And some societies are not adequate in providing that. Many are not just willing to go to Japan because of a good salary but more so because of the safety. And nowadays safety has become more valuable and it provides 'freedom of the heart'. So, I would say it does define Japan to a large degree. Societies develop a consensus on how to behave. Behaviour and practices can define

the characteristics of people. I believe it is not always about identity itself but more about presentation and representation.’

Professor Akashi: ‘Identity. The existence of the concept of identity is not something which can be proved. I believe there have been studies about what characteristics, and requirements which make Japanese people Japanese. In those instances the answers generally are blood, essentially *ius sanguinis*, to be able to speak Japanese, to be living in Japan. But if that is not what you are asking, the answer would be that it (identity) is quite strong, compared to other countries. But to talk about what kind of impact identity can have is a whole other story. If we were talking about whether it exists or not, it does, and I believe it is very strong’.

Professor Takizawa: ‘I believe what is most important to Japanese people is the respect for the rules. Safety and security are at the centre of Japanese society. Even with simple things such as crossing the street. Japanese people do not cross the street if the light is red, not even if no cars are coming. Respecting the rules protects public security and so Japanese people would very much like for people who come from abroad to follow the rules and act in the same way.’

Q: There is a disagreement on why Japan is reluctant to accept refugees. There are mainly two ideas: one is Ethnonationalism and on the other hand, there is the fear of the disruption of security and public order. Do you believe it is only one of the two or a bit of both? Which one prevails in your opinion?

Professor Farrer: ‘I think the two are related, especially when you define it. In the case of ethnonationalism, one links their national identity to a biological, racial component and thinks of it in a homogeneous way so everybody else becomes the ‘other’ and they create a boundary. And this boundary is tied to security and social order, and it has to do with how the discourse around ethnonationalism is established. Ethnonationalism can easily lead to xenophobia but not always, not necessarily.’

Professor Akashi: ‘I believe the two are tied together. If we are talking at the ‘mass’ level, I believe there is a strong desire to maintain security. I don’t think they are aware of the ethnonationalism but there are politicians who have this kind of agenda. I believe that at the ‘population/civilian’ level safety is surely at the core of this issue.’



Professor Takizawa: ‘In other countries, many claim that the reason why Japan does not accept refugees is due to racial reasons I don’t think that is the case. What I believe is strong is the desire to respect the rules which maintain safety and public order. The feeling that is strongly shared is that of protecting the rules. This is very strong in Japanese society. There is a sense of safety derived from the protection of rules. The low number of accepted refugees is the result of Japan respecting the rules of refugee recognition. There are no people of the Immigration Services Agency who want to ‘maintain the purity of blood’ or that they do not like foreigners. But there is a strong feeling of wanting to protect the rules. It is a societal awareness.’

Q: Why do you believe Japan continues to add new alternative means of protection instead of expanding the interpretation of the refugee recognition to allow more asylum seekers to be officially recognised as refugees?

Professor Farrer: ‘Well, because they don’t want to change it (refugee recognition). They would much rather make ‘additional exceptions’. I think that is what is at the core and this is Japan’s attitude regarding it. Exceptions become the norm in Japanese policymaking. Even the MOJ was talking about how Immigration policy is essentially patch-making’.

Professor Akashi: ‘I have written about this issue previously. To change Refugee Recognition would mean to go against OBs and Ogs of Japanese society and that is certainly not an easy thing to do. Same goes for trials. There is a system of past dependency. So I believe that the approval of the new ‘subsidiary protection’ should be considered a positive thing’.

Professor Takizawa: ‘By the new criterion of refugee recognition (of the new guideline), it is made clear that there is no need for each individual to be persecuted singularly ( to be recognised as a refugee). As to ‘why Japan doesn’t simply relax the requirements for refugee recognition instead of creating new systems for protection’, that’s a problem of interpretation of the rules. If we were to interpret like so (in a more inclusive manner) there wouldn’t be real requirements anymore. It would lead to a very broad interpretation. And if we were to do that, many others such as those escaping poverty, shouldn’t they then be accepted as refugees as well? At that point, there would be no limit to it. The idea is therefore to protect the current rules. But then there would be limitations to those who can be saved. That is why

people such as Ukrainians, who are victims of war, of Afghans who are victims of internal conflict would be put in subsidiary protection.’

