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## **The Wax and Wane of Human Security Norms: Revisiting the Cases of Japan and Canada**

Sangmin Bae and David Diaz<sup>1</sup>

### **Abstract**

While the concept of human security has been given considerable weight in policy-making circles and academia in recent decades, little has been discussed why some countries continue to support human security while others do not. With a comparative case study of Japan and Canada, initially the two strongest proponents of human security, we examine their diverging paths over time: the reduced salience of human security language and policy in Canada and its contrasting persistence in Japan. This article argues that divergences in the promotion of the concept of human security over time are attributable to the very way the concept is framed. Canada's norm promotion did not last very long because the country presented human security as a policy tool in the context of national interests. Japan, on the other hand, has framed human security as an issue of national identity, and has likened human security to its post-war peace constitution. When human security is viewed primarily as a policy tool necessary for specific national interests, its progress and sudden decline are to be expected. When human security is perceived as an evolving national idea of appropriate behavior, and, perhaps more importantly, if it is framed that way, it will likely bring about a long-term, ongoing state policy. Japan framed human security not only as a government policy strategy that serves the interest of the state but also as a national identity that gets embedded into the entire political circle beyond the party line and further into the wider society.

**Keywords:** Human Security, Japan, Canada, State Interests, National Identity

### **1. Introduction**

Since the mid-1990s, the concept of human security has attracted considerable attention in academia, governmental circles, and in civil society writ large. Characterized by a shift from the state to the individual as the primary referent of security, human security sees both human rights and sustainable development as being central elements to achieving national and international security. This is based on the premise that it is impossible to protect human freedom and welfare exclusively through traditional concepts of military security, and that the international peace and security agenda

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should include nontraditional challenges, such as: poverty, environmental degradation, famine, and diseases. Proponents of human security view it as “a condition of existence” that entails the satisfaction of basic material needs and the promotion of human dignity through meaningful participation in the life of the community, from the local to the global.<sup>2</sup>

Japan and Canada were initially two important adopters and advocates of human security. Both were extremely enthusiastic and outspoken about human security goals and issues since the concept was popularized in the first half of the 1990s. Over the years, however, their approaches to human security have diverged. Japan has remained a perennial supporter of human security, despite its protracted economic recession and changes in administrations, while Canada, which appeared to have a deeper commitment initially, has all but categorically dispensed with the idea of human security. For example, the actual use of the term human security in government speeches, documents, and websites has largely disappeared. In addition to the restrictions on the use of human security as an operational concept, Canada has officially left the Human Security Network, even though, along with Norway, it was most instrumental in establishing the network. What explains continuity and change in the preservation of human security language and prerogatives for both of these countries? While the existing literature explains the growing norm of human security reflected in a new set of state practices, little research has been conducted on the actual shifts in state behavior. The purpose of this article is to elucidate why some countries continue to promote the human security while others do not. Examining the recent trajectory of human security in the policy agendas of these two countries, the article discusses theoretical implications of norm adoption and discontinuation pertaining to human security.

The article begins with a survey of the literature in international relations that discusses the evolution of international norms and state practices. Following this, it moves on to an analysis of the two leading countries in the human security enterprise, Japan and Canada. After explaining why these two countries were highly motivated in promoting human security, it discusses Japan’s sustained support for the norm and the norm’s simultaneous loss of poignancy for Canada. Finally, the article summarizes the wider implications of the findings.

## **2. Human Security Norms and the State**

Scholars in international relations have discussed the concept and policy of human security as an

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<sup>2</sup> Thomas 2000.

evolving transnational norm.<sup>3</sup> Social constructivists in the study of international relations, in particular, argue that the interests pursued by states individually or through international organizations are often based on norms and values, which ultimately defines their social identity. From this perspective, the emergence and development of human security reflect the influence of values and norms on our existing understanding of security. Human security engages with deeply contested values pertaining to state sovereignty, the nature of political community, and international responsibility, and attempt to reconstruct the interpretation of the roots of insecurity, underdevelopment, and poverty. Largely relying upon the significance of agent-oriented processes and the impact of ideas and values, a new understanding of human security calls for multilateral action that helps alleviate gross human suffering, even if this sometimes encroaches upon sovereign prerogatives.<sup>4</sup>

International norms are commonly defined as “collective expectations about proper behavior for a given identity”<sup>5</sup>; “shared expectations about appropriate behavior held by a community of actors”<sup>6</sup>; and “standards of ‘appropriate’ or ‘proper’ behavior.”<sup>7</sup> In very similar language, many scholars in norm research emphasize “the logic of appropriateness” embedded in the definition of norms as opposed to “the logic of consequences.”<sup>8</sup> Norms are promoted *deliberately* in the international system by norm entrepreneurs. International norms do not simply come about naturally and diffuse into domestic politics; they are intentionally spread by goal-oriented state and nonstate actors. Norm entrepreneurs, defined as “agents having strong notions about appropriate or desirable behavior,” are thus essential in the life of norms, since they initiate the placement of issues on the international agenda.<sup>9</sup>

Through the concept of human security, states gain new insight into certain forms of economic and political organization which are more conducive to achieving international peace and stability. This understanding can be productively shared as a minimum standard of cooperation.<sup>10</sup> The recent wave of state policies that invoke human security cannot be easily explained in terms of power and interest, suggesting that there is “something normative” going on. Questioning the appropriateness of traditional conceptions and practices of security, human security certainly speaks to a changing normative international context and serves as a normative basis of the international system.

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<sup>3</sup> On the historical origin of the concept of human security and its limits, see Murphy 2013.

<sup>4</sup> Newman 2000, 244-7.

<sup>5</sup> Jepperson et al. 1996, 54.

<sup>6</sup> Finnemore 1996, 22.

<sup>7</sup> Finnemore and Sikkink 1998, 891.

<sup>8</sup> March and Olsen 1998.

<sup>9</sup> Finnemore and Sikkink 1998, 896.

<sup>10</sup> Newman 2000, 247.

International organizations often play a significant role in creating and strengthening norms.<sup>11</sup> The United Nations is undoubtedly a human security entrepreneur and advocate. Since the UN Development Program first drew global attention to the concept in its 1994 Human Development Report, the notion of human security has been actively embraced by the UN. The opening statement of the UN World Summit for Social Development in 1995 reiterated “the indissoluble link between security, social development, and human rights.”<sup>12</sup> Human security has been widely institutionalized in the UN framework, and the term *human security* has been used as the best indicator of security in much of the UN system, notably including the Office of the Coordination of Humanitarian Affairs (OCHA) and the Office of the High Commissioner of Human Rights (OHCHR). The Human Security Unit was established inside OCHA in 2004 to administer the UN Trust Fund for Human Security. This was with the intent to disseminate and mainstream the concept of human security throughout the UN and its agencies, and to integrate the concept into all UN activities.<sup>13</sup>

Aside from the role of nonstate actors, some notable states take on leadership roles in promoting and implementing concrete human security policies as well (Bae and Maruyama 2015). States build collaborative networks to motivate international action on a broad range of human security programs (e.g., Human Security Network), create a human security think-tank/advisory board within an international organization (e.g., Commission on Human Security), or finance human security programs and activities operated by international organizations (e.g., UN Trust Fund for Human Security). One could argue that state officials and representatives’ support of certain norms and values (e.g. human rights norms) stems largely from interest-based considerations. It may be a well-calculated political action in a concerted effort to shape a positive international image. Others may suggest that states as part of an international society or community learn appropriate behavior through interaction with other states as well as with nonstate actors.<sup>14</sup> Why, then, do some states take leadership roles in creating humanitarian norms like human security when no one pressures them to do so? And, why do others drop such norms only a few years later?

### **3. Japan’s Continued Support of Human Security Norms**

The multilateral and normative nature of human security is new to most East Asian countries. The end of the Cold War shifted much of the political and economic dynamics of East Asia, once a

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<sup>11</sup> Abbott and Snidal 1998; Alvarez 2007/08.

