

Protection of the Human Rights of Refugees in Japan: from the perspective of  
Islamic Law and International Refugee Law - the Rohingyas as a case study

by

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A Master's Thesis Presented to the Faculty of Osaka Jogakuin University  
Graduate School of International Collaboration and Coexistence in the 21<sup>st</sup> Century,  
in Partial Fulfilment of the Requirements for the Degree of Master of Arts.

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January 31, 2024

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### Abstract

This research examines the policy of human rights protection of refugees in Japan which is solely based on the 1951 Refugee Convention. In an evolving global context, the definition of refugees that the Convention provides doesn't seem to cover all the individuals who seek refuge: does the Refugee Convention possess a comprehensive framework that adequately addresses the protection of human rights for them? Considering the study of UNHCR suggests the significance of Islamic Law in the perspective of human rights, it will discuss the similarities and differences between Islamic Law and International Refugee Laws. Examining the case of Rohingya refugees in Japan emphasizes the importance of interpreting refugee status more broadly than stipulated by the Refugee Convention. Ultimately, it will suggest that Japan should extend the definition of refugee beyond the 1951 Refugee Convention by referencing to Islamic and International Refugee law.

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### I. Introduction

In 2009, UNHCR implemented a comparative study of differences between Islamic Law and International Refugee Law to argue that there are humanitarian principles which Islamic Law consolidates, but International Refugee Law doesn't cover in the perspective of right to asylum. UNHCR (2009) suggests "The deeply rooted Arabic traditions and customs have, for a very long time, served as a solid foundation for protecting human beings and preserving their dignity." It also points out "More than any other historical source, the Holy Qur'an along with the Sunnah and Hadith of the Prophet of Islam are a foundation of contemporary refugee law," which emphasizes the significance of Islamic Law in the view of human rights.

Why has UNHCR conducted such a study? As the study (UNHCR, 2009) mentions, the majority of refugees worldwide are Muslims today. The research highlights the fair and tolerant principles of Islamic Shari'ah in its treatment of refugees, emphasizing its strong concern for their well-being and interests while affirming human dignity and the right to a decent and free life. The study extensively explores Islam's precedence in this area, showcasing its distinctive and prescribed rules. It contrasts Islam with legal systems, particularly in the United States and South Africa, that have adopted discriminatory practices based on color or race. Western thinkers recognize Islam's honorable stance against racial discrimination, some even attributing the spread of Islam to its prohibition of such discrimination.

To draw upon Islamic law as one of the references of human rights protection seems to be an effective way to improve the protection in Japan.

One of the problems refugees face is the number of their acceptance rate. Refugee issue is one of the most serious problems to solve in the world. The United Nation High Commissioner for Refugees (2023) reports that there are 110 million people who are forcibly displaced worldwide: 62.5 million of them are internally displaced, 36.4 million are refugees, 6.1 million are asylum seekers, 5.3 million need international protection. To respond to this, a number of countries have been accepting them as refugees. As developed economies, G7 countries have been accepting asylum seekers as refugees: Germany accepted 46,787 refugees, the U.S. accepted 46,629, France accepted 41,681, Canada accepted 30,598, the U.K. accepted 18,551, Italy accepted 7,193. However, looking at the number of the whole population displaced forcibly, it is apparently not enough to save all of them.

Compared with other G7 countries, the number of refugee recognition in Japan is very limited: according to UNHCR (2022), Japan recognizes 203 as refugees, which is relatively very low. In Japan, the Immigration Services Agency plays the main role for refugee recognition. It states that "the term 'refugee' refers to individuals defined by the provisions of Article 1 of the Refugee Convention or Article 1 of the Protocol (Immigration Services Agency, n.d.)." However, there are opinions against the system adopted in Japan; Satoshi Yamamoto (2016) argues that it is important for Japan to establish a new framework and to adopt a more flexible interpretation of the Refugee Convention to address these evolving challenges.

The number of refugee acceptance is not the only problem that Japan faces, but also the treatment of foreign citizens based on the current Immigration Control Act. On March 6 of 2021, a 33-year-old Sri Lankan woman named Wishma Sandamali died at the Nagoya Immigration and Residency Management Bureau's facility. She was not an asylum seeker but had been detained for illegal stay. Due to a stomach illness caused by extreme stress, she lost 20 kilograms during her detention. Her health had continuously deteriorated due to severe stress, and in the days leading up to her death, she was reportedly vomiting blood (BBC News Japan,

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2023). She repeatedly pleaded to be taken to the hospital and requested provisional release, but both requests were denied, which an investigative report by the Immigration Services Agency in August 2021 concluded that there was a lack of awareness of human rights among the staff at the detention facility, and details of Wishma's medical condition were not adequately communicated (BBC News Japan, 2023).

It is essential to note that refugee protection is a complicated issue involving political, economic, geopolitical, cultural, and religious factors. However, it would be critical to examine whether Japan's response to refugee protection, which is solely based on the 1951 Refugee Convention, is sufficient from a perspective of human rights. We could address this issue from the operational point of view such as how relevant articles of the 1951 Refugee Convention should be interpreted and implemented within the national legislation system. That would be also one way to analyze and consider how we could better protect the human rights of refugees. In consideration of the preliminary insights obtained from the UNHCR study, the present discourse attempts to engage a fundamental question: does the Refugee Convention possess a comprehensive framework that adequately addresses the protection of human rights for individuals seeking refuge? It would be also beneficial to examine a more fundamental question, and that is, whether the 1951 Refugee Convention is a sufficient instrument to protect the human rights of refugees.

Taking the case of the Rohingya refugee in Japan as an example, this paper examines whether the 1951 Refugee Convention is a sufficient instrument to protect the human rights of refugees in comparison with European legal systems and Islamic law. By doing so, it attempts to raise issues regarding Japan's refugee acceptance from the perspective of the concept of protection of human rights of refugees.

In the following Chapters, this paper first examines the basic concept of refugees and protection of their human rights in Chapter II. Chapter III will illustrate deficits of International Refugee Law with respect to the protection of human rights. In Chapter IV, it will discuss the circumstances of the Rohingya in Japan and the difficulties that they are facing and finally in Conclusion it suggests that Japan should extend the definition of refugee beyond the 1951 Refugee Convention by referencing to Islamic and European law. The research is based on document analysis.

## II. Concept of refugees and protection of their human rights

This section examines Japan from the view of refugee and human rights protection, providing an overview of the 1951 Refugee Convention and the Common European Asylum System as key international instruments for human rights protection. Additionally, it explores the role of Islamic law and teachings which can be a foundation of contemporary refugee law.

### 1. The 1951 Refugee Convention

The 1951 Refugee Convention, also known as the Convention Relating to the Status of Refugees, is a basis of international refugee protection. The international treaty that was adopted on July 28, 1951, responding to World War II. This treaty (1951) defines the legal

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framework for the protection and rights of refugees in the article 1, paragraph A, that individuals who have fled their home countries due to well-founded fears of persecution based on race, religion, nationality, political opinion, or membership in a particular social group. The Convention outlines the rights and obligations of refugees and the countries that host them. The article 33 of the Convention (1951) holds the non-refoulement principle, which prohibits refugees from returning to countries where they would face persecution and obliges signatory states to provide refugees with access to education, employment, and social services.

The Convention provides the legal framework for the UNHCR's work in protecting and assisting refugees. The United Nations High Commissioner for Refugees (UNHCR) is an essential institution in the global effort to protect and assist refugees and displaced persons. The UNHCR was founded in December 1950 by the United Nations General Assembly No.20 (A/1775) in response to the massive displacement and suffering caused by World War II primarily to provide protection and assistance to European refugees (UNHCR, n.d.). Initially, the organization's mandate was temporary, but it quickly became apparent that the world needed a permanent institution to address the ongoing refugee crises. The UNHCR's mission is to safeguard the rights and well-being of refugees. Its core mandate is to provide protection, shelter, and assistance to refugees and to find lasting solutions to their circumstances (UNHCR, n.d.).