Q: Do you believe refugees choose the country they escape to?

Professor Farrer: ‘Immigrants do. They choose the countries they go to but their information is often very limited. But for refugees... Many are desperate for resettlement and for a place to go to. They have very limited choices, constrained choices. So they take whatever comes their way. Bureaucrats would tell you these people have no reason to come to Japan and that Japan is not attractive to those people, but many were encouraged by the UNHCR to come and so they did. People might not know how difficult it is (to enter Japan) and they do not have a lot of information when escaping Japan.’

Professor Akashi: ‘There are people who cannot choose. The people who can choose, choose. But there are some who can’t. I believe that is the reality of it.’

Professor Takizawa: ‘They do choose. Clearly, they do. Obviously, there are various levels to it. There are times when the options are limited. But it is a fact that they do not choose Japan, it is never the first option. There is in fact a phenomenon of ‘Japan passing’. Oftentimes, Japan is not included within the possible options. Some come by acquiring a tourist visa, as those are simply obtained and then resettle in third countries.’

Q: Do you believe that a high number of Ukrainian evacuees was welcomed due to the fact that the framework for ‘Subsidiary Protection’ had already been discussed in 2014?

Professor Farrer: ‘I am not sure about whether a high number of Ukrainian evacuees were welcomed since I am not sure the implementation of the subsidiary protection was ready at the time of their arrival, but I am very glad to see this category being implemented.’

Professor Akashi: ‘I hadn’t thought about that. Accepting Ukrainian evacuees seemed a move based on foreign policy image. I think it’s closer to the truth that the ‘Subsidiary Protection was solely created to accept Ukrainian evacuees.’

Professor Takizawa: ‘It was because the framework already existed, that it was possible to welcome Ukrainian refugees. I believe that when the ‘Subsidiary Protection ‘will be effectively ready, all the Ukrainian evacuees who are currently under ‘Designated Activities’

will be transferred to ‘Subsidiary Protection’. While it cannot be said that the framework was discussed because of Ukrainian refugees (as it had been already in 2014), it is very valid to claim that the Ukraine refugee crisis has sped up and led to the final ‘creation’ of the subsidiary protection category.’

Q: What do you think should be done for the future of the ICRRA?

Professor Farrer: ‘I think Japan needs to recognise immigration and institutionalise it, and to stop hiding behind these temporary categories because Japan is becoming an immigration country and a destination country for refugees. If Japan accepts immigration it will also be easier to accept refugees because refugees are long-term. I think Japan needs to change some of its practices and needs to have an integration program. But you need immigration first to have integration.’

Professor Akashi: ‘I believe that the idea that it is difficult to welcome refugees needs to change in order to welcome them in the future. And that is what we are doing. We need to design a society for Japan’s second generation. The acceptance of refugees is a ‘give and take’ situation. The first welcomings/acceptances are bound to be difficult. I hope Japanese people will think about making Japanese society good for the years to come and be conscious that the first steps might be hard.’

Professor Takizawa: ‘I think Japan should promote disciplinary humanitarianism and show that disciplinary humanitarianism is possible. Japan is being able to slowly welcome refugees in. Japan was late to accept refugees but as of now it is being able to open its doors carefully and without being subdued by chaos. I think Japan can become an example for ASEAN and the rest of the world. Alexander Betts, who is a leading expert in refugee studies, has expressed very positive expectations for Japan regarding this. I think there is a need to balance the head and heart when addressing the issues of refugee recognition. I think Japan can prove that disciplinarian humanitarianism is possible.’

Q: Do you think Japan is entering a new era regarding the Immigration Control and Refugee Recognition Act?

Professor Farrer: ‘I always see the optimistic side. I did say Japan has changed and I think it will. I do think Japan is entering a new era, and *it has to*.’

Professor Akashi: ‘There are many things to consider but if it were a yes or no question, I would say it is a yes. I study the history of the creation process of these laws so depending on the ‘span’ of what we are considering, the possible answer to the question would vary. It could be necessary to discuss it further but I have said yes. The recent changes since 2018 have made the topics of immigration and refugee recognition a priority.’