<sup>12</sup> United Nations 1995a.

<sup>13</sup> Shusterman 2006.

<sup>14</sup> Gofas and Hay 2010; Zwingel 2012.

geopolitical “hot spot” located at the intersection of the communist powers and free-market democracies, but it failed to have the same impact on East Asia as it had in Europe. Northeast Asia, in particular, is distinguished by continuing Cold War alliance systems and the absence of a multilateral regional security complex. Despite the dramatic political and social transformations that the region has experienced in the last few decades, much of the region’s key security concerns tend to remain state-focused. East Asia still “remains a tightly sovereignty-oriented region” where most governments still advocate a traditional security paradigm, emphasizing the importance of conventional military means as the best response to threats.<sup>15</sup> One can posit that Asia’s continued preoccupation with traditional military security concerns has much to do with regional conflicts or balance of power issues that have come to pervade the area, these include: territorial disputes, an increasingly hegemonic China and the concern over nuclear proliferation.<sup>16</sup>

In the face of such geopolitical realities, Japan has nonetheless remained an exception to interpreting security in solely state-based terms. From the outset of its post-war and reconstituted government, Japan has, and continues to be, one of largest proponents of and donors to the international campaign for human security. When the UNDP launched the human security concept in its 1994 report, the Japanese government adopted it within a few years as a central pillar of its foreign policy.<sup>17</sup> At the 1995 UN World Summit for Social Development, Prime Minister Tomiichi Murayama delivered a speech pertaining to Japan’s early pursuit of human security: “Formidable social problems [such] as poverty, unemployment and social disintegration [have increasingly] threatened the well-being of people in developed and developing countries alike... Japan gives priority to human-centered social development... in our ODA [Official Development Assistance] policy.”<sup>18</sup> When the Asian financial crisis hit in 1997, Japan especially felt the need for human security in diplomacy. In two of his speeches in 1998, the then new Prime Minister Keizo Obuchi made the clear connection between the financial crisis issues and human security: “the current economic crisis has aggravated those [social] strains, threatening the daily lives of many people... I believe that we must deal with these difficulties with due consideration for the socially vulnerable segments of the population, in light of ‘human security,’ and that we must seek new strategies for economic development which attach importance to human security with a view to enhancing the long-term development of our region.”<sup>19</sup> Since the Obuchi administration, the language and practices of human security have remained

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<sup>15</sup> Acharya 2002, 378.

<sup>16</sup> Soeya et al. 2011, 7.

<sup>17</sup> For an excellent overview of the evolution of human security ideas and practices in Japan, see Kurusu and Kersten 2011; Kurusu 2016.

<sup>18</sup> United Nations 1995b.

<sup>19</sup> MOFA 1998; Obuchi 1998.

instantiated in Japanese speeches and basic policy.<sup>20</sup> For example, as recent as May 2016, the Japanese Government, in lockstep with the UN's 2030 Sustainable Development Goal (SDG)'s initiative -- an agenda meant to mitigate extreme forms of poverty and to strengthen universal peace, created a cabinet body, the SDG Promotion Headquarters (headed by the Prime Minister), and has asserted that human security will continue to be the "guiding principle that lies at the foundation of its [Japan's] diplomacy."<sup>21</sup>

Why has human security remained a hallmark Japanese foreign policy? Why has Japan been far more active than any of its neighbors in promoting human security ideas and goals?<sup>22</sup> There are at least three apparent reasons. The first and perhaps most consequential reason is that Japan's promotion of human security is a practical consideration for its postwar political status, as informed by its constitution, in a realpolitik-driven world. Its unique constitution, which is still largely defensive in nature and constrains the conventional use of military force, has directed Japan over the years to foster a national identity and value system that is largely commensurate with the tenets of human security, thereby devising new approaches to security. As an observer asserts, "The 'incumbent' permanent members of the Security Council established their status in the 'traditional' security field, and Japan might be a leading force in . . . human security."<sup>23</sup> Secondly, Japan's active role in human security is due to the leadership and ideational entrepreneurship of particular individuals in the government. For the initiation and development of human security policy, Japan is indebted to Keizo Obuchi who passionately put the idea of human security into policy practice, as discussed earlier. Vice Foreign Minister Keizo Takemi worked closely with Obuchi to mainstream human security in Japanese political circles, thereby successfully garnering political and monetary support. Personalities and personal visions matter in the articulation of human security foreign policy. Lastly, Japan does not deny that the promotion of human security will help its explicit and strategic goal to acquire a permanent seat on the UN Security Council.<sup>24</sup> It is important for Japan to be seen as a good, responsible nation, in the eyes of its Asian neighbors and of the international community if its campaign for a permanent seat is to succeed. During the Asian economic crisis of the 1990s, the Japanese government announced a \$43 billion aid package for East Asia and another \$30 billion package for Southeast Asia.<sup>25</sup> When the fiscal austerity approach of the Washington Consensus and

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<sup>20</sup> On the role of Prime Minister Obuchi in placing human security at the center of Japan's foreign policy objectives, see Asahi 2014, 15-16; Kurusu 2016, 5-11; Takasu 2014, 239-247.

<sup>21</sup> MOFA 2017.

<sup>22</sup> Kaji 2015.

<sup>23</sup> Shinoda 2004, 19.

<sup>24</sup> Edström 2011.

<sup>25</sup> Lam 2006, 141-59.

the US's security agenda failed to address the world's various threats, both military and nonmilitary, Japan cultivated an alternative way to deal with these issues.

For these reasons, human security has remained an integral part of Japan's foreign policy up to the present. Even under the conservative administration of Shinzo Abe, Japan's support for human security has not waned. A recent and poignant example of this was at the UN's Sustainable Development Summit in 2015. There Abe stated that Japan would promote the implementation of the 2030 agenda by "applying the Development Cooperation Charter of Japan as a compass, which was newly established this year [2015] as a foundation for Japan's development cooperation. In particular, we will do so based on the concept of human security, the guiding principle of the Charter, which focuses on each and every individual," irrespective of country or region.<sup>26</sup> In formulating and launching the "Strategy on Global Health Diplomacy," the Abe administration has made global health issues the lynchpin of Japan's human security endeavors.<sup>27</sup> After the G7 Ise-Shima Summit in Japan in 2015, Japan volunteered to be at the vanguard of establishing Universal Health Coverage (UHC) for developing countries, especially in Africa. It will do so by helping to combat preventable infectious diseases and the providing of immunizations. This is with the intent of granting international health organizations with \$1.1 billion in supports, and another \$800 million to the Global Fund.<sup>28</sup>

While some government departments embraced the human security norm with more enthusiasm than others, most governmental agencies, and even non-governmental sectors including the media, recognized the significance of human security in Japan's diplomacy.<sup>29</sup> Human security remains a key theme for research projects, academic conferences, and public symposiums supported by the government or government-sponsored foundations. As Yukio Takasu, the former United Nations Under-Secretary-General for Management, describes, there is no other country that has more academic courses, scholars, and students in human security than Japan.<sup>30</sup> Japan's continuing dedication to human security is therefore largely attributable to such broad support in society where ideas and practices of human security are extended to, coordinated with, and institutionalized by different sectors and programs in and outside of the government.

This fealty to human security policy has often been linked to the Japanese constitution and to the staunchly antimilitarist norms and institutions it has wrought.<sup>31</sup> According to Takasu, the notion of human security is deeply rooted in the national value system in Japanese society, especially as the

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<sup>26</sup> Prime Minister of Japan and His Cabinet 2015.

<sup>27</sup> MOFA 2013; 2014; 2015.

<sup>28</sup> MOFA 2016.

<sup>29</sup> Asahi 2014, 15-17; Kurusu 2016, 9-10.

<sup>30</sup> Takasu 2013, 239.

<sup>31</sup> Soeya et al. 2011, 5.



preamble of the Japanese constitution reflects the very notion of human security: “We [the Japanese people] recognize that all peoples of the world have the right to live in peace, free from fear and want.”