The 1951 Refugee Convention remains a basis of international refugee law and continues to guide the global community in its efforts to provide sanctuary and support for those fleeing persecution and conflict. The sanctuary is called asylum which originally comes from the Greek word "asylon," meaning "inviolable" or "safe from harm" and is a legal status and a fundamental human right granted by a government to individuals who are fleeing persecution, violence, or other forms of harm in their home country. It provides protection to those who are in circumstances stated in the article 1 of the Refugee Convention. Asylum seekers typically seek refuge in another country, where they can apply for asylum and, if approved, gain the right to live and work there without fear of deportation to their home country. The granting of asylum is based on the principles of international law including the Refugee Convention in the countries which have joined the Convention, aimed at providing a safe place and allowing them to rebuild their lives and escape the threats they face in their places of origin.

### 2. Common European Asylum System

The European Union (n.d.) has its own system to serve as an asylum for individuals escaping persecution or danger in their home countries beyond the contents of Refugee Convention. The 1951 Geneva Convention concerning the protection of refugees stipulates the right to seek asylum as both a fundamental right and an international duty for nations. Within the EU, a zone characterized by unrestricted borders and the freedom of movement, member states uphold common core principles and a collaborative approach to ensure high levels of protection for refugees, moreover, it is the shared responsibility of EU nations to extend a respectful reception to asylum seekers, ensuring their equitable treatment and the consistent evaluation of their cases based on standardized criteria and the procedures must be impartial, efficient across the EU, and resistant against any misuse (European Commission, n.d.).

In 2020, the European Commission proposed a plan to improve the Common European Asylum System, emphasizing effective asylum processes, collaborative responsibilities among member states, and enhanced partnerships with non-EU countries. Since 1999, the EU has introduced the Common European Asylum System. In the year 2020, the European Commission (1999) put forth a plan to improve this system by adopting a

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comprehensive strategy in relation to migration and asylum policies, underpinned by three primary principles: well-organized asylum and repatriation processes that operate effectively, collaboration and common obligations among member states, and reinforced collaborations with countries outside the EU. The Common European Asylum System, defined in Article 78 of the EU Treaty, aims to provide appropriate status to third-country nationals seeking international protection, in accordance with the 1951 Refugee Convention and related agreements. It safeguards those falling under the UN Refugee Convention's refugee definition and others requiring protection under international human rights treaties. Protected individuals can be categorized into two groups. First, those who fear "persecution" due to criteria outlined in the Refugee Convention: race, religion, nationality, social group membership, and political opinion. Second, the system seeks to establish common policies for protection, supplementary protection, and temporary protection to ensure adherence to the non-refoulement principle stated in Article 78 of the EU Treaty.

Historically, the Common European Asylum System maintained consistent standards for asylum applicants within EU countries. However, due to significant inflows of people, particularly after 2015, there's been a rise in suggestions to tighten criteria within the Dublin Regulation and the European Common Asylum System. The Dublin Regulation is a set of European Union regulations that determine which EU member state is responsible for examining an asylum application made by a third-country national or stateless person seeking international protection within the EU (European Commission, 2020). These regulations are designed to establish a clear and consistent framework for addressing asylum claims and to prevent individuals from applying for asylum in multiple EU countries. Germany and France proposed changes to Dublin Regulation, eliminating substantial criteria for returns and introducing mechanisms for assessing applications during periods of mass migration. The "safe countries" concept and its implications in the asylum process have been subjects of discussion within the EU. While some nations publicly list safe countries, criticism has arisen that this could restrict refugee applications.

The Dublin Regulation ensures all asylum seekers can apply in any EU nation, but it assigns responsibility to the first country accepting an application (UNHCR, n.d.). This notion raises concerns about "chain refoulement," potentially violating the non-refoulement principle (Ando, 2021). In response, there have been ideas to unify the "safe countries" concept at the EU level. The European Commission proposed a consolidated list of safe countries, yet concerns have emerged due to potential human rights violations and the intricate challenge of ongoing safety assessment. Though aiming to streamline the asylum process, there are worries about infringing upon human rights and labeling individuals from specified "safe countries." Striking a balance between fairness, evolving circumstances, and potential non-refoulement violations presents a complex task (Ando, 2021).

The European Union, guided by the 1951 Geneva Convention and the Common European Asylum System, makes a dedicated and concerted effort to offer a safe and secure refuge for individuals who are fleeing persecution or danger in their home countries. The challenges arising from increased refugee inflows post-2015 have prompted discussions on amending the Dublin Regulation and the asylum framework. The notion of "safe countries" has sparked debates, with concerns about potential restrictions on refugee applications. Efforts to address these concerns include proposals for a consolidated EU-level list of safe countries, although balancing streamlined processes with human rights safeguards remains a complex challenge. As the EU navigates these intricacies, maintaining fairness, adaptability, and

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preventing non-refoulement violations are crucial for a just and effective asylum system.

### 3. Islamic Law and teaching

As UNHCR highlights the significance of Islam for refugee protection, Islam has its law and teaching focusing on protection of asylum seekers. Islamic law, commonly known as Sharia, is a comprehensive legal and ethical framework that governs various aspects of life for Muslims around the world. Rooted in the teachings of the Quran and the Hadith, the sayings and actions of the Prophet Muhammad, Sharia is a complex and dynamic system that encompasses religious, moral, social, economic, and legal principles.

It derives its authority from two primary sources: the Quran and the Hadith. The Quran is the holy book of Islam, believed to be the literal word of God as revealed to the Prophet Muhammad. It serves as the primary source of Islamic law, providing guidance on matters of faith, morality, and human conduct. Quranic verses address a wide range of topics, from personal piety and family law to criminal justice and economic ethics.

The Hadith is a collection of the sayings and actions of the Prophet Muhammad. It complements the Quran by providing context and practical applications of its teachings. While not equal in authority to the Quran, the Hadith plays a crucial role in shaping Islamic jurisprudence.

Sharia is guided by several fundamental principles: such as Monotheism which is the central to Islamic belief is the concept of monotheism. All aspects of life, including the legal system, must reflect the absolute oneness of God. Islamic law aims to establish equity, fairness, and protection of individual rights. It emphasizes that all individuals, regardless of their social or economic status, are equal in the law. Sharia seeks to promote the common good and public welfare. It balances individual rights with the collective interests of the community. In cases where the Quran and Hadith do not provide clear guidance, Islamic jurists rely on consensus among scholars and analogical reasoning to derive legal rulings.

These tools allow Sharia to adapt to changing societal conditions. Sharia governs various aspects of life, including: family law: Sharia outlines rules for marriage, divorce, inheritance, and guardianship. It seeks to ensure the rights and responsibilities of family members are respected. Islamic criminal law, known as Hudud, deals with offenses against God, such as theft, adultery, and apostasy. It prescribes severe punishments, including flogging and stoning, but requires stringent evidence and due process. Sharia promotes ethical economic behavior, forbidding practices such as usury and exploitation (BBC, 2009). It encourages fair trade and charitable giving. Sharia guides personal conduct in matters such as dietary restrictions, prayer, and hygiene (BBC, 2009). It also addresses issues of modesty and morality. Sharia remains relevant in the lives of millions of Muslims worldwide. While some Islamic-majority countries implement Sharia as state law, others adopt a hybrid legal system that combines civil and Sharia law (Moore, 2012).