Professor Takizawa: ‘Yes. That is clearly a yes. There will not be any turning back not and there can’t be. At the moment it is sort of a Pandora’s box. We don’t know if this will save Japan but as long as there is a controlled opening of doors which includes immigrants too, I believe it will save Japan. I am very positive about that. And not only Japan. I think Japan can become an example for Asian countries. There is a ‘refugee system race’ between Japan and Korea. I think of it as a good competition’.

I have translated and transcribed some of the questions and answers of the interviews I have conducted for the sake of this dissertation. Many are the differences and similarities that can be seen amongst their responses. The topics surrounding Japanese identity and the image of refugees have sparked the vastest variety of views, and the professors have each given their opinions. Perhaps the most interesting results were obtained through the question of what Japan’s actions should be moving forward, as the professors each provided different ideas for what should be done.

Further comments and analysis will be carried out in the following chapter which will discuss the findings of each chapter and compare the obtained data. But I will add that what is extremely important to note is that when asked the final question on whether they believe Japan is entering a new era regarding Immigration Control and Refugee Recognition, all three professors have answered yes and they all expressed optimistic expectations. Professor Farrer has stated that Japan *has to* enter a new era for its own sake, Professor Akashi that because of the recent developments started in 2018, immigration and refugee recognition have become a priority for the country and Professor Takizawa has gone as far as to say that this new era, characterised by Japan’s disciplinary humanitarianism could save Japan.

## Chapter 5: Findings

Having conducted both a quantitative and qualitative discourse analysis, and having also interviewed the experts in the field of Immigration Control and Refugee Recognition, I will be now comparing the final data and results obtained from each analysis and will go on to elaborate the findings.

To begin, in Chapter 2, in which I have conducted a quantitative analysis, the main goal consisted of showing the growth in the protection of both refugees and evacuees and demonstrating that even when there are individuals who cannot be recognised as refugees as they do not fit the 1951 Convention's definition of 'refugee' which is employed in Japan in refugee recognition, they are protected by alternative means. This is especially true for Ukraine evacuees, who did not qualify as refugees as 紛争 (conflict) is not included in the five criteria of the 1951 Convention's definition of refugee. Despite the number of Ukrainian recognised refugees remaining at zero even after the events following the Russian invasion of Ukraine, Japan has indeed provided them protection but by alternative means such as providing them with the 'Designated Activities' status of residence which would allow them to remain within the country for a year.

In the discourse analysis I have conducted on the declaration of the MO, I have provided this section taken from part of the MOJ speech:

'Also, for Ukraine evacuees, who the press is righteously, I think, addressing as 'quasi-refugees', we are creating a new system, the 'complementary protection' which is made to be system design for better acceptance'.

However, this would seem to be a contradiction. As a matter of fact, in the subchapter concerning 'Subsidiary Protection', I have proved that the category which was approved as part of the revision bill which passed on the 9<sup>th</sup> of June 2023, had already been in the works since 2014, when the Japanese government, worried about the future possibilities of inadequacies in providing protection in the event of a refugee crisis that could reach Japan, discussed the possibilities and the need of the creation of a system of subsidiary protection to protect those in need.

What seems like a contradiction is a key element in answering one of the two main research questions of this dissertation which is on how the recent refugee crises of Afghanistan, Myanmar and Ukraine have impacted Japan's ICRRA. The research conducted indeed shows that the 'subsidiary protection' had been suggested in 2014 but it remained frozen for almost ten years, and the statement given by the MOJ is that the category was 'created for the protection of Ukrainian evacuees'. This connection suggests that while the framework had been in the works, the creation itself was finalised as a mean to protect the Ukrainian evacuees. Furthermore, in one of the questions asked to the Professors regarding the implementation of this new category, the professor answered that 'it was because the framework already existed, that it was possible to welcome Ukrainian refugees. While it cannot be said that the framework was discussed because of Ukrainian refugees (as it had been already in 2014), it is very valid to claim that the Ukraine refugee crisis has sped up and led to the final 'creation' of the subsidiary protection category.' So while the framework had been proposed, it can be said that it was indeed the impact of the Ukrainian wave to finalise the creation of said category of protection. Furthermore, this analysis would debunk the contradiction and instead confirm that the Ukrainian refugee crisis did influence change within the ICRRA.