<sup>32</sup> Article 25 also states, “All people shall have the right to maintain the minimum standards of wholesome and cultured living. In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.” The fact that Japan is the only country in the world to have been the victim of a nuclear attack also explains the specific role of its collective identity. The firsthand experience of atomic bombs on Hiroshima and Nagasaki and the living memory of many Japanese led the country to be committed to alleviating human suffering, a crucial theme in human security ideas. This seems now to have stronger relevance as Japan again encountered a major nuclear crisis in March 2011.<sup>33</sup> This confirms the significance of what Acharya describes as “congruence building” with local identities adopting international norms.<sup>34</sup>

Japan’s emphasis on human security as national identity often appears in public discourse. In official documents, the Japanese government indicates that its human security initiatives are “based upon Japan’s own experiences”<sup>35</sup>; “mak[ing] good use of Japanese values”<sup>36</sup>; “Japanese people ... long cherished the values of placing great importance on individuals and shedding light on all people ... have been promoting this concept [human security] in the international community as a pillar of its diplomacy.”<sup>37</sup> Japan’s connection to identity has helped its human security policy be stable and consistent over the past two decades. National identity and value system have a vastly more sustained impact on policy than just the invocation of state interests. Thus, it should not be assumed that given the recent modifications to Japanese security policy, and its desire to play a more proactive role in international security affairs, that Japan has somehow abandoned its long embedded norms. Japan, particularly during the collapse of the Soviet Union and shortly thereafter, came to be derided by the US and other members of the international community as a “free-rider” in the sphere of international security and peacekeeping efforts. Since the beginning of the 1990s, there has been the incremental and cautious lifting of the self-imposed restrictions on security policy, which has ranged from minesweeping in the Persian Gulf in 1991 to the providing of ancillary support during the post-reconstruction efforts in Iraq after 9/11.<sup>38</sup> These alterations to security policy restrictions culminated recently in 2015, with a series of controversial security bills, which some assert, have led to a “radical

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<sup>32</sup> Takasu 2012.

<sup>33</sup> Bacon and Hobson, 2014.

<sup>34</sup> Acharya 2004.

<sup>35</sup> MOFA 2006.

<sup>36</sup> MOFA 2012b.

<sup>37</sup> MOFA 2012a.

<sup>38</sup> Liff 2015, 81.

departure” from Japan’s post-war security regime. The most consequential change has to do with a resolution which reinterpreted some aspects of Article 9. This was meant to partially lift the ban on collective self-defense.<sup>39</sup>

The rationale for this was to respond to the changing relations with the US, to facilitate a deterrence mechanism in relation to China’s territorial encroachments, and to allow for Japan to play a larger role in peace-keeping operations. What is little discussed, however, is that because of domestic concerns over the prospects of a “radical shift” in security paradigms, three conditions have been attached to the exercising of collective self-defense, and they are: that Japan’s very survival has to be compromised due to an existential threat, that no alternative means of dealing/addressing the threat exists, and that whatever force is employed, Japan will be limited to the “minimum necessary.”<sup>40</sup> Taken together, these revisions are not a denunciation of postwar institutions, ideas, or norms per se, but are “motivated by the values and practices that the existing constitution has nurtured.”<sup>41</sup> It is far from clear at this juncture whether such policy initiatives and innovations are being driven by the subversion of Japan’s post-modern values and its attraction to the areas of development cooperation, environmental preservation, peace building, and global health sustainability.<sup>42</sup> What is equally dubious is whether and to what extent such revisions to security policy are at odds with the agenda of human security itself. Japan still does not possess a nuclear arsenal, and in 2016, it only spent a mere 0.9% of GDP on defense.<sup>43</sup> As it pertains to the current use of force, power projection capabilities, arms exports and the role of the national legislature (the Diet) in operational decision-making, Japan is far from “normal” when compared to other “middle of the road” powers that comprise of the US alliance network (such as France, Germany, England, Spain). In this regard, equivocations over the processes of “normalization” or the notion that this “remilitarization” will lead to excessive foreign entanglement or overseas wars, is likely to continue to be challenged until Japan becomes a full-fledged military power.<sup>44</sup>

#### **4. Reduced Salience of Human Security in Canada**

Canada was one of the first countries to adopt a human security agenda in its foreign policy framework. During the mid-1990s and the early part of the 21<sup>st</sup> century, Canada used the term *human*

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<sup>39</sup> Liff 2015, 85.

<sup>40</sup> Liff 2015, 86.

<sup>41</sup> Soeya et al. 2011, 66.

<sup>42</sup> Soeya et al. 2011, 68.

<sup>43</sup> World Bank 2016.

<sup>44</sup> Hornung and Mochizuki 2016, 110.

*security* as an umbrella concept to cover a variety of humanitarian issues such as the ban on antipersonnel landmines, support for the international criminal court, and the protection of children from sexual abuse, violence, and child labor, to name a few. The perception that there were inadequacies in international humanitarian law led the Canadian government to create the International Commission on Intervention and State Sovereignty (ICISS) in September 2000 and to issue a report entitled “Responsibility to Protect.”<sup>45</sup> The report addresses a variety of critical questions concerning humanitarian intervention, such as when to intervene, how, and by whose authority.

Lloyd Axworthy might be the most well-known individual in and outside of Canada to first embrace the idea of human security as a concrete government policy objective. As soon as he took office as Canada’s Minister of Foreign Affairs in January 1996, he called for an extension of the security framework to encompass nonmilitary threats to security, including those involving politics, economics, health, food, and environmental factors.<sup>46</sup> He led a campaign to ban landmines and military weapons and expanded humanitarian law in the security domain. Axworthy also supported funding for a military sizeable enough to attend to the key tasks of the human security agenda. In pursuit of human security causes and initiatives, he sought to involve the energy and skills of nongovernmental actors ranging from human rights groups, ethnic groups, universities, churches and business organizations.<sup>47</sup> While his early pronouncements reflected a broad and holistic understanding of human security that largely encompassed both “freedom from fear” and “freedom from want” as laid out in the UNDP report, by the late 1990s, the Department of Foreign Affairs had articulated a narrower approach, giving priority to the “freedom from fear” agenda.<sup>48</sup> Five specific priorities included public safety, protecting civilians in war-affected contexts, conflict prevention, governance and accountability, and support for multidimensional and effective Peace Support Operations.<sup>49</sup> There were a number of concerns regarding the move to focus and narrow the human security concept, despite the government’s efforts to render the agenda more actionable. One concern was that, due to this narrow policy agenda, human security would lose a “whole-of-government approach,” lacking effective and efficient coordination mechanisms with other departments at the state level. According to Smith, human security became Canada’s “foreign policy” rather than “international policy” that is designed and coordinated by a number of different departments in the government. Due to the lack of reference to human security in most departments except foreign affairs,

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<sup>45</sup> ICISS 2001.

<sup>46</sup> Axworthy 2001, 19-23.

<sup>47</sup> Van Rooy 2001, 253-69.

<sup>48</sup> Hynek and Bosold 2009, 143-58.

<sup>49</sup> DFAIT 2002.

human security was “manipulated to meet national security priorities, losing its breadth and transformative potential.”<sup>50</sup>

Canada’s promotion of the principles and practices of humanitarianism cannot be separated from its middle-power identity. Lloyd Axworthy, in particular, referred explicitly to Canadian actions on human security as “middle-power diplomacy.”<sup>51</sup> As Nikola Hynek notes, Canada’s national self-image is based on “the notion of doing some good in the world.”<sup>52</sup> In putting this notion into foreign policy, Canada has been significantly consistent since the World War II. Human security was a strategic and functional foreign policy for Canada when the country sought to distinguish itself “as a progressive middle power,” especially from its most immediate neighbor, the world’s political, military and economic superpower.<sup>53</sup> Having an independent and differing foreign policy, Canada sought to build its own identity and distinct international voice and influence: “Canadians want their country to be more than a junior partner to the United States.”<sup>54</sup> Canada’s national values and strong tradition of humanitarianism made the country quick, bold, and entrepreneurial in international conflict areas and human security work around the globe. And its unique political status and foreign policies made it an ideal breeding ground for the new approach to security.