In Islamic Law, the concept of a refugee is not explicitly defined the same as international refugee law. However, Islamic principles and teachings provide guidance on the treatment of migrants, asylum seekers, and those seeking refuge from persecution, oppression, or hardships. The Quran emphasizes compassion, justice, and care for vulnerable individuals, including refugees. While the term "refugee" might not be explicitly used, the principles of providing protection and support to those in need are evident in Islamic teachings. During the early days of Islam, Prophet Muhammad and his followers faced persecution in Mecca, and they migrated to Medina seeking safety and religious freedom. The Prophet provided protection



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and support to these migrants, establishing the principles of asylum and refuge in Islamic tradition. Islamic teachings encourage Muslims to assist those in need, including refugees, and to treat them with generosity. The Quran emphasizes the importance of helping the less fortunate and mentions the obligation to give refuge to those who seek it: "Then, as for the orphan, do not oppress [him]. And as for the petitioner, do not repel [him]. But as for the favor of your Lord, report [it]." (Quran 93:9-11) Furthermore, the Hadith of the Prophet Muhammad emphasizes the importance of showing empathy and compassion to those seeking refuge. Islamic law, Sharia, also includes principles that promote the protection of refugees and their rights. Sharia principles are based on justice, which align with the treatment of refugees in accordance with Islamic teachings.

### 4. Refugee acceptance in Japan

Japan accepts refugees in accordance with the 1951 Refugee Convention which Japan joined on October 3 in 1981 (The Ministry of Foreign Affairs of Japan, 2023). The Convention is also used as the only criterion to accept asylum seekers in Japan, which is argued is not enough.

Criticisms have been made of this Japanese policy. Satoshi Yamamoto (2016) mentions in his research that in light of recent developments in the international community, and considering Japan's position as a member of the international community, it is important to establish a new framework, which should be designed to clarify the criteria for individuals who have sought refuge in our country due to factors such as the deterioration of their home country's situation caused by armed conflicts in various regions around the world, within its immigration law system to provide a refuge opportunity in accordance with international human rights norms. He continues, even in cases where individuals do not qualify as refugees under the Refugee Convention, it is crucial for Japan to identify those who still require international protection to ensure that it provides protection in accordance with International Human Rights Laws (Yamamoto, 2016). Moreover, he adds that given the changing international landscape, especially the increasing visibility of victims of civil wars and armed conflicts seeking refuge abroad, it is essential to demonstrate a responsible stance within the international community through legal reforms (Yamamoto, 2016). In this context, it is advisable to adopt a more flexible interpretation of the Refugee Convention to address these evolving challenges.

In response to such criticism, the Ministry of Foreign Affairs of Japan (2023) explains about refugee recognition and its effect that upon approval to the Refugee Convention encouraged Japan to change its existing immigration laws, introducing a new system for refugee recognition named the Immigration Control and Refugee Recognition Act.

The amendment to the law has sparked intense debates between the ruling and opposition parties. The government aimed for the bill's passage to facilitate swift deportations, primarily focusing on the extension of detention periods in immigration facilities in 2021 (BBC, 2021). However, in the same year, the Japanese government and ruling party announced that they have abandoned the passage of a revised immigration control law amendment that would have reviewed the rules for detaining and deporting foreigners in the current session of the Diet (BBC, 2021).

This decision came after discussions between the ruling and opposition parties broke down over the case that a 33-year-old Sri Lankan woman named Wishma Sandamali died at the Nagoya Immigration and Residency Management Bureau's facility. She was not an asylum seeker but had been detained for illegal stay. According to Japanese media reports,

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Wishma passed away on March 6, 2021, in the detention facility of the Nagoya Immigration Services in Aichi Prefecture, Japan. Wishma, who had overstayed his student visa, was held in custody for seven months after applying for refugee status. Due to a stomach illness caused by extreme stress, she lost 20 kilograms during her detention. Activists who met with her reported that her health had continuously deteriorated due to severe stress, and in the days leading up to her death, she was reportedly vomiting blood (BBC, 2023). She repeatedly pleaded to be taken to the hospital and requested provisional release, but both requests were denied. An investigative report by the Immigration Services Agency in August 2021 concluded that there was a lack of awareness of human rights among the staff at the detention facility, and details of Wishma's medical condition were not adequately communicated (BBC, 2023). The report also indicated that some staff members believed that detainees might feign illness to seek provisional release. This incident led to a postponement of the bill's vote, and it was ultimately scrapped due to the dissolution of the House of Representatives. In spite of this, in March in 2023, a bill with nearly the same content as the one two years ago was reintroduced in the parliament, and today it was approved and enacted in the House of Councilors (BBC, 2023). UNHCR expressed some appreciation for parts of the proposed revision but also noted "very serious concerns" about other aspects of it (BBC, 2023). Activists highlighted this case, shedding light on the conditions of immigration detention facilities in Japan (BBC, 2023).

Regarding such criticism, Immigration Services Agency (n.d.) mentions three issues: deportation avoidance issue, issues surrounding detention, Insufficient system to reliably protect conflict refugees. The current legal framework in Japan restricts the forced removal of foreign nationals under specific circumstances: foreign nationals undergoing refugee recognition procedures are protected from deportation, regardless of their criminal backgrounds or other factors (Immigration Services Agency, n.d.). Some countries decline to accept their own nationals who refuse to leave Japan, despite international law requesting that nations must accept their citizens. Consequently, individuals who refuse to leave cannot be forcibly repatriated to such countries according to current legislation.

A few foreign nationals resisting deportation may engage in disruptive behavior during removal attempts, such as acts of violence or creating disturbances on the aircraft. In such instances, flight captains have the authority to refuse boarding to ensure the safety of passengers and the flight, which enables them to repatriate physically. Under the current Immigration Control Act, foreign nationals who have been ordered for deportation are typically held in detention facilities until their deportation can be carried out. This detention can become prolonged in cases where individuals persistently refuse to leave and misuse or abuse the process for seeking refugee recognition. This extended detention can lead to various issues, including health problems among detainees and requests for early release.

Problems within the detention facilities, such as hunger strikes and refusals of medical treatment, can also arise. The Immigration Control Act provides for a "provisional release" system as the only means to prevent extended detention. However, this system was originally established to temporarily release individuals for health reasons and lacks efficient measures to prevent escape and other issues. Consequently, there have been numerous instances where foreign nationals granted provisional release have escaped.

Individuals displaced by conflicts may not always fit into the definition of refugee in the Refugee Convention and may not qualify as "refugees" under the Convention. The problem arises because there is currently no established system to ensure the protection of individuals affected by conflicts, who should receive similar protection as "refugees" even if they don't fit the Convention's criteria. For instance, in Japan, more than 2,300 Ukrainian

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evacuees received temporary protection based on humanitarian considerations between March 2022 and the end of November 2023 (Immigration Services Agency, 2023). This protection is granted at the discretion of the Minister of Justice as an emergency measure. The challenge lies in developing a more robust system to consistently safeguard people displaced by conflicts and other humanitarian crises, even if they do not meet the strict definitions of "refugees" outlined in the Convention.

On June 9, 2023, during the 211th regular session of the National Diet, the "Act Amending Some Provisions of the Immigration Control and Refugee Recognition Act and the Special Law on Immigration Control for Persons who Have Renounced Japanese Nationality Based on Peace Treaty with Japan" was enacted, and it was promulgated on June 16, 2023.

According to the Immigration Services Agency (n.d.), this amended law includes the creation of exceptions to deportation suspension, the establishment of a deportation order system with penalties, the creation of a supervisory measure system as an alternative to detention, the establishment of a system for recognizing "complementary protection beneficiaries," and the establishment of procedures for applying for special permission to stay. Regarding the creation of the "complementary protection beneficiaries" recognition system, it is scheduled to be enforced from December 1, 2023 (The Immigration Services Agency, n.d.). The creation of exceptions to deportation suspension, the establishment of a deportation order system with penalties, the creation of a supervisory measure system as an alternative to detention, and the establishment of procedures for applying for special permission to stay are scheduled to be enforced by June 15, 2024 (The Immigration Services Agency, n.d.). The amendment of the Immigration Control Act aims three theories: "① Ensure the protection of those who should be protected. ② After that, foreign nationals whose residence is not approved will be promptly expelled. ③ They will not be detained people unnecessarily until they are removed, and if they are detained, they will be treated appropriately." In order to carry out those theories, the Immigration Services Agency sets several plans.