The numbers prove that in recent years, especially from 2020 and on, Japan has been providing protection like never before, both through the refugee recognition system and other means, such as the Designated activities status of residence. In Chapter 2 I have shown the exponential increase in the numbers of individuals recognised as refugees and that of others who are protected under designated Activities and I have shown that in 2022, a new record of refugees was accepted in Japan, with the number mainly composed (72,77%) by the 147 Aghan refugees recognised in 2022. The analysis focused not only on proving the number of protected individuals increased but also on comparing the nature of the protection the various asylum seekers were granted by explaining in detail the characteristics of refugee recognition, Special Permission to Stay and 'Designated Activities'. In the end, the numbers obtained from the quantitative analysis suggest that the external impact of the recent refugee crises have impacted Japan's protection system. This can be seen in the escalating number of recognised refugees who have increased in a never-before-seen manner. Furthermore, I have demonstrated that many of the Ukrainians fleeing from the conflict in their home country,

have been officially accepted in Japan and have been granted a ‘Designated Activities’ status of residence.

I also have shown that between the years 2020 to 2022, no Ukrainians were recognised as refugees, and by conducting a discourse analysis on the Guideline on the Determination of Refugee Status, it was explained how the term ‘refugee’ employed in the refugee recognition system in Japan does not recognise ‘conflict refugees’ as refugees, since the term is based on the definition provided in the 1951 Convention. However, having realised that the limiting interpretation of the word refugee limits in turn the number of those whom Japan can legally protect, Japan has issued, in March of 2023, the Guideline on the Determination of Refugee Status which reviews the term ‘persecution’ on which the evaluation is based. In this guideline, the term ‘persecution’ has been deemed to include other kinds of circumstances, or persecutions based on gender discrimination and sexual minority under the general term of ‘persecution’. Furthermore, I have translated and reported a statement of the MOJ released on the 24<sup>th</sup> of March 2023, where the Minister himself stated that: ‘the guideline is not a criterion of judgement itself, but by clarifying the points to be taken into account when determining refugee status, it will increase transparency and improve credibility, which has the effect I mentioned earlier. However, now that the points to be taken into account when determining refugee status have been sorted out, it is expected that applications for refugee status will be made based on these points, and as a result, there is a possibility that the number of cases of recognised refugees will increase.’

Moreover, considering that on the 13<sup>th</sup> of June 2023, the MOJ declared in a press conference that: ‘Also, for Ukraine evacuees, who the press is righteously, I think, addressing as ‘quasi-refugees’, we are creating a new system, the ‘complementary protection’ which is made to be system design for better acceptance’, it is proved that the new system of ‘subsidiary protection’ was created for the acceptance of Ukraine evacuees. As I explained in the following sub-chapter, this seemed at first to provide a contradiction, based on the fact that in the sub-chapter ‘Subsidiary Protection’ I have demonstrated how the framework for the implementation of this category had already been discussed in 2014. However, by conducting a discourse analysis on the document titled ‘Report on the evaluation on the review of the direction of the refugee recognition system’, and by comparing its findings to that of the MOJ

Declaration, I have shown how the framework was indeed discussed already in 2014, but it was the Ukrainian refugee crisis which prompted the final creation and implementation of this category. This is also supported by the answer given during the interviews by Professor Takizawa, who answered:

Consequently, while it would be incorrect to claim that the Ukrainian refugees have set the basis for the creation of this new protection category, it was indeed the force behind the finalisation of it. As suggested by Putnam's two-level game theory, I have demonstrated how the 'negotiation' of the creation and subsequent implementation of this protection category was both influenced by an external, international cause and an internal one. In order to live up to the standards of the number of refugees recognised, and overall the number of protected individuals under persecution provided by other international actors, such as regional organisations and states, and to be able, at the same time, to protect the public security which I have demonstrated to be central to what can be defined as 'Japanese identity', Japan has implemented a new category of protection based on disciplinary humanitarianism which consists in a balance of 'head and heart' that some consider as one of, if not the most appropriate solution when it comes to implementing new protection for refugees in international terms (Betts & Collier). This way, while Japan will be able to increase the number of individuals it can legally protect and remain consistent with the adherence to International Treaties based on the Protection of Human Rights, it aims to protect public safety by introducing a new category of protection. As a matter of fact, the reason behind the decision to add a new category instead of revisiting the interpretation of the word 'refugee' completely, was done to prevent a too wide interpretation of the term which could, in Japan's eyes, jeopardise the stability of the 'public security' so central to Japanese society. As I have cited above, this was specified in the 2014 document where at the bottom of the section on recommendation it is stated that: 'For the introduction of the (2) recommendation, [...] the impact on the lives of the people of our country is to be considered, such as the safety and security of the population'.

It can be therefore said that, in Putnam's terms Japan has negotiated the creation of said categories at both the international and national level.



The findings here listed were derived from the quantitative analysis conducted on the number of protected individuals under the Japanese ICRRA, the discourse analysis conducted on the various documents including the transcripts of the Diet Session on the ‘Proposed Bill for Partial Revision of the Immigration Control and Refugee Recognition Act’ of April 21<sup>st</sup> 2023, the declaration of the press conferences of Minister of Justice of 2022 and 2023, the ‘Guideline on the Determination of refugee Status’, and the ‘Report on the Evaluation on the Review of the Direction of the Refugee Recognition System’, and the interviews conducted with the experts on the Japanese ICRRA, provide extensive data to support the claims of this thesis and provide the necessary material to answer the research questions which were set at the beginning of this dissertation and to test the derived hypothesis.

Finally, to answer the two main research questions, I will now propose them here again:

RQ1: Is Japan entering a new era regarding Immigration Control and Refugee recognition?

RQ2: How have the recent refugee crises of Afghanistan, Myanmar and Ukraine influenced the expansion of human protection of the Japanese ICRRA?

The hypothesis which was derived was: The recent refugee crises, particularly the Ukrainian refugee crisis has influenced the creation of an alternative mean of protection in Japan’s ICRRA.

I will begin by answering RQ2, as the answer to RQ1 can only be argued based on the result of RQ2. The research conducted, which was comprehensive of quantitative and discourse analysis, has shown clearly that the statistics derived from the data prove that the numbers of individuals protected under refugee recognition and alternative means have been rising quickly, especially during the last years from 2020 to 2022, and that many of these individuals are from the Afghanistan and Myanmar refugee crises and a record number of accepted refugees in 2022, of which 147, corresponding to 72,77% were composed by Afghan refugees. This would therefore suggest a higher effort on the Japanese part to protect not only refugees but also others escaping persecution, as many of the protected individuals are protected through alternative means such as under the ‘Designated Activities’ category. The results obtained through this quantitative analysis coincide with the results of the discourse analysis, which shows that while the framework for the new category of

‘Subsidiary’ protection had already been discussed in 2014, the implementation was finalised to ensure the protection of Ukrainian evacuees. Furthermore, the analysis of the Guideline on the Determination of Refugee Status’ shows that there have been changes in the interpretation of the term ‘persecution’ which will allow for a higher refugee recognition rate in the future. The results obtained from both the quantitative and discourse analysis are supported by the expert's Professors opinion. To quote one, Professor Takizawa has gone as far as to say that this new era, characterised by Japan’s disciplinary humanitarianism could save Japan.

To conclude, based on the obtained data from the conducted research, it is possible to confirm the main hypothesis as the thesis has shown that the Ukraine refugee crisis has, without doubt, impacted Japan’s ICRRA and was a key component in the creation of the ‘Subsidiary Protection’ category. Furthermore, having considered the findings discussed above, based on the different analyses conducted, it can be argued that Japan is indeed entering a new era regarding Immigration Control and Refugee Recognition.

## Conclusions

To conclude, this dissertation has shown through various methods of analysis that change is occurring within Japan's ICRRA. Based on Putnam's two-level-game theory, I have argued how the creation of the new 'Subsidiary Protection category, which is meant to protect those who do not fit the term 'refugee' employed in Japan's refugee recognition system which is based on the definition provided in the 1951 Convention, was the result of negotiation at both the international and national level.