But with the election of Stephen Harper of the Conservative Party in the early 2000s, human security was casted to the periphery of Canadian foreign policy discourses and circles. Upon taking office, Harper quickly renamed the Human Security Program (HSP) within the Department of Foreign Affairs and International Trade (DFAIT) to the Glyn Berry Program for Peace and Stability (GBP). While the objective of the HSP was to advance Canadian foreign policy priorities under the human security agenda, namely, the protection of civilians, public safety, and peace operations, the GBP refocused its priorities on issues of democracy, the rule of law around the world, and conflict prevention.<sup>55</sup> The Harper government stopped funding for the Annual Peacebuilding and Human Security Consultations that were created by the Liberal government. The Canadian Peacebuilding Coordinating Committee (CPCC) and the Canadian Consortium on Human Security (CCHS), once tasked with organizing the events pertaining to human security, no longer receive government funding and have hence ceased operations. Research on climate change that was actively supported by the government under the larger framework of human security suffered substantial funding cuts.<sup>56</sup> In

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<sup>50</sup> Smith 2006, 79.

<sup>51</sup> Chapnick 2005.

<sup>52</sup> Hynek 2004

<sup>53</sup> MacLean 2006, 70.

<sup>54</sup> Axworthy 2001, 8.

<sup>55</sup> DFAIT 2011.

<sup>56</sup> De Souza 2010.

addition, the Harper government discouraged Canadian diplomats from participating in UN human rights negotiations, and it changed the phrases which have specific meaning in international law, such as gender equality, child soldiers and international humanitarian law to more nebulous ones like equality of men and women, children in armed conflict and international law.<sup>57</sup> Instead, Canada would become deeply involved in traditional state security activities, including the Afghanistan mission, causing deep divisions between, and within, Canada's political parties.

Under the liberal Prime Minister Justin Trudeau, no substantive change has come about as it relates to human security policy implementation. There has been a pledge to take a more pacifistic approach to the war on terror, a desire to tackle climate change, and to promote international free-trade, but nothing about human security itself. According to a policy observer, as it relates to ODA and foreign aid spending, the "Trudeau government is increasingly sounding and acting like the one it replaced."<sup>58</sup> From the outset of Trudeau's tenure, it has been made clear that government was not prepared to breathe new life into the aid programs that were slashed under Harper. The Canadian government has "repeatedly used the word 'unrealistic' to characterize the goal of reaching 0.7% of gross national income (GNI), to which Canada committed in 1970...Under Harper, Canada officially abandoned the 0.7% target and the Trudeau government has not restored it, not even as a distant inspiration."<sup>59</sup> As recently as 2018, if one were to peruse the Canadian government's website, publications, or read any updates or literature emanating from the Department of Global Affairs webpage, there is little mention of human security. One can say that, conceptually, it has continued to be phased out at the same pace under Trudeau's administration as during his immediate predecessors. According to Michael Small, the former Director-General of the Human Right and Human Security Division at in the DFAIT, in his article "Should Canada Revisit the Human Security Agenda," he asserts that from 2006 on, the terminology of human security has been shelved and the funding for it slashed: "Canada dropped out of sight internationally as a promoter of the concept."<sup>60</sup> What are the major causes for change in Canadian human security policy? What explains the diminished attention to human security in Canada?

Perhaps the decline in its saliency relates to how the government presents human security. Canada's human security approach has been mainly framed in a way that emphasizes state interests. Despite the fact that Canada's human security initiatives are rooted in its strong political and cultural tradition of humanitarianism and multilateralism, the Canadian government did not fully articulate

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<sup>57</sup> Russell 2010.

<sup>58</sup> Brown 2017.

<sup>59</sup> Brown 2017.

<sup>60</sup> Small 2016, 1.

how its promotion of human security relates to its national values and identities. Since the early phase of the Axworthy government, human security had been promoted as a pragmatic grand strategy of Canada's foreign relations and economic policies, inviting criticism and frustration from both policymakers and the academic community, particularly on the left.<sup>61</sup> When the government addressed human security, its importance was frequently linked to national interests: the Canadian "economy depends on global security"; "Our approach to security must reflect our reality."<sup>62</sup> Interests have repeatedly been connected to the "niche" argument and the need for "prioritization": "We must accept that we cannot do everything, that we have more than ever to choose where and how we make a difference in the world"<sup>63</sup>; "We cannot be effective everywhere...Based on a clear understanding of where our interests lie, we will focus on particular threats, particular partners, particular markets and particular institutions."<sup>64</sup>

Due to the frequent and explicit reference to interests, therefore, a break from the previous dominance of human security became obvious when Axworthy left the office. Instead, interests were highlighted, including the importance of economic foreign policy and the need to focus on Canada's sovereign course. State interests respond rather swiftly to changing political and economic conditions. Canada's human security policy has been much scaled down because of a skewed balance in favor of the interest-based over the identity-based approach to their human security policy. If Canada is to reassume its place in the international order as a norm entrepreneur concerned with the aggrandizement of human security, it is going to have to do so in ways that forgo the strict parameters of interest-based approaches/solutions to questions regarding security

## **5. Conclusion: What Explains Norm Adoption and Abandonment**

Both Japan and Canada clearly saw multilateral policymaking with regard to human security as serving some of the state's needs. Explicitly promoting the more stable and rule-bound international system suits the interests of those middle powers, and they did so with the slogan: "We are not powerful, but we are promoting powerful ideas." The theme of human security enabled these two countries to actively participate in the international coalition on humanitarian issues and to engage themselves with what Jan Egeland called "humanitarian large power status."<sup>65</sup>

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<sup>61</sup> MacLean 2006, 63.

<sup>62</sup> Smith 2006, 77.

<sup>63</sup> Axworthy 1996, cited in Bosold and von Bredow 2006, 841.

<sup>64</sup> Canada's International Policy Statement 2005, cited in Bosold and von Bredow 2006, 841.

<sup>65</sup> Jan Egeland 1988.

Nonetheless, political self-interestedness alone does not explain why some, but not all, countries support human security. Promotion of new ideas by Japan and Canada stemmed from both strands of logic - exerting influence in international affairs and seeking to be good global citizens. There seems to be a causal significance, then, of the middle power notion of identity in their distinctive, advocacy-based foreign policy. Their identity, partly understood in their relationships to the United States and their relationships to the UN Security Council, was grounded on distinctiveness, normative value for self and others, and leadership with respect to human security norms. Human security calls for a basic human obligation to act, thereby suggesting that it is an outcome of redefining appropriate behavior.

The table below summarizes the similarities in the Japanese and Canadian adoption of human security norms and an important difference that lead to different policy outcomes. As is well documented, much of the human security agenda was championed by the strong individual leadership in the government: in Japan by Keizo Obuchi, Japan's foreign and later prime minister in the late 1990s, and in Canada by Lloyd Axworthy, foreign minister during the same period of the late 1990s. They took various initiatives to generate practical tools for implementing their vision, such as creating a multilateral human security alliance and human security fund, which made them the most prolific protagonists on the international stage for the human security cause. Along with the political leadership, notable situational factors explain the development of human security foreign policy in these two countries. For Japan, the lessons from the Asian financial crisis in the late 1990s were a catalyst for development of the human security agenda. When many of Japan's Asian neighbors were severely hit, Japan had to be aware of the negative impact of crises ravaging the region. For Canada, it was an experience in Rwanda. The tragic Rwandan experience gave important lessons to Canadians regarding humanitarian crises and encouraged reflection on how to prevent them from happening.