By means of the amendment, a system will be set up to recognize and protect foreign nationals, such as conflict evacuees, who don't meet the strict criteria of refugees under the Refugee Convention. These individuals will be granted "complementary protection" and will have the same status as refugees, allowing them to stay in Japan with a stable long-term resident status.

Procedures for granting special permission to stay will be improved (The Immigration Services Agency, n.d.). This includes clarifying the circumstances considered for granting such permission and providing reasons if it's not granted. While not changing the law, efforts will be made to enhance the refugee recognition system. This includes making the definition of a refugee easier to understand, improving information about refugees' home countries, and enhancing the research skills of staff involved in refugee investigations. These improvements aim to ensure a more effective and fair system for recognizing refugees.

Changes will be made to the current Immigration Control Act (n.d.), allowing for deportation even during refugee recognition procedures in specific cases. These include applicants who have applied for refugee recognition three or more times, individuals sentenced to three years or more in prison, and those linked to terrorist activities (The Immigration Services Agency, n.d.). However, there's an exception to this rule: as long as these individuals provide "documents with reasonable grounds," they may still have their deportation suspended (The Immigration Services Agency, n.d.).

A new system will be created to order certain foreign nationals to leave Japan when there is no legal means to forcibly remove them (The Immigration Services Agency, n.d.). This

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applies to individuals whose home countries do not accept their return and those who have obstructed repatriation on an aircraft. Measures will be established to encourage foreign nationals who should be deported to leave voluntarily. This includes shortening the period until they can re-enter Japan (landing refusal period) for those who meet certain requirements, aiming to encourage more individuals to choose voluntary departure.

Instead of automatically detaining individuals, a new "supervision measures" system will be established. In this system, a chosen person acts as a "supervisor" to ensure that the individual doesn't escape. The decision to detain or use supervision measures will be based on factors such as escape risk and the person's well-being, with periodic reviews every three months to prevent prolonged detention. This replaces the current practice of detaining everyone and moves towards a more individualized approach.

With the introduction of the supervision measures system, the provisional release system will be reviewed. This system originally allowed temporary release from detention for health or humanitarian reasons. The law will now explicitly consider a person's health condition, including consulting with a doctor, when evaluating requests for provisional release.

Measures will be taken to ensure appropriate treatment in detention facilities. This includes hiring full-time doctors by relaxing certain employment requirements and conducting medical exams for detainees every three months. Additionally, staff will receive human rights training, and necessary regulations will be established to guarantee proper treatment within these facilities.

On the other hand, Amnesty International Japan (2021) opposes the amendment of the Immigration Control Law when it was submitted for the first time; Amnesty International Japan has four key recommendations for aligning recent legal amendments with international human rights standards. First, the Immigration of Control Law has to clearly state the reasons for detention in the law by defining when and why people can be detained. Detention should only be used to confirm identity or prevent escape (Amnesty International Japan, 2021).

Second, the law should set a maximum time limit for detention by defining the longest period someone can be held (Amnesty International Japan, 2021). Once this limit is reached, individuals have to be released from detention.

Third, Judicial Review for Commencement and Continuation should be introduced. Article 9(4) of the International Covenant on Civil and Political Rights (1966) guarantees access to the judiciary for those detained. Therefore, the authority deciding on detention should not be the same as the authority responsible for execution. Decisions regarding the legality, necessity, and proportionality of detention should be made promptly by a court of law. If a court determines that detention is illegal, the individual should be released immediately. Judicial review should be conducted regularly or upon the request of the detainee.

Fourth, the law has to follow the non-refoulement principle. Deportation or removal to a country where an individual may face persecution is prohibited under international law. The amendment introduces exceptions to the prohibition of removal for certain categories of asylum seekers and individuals convicted of serious crimes. Amnesty International Japan is concerned that these exceptions may violate the non-refoulement principle. The non-refoulement principle is not only enshrined in the Refugee Convention but is also customary international law that applies regardless of treaty membership. Individuals who have a substantial basis for believing that they would face serious human rights violations upon return should not be subject to deportation under any circumstances. Effective and impartial review should be guaranteed for any decision related to deportation.

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These recommendations aim to ensure that the amendments meet international human rights standards and protect the rights of all individuals, regardless of their immigration status.

The low acceptance rate of refugees in Japan can be observed from the actual figures: Japan Association for Refugees (2022) reports that in 2022, 3,772 people applied for refugee status in Japan, and only 202 of them were granted refugee status, which reached its highest rate, yet the approval rate remains significantly low compared to the total number of applications. On the other hand, 10,143 people were not granted refugee status as a result of initial assessments and requests for examination (Japan Association for Refugees, 2022). In 2022, Germany had 322,831 asylum applicants and recognized 46,787 of them as refugees, the U.S. had 752,693 applicants and recognized 46,629, France had 192,744 applicants and recognized 41,681, Canada had 108,408 applicants and recognized 30,598, the U.K. had 94,729 applicants and recognized 18,551, Italy had 76,910 applicants and recognized 7,193, and Japan had 8,232 applicants and recognized 203; when these are calculated in percentage, they are: Germany 10%, the USA 6%, France 20%, Canada 20%, the United Kingdom 10%, Italy 9%, Japan: 2% (UNHCR, 2022). Needless to say, since each country has different circumstances, it is not simple to compare. However, comparing the refugee recognition rate in Japan with that in other developed countries, it seems the rate in Japan: 2% is relatively low.

According to an article published on the website of The United States Department of State (2023) reports that Professor Emeritus Tanada Hirofumi from Waseda University, an expert in the Muslim community, estimated that as of 2020, the country was home to about 230,000 Muslims, with roughly 47,000 being Japanese citizens. Among this group, the largest concentration of the 380 to 400 Rohingya Muslims in Japan can be found in Gunma Prefecture, located to the north of Tokyo, with some also residing in Saitama, Chiba, Tokyo, and Nagoya, as reported by Zaw Min Htut, President of the Burmese Rohingya Association in Japan (The United States Department of State, 2023).

### 5. Human rights protection in Japan

The 1951 Refugee Convention and the Protocol grant refugees rights and benefits. UNHCR Japan (n.d.) notes those rights and benefits; protection of the physical safety of refugees in host countries, particularly when motivated by racial discrimination or xenophobia, access to the legal system without restrictions in the host country, support for basic physical and material needs, including food, clothing, shelter, and healthcare. Further, it mentions supporting self-sufficiency through access to the labor market and permission for self-employment is beneficial for the host country, especially during the initial stages of refugees' stay when most of them may rely on assistance from others, freedom of movement, enjoying the same level of freedom as the host country's nationals unless it poses specific threats to public order or public health, access to adequate education, including at least primary education, and providing recreational opportunities for refugee children, facilitating the reunification of close family members in the host country as soon as possible, and special measures for the protection of particularly vulnerable refugees, such as women and girls who are at a higher risk of gender-based violence due to their gender (UNHCR Japan, n.d.).

Refugees with identity documents are better able to enjoy the aforementioned rights, especially freedom of movement and protection from refoulement. Host countries have an obligation to issue identity documents to refugees unless they possess travel documents. The Refugee Convention also stipulates that governments must apply the treaty provisions to

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refugees within their territory without discrimination based on race, religion, or country of origin (UNHCR Japan, n.d.).

