

Credit :

UTokyo Online Education, INTERNATIONAL REFUGEE LAW 2019

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CDR

The Project of Compilation and Documentation on Refugees and Migrants
The University of Tokyo

INTERNATIONAL REFUGEE LAW

Can it Help Japan with its Current
Challenges?

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INTERNATIONAL REFUGEE LAW

The best protection and migration outcomes in Asia (as elsewhere) will follow from adopting the international treaty/human rights approach to refugee and protection law and practices, coupled with the application of humane domestic migration and deportation laws.

This does not unduly compromise the underlying principles of non-interference in internal affairs, held by many Asian states. **State sovereignty is actually strengthened by states' compliance** with international human rights law and following the principles of the Vienna Convention on the Law of Treaties, 1969.

INTERNATIONAL REFUGEE LAW

BEST PROCESS

The best results will be achieved by following international refugee law and practices. This approach is greatly enhanced if the assessment of claims arising in conjunction with other migration issues, are addressed in a **'one stop' process**, in the following order:

- a. Step 1:** Refugee Status Determination (RSD);
- b. Step 2 :** 'Complementary Protection' – CAT Art 3, ICCPR Arts 6 and 7; and *then*
- c. Step 3 :** Any domestic law (Constitutional or immigration based) protection on humanitarian grounds.



INTERNATIONAL REFUGEE LAW

BEST PROCESS

To carry out this type of assessment process efficiently, in the reality of modern migration, requires much training and professional development. This must involve both first-instance decision-makers (who should not be immigration or border protection officers) and appeal/review tribunal members and appellate judges (who must be fully independent), being well trained in **both** international refugee law and procedures **and** any relevant domestic migration/deportation law and procedures.



INTERNATIONAL REFUGEE LAW

WHAT ARE THE PROBLEMS FROM NOT APPLYING INTERNATIONAL LAW?

Many Asian countries experience serious procedural and substantive difficulties because of a lack of international law principles. Costly inefficiencies, repeat claims and, inevitably, backlogs at all levels, combine to produce perceived (and real) abuse, and growing public/media disquiet towards protection law and genuine refugees.

A vicious circle results, with more and more restrictive laws and procedures being introduced to counter the symptoms of 'abuse' instead of addressing the causes that have resulted from the failure to implement sound, internationally accepted refugee law and procedures and humane migration/deportation law.



INTERNATIONAL REFUGEE LAW

WHAT ARE THE PROBLEMS FROM NOT APPLYING INTERNATIONAL LAW?

International law leaves the actual determination to be done by each signatory country. This has resulted in inconsistency, with some good, some average and some bad systems. We recommend that countries with infant or struggling systems should, in their own state's interests, look internationally at the successes and failures of other states and to adopt/adapt the best sound and consistent RSD systems available.

Our experience is that a structured, human rights-compliant approach provides the best outcomes for states and citizens, as well as for claimants, AND it respects the rule of law for all.

INTERNATIONAL REFUGEE LAW

OTHER REASONS TO HAVE REGARD TO INTERNATIONAL LAW

1. We have all signed the same Convention – it should be applied in the same way.
2. Consistency:
 - prevents 'forum shopping';
 - leads to fair outcomes through learning to avoid mistakes; and
 - Ensures all countries move towards best practice.
3. Interpreting the Convention definition in the same way ensures that the evolution of our understanding takes place uniformly.

INTERNATIONAL REFUGEE LAW

CONSISTENCY IN INTERPRETING THE REFUGEE DEFINITION

“A Structured Approach to Decision-Making Process in Refugee & other International Protection Claims”

This IARMJ paper, with its ‘step by step’ chart, provides guidance to decision-makers hearing claims for refugee status at international law. It can also provide assistance to claimants, counsel, UNHCR, academics and NGOs working with claimants.

It is based on a wide consensus of IARMJ judges, UNHCR and academics and has been developed over the past 10-15 years.

The paper is available, free, at www.iarmj.org (in English and Russian) and at www.unhcr.org (in Japanese).

INTERNATIONAL REFUGEE LAW

THE PROVEN INTERNATIONAL MODEL

Decades of development through co-operation at an international level, have established that the most effective and fair model is:

1. An first-instance agency of specialist officers (not simultaneously immigration officers) who are well-supported by training and a COI research office;
2. An independent appeals tribunal/court of specialist members/judges, who hear appeals *de novo* (afresh);
3. A right of appeal, on point of law only, to the superior courts.

At all levels, decision-makers need to receive expert training on a regular basis.



INTERNATIONAL REFUGEE LAW

THE PROVEN INTERNATIONAL MODEL

SUBSEQUENT CLAIMS

Strong procedural regulations need to provide for the right to bring a second or subsequent claim, in limited circumstances. The threshold should require new or changed circumstances since the first claim. If none exist, the claim can be dismissed quickly. If they exist, the claim should be heard.

Assessment of whether there are new or changed circumstances can be done 'on the papers', so long as that decision can be appealed.

INTERNATIONAL REFUGEE LAW

THE PROVEN INTERNATIONAL MODEL

MANIFESTLY UNFOUNDED CLAIMS

Procedural regulations may also be needed to enable the state to deal quickly with manifestly unfounded claims. This requires:

1. A *prima facie* assessment that the claim cannot succeed, even if true; and
2. The opportunity being given, on the papers, for the claimant to establish otherwise.

If the claim is still manifestly unfounded after this, it can be dealt with substantively on the papers. A right of appeal must still remain. Careful attention needs to be given to this jurisdiction, so that it is not abused by over-zealous decision-makers.



INTERNATIONAL REFUGEE LAW

THE PROVEN INTERNATIONAL MODEL

BACKLOGS

As already mentioned, dysfunctional systems can lead to abuse. Backlogs are undesirable for the claimant, who must wait, and for the state, whose system becomes at risk of abuse from specious claims designed to buy extra time.

There are sound, internationally-proven solutions to backlogs, which require careful and insightful handling, but which do address the problem and can return the incoming claims to 'flow'.



INTERNATIONAL REFUGEE LAW

ISSUES FOR DISCUSSION

Some current problems that international law has dealt with effectively:

How to assess the fact that a claim is made at the last minute?

How to assess credibility?

What weight to give to a claimant's return to the home country?

What weight to give to a claimant's visit to their embassy?

How to assess family members?