**Table: Adoption and Abandonment of Human Security Norms**

	<b>Japan</b>	<b>Canada</b>
<b>Similarities</b>	Political Leadership (Keizo Obuchi, Lloyd Axworthy)	
	Political Contingency (Asian financial crisis, Rwandan genocide)	
	Political Capacity (Middle power identities, Relations w/US)	
	Expected Political Gains (Independent voice and influence on the international stage)	
<b>Difference</b>	Framing Human Security as National Identity	Framing Human Security as State Interest
<b>Different Policy Outcome</b>	<b>Continued Support of HS norms</b>	<b>Reduced Salience of HS norms</b>

Another important similarity with regard to Canada and Japan's initial support for human security relates to their political capacity as middle powers. As its relations with the United States largely

influence its geopolitical position, Canada has sought to become an independent international actor through the application of human security policy. The desire to have its own international voice led to a distinct Canadian foreign policy identity and helped to promote an agenda of international peace, security, and development in the newly emerging postwar multilateral infrastructure. Similarly, Japan has pursued distinct foreign policy programs in recent years that might overcome its consistent branding as an unequal, junior partner to the United States. Because of its constitutional restraints on full and offensive military exercise, in particular, human security fits very well with what Japan can offer. At the same time, some political gains were anticipated. As discussed earlier, Japan has its own agenda for gaining a permanent seat on the UN Security Council. When Canada was most active in promoting the idea of human security, it was a new rotating member on the UN Security Council. Surrounded by the most powerful countries in the world, Canada had to find its own diplomatic role. Both Japan and Canada found the concept of human security helpful in achieving their political goals. The theme of human security seemed a good fit for them given their political conditions and capacities.

An important difference, however, has much to do with the framing of the issue, that is to say, how each government presents its human security ideas and policies. Canada no longer officially promotes the human security idea. Instead of highlighting Canada's normative infrastructure as a long-standing champion of the rule of law, multilateralism, and internationalism, the Canadian government often utilizes the language of interests. In its strong emphasis on state interests, which can be mercurial, and change given the political contexts and contingencies, the Canadian government was fairly open about a strategic pick-and-choose of where and when to intervene in the name of human security. When different administrations view state interests and preferences differently and when the new government associates human security with a previous administration, policy continuation can hardly be expected. This contrasts with Japan, where human security is deliberately linked to its postwar national identity, which is more likely to leave a sustained impact on understandings of appropriateness in policy-making processes. Linking human security to the national identity, the Japanese government works closely with nongovernmental actors (media, universities, foundations) to mainstream the idea of human security, which helps to keep its policy largely unchanged throughout different administrations. This, as a result, becomes interwoven into the very consciousness and moral fabric of Japanese society.

In sum, the difference in the framing of human security undertakings explains the different survival of norm promotion policies between Canada and Japan. Canada's abandonment of human security surely has a lot to do with the legacy of the conservative Harper government and its ideology. And yet, the fact that Japan continues to support human security even under an equally conservative



government, sheds light on how the notion of human security has been framed and internalized in the respective policies of these two countries. Canada framed human security as a matter of national interests, while Japan framed human security as a matter of national identity, which led to Tokyo's unwavering support. We are not arguing that Canada's promotion of human security was an outcome of political calculation premised exclusively on fixed state interest. Neither are we arguing that Japan's ongoing support for human security was grounded solely in its national values or identity. Nonetheless, the framing of interests and identity make an important difference. Japan is a successful case in which human security is presented not only as a government policy strategy that can serve the interests of the state, but also as part of an earned national identity, which after years of cultivation and policy innovation, has become embedded in wider political circles beyond political and party lines. The key difference here lies in how the government of each country has presented, framed, and utilized the two logics when promoting human security foreign policy. If human security is viewed and framed primarily as a policy tool necessary for specific national interests, its progress and sudden decline are to be expected. But, if human security is perceived as an evolving idea of appropriate behavior, and, perhaps more importantly, if it is framed that way by the norm entrepreneurs and agents constituting government and nonstate actors, it will likely bring about a more durable set of state policies and initiatives.

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## **Enforcement of Nationality and Human Insecurity: A Case Study on the Securitised Japanese Nationality of Koreans during the Colonial Era\***

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### **Abstract**

Although the securitisation of nationality received scholarly attention after 9/11, and deprivations of nationality began to be researched, the enforcement of nationality has not been discussed much. Since nationality can be a means to control a population, and the purpose of such control can be to ensure security, enforcement of nationality can be regarded as securitisation of nationality. At the same time, securitisation of nationality can threaten human security because it allows the state to control individuals. This article examines the enforcement of Japanese nationality over Koreans during Japan's colonial era from 1910 to the end of World War II. Nationality was securitised and enforced over Koreans, and they were not allowed to renounce their Japanese nationality. An examination of this case offers insight into the features of securitisation in relation to colonialism and nationality. First, nationality can be enforced as a result of securitisation of nationality. Second, nationality can be a means to control individuals. As a result, while the enforcement of nationality could be necessary for national security, it can threaten human security. Third, colonialism justified the prohibition of the renunciation of the Koreans' Japanese nationality, while the Japanese were allowed to renounce their nationality.

### **Keywords:**

Securitisation, Nationality, Human Security, Colonialism, Japan

## **1. Introduction**

The securitisation of nationality or citizenship has received scholarly attention since 9/11.<sup>2</sup> Recently for instance, nationality began to be regarded as a significant issue for security in Europe. One research area is the deprivation of nationality. Issues related to deprivation of nationality began

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<sup>2</sup> See Guillaume and Huysmans 2013; Nyers 2009.

to be discussed in the European Union,<sup>3</sup> and some states such as the United Kingdom of Great Britain and Northern Ireland strengthened their government's discretion to deprive the nationality of their nationals in case of a security concern.<sup>4</sup> This can be regarded as an example of the securitisation of nationality.

However, deprivation of nationality is not the only matter that needs discussion under this topic. The enforcement of nationality, which has not been discussed so far, should also be discussed. Nationality can be a means to control a population; therefore, states may not allow individuals to renounce their nationality in order to keep an eye on them. The purpose of such control can be relevant to national security, and this can result in a securitisation of nationality. At the same time, such securitisation of nationality can threaten human security. For example, Koreans were not allowed to renounce their Japanese nationality during the period of Japan's colonisation from 1910 to the end of World War II (WWII).

This analysis will contribute to understanding the features of securitisation, human security, and nationality, and indicate that nationality can be securitised and can be a threat to human security. Since enforcement of nationality has not been discussed as a matter of securitisation, this analysis will contribute to future discussions of securitisation of nationality and the role of nationality in human security.

This historical analysis also has significance from the following two perspectives. First, this case indicates that securitisation occurred long before the concept was introduced in the 1990s, indicating that it had been valid long before its actual introduction. In other words, this historical study indicates that non-military issues, traditionally not regarded as security issues, have been discussed as security issues. This implies that since the early twentieth century it was not necessarily military issues but also the perception of threat that mattered in the security field. Second, one can observe a conceptual relationship between securitisation and colonialism from this analysis. While colonialism is not officially justified in international society today, postcolonialists believe that colonial hierarchy continues to persist.<sup>5</sup> In other words, the analysis has the implications of examining securitisation from the perspective of postcolonialism as well.<sup>6</sup>

This article examines the enforcement of Japanese nationality over Koreans during the colonial

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<sup>3</sup> Mantu and Guild 2012.

<sup>4</sup> Arakaki 2017.

<sup>5</sup> See Sylvester 2017, 184.

<sup>6</sup> Unlike some other articles on securitisation in a historical context, this article does not argue that history can be an object of securitisation today. See Jutila 2015; Coskun 2010. However, the author believes that this paper has sufficient conceptual and theoretical significance on the relationship between colonialism/postcolonialism and securitisation.



era. First, it reviews perspectives on security employing the “Copenhagen School” approach as well as referring to a postcolonial approach, and a critical approach to human security. Second, it differentiates between nationality and citizenship, and specifies that the scope of this article is nationality. Third, it introduces the 1899 Japanese Nationality Act, which allowed the Japanese to renounce their Japanese nationality when they acquired another. Fourth, the enforcement of Japanese nationality on Koreans as a result of non-enforcement of the 1899 Nationality Act is explained. This part also covers the legal differences between mainland Japan and its colonies. Fifth, features of securitisation in relation to law, colonialism, and nationality are discussed, and the article concludes that nationality can contribute to national security although it may sometimes threaten human security.