### III. Islamic law and refugee protection: Deficits of International Refugee Law with respect to the protection of human rights

Going deeper into Islamic law, this Chapter compares it with the international refugee laws, identifying potential deficits of the protection of human rights. It will discuss the basic principles of Islam, the differences between the Refugee Convention and Islamic law, as well as distinctions between the Common European Asylum System and Islamic legal principles.

#### 1. Islam in Japan: Basic information of Islam

Islam's history begins with the life of Prophet Muhammad, who was born in Mecca in 570. He received revelations from Allah through the angel Gabriel over 23 years, which were later compiled into the Quran. Muhammad's message emphasized the oneness of God (Tawhid), social justice, and moral conduct (Cook & Michael, 1983). The early Muslim community faced persecution in Mecca but later migrated to Medina in 622 (known as the Hijra), marking the start of the Islamic calendar. Muhammad's leadership in Medina, the spread of Islam, and military campaigns are significant aspects of this period.

After Muhammad's death in 632, the first four caliphs, known as the Rashidun (Rightly Guided) Caliphs, succeeded him. They were Abu Bakr, Umar, Uthman, and Ali. During this period, Islamic expansion expanded rapidly, reaching regions as far as North Africa and Persia. The Rashidun Caliphs established the foundations of Islamic governance and jurisprudence. The Umayyad Caliphate moved the capital to Damascus and expanded the Islamic empire, including the conquest of Spain. The Abbasid Caliphate established Baghdad as its capital and saw a period of intellectual, scientific, and cultural flourishing known as the Islamic Golden Age.

Various Islamic empires and dynasties emerged, including the Fatimids, Seljuks, and Mughals, each contributing to the spread and development of Islam. The Ottoman Empire, founded in the 14th century, became a powerful Islamic state and lasted until the early 20th century. The Crusades were a series of religious wars between Christian and Muslim forces in the Holy Land. The Mongol Invasions led to the destruction of Baghdad and the decline of the Abbasid Caliphate. Many Muslim-majority regions fell under European colonial rule in the 19th and 20th centuries, leading to significant political and social changes.

In the 20th century, numerous Muslim-majority countries gained independence, with the rise of nationalist movements and decolonization. Contemporary Islamic history includes political developments, conflicts, and the spread of Islam to various parts of the world. Contemporary challenges for Islam include issues of governance, sectarian tensions, and responses to modernization. Various Islamic movements, including political Islam (Islamism), have emerged to address social, political, and religious issues.

In the Muslim way of life, there are five fundamental practices: Shahada (Faith Declaration), Salat (Prayer), Zakat (Almsgiving), Sawm (Fasting), and Hajj (Pilgrimage). Shahada (Faith Declaration) is the declaration of faith that states, "There is no god but Allah, and Muhammad is the Messenger of Allah." This simple statement is known as the Shahada, and it signifies the belief that the purpose of life is to obey Allah alone. This belief is attained

through the teachings and practices of the last prophet, Muhammad. Salat (Prayer) refers to the daily ritual prayers performed five times a day. It is a direct connection between the worshiper and Allah. These five prescribed prayers include recitations from chapters of the Quran and are conducted in the Arabic language, which is considered the language of revelation. However, personal prayers can be done in one's native language at any time.

One of the important principles in Islam is that everything belongs to Allah, and human wealth is considered a trust. The term "Zakat" means both "purification" and "growth." Giving a portion of one's wealth to the needy helps purify one's possessions and promotes the growth of wealth, akin to pruning a tree to encourage new growth. Every year during the month of Ramadan, all healthy Muslims fast from dawn to sunset. Sawm (Fasting) not only involves abstaining from food and drink but also refraining from gossip, arguments, sexual activity, and other inappropriate behaviors. Fasting is not only beneficial for health but also serves as a means of self-purification and self-discipline, redirecting one's focus towards Allah's presence in their life by temporarily giving up worldly comforts.

The Hajj pilgrimage to Mecca is obligatory for those who are physically and financially able to undertake it. Each year, over two million people from various parts of the world gather for this unique event where people of different ethnicities and backgrounds come together. The Hajj typically begins in the 12th month of the Islamic lunar calendar. Pilgrims wear special clothing made of two seamless pieces of white cloth, symbolizing equality before Allah.

The rituals of Hajj have their roots in the actions of the prophet Ibrahim (Abraham), such as circumambulating the Kaaba seven times and walking between the hills of Safa and Marwah seven times. Pilgrims later gather on the plain of Arafat, seeking Allah's forgiveness together, reminiscent of the Day of Judgment. The conclusion of Hajj is marked by the Eid al-Adha festival, where Muslims worldwide celebrate in their finest attire. This, along with the Eid al-Fitr festival marking the end of Ramadan, constitutes important Islamic festivals.

Professor Tenada and others in Waseda University have estimated the number of Muslims living in Japan based on statistics of foreign residents, the Muslim population rate by country, and the membership of the Japan Islamic Association, among other factors. According to the survey, there were approximately 230,000 Muslims living in Japan as of the end of 2020 (Asahi, 2023). Among them, there were about 47,000 Japanese citizens or individuals with permanent residency status due to factors like marriage, which is a significant increase from 10 years ago when the number was between 10,000 to 20,000.

Professor Tenada mentioned, "One notable factor is the increase due to marriages, and it seems that there is also an increase in cases where people convert to Islam." The construction of mosques has also progressed, increasing more than sevenfold in the past 20 years.

## 2. Difference between Refugee Convention and Islamic law

UNHCR (2009) has conducted a study of differences between Islamic Law and International Refugee Law including Refugee Convention, United Nations General Assembly resolution and the Universal Declaration of Human Rights. Islamic Law and International Refugee Law are similar in that both prohibit deportation of refugees and any penalty on them. In addition, both aim to meet the basic needs of refugees and let their family reunite. However, there are clear differences in both instruments.

The following section will demonstrate those differences.

**The right to seek refuge and asylum.**

Based on Islamic Law and in accordance with Islamic teachings, Muslim countries provide asylum for people in their territory without exclusion while International Refugee Law restricts the grant of asylum. Islamic Law stipulates to accept asylum seekers beyond the definition of refugee under Article 1 of the 1951 Convention. Once asylum seekers reached any Islamic territory, they should have the benefit of the right to asylum in all Muslim territories. Islam sees the grant of asylum as a duty, thus refugees, regardless of Muslims or not, should be given treatment certified equally because of humanitarian considerations (UNHCR, 2007), considering dangerous situations where refugees' lives were at risk, and the customs of the generosity of Arabs and Muslims. However, these provisions of asylums have not been applied at present time because Muslims are scattered in several countries. Some countries provide them with the right to asylum, but others do not.

Article 9 of the Universal Islamic Declaration on Human Rights expresses "Every persecuted or tyrannized person shall have the right to seek refuge and asylum. This right shall be guaranteed for each human being, regardless of race, religion, color, or gender." Article 14 of the Universal Declaration of Human Rights states that "everyone has the right to seek and to enjoy in other countries asylum from persecution". However, this right seems not to be involved in the 1951 Refugee Convention, which doesn't mention asylum seekers' right to have it; for instance, the 1951 Convention does not provide asylum seekers with automated or eternal protection (UNHCR, 2009).

United Nations General Assembly Resolution A/RES/50/152 (1996) recognizes that "in many situations, refugee protection was at risk as a result of their rejection, illegitimate expulsion, removal and unjustified arrest, other threats to their physical safety, integrity and welfare, disregard for and failure to guarantee their basic freedoms and human rights," in other words, international protection of refugees may be now at risk.