The data which I have provided was elaborated based on an array of primary and secondary sources. The material used to obtain the data through the quantitative analysis on the number of individuals protected under refugee recognition and alternative means such as 'Designated Activities', was taken from the database of the Immigration Services Agency of the Ministry of Justice. This material was then elaborated, and I conducted calculations and provided several visual representations of this data in order to provide extensive and accurate material to then later re-examine the findings by comparing the results with those of Chapters 3 and 4.

The discourse analysis was conducted on several different documents and material collected from different sources. The transcripts of the Diet Session of April 21<sup>st</sup> 2023 on the 'Proposed Bill for Partial Revision of the Immigration Control and Refugee Recognition Act' were taken from the Website of the House of Representatives and then translated. The declaration released by the MOJ was collected and put together by extrapolating the transcripts from the website of the Ministry of Justice, where the documents of 'Guideline on the Determination of Refugee Status' and the 'Report on the Evaluation on the Review of the Direction of the Refugee recognition System' were also found. The discourse analysis conducted on these documents supported the results found through the quantitative analysis and showed that, following the refugee crisis, new alternative methods of protection were set into place, such as the 'Subsidiary Protection' and that the term 'persecution' was updated with a new interpretation of the term which includes new persecutions and circumstances to be taken into account when conducting evaluations on refugee status. The research has shown that these measures were implemented to ensure the protection of those who are in need of it and

to allow for more refugees to be recognised. The discourse analysis has also shown that the final implementation and approval of the category was done due to the impact of the recent refugee crisis while the framework of said category had already been discussed back in 2014.

This was also backed up by the answer provided by Professor Takizawa in the interviews, who, when asked whether an unexpectedly high number of Ukrainian evacuees was accepted in Japan was due to the incoming implementation of the new ‘subsidiary Protection’ category, stated that ‘While it cannot be said that the framework was discussed because of Ukrainian refugees (as it had been already in 2014), it is very valid to claim that the Ukraine refugee crisis has sped up and led to the final ‘creation’ of the subsidiary protection category.’ For Chapter 4, in order to provide original data, I have conducted interviews with experts in the field of both Immigration Control and Refugee Recognition. The interviews were conducted both in English and Japanese and a selection of questions and answers to be featured within the thesis were made. All the documents featured within this dissertation which were only available in Japanese were translated by me.

Having then analysed the data and discussed the findings, I have answered the researcher's questions which were: ‘Is Japan entering a new era regarding Immigration Control and Refugee recognition’ and ‘How have the recent refugee crisis of Afghanistan, Myanmar and Ukraine influenced the expansion of human protection of the Japanese ICRRA?’.

On the basis of the findings of this thesis it is possible to answer the research question and confirm the hypothesis proposed at the beginning of the dissertation and claim that:

While it cannot be proved that the refugee crisis of Afghanistan and Myanmar had a direct influence on the changes prompted by the approval of the revised bill on the 9<sup>th</sup> of June 2023, the research conducted in this thesis shows that the Ukraine refugee crisis has influenced and was the key to the final implementation of the category of ‘Subsidiary Protection’. And while it is not possible to show a direct connection, the numbers and statistics obtained through the quantitative analysis, heavily suggest that the recent refugee crisis in Afghanistan, Myanmar and Ukraine has impacted Japan’s ICRRA as in the year 2022, a never before registered number of refugees was recognised in Japan, of which 147, corresponding to 72,77% were composed by Afghan refugees.

Therefore, this thesis does claim that Japan is indeed entering a new era regarding Immigration Control and Refugee Recognition and that the data obtained through quantitative analysis and discourse analysis, which is also supported by the answers provided by the interviewed Professors that the Ukraine refugee crisis has influenced the expansion of the scope of protection of the Japanese ICRRRA and has been a key component in the final implementation of the category of ‘Subsidiary Protection’ which the dissertation shows to have been ideated in 2014 for the protection of those in need of protection who fall out of the scope of the definition of ‘refugee’ provided in the 1951 Convention employed in Japan’s evaluation of refugee recognition Status. This proves that the hypothesis proposed in the introduction is indeed true and can be argued to be further proof that Japan is indeed beginning a new era of Immigration Control and Refugee Recognition’.

