

A Sketch of Backdrop of the Comments on Ambassador Dr. Reiterer

[A provisional and roughly drafted text to be circulated among participants only]

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Although I condemn the Russian aggression on Ukraine in the strongest term, I would like to treat with the current Ukrainian situation as one of the greatest humanitarian crisis since the end of World War II (WWII). The reason is because it is the matter of utmost importance to rescue human lives in Ukraine as many as possible. From this point of view, I would like to discuss the measures taken by Japanese government relating to admission of Ukrainians.

I am wondering whether Japan really has any normative framework for admission of foreigners by humanitarian reasons despite of her status as a contracting party to the 1951 Convention on Status of Refugees since 1982 at the level of, not only statutory laws but also normative consciousness in society. The post-WWII Japanese immigration law has been constructed on so-called “national interests” as the sole basis of system of laws in this field.

After mid-1980s, great majority of the legal thinking somehow recognized a special status of “teiju gaikoku jin” or “long-term residents”, and it brought a quite radical change in the law in term of rejecting the past policy of constant threat of deportation and fingerprinting against Korean residents in Japan. The concept of long-term residents is, however, based on calculation of their past contribution to Japanese society or national economy. We had overlooked an innovative aspect of refugee law, which recognises possible admission of foreigners by purely humanitarian reasons detached from considerations of “national interests”.

Such a structural framework of thinking and its subsistence in Japan have been a complex end-result of nationalism-based decolonization in East and Southeast Asia after WWII. More exactly speaking, because the Empire of Japan, as a colonial power, was dismantled by the Allied Powers, Japan could develop its relationship with Asian countries without any serious self-reflection about her past colonial rule. And nationalism itself had been a consensus in Japan because the leftist movements had also support for it as a main tool of resistance against US military rule. Without any formal colony, Japan had built economic relationships with East and Southeast Asian

countries on the basis of functionalism. It included support for nationalism in those countries and, therefore, in practical sense, for authoritarian regimes, leaders and governments there.

In this context, humanitarian consideration itself has found no place in law and policy in respect of admission of foreigners in Japan. External policy-making has been still dominated by rather loud voices seeking only “national interests”.

On that basis, we can observe a repeated pattern of admission of displaced foreigners, where comparatively small numbers of people are admitted in exercise of discretionary power of the government coupled with non-recognition as Conventional refugees. The Indochinese “refugees” from 1975 through around 1990, the Myanmar residents who had already stayed in Japan at the time of the military coup in February 2021 and so on.

On the one hand, at least up to now, the measures taken by Japanese government in respect of admission of Ukrainians may well be analysed as another example of the pattern above indicated. On the other hand, because of unprecedented scale of crisis, and of clear and fragrant destruction of very basis of international order, we can find some embryos of new elements in the practice, which might develop into a policy solely based on humanitarian considerations or solidarity among human kind, setting aside “national interests”.