Providing asylum for refugees, even if their claims are not entirely honest, is important for Muslims. On the contrary, International Law may remove refugee status if someone hides crucial information or if new evidence shows they don't qualify. One example that the Supreme Court of Canada (2005) reports: on November 22, 1992, Léon Mugesera, an active member of a hard-line Hutu political party in Rwanda that opposed ongoing negotiation efforts to end the country's war, addressed approximately 1,000 people during a party gathering. The content of Mugesera's speech led to Rwandan authorities issuing an arrest warrant against him. Consequently, he fled the country shortly after the speech. In 1993, he successfully applied for permanent residence in Canada. However, in 1995, the Minister of Citizenship and Immigration in Canada initiated legal proceedings under sections 27(1) and 19(1) of the Immigration Act, arguing that Mugesera's speech incited murder, genocide, and hatred, and constituted a crime against humanity. An adjudicator reviewed the case and concluded that the allegations were valid, resulting in a deportation order against Mugesera. The Immigration and Refugee Board's Appeal Division upheld this decision. The matter was brought before the Federal Court, which dismissed the application for judicial review regarding the allegations of incitement to commit murder, genocide, or hatred. However, it allowed the application on the grounds of crimes against humanity. The Federal Court of Appeal later intervened, overturning several factual findings made by the Immigration and Refugee Board's Appeal Division. The Federal Court of Appeal determined that the allegations made by the Minister against Mugesera lacked foundation, ultimately annulling the deportation order.



### **Status of “Refugees”**

Article 34 of the 1951 convention grants States wide discretionary power to naturalize refugees; "Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. they shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and cost of such proceedings." However, in Islamic states, once refugees are granted the acquisition of a zimmi status, which means protected people status, they are granted the nationality of Islamic States; they can get the same rights and obligations as a Muslim.

### **Family Reunification**

Islamic Sharia and International Refugee Law support family reunification, yet they are different in their local systems. Article 74 of the 1977 First Additional Protocol to the 1949 Geneva Convention states that "a state shall facilitate in every possible way family reunification". On the other hand, Islam prohibits separation of family members from a religious perspective.

A fundamental support of modern international law was established by the theory of sovereignty; personal sovereignty element and territorial sovereignty element. The existence and interaction of a state within an organized International Community force restrictions on its sovereignty. Individuals used to fight each other to regain their rights because the presence of an individual within an organized community put restrictions and fettered their freedom of action, which disappeared because of sovereignty and jurisdiction States spread out over their particular territories. Correspondingly, the existence of a state within the current International Community or its accession to contemporary International Organizations has put particular restrictions on its sovereignty. Demonstrations of restrictions to sovereignty can be seen in the need for a state to follow some fundamental principles: the principle of non-refoulement while the right to Asylum is concerned.

It is also necessary that "states develop measures to deal responsibly and effectively with rejected Asylum Seekers," however, in fact, they failed to meet their obligations in this perspective and tend to force many restrictions on the admission of refugees and even to refuse to entry to the states and repatriate asylum seekers at the borders. On the contrary, in Islam, it seems that the sovereignty of an Islamic State is imposed particular restrictions in the perspective of Refugee admission and treatment, including; the obligation to occurs Asylum to any person in anxiety or at stake of persecution or Injustice; requirements of accepting a Refugee who comes to hear the words of Allah. As a result, it is forbidden to repatriate asylum seekers to places where they may be at risk of persecution.

As an example of refugee acceptance in an Islamic country, Gerhard Hoffstaedter (2017) explains how Malaysia deals with it. In 1975, after the collapse of Saigon, the Malaysian post-independence government first experienced the influx of Vietnamese refugees at the eastern shore of the Malaysian peninsula. There were several reasons they had to flee from the country; such as political persecution, economic reforms, and restructuring programs. In the beginning, Malaysia wasn't willing to welcome Vietnamese refugees, but it accepted the Comprehensive Action Plan which encouraged to establish temporary refugee camps along the eastern shore through discussions with international partners; such as the United States, Australia, and France, the Malaysian red crescent society, UNHCR, and other international NGOs, which made Malaysia a leading host country for Vietnamese refugees. The reasons for Malaysia's strict attitude toward numerous Vietnamese refugees can be the complicated

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relations between the indigenous Malay population and the ethnic Chinese and Malaysia's inability to deal with the large numbers of refugees.

At the time, Cham refugees who are Muslims and live along the boundary between Vietnam and Cambodia started to reach Malaysia. Malaysia welcomed the Cham and the procedure was carried out on the mainland. Approximately 10,000 Chams immigrated to Malaysia from 1975 to the 1980s. Since there were philanthropic reasons and Muslim belief in brotherhood, the government let them stay and join Malaysian Society. Therefore, they integrated rapidly into the communities over the peninsula.

Correspondingly, in the early 1980s, more than a thousand Thai Muslims escaped from Southern Thailand because of violence. Malaysia asked the UNHCR for intervention, which made the issue international because the government couldn't make the right decision. Finally, Thai refugees were sent back to their country, but they could have philanthropic aid from the Malaysian government.

Soon, the war in Bosnia in the early 1990s forced numerous Muslims to be displaced. Malaysia asked the United Nations for protection for Bosnia Muslims and grew humanitarian Aid. Moreover, Malaysia established relief centers after over Europe and started to raise donations for the "Bosnia fund" and tried to find a way to provide places to stay for Bosnian refugees. This showed the Muslim Brotherhood and the strong bond of the Muslim Community.

Since 2003, because of the Indonesian huge domestic military operation since the invasion of East Timor, there was another influx of Acehnese refugees who were Muslim indigenous in Malaysia. In addition, the 2004 Indian Ocean earthquake and tsunami was an opportunity for the Malaysian government to review its recognition of Acehnese refugees. The government provided work visas called imm13 which allowed the holders to inhabit, work legally in Malaysia, and go to state schools; provided protection for refugees temporarily.

According to UNHCR, over 90% of refugees in Malaysia are from Myanmar because of human rights abuses; such as forced labor, forced relocation, torture, rape, and dispossession in civil war. Since 1974, one Muslim minority ethnic group from Myanmar has been displaced: the Rohingya. They were recognized as non-National or foreign immigrants by the Burma citizenship law made by the government in 1982. Malaysia established housing temporarily and provided work passes for refugees from the Indonesian province of Aceh, while other refugees couldn't live and work in Malaysia legally. However, the service was enhanced for refugees from Myanmar in 2006.

### 3. Difference between the Common European Asylum System and Islamic law

The European Common Asylum System and Islamic law have different characteristics based on distinct contexts and purposes. Considered the legal basis and authority, the European Common Asylum System is a legal framework agreed upon by the countries that are members of the EU and the European Economic Area. It is an intergovernmental agreement in Europe and is based on EU laws and regulations. The European Common Asylum System aims to provide a common legal framework and process for refugees and those in need of international protection, ensuring consistent treatment of immigrants and asylum seekers. On the other hand, Islamic law, or Sharia law, is the religious law of Islam, based on the religious teachings of Islam. It is not an international agreement but rather subject to varying interpretations and applications by different countries. Sharia law exists to provide rules related to religious observance, ethics, and behavioral norms, and it is not a legal framework for asylum

applications or international law.

The European Common Asylum System applies to countries that are members of the EU and the EEA. It is a specific regional and international cooperation framework that provides a legal framework related to refugees and asylum seekers in Europe. Sharia law focuses on religious practices and ethics for Muslims. It is a religious law and does not have a direct connection to international asylum systems or international law. However, it emphasizes humanitarian values and principles of justice concerning refugees and displaced people.

#### 4. Islamophobia and Refugee Rights

"Islamophobia" refers to a form of discrimination and prejudice specifically targeting individuals or communities perceived to be Muslim. It encompasses various manifestations, including verbal abuse, physical assault, threats, harassment, and property damage (Awan & Zempi, 2020). Importantly, Islamophobia operates within intersecting dynamics, such as gender, ethnicity, appearance, and geographic contexts (Awan & Zempi, 2020). The impacts of Islamophobic hate crimes are profound, resulting in physical, emotional, psychological, and economic harm to victims. Moreover, they undermine community cohesion and contribute to polarization between different communities (Awan & Zempi, 2020).