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## Acknowledgements

First, I would like to thank my supervisors, beginning with Prof. Menegazzi, who has been extremely kind and patient throughout the development of this thesis. But most of all, I would like to thank her for letting me write about a topic so close to my heart and for trusting me to deliver a thesis I could truly be proud of. I had wanted for years to write my Master thesis on Japan and I truly cannot thank her enough for letting me and trusting me.

Next, I would like to thank Prof. Lemaire, who has shown me exceptional kindness at every corner. She has provided me with numerous materials and has always provided me with kind words of encouragement. From the start she had high hopes for this thesis and her encouragement pushed me to complete this memoire.

I would like to thank the co-supervisor, Prof. Giordano, as it was through his lectures which were always equipped with numerous visual data representation that made me realise how important they are when comparing the data and statistics of different countries and pushed me to incorporate many in this thesis. It was also by reading again and again his papers that I learnt how to properly compare said data, as I did in the chapter on quantitative analysis data of this thesis.

I would like to thank Prof. Orsini, whose lectures I found to be the most interesting and engaging out of all the courses at ULB, for accepting to evaluate my thesis. I have truly enjoyed each class and I will keep in mind what I learnt in his course with me always.

I will like to thank Professor Takizawa, who has been extremely supportive throughout the development of the dissertation. From the very beginning he has trusted my judgement and encouraged me through each and every step of the way and has taken time to meticulously explain everything and more that I needed to know to write a thesis that was accurate and innovative. I thank him from the very bottom of my heart for having believed not only in the potential of this thesis, but also in mine.

I would also like to thank Professor Akashi and Professor Farrer who have kindly accepted to be interviewed alongside Professor Takizawa. It was because of their expertise that I could deliver a thesis I am truly proud of. Thank you for having gifted me your time and your knowledge and I hope to be able to thank you soon in person.

I want to thank Professor Botta, who supervised my Bachelor thesis. When I was then going through very dark times, he has gifted me the words I needed the most and believed in me, encouraging me to be what I could have been, and am today. I know that without the words he gifted me then, I would not be delivering this thesis. Thank you for believing in me before I could. I would not be an understatement to say I am who I am today because of your kind words.

I would like to thank my family for having me gifted the possibility of this education and for having supported my year abroad in Belgium which has allowed me to grow immensely as a person.

And now I would like to thank the people who accompanied me throughout this incredible journey; all the students with whom I got to live this experience in Belgium with and my friends in Rome. Luca, Costanza, Lavinia, Giulia, Leonardo, Giorgia, Gaia, Marco, Andreea, Pierre-Alexis, Alexandra, Anastasia, Ilaria, Aurora, Edoardo, Dario, Andrea, Katty, Isabel, Saki, Federica, Kae, Maho, Kei, Serina, Maya, Yuuko. Thank you all for supporting me and having been a part of my journey.

A special thank you needs to be dedicated to the other half of my soul, to the half-shared neuron, my roommate and my very best friend. Nicola, I would not be the person I am today without you. You have guided me through dark times, shared laughs and tears, and a big chunk of our still brief lives. You have, and still believe in a potential I had never seen in myself before. I am able to always push for more because of you. I allow myself to be greedy because of you. I have begun to make peace with myself because of you. Whether I am under a bright starry sky or a stormy one, you have been my compass. I know you are

meant for such greatness neither of us can even fathom. I wish you all the love all the worlds can give you.

Thank you.

A final thank you goes to myself. Thank you to my body for having supported me this far, and for my soul to have pushed me so far. Through this year, Elena and Amare have finally begun to make peace within me and I have learned I can be so much with them holding hands. To the me of the past, can you believe it? We have made it so far.

To those who are fighting for their place in the world, to the great sights I am yet to see, to the love I have been gifted and to the love I am to give, to the love that has brought me here, to the future I did not believe in and now anticipate with joy, thank you.

What will the future hold now?

I wonder, I wonder.

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