## **2. Approaches to Security**

Among the various approaches to security, this article takes the position of the Copenhagen School, since the securitisation process is observable in the Japanese nationality policy towards Koreans. In addition, this article also refers to a postcolonial approach and a critical approach to human security to explain the policy thoroughly.

Traditionally, security studies have only covered military matters. However, this stance has been questioned, and hence apart from military issues, other issues such as economic and political ones began to be included as part of security studies.<sup>7</sup> Under these circumstances, “the Copenhagen School” developed the concept of securitisation.<sup>8</sup> Unlike traditional security studies, Buzan, Wæver and de Wilde claim that “the issue becomes a security issue—not necessarily because a real existential threat exists but because the issue is presented as such a threat.”<sup>9</sup> In other words, security matters are not a given fact, but they are based on the perception of the threat. There is a process by which certain matters are regarded as a security issue. The Copenhagen School believes that any public issue can be classified as a non-politicised, politicised or securitised matter. When a matter is non-politicised, a state does not concern itself with the matter, and it is not discussed in the public sphere. If something is politicised, the state does concern itself with the matter, and it constitutes public policy. When a matter is securitised, it is interpreted as a threat, and emergency measures are required. This process of securitisation takes place through discourse.<sup>10</sup> First, a securitising actor attempts to securitise a

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<sup>7</sup> Peoples and Vaughan-Williams 2015, 4.

<sup>8</sup> Founders and advocates of the concept of securitisation are called “the Copenhagen School” because this “school” emerged at the Conflict and Peace Research Institute of Copenhagen. Emmers 2013, 168.

<sup>9</sup> Buzan, *et al.* 1998, 24.

<sup>10</sup> Buzan, *et al.* 1998, 23-25.

certain matter.<sup>11</sup> Second, “the audience” accepts this securitising move. If they do not, the matter is not securitised. Securitisation allows for the exception of rules, and therefore the breaking of rules is allowed. However, a securitised matter can also be desecuritised, and it can be politicised or even depoliticised as well.<sup>12</sup>

In addition to the Copenhagen School’s approach, this article employs a postcolonial approach. Postcolonialism questions the Eurocentric concept of security.<sup>13</sup> In this article, postcolonialism clarifies the role of the state in a colonial setting. The division between the mainland and its colonies in terms of “colonial governmentality” is a significant one.<sup>14</sup> As will be examined later, the nationality policies implemented in Korea and in mainland Japan were different. This difference can be explained through a postcolonial approach.

This article also refers to a critical approach to human security. Unlike in traditional security studies, human security regards the “human” as a referent object of security. However, it must be noted that conventional broad and narrow approaches to human security assume that national security is a basis of human security and these concepts of security are compatible.<sup>15</sup> While the concept of human security has developed to shift the referent object of security from states to individuals, both the broad and narrow approaches seem to be in line with the national security paradigm, because states are regarded to be the primary guarantors of human security.<sup>16</sup> The critical approach to human security critically examines relationship between national security and human security.<sup>17</sup> There is a possibility that national security and human security can conflict, and states may threaten the human security. In particular, human security of the colonised tends to be threatened because the colonised tend to be marginalised. In order to capture this feature, this article also considers human security critically.<sup>18</sup>

### 3. Nationality and Citizenship

Nationality is sometimes used as a synonym for citizenship,<sup>19</sup> but this article distinguishes

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<sup>11</sup> This is called “a *securitising move*” (sic). Buzan *et al.* 1998, 25.

<sup>12</sup> Buzan, *et al.* 1998, 25-29.

<sup>13</sup> Laffey and Nadarajah 2013, 123.

<sup>14</sup> Scott 2005, 21.

<sup>15</sup> For a broad approach, see Commission on Human Security (CHS) 2003, 4. For a narrow approach, see International Commission on Intervention and State Sovereignty (ICISS) 2001, vii.

<sup>16</sup> Both CHS and ICISS recognise the significance of empowering states to protect or empower individuals. See Shani 2014, 72.

<sup>17</sup> See Shani 2014, 71-73.

<sup>18</sup> This article intends to analyse the relationship between securitisation, human security, and nationality and does not aim at the “emancipation” of individuals. See Shani 2014, 73-74. Thus, this article intentionally avoids using the term “critical human security studies”.

<sup>19</sup> See Arakaki 2017, 4.

between these terms based on the historical development of each concept. Both nationality and citizenship have the property of dividing members from non-members of a community. However, there is a large difference between them. While nationals are expected to share an identity in this age wherein a nation-state is regarded as a principle,<sup>20</sup> citizens do not necessarily share one. Rather, the concept of citizenship focuses on the rights and duties of individuals.<sup>21</sup>

Historically, the term “citizenship” has been used for a much longer time than “nationality”. The term can be found to have originated in the city-state period of Ancient Greece.<sup>22</sup> Citizens participated in the politics of the city-state,<sup>23</sup> and they also possessed military obligations.<sup>24</sup> The purpose of determining the scope of citizenship was to protect the community, and in return their rights to participate in politics were recognised.<sup>25</sup> Thus, protection of the community and citizens’ participation in the community were the principal features of citizenship. For instance, suffrage is one of the significant rights of citizens.

On the other hand, nationals are expected to share a certain identity. The French Revolution triggered the emergence of nationality. After the revolution, shared identity as members of the state was emphasised. Article 3 of the 1789 *Declaration of the Rights of Man and of the Citizen* states that “sovereignty” essentially resides with the nation, and it attempted to shift the bearer of sovereignty from the king to the people who compose the state. Influenced by this declaration, the French people began to experience a shared identity, and they attempted to be liberated from tyranny.<sup>26</sup> This can be considered as nationalism. After the revolution, the norm that members of the state should share a common identity developed. Based on the concept of the nation, people within a territory shared a nationalism, and the nation was “substantiated” by nationality.<sup>27</sup> This history indicates that nationality places emphasis on the shared identity of members of the state. Rights and duties should be regarded as attachments to such identity.<sup>28</sup>

Based on this history, this article distinguishes nationality and citizenship. Nationality refers to a collective identity and citizenship to the membership of states. This article focuses on nationality

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<sup>20</sup> For instance, the name “United Nations” implies that a nation is regarded as a unit of the United Nations, which is composed of states, and it can be regarded as an example indicating that a nation-state is a principle today.

<sup>21</sup> This article merely differentiates citizenship and nationality at the conceptual level, and it must be emphasised that different states use different terms to indicate a similar meaning. For instance, Japan uses the word “nationality” while the United States of America (US) uses the word “citizenship” to refer to a similar meaning.

<sup>22</sup> Yarwood 2014, 1.

<sup>23</sup> Isin and Turner 2002, 5.

<sup>24</sup> Faulks 2000, 16.

<sup>25</sup> Riesenberger 1992, 3.

<sup>26</sup> Opello and Rosow 1999, 183.

<sup>27</sup> Arakaki 2016, 14.

<sup>28</sup> However, in general some rights are recognised for nationals. For instance, nationals are typically allowed to admit to the state of nationality. Edwards 2014, 35-38.

because nationality is a significant concept in this age of the nation-state.