In 2012, ISIS, Islamic State of Iraq and Syria, became extremist (The New York Times, 2019). The group is also called Islamic State in Iraq and the Levant (ISIL) and originated from Al Qaeda in Iraq (Zimmerman, 2019). In the mid-2000s, this Iraqi offshoot fueled a violent insurgency in Iraq that nearly led to civil war. However, it was eventually defeated by American forces and local militias (The New York Times, 2019). In 2013, the remnants of this group rebranded as ISIS and shifted their focus to Syria, which was embroiled in a civil war (The New York Times, 2019). Led by Abu Bakr al-Baghdadi, they took advantage of the chaos in Syria and captured significant territory. Their stronghold became the city of Raqqa, which they made their capital in early 2014. By 2014, ISIS gained international attention as it rapidly expanded across Syria and Iraq, seizing major cities such as Mosul. In June of that year, they declared the establishment of a "caliphate" and called for foreign fighters to join them (Zimmerman, 2019). Baghdadi, who had been in hiding, emerged in Mosul's Great Mosque to assert his leadership as the self-declared caliph. As ISIS grew, it attracted recruits from around the world and inspired supporters to carry out attacks globally. At its peak, the group had around 40,000 members from various countries (The New York Times, 2019). This incident caused a negative effect on the image of Islam and Muslims around the world.

In the United States, Donald Trump gained support by portraying Muslims as a constant security risk and refugees and immigrants as harmful to the country during his presidential campaign. He turned these ideas into policies with the 2016 'Muslim Ban.' Trump's 'Muslim Ban' was a clear example of how Islamophobia and national security concerns can be intertwined. However, these ideas aren't new and are also seen in debates in Europe and Australia. In the U.S., Trump revived long-standing beliefs that view immigrants and refugees as potential security dangers, especially after 9/11 (The New York Times, 2019). Scholars have studied how discussions about Islam, migration, and terrorism intersect, highlighting how Muslims are often portrayed as a threat to the white, Christian identity of America. Through such discussions and security measures, the U.S. identifies certain groups, like Muslims and refugees, as enemies that could harm the American way of life and local communities, leading to their exclusion (The New York Times, 2019).

Muslim refugees often find their rights at risk due to discriminatory policies like

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the 'Muslim Ban,' particularly evident during Donald Trump's presidency in the United States (Amnesty International, 2020). These policies not only go against principles of equality but also reinforce negative stereotypes connecting Islam to security threats. The global impact of groups such as ISIS has contributed to an unfair targeting of Muslim refugees, leaving them vulnerable and their rights inadequately protected. It's essential to address these issues to ensure a fair and inclusive approach to refugee protection on both national and international levels.

The plight of Islamic refugees remains a critical concern, exacerbated by the negative impact of groups such as ISIS on the perception of Islam and Muslims globally. The discriminatory policies: the 'Muslim Ban' in the United States reflects a broader issue of Islamophobia and the intertwining of national security concerns with the rights of Muslim refugees. The biased portrayal of Muslims and refugees as potential threats not only contradicts principles of equality but also perpetuates harmful stereotypes. The inadequate protection of rights for Islamic refugees underscores the urgency of addressing discriminatory policies and fostering a fair, inclusive approach to refugee protection on both national and international levels. Efforts must be made to disentangle the association between terrorism and Islam, ensuring that the rights of Islamic refugees are protected and that they are treated with dignity and fairness.

### IV. Protection of Rohingyas' human rights in Japan

As an example of Muslim refugees, this section examines the plight of Rohingyas in Japan. It provides a historical overview of the Rohingya people, explores their current status in Japan, and analyzes the position of the Japanese government towards their human rights. The section also outlines the challenges and issues faced by the Rohingya community within the Japanese context.

#### 1. History of Rohingya

Historically, the Rohingya have experienced severe situations. They are not recognized as indigenous people by the Burmese military government but as immigrants from Bangladesh (Parnini, 2013). In 1785, the Bamar, the dominant ethnic group in Burma, took control of Arakan, subjecting the region to harsh oppression. This occupation led to the execution of thousands of Rakhine men and the deportation of many to central Burma. By 1799, about 35,000 people fled to British Bengal to escape persecution by the Bamar (Rohingya Culture Center, n.d.). In an article by Dr. Francis Buchanan-Hamilton, a British physician and geographer, published in 1799, it is mentioned that "the Mohammedans, who have long settled in Arakan, call themselves 'Rooinga,' or natives of Arakan, while the others are Rakhing who adhere to the tenets of Buddha," which doesn't only confirm the existence of an indigenous Muslim minority in Arakan known as the Rohingya but also distinguishes them from the majority Rakhine Buddhist population (Rohingya Culture Center, n.d.).

In 1823, the British took control of Burma after several wars. They encouraged the migration of Bengali and other Indian immigrants to work in rice fields and tea plantations throughout Burma, but these immigrants were different from the Rohingya. Traditionally, the Burmese kings' rule was closely tied to their support of the Buddhist religious hierarchy (Rohingya Culture Center, n.d.). Additionally, the British preferred to appoint Muslims to administrative roles due to Buddhist resistance to colonial rule. This preference for Muslims added to the discontent of the Burmese Buddhists.

Before 1962, they were granted both government-issued identity cards and

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British-issued ration cards which identified them as citizens of Burma. However, for the reason for clarifying, the cards were forced to be taken from the holders and torn, which meant the holders lost their legal identities (Parnini, 2013). The 1982 citizenship law in Myanmar removed the Rohingya from their citizenship rights. Even though they had temporary identification cards known as white cards, these did not guarantee full citizenship but provided some recognition for temporary stay (Kipgen, 2019). However, these cards were revoked in 2015, depriving them of voting rights. Discrimination against the Rohingya was also institutionalized through various restrictions on marriage, family planning, employment, education, religious practices, and freedom of movement (Kipgen, 2019). They had to seek permission for marriage, were subject to a two-child policy in certain areas, and required authorization for traveling or even moving within their own townships. Moreover, the impoverished state of Rakhine, with limited infrastructure and job opportunities, led to competition and tensions between Rakhine Buddhists and Rohingya Muslims, sometimes resulting in violence due to religious and resource-related differences (Kipgen, 2019).

Political goals and power politics made it invisible the possible danger of arranging a legitimacy policy to increasing threats by the immigration of Rohingyas. Parnini (2013) stated "The more severe the violation of human rights, insecurity, and repression, the larger the scale of the refugee flow. The more the refugee flow, the larger the non-traditional security threats." The recognized actual threats revealed by the condition of Rohingyas not only from Myanmar to Bangladesh; but also, to countries around them; such as Malaysia, India, and the Middle East. Refugees are often exposed to unsafe situations in host countries such as Bangladesh for the reason that those countries have been facing uncontrolled poverty and experienced various economic changes. In addition, they are hardly supported by UNHCR or other international communities to overcome the Rohingya problems between Bangladesh and Myanmar.

Even though Rohingyas crossed the border and entered Bangladesh, it didn't mean their situation and status had changed. The relationship between Bangladesh and Myanmar sometimes loses balance when it comes to political and security problems: Rohingyas' flow to Bangladesh since the 1970s is one of the problems (Parnini, 2013). Those Rohingyas still live in refugee camps in Cox Bazar of Bangladesh. They live in 33 camps in Cox's Bazar, forming the largest refugee settlement globally (UNHCR, 2023).