#### 4. The 1899 Japanese Nationality Act

This section introduces the nationality in mainland Japan to compare with the situation of its colonies. Article 10 of the first Japanese Constitution promulgated in 1889 provided that “[t]he conditions necessary for being a Japanese subject shall be determined by law”.<sup>29</sup> In response, the first Japanese Nationality Act was enacted in 1899.<sup>30</sup> The Nationality Act adopted *jus sanguinis* through the paternal line, which allowed fathers to transmit their nationality as a principle (Art. 1). In addition to this, mothers could transmit their nationality to children when the fathers were not known or were stateless (Art. 3). Children born in Japan could also acquire Japanese nationality when both parents were not known or were stateless (Art. 4). Wives of Japanese nationals (Art. 5(i)) and children who were acknowledged or adopted by the Japanese (Arts. 5(iii) and 5(iv)) also acquired Japanese nationality. When a man acquired Japanese nationality, his wife also acquired Japanese nationality (Art. 13). The dominant principle in the Nationality Act was the Japanese family system,<sup>31</sup> and the prevention of conflicts of nationalities was also considered.<sup>32</sup> The Nationality Act attempted to prevent conflicts of nationalities because conflict of nationalities was regarded as an issue in the international legal principle.<sup>33</sup> It is significant to point out that the international legal principle was taken seriously when the Japanese Nationality Act was drafted.<sup>34</sup>

In addition to these provisions on the acquisition of nationality, the Nationality Act also determined the ways in which Japanese nationality could be lost. Article 18 provided that a woman who is married to a man with another nationality loses her Japanese nationality. In addition, Japanese nationality is lost when a person acquires another nationality at his or her will (Art. 20). These

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<sup>29</sup> The meaning of “subject” should be regarded as “nationals” in this context. While the concepts of subject and national are different since the subject has a notion of the vertical relationship between the King, Queen, or Emperor and his or her “subjects”, they share the meaning of emotional similarity among members of the state unlike the concept of citizens.

<sup>30</sup> Tashiro argues that there used to be an “assumed nationality law” even before the drafting of the 1899 Nationality Act and the 1889 Constitution. Tashiro 1974, 58. However, it is meaningful to mention that the 1899 Nationality Act is the first law that codified the scope of Japanese nationals, which helped to clarify the scope of the Japanese. See Nakamura 2013, 7. Dr. Anna Nakamura kindly shared her dissertation with the author, for which the author is grateful.

<sup>31</sup> Ministry of Justice, Civil Affairs Bureau, The Fifth Division 1969, 32. For the history of the Japanese family system and nationality, see Krogness 2014.

<sup>32</sup> Conflicts of nationalities refer to both negative and positive conflicts of nationalities, and the Nationality Act attempted to prevent both statelessness and dual nationality. Ministry of Justice, Civil Affairs Bureau, The Fifth Division 1969, 32.

<sup>33</sup> See Ministry of Justice, Civil Affairs Bureau, The Fifth Division 1970, 19.

<sup>34</sup> This should be compared with the status of international law when the enforcement of nationality over Koreans was addressed. See next section titled “Koreans’ Japanese Nationality”.

provisions on losses of nationality were based on the principle of the household. When people left a Japanese household, they lost their Japanese nationality in principle.<sup>35</sup>

This article focuses on Article 20, which recognised the possibility for the Japanese to lose their nationality of their own will. There are two significant points in Article 20. First, the article explicitly indicates the possibility that Japanese nationals can acquire another nationality.<sup>36</sup> Although the intention of the inclusion of such a provision is not clear since the documents on the drafting process of the article are not available,<sup>37</sup> Article 20 implies that Japanese nationals could naturalise to another state.<sup>38</sup> The second point is that “at his or her will” is included in this article. The purpose of including this phrase is not very clear since existing documents do not explain its inclusion, but this provision secured for each Japanese national’s will regarding their nationality. If Japanese nationals sought to acquire another nationality, they could do so, and this could result in the loss of their Japanese nationality; however, the Nationality Act did not allow the Japanese government to enforce or to deprive Japanese nationality.<sup>39</sup> This fact, as we shall next see, is different when compared to the Korean situation.

## **5. Koreans’ Japanese Nationality**

As a result of Japan’s colonisation, the scope of Japanese nationals expanded. However, the Nationality Act was not enforced in the colonies automatically and a specific imperial ordinance or order was necessary in order to make laws for the mainland enforceable in the colonies.<sup>40</sup> The first Japanese colony was Taiwan (Formosa), and Taiwan became a Japanese colony in 1895. The Taiwanese who did not leave Taiwan until two years after its cession to Japan became Japanese subjects pursuant to Article 2 of the “Procedure to Deal with the Status of Taiwanese Residents.”<sup>41</sup> After the 1899 Nationality Act was promulgated on 18 March 1899, the act was made enforceable in

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<sup>35</sup> However, there were exceptions to this. Articles 19 and 21 provided that Japanese nationality is not lost if nationals do not acquire another nationality, even when they leave the Japanese household. This was motivated by the principle of the prevention of statelessness.

<sup>36</sup> It is said that the 1899 Nationality Act might copy laws of other states such as Italy, Portugal, and Belgium. Tanaka 1983b, 9.

<sup>37</sup> Tanaka 1983a, 1.

<sup>38</sup> The 1899 Nationality Act could have banned naturalisation to another state if drafters had wished so, but they did not do so.

<sup>39</sup> Tatsukichi Minobe, a constitutional scholar, stated that “[a]lthough a nationality remains to be a status of a person, and itself is not a right, possession of a nationality is a right of nationals. Thus, a state cannot deprive nationality contrary to the will of nationals”. Minobe 1931, 130-131.

<sup>40</sup> See Article 1 of the Act on Laws to Enforce in Taiwan in 1896 and Article 1 of the Law to Enforce in Korea in 1911.

<sup>41</sup> Endo 2010, 76. See also Article 5 of the Treaty of Shimonoseki.

Taiwan on 20 June 1899, pursuant to an imperial ordinance (No. 289 of 1899).<sup>42</sup> Thus, Taiwanese people acquired and lost Japanese nationality just as mainland Japanese did.

In 1910, Japan annexed Korea pursuant to the Japan-Korea Annexation Treaty, but the treaty did not explicitly mention the status of Korean people.<sup>43</sup> However, since Japan regarded this annexation as a peaceful one, it was *assumed* that Korean residents acquired Japanese nationality automatically, although there was no clear basis for this.<sup>44</sup> In addition, it was also *assumed* that the nationality of Korean people was regulated by a “custom and nature” compatible with the Japanese Nationality Act.<sup>45</sup>

However, it is significant to point out that the Nationality Act was not enforced in Korea, and the “custom and nature” that regulated Korea was not exactly the same as the Japanese Nationality Act. This non-enforcement of the Nationality Act is relevant to the loss of nationality. As mentioned already, the 1899 Nationality Act included a provision on the loss of nationality upon naturalisation to other states (Art. 20). Since the Japanese government hesitated to allow Koreans to naturalise to other states, the Nationality Act was not enforced. In 1910, Masatake Terauchi, Governor-General of Korea at the time, noted that there was a considerable number of Korean people living in the US and Russia who attempted to lead an anti-Japanese movement, which threatened Japanese security. He continued noting that if the naturalisation of Koreans’ to other states was allowed, it would be difficult to control security.<sup>46</sup> The statement of the Governor-General of Korea to securitise nationality seems to have persuaded other Japanese ministries, and thus the Japanese nationality of Koreans was securitised during the colonial period. As a result, the Nationality Act, insofar as it guaranteed the renunciation of Japanese nationality, was not enforced in Korea. Since the Japanese government attempted to “control” the Korean people, it can be said that the enforcement of Japanese nationality could have caused human insecurity among the Koreans.

Although Japan had recognised the enforcement of Japanese nationality over Koreans as a problem from an international legal perspective, its policy did not change. The Ministry of Foreign Affairs of Japan (MOFA) did not call for the enforcement of the Nationality Act in Korea, but it did state that non-enforcement of the Nationality Act, which results in enforcement of nationality, was

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<sup>42</sup> Endo 2009, 53.

<sup>43</sup> Article 6 of the treaty stated that “the Government of Japan [...] undertake[s] to afford full protection for the persons and property of Koreans obeying the laws there in force to promote the welfare of all such Koreans,” but it did not cover the acquisition or loss of nationality.