Since 2017, humanitarian organizations have been closely working with the Bangladeshi government to address the humanitarian challenges posed by this massive displacement. However, conditions in the crowded camps are severe, especially for women and children who are vulnerable to various forms of harm, including violence, exploitation, and human trafficking (UNHCR, 2023). UNHCR (2023) assists the Bangladesh government address the humanitarian and protection needs of Rohingya refugees. These refugees depend entirely on humanitarian aid and require assistance with food, water, shelter, education, and healthcare (UNHCR, 2023).

However, the Myanmar government hardly expresses the willingness to welcome them: the government doesn't recognize them as citizens, but as foreigners. Rohingyas are also reluctant to go back to Myanmar because of persecution. Bangladesh is dissatisfied with Myanmar's attitude because the Myanmar government only has requested an updated list of refugees who fled from Myanmar to Bangladesh to check if they're Myanmar citizens, which has been done again and again. Sending refugees back to their countries without their will can be recognized as forcible deportation; once UNHCR mentioned Bangladesh implemented such deportation.

## 2. Rohingyas in Japan

According to Tanada Hirofumi, a professor of Waseda University, there are about 400 Rohingya people living in Tatebayashi City, Gunma Prefecture, Japan (United States Department of State, 2023). Several Rohingya started living in the city when a company that employed them relocated to the city which led more Rohingya to follow to live in the city, aiming to be with their compatriots (Kusakabe & Ishikawa, 2019).

The Rohingya have established their community in Tatebayashi City. There is also a mosque primarily used by the Rohingya community. Initially, there were some objections from neighboring residents when the mosque was first built, but through interactions such as greetings and inviting neighbors to the mosque for meals, they have now established good relations (Kusakabe & Ishikawa, 2019). An Imam from Rakhine is invited to conduct prayers, and Quran study sessions for Rohingya children are held in the evenings. Families among the Rohingya community also exist, and efforts are made to accommodate them, including providing prayer rooms in middle schools. According to lawyers supporting Rohingya individuals, approximately 20 people have been granted refugee status, while around 100 have obtained special residence permits, allowing them and their families to legally reside in Japan (Kusakabe & Ishikawa, 2019).

Special residence permits are granted to individuals who are permitted to live in Japan due to humanitarian considerations while not recognized as refugees. Those with refugee status or special residence permits are allowed to work in Japan and lead self-sufficient lives (Immigration Bureau, Ministry of Justice, 2009). Many work in factories due to Tatebayashi City's proximity to industrial areas. However, some Rohingya individuals in Japan do not have refugee status or legal residence permits. There are about 10 people on provisional release, and a few are still in detention. Provisional release refers to temporarily allowing detainees to leave the detention facility, but they are not allowed to work. Other Rohingya individuals support them in their daily lives. Amid the challenging circumstances surrounding Rohingya in Japan, questions are raised about how Japan will conduct refugee status determinations. A few families have obtained Japanese nationality through naturalization, while many are presumed to be stateless (Kusakabe & Ishikawa, 2019).

## 3. Position of the Japanese Government towards Rohingyas

Japanese government has been supporting the Rohingya economically. According to the UNHCR Japan (2022), the Japanese government has decided to provide \$3.5 million in non-repayable financial assistance to the UNHCR to support Rohingya refugees who have fled from Myanmar to Bangladesh. Through this non-repayable financial assistance, efforts will be made to protect the lives and dignity of Rohingya refugees in Bangladesh and to enhance their capacity for self-reliance in the event of safe and voluntary repatriation. Japan is one of the countries that has made significant contributions to Rohingya refugees in Bangladesh. Since August 2017, including this support, Japan has provided more than \$170 million to support various United Nations agencies, including UNHCR, and NGOs.

However, the Rohingya are still facing problems in Japan. Since many Rohingyas lack a nationality, it is difficult for them to enter Japan with proper travel documents and making them susceptible to forced deportation; when a person is recognized as a refugee, the person is supposed to be granted residence status for five years in Japan, as well as permission to work and enroll in the national health insurance program. Asahi Shinbun (2021) reports a severe

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situation of a Rohingya family in Japan; Mr. Saed Ahmed applied for refugee status in Japan in 2017 after arriving in the country, but he has not yet received a decision on his application. Instead, he was granted temporary release from detention, which does not allow him to work, generally permit to move outside the prefecture, and enable him to enroll in the national health insurance program. In February in 2021, a coup took place in Myanmar, and the military continues to brutally suppress protesting citizens. Mr. Saed Ahmed states that "the military regime is dangerous, and I cannot return under any circumstances," and he is seeking refugee status. Shogo Watanabe, a lawyer and the representative of the Association of Burmese Refugee Applicants in Japan, criticizes the government's response, saying that under temporary release status, refugees cannot work and cannot sustain themselves. He argues that "Rohingya are clearly facing persecution," but the number of Rohingya refugees recognized as refugees in Japan remains very low, around 20 individuals.

The United Nations General Assembly resolution A/RES/73/264 (2018) called for Myanmar to halt excessive military force against the Rohingya. The Japanese government's response was to abstain from voting on the resolution, even though it received overwhelming support from over 130 countries (Human Rights Watch, 2019).

Additionally, the United Nations has taken measures to protect the rights of the Rohingya. The UN Fact-Finding Mission concluded that the Myanmar government and military committed serious crimes against the Rohingya, including war crimes, crimes against humanity, and genocide. This report also highlighted violence by various groups, not just the Myanmar military.

In September 2019, a new resolution on Myanmar's human rights was passed at the United Nations Human Rights Council, with support from 35 countries. This resolution led to the establishment of an international mechanism to investigate and document these crimes. However, the Japanese government once again abstained from voting on this resolution (Asahi Shinbun Digital, 2019).

## V. Conclusion

In conclusion, the exploration of the Common European Asylum System, Islamic law, and Japan's approach to refugees illuminates the complicated challenges and evolving dynamics of asylum policies. While Japan has been a signatory to the 1951 Refugee Convention since 1981 and has recently introduced legislative amendments, the specificities of the Convention might not fully encompass the wide range of challenges and situations faced by different groups of asylum seekers globally. The plight of Rohingyas in Japan serves as an example of the limitations of relying solely on established conventions. Historical discrimination, displacement, and insufficient international support create a unique set of challenges for this community, emphasizing the need for a more comprehensive and adaptable approach.

The differences between Islamic Law and International Refugee Law underscore the complexity of the issue, revealing that while common goals exist, each law has different principles governing refugee rights. Islamic Law provides asylum without restrictions, contrasting with International Law's limitations. Islamic community grants refugees protected status, different from the status granted to them under International Law. Despite disparities, both legal systems aim to alleviate human suffering and offer refuge to the displaced. Despite differences, both laws attempt to save people who are suffering and provide a safe place for those who have been forced to leave their home countries.

## Protection of the Human Rights of Refugees in Japan

The comparison between the European Common Asylum System and Islamic law underscores their distinct characteristics and purposes. The European Common Asylum System is aimed at establishing a uniform legal framework for member states and those requiring international protection. In contrast, Islamic law, or Sharia law, is rooted in the religious teachings of Islam and governs religious observance, ethics, and behavioral norms. While the European Common Asylum System focuses on asylum applications and international law within Europe, Sharia law primarily addresses religious practices and moral principles for Muslims. Despite their differences, those systems share a concern for humanitarian values and justice, albeit within different contexts and frameworks.

In view of these considerations, the conclusion draws attention to the imperative for Japan to go beyond the confines of the Refugee Convention. To enhance human rights policy, it is essential to contemplate the dignity and worth of humans. A more inclusive and flexible refugee acceptance policy that recognizes the evolving situations of displacement and the limitations of current legal frameworks would demonstrate Japan's commitment to supporting human rights and meeting the diverse needs of asylum seekers worldwide. By embracing a broader perspective, Japan can contribute significantly to promote a more comprehensive and compassionate human right protection of refugees worldwide.



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