<sup>44</sup> In the case of peaceful annexation, it was assumed under international law that nationals of the annexed states acquire the nationality of the annexing state. Egawa *et al.* 1997, 200.

<sup>45</sup> Egawa *et al.* 1997, 201. This view was shared by the Japanese government. Tashiro 1974, 798.

<sup>46</sup> Endo 2010, 57.

problematic from an international legal perspective.<sup>47</sup> Although the reason why enforcement of Japanese nationality was regarded to be problematic is not clear from available sources, there are two possible bases for this problematisation of non-enforcement of the Nationality Act. The first is the principle of non-discrimination. In 1915, an officer of the Governor-General of Korea submitted a report to the Governor-General, which stated that equal treatment of nationals is “an international principle,” and hence discrimination against Koreans would be problematic.<sup>48</sup> The second possible basis is the principle of the freedom to change one’s nationality. In 1895, the *Institut de Droit International*, a society of international legal scholars, published a resolution on nationality, the third principle of which stated that “[e]veryone must have the right to change nationality.”<sup>49</sup> Saburo Yamada, a legal scholar, introduced the principle in his 1926 article stating that freedom to change nationality is recognised in international law.<sup>50</sup> Since he played a significant role in the Japanese government,<sup>51</sup> his understanding of international law might have been shared by the government, and it could have resulted in the problematisation of the non-enforcement of the Nationality Act. MOFA then stated that it was desirable that the Nationality Act be enforced in Korea to allow the renunciation of Japanese nationality. However, at the same time, it also justified the enforcement of Japanese nationality from the perspective of Japanese security. In 1930, MOFA noted that it would be difficult to control Koreans’ thought, if Koreans could naturalise to the former Union of Soviet Socialist Republic (USSR) or China.<sup>52</sup> Thus, the Japanese Nationality Act was not enforced in Korea to make it easier for the Japanese government to control Koreans. In other words, the act was not enforced in Korea in order to prevent the naturalisation of Koreans to other states from a security perspective. Although Japan had recognised the international norms that should have permitted Koreans to renounce Japanese nationality, these norms were not strong enough to change the policy of the enforcement and securitisation over Koreans.

This enforcement of nationality particularly contrasted with the legislation of mainland Japan after 1910. The 1899 Nationality Act was amended in 1916 with the principal motivation to allow Japanese nationals born in the US to renounce their Japanese nationality in order to protect the Japanese in the US.<sup>53</sup> There were many children who were born to Japanese fathers or unmarried

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<sup>47</sup> MOFA 1930.

<sup>48</sup> Endo 2010, 65.

<sup>49</sup> *Institut de Droit International* 1895.

<sup>50</sup> Yamada 1926, 18-23.

<sup>51</sup> Yamada was a member of the Investigation Committee of Codes when Japan developed laws after the isolation policy was lifted, and he served as Councillor of the Japanese Legislation Bureau. Endo 2010, 54.

<sup>52</sup> MOFA 1930.

<sup>53</sup> See National Archives of Japan 1916.

Japanese mothers in the US who acquired both Japanese and US nationalities.<sup>54</sup> As a result of dual nationality, Japanese-Americans faced many issues. The anti-Japanese movement began in the US, and the Japanese government was concerned about the situation of Japanese-Americans.<sup>55</sup> In particular, the Japanese government was afraid of future legislation in the US which would deny the US nationality of Japanese-American people. One idea was to allow for the renunciation of Japanese nationality so that Japanese-Americans would not have to face discrimination. While Article 20 of the 1899 Nationality Act allowed Japanese to renounce their Japanese nationality, it was not applicable to Japanese-Americans. It provided that a loss of Japanese nationality was conditional on the acquisition of another nationality “at his or her will”. Thus, the text was referring to naturalisation. Since the acquisition of nationality by birth was not considered the acquisition of nationality at a Japanese national’s will, Article 20 did not allow Japanese-Americans to renounce their Japanese nationality. In this context, Article 20-2 was added in 1916. The new article made it possible for Japanese nationals to withdraw their Japanese nationality if they acquired another nationality by birth in another state and if they had an address in the state.<sup>56</sup> This article facilitated the possibility for Japanese to lose their Japanese nationality, and it was aimed at protecting Japanese nationals. This legislation contrasts with the fact that Koreans were not allowed to renounce their Japanese nationality.

## 6. Implications for Security Studies

There are some implications of this study on the relationships between the securitisation of nationality, colonialism, national security, and human security. First, nationality can be enforced as a result of securitisation of nationality. Deprivation of nationality was regarded as an example of securitisation of nationality, but enforcement of nationality is also an example of securitisation of nationality. The Governor-General of Korea persuaded the Japanese ministries, and Japanese nationality was enforced in Korea.<sup>57</sup>

Second, related to the first implication, this case has an implication that nationality has a feature to control individuals, and this implies different features of nationality vis-à-vis national security and human security. Nationality is typically regarded to be a positive factor to secure human security,<sup>58</sup>

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<sup>54</sup> If a mother of a child was married to a foreign man, she could not transmit Japanese nationality to her child. It was reported that 1,500 Japanese men were born in the US at the time. Ministry of Justice, Civil Affairs Bureau, The Fifth Division 1971, 13.

<sup>55</sup> Tanaka 1983c, 14.

<sup>56</sup> Ministry of Justice, Civil Affairs Bureau, The Fifth Division 1971, 13.

<sup>57</sup> It is interesting to note that the “audience” to be persuaded does not have to be the general public, but the Japanese ministries at the time.

<sup>58</sup> See Sokoloff 2005.



but this article indicates that nationality has a potential to threaten human security while it may secure national security. In Korea, nationality was enforced as a result of the securitisation of nationality. In order to control the Korean population, the Japanese government did not want to allow Koreans to naturalise to other states such as China and the USSR, and this resulted in the enforcement of Japanese nationality. The Japanese government expected that this enforcement of nationality would contribute to the control of Koreans. This case study indicates that nationality can be enforced to control people.<sup>59</sup> This implies that nationality can be necessary for the state to secure national security by controlling population. On the other hand, nationality does not necessarily protect or empower the human security of Koreans. Korean people did not have suffrage, and they could not participate in politics, which meant that their voices could not influence the law.<sup>60</sup> In addition, they could not renounce their Japanese nationality. Colonialism itself can be regarded as a threat to human security, but the enforcement of nationality, if anything, even strengthened this threat to the human security of Koreans. Koreans could not escape from the control of Japan. This indicates that a nationality has potential to be a threat to human security while it may contribute to national security. This finding can be supported by critical approaches to human security, which claims that securing national security has a risk for human security.

Third, colonialism justified the prohibition of the renunciation of Koreans' Japanese nationality while the Japanese were allowed to renounce their nationality. For instance, the influence of international law for the policies in the colonies is different from the influence of international law for the 1899 Nationality Act. When the 1899 Nationality Act was drafted, an international principle was discussed, and this assisted the inclusion of provisions to prevent conflicts of nationalities. However, international law did not influence the nationality policy in Korea. Although the Koreans' inability to renounce their Japanese nationality was regarded as an issue from an international legal perspective, this did not change the policy in Korea. This was part of the colonial governmentality which distinguished the colonies from the mainland. In a broader context, the status of people from the colonies was not equal with that of the mainland Japanese. Koreans and Taiwanese people were listed under different household registrations (*koseki*), and these differentiated systems were convenient for the Japanese government.<sup>61</sup> After the end of WWII, the Japanese nationality of Koreans and Taiwanese was denied. Some people from the former colonies residing in Japan felt their status to be

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<sup>59</sup> This can be contrasted from cases of deprivation of nationality in which states deprive individuals of their nationality because their possession of nationality could threaten the security of the state.

<sup>60</sup> Representatives in the colonies did not have seats in the Imperial Diet.

<sup>61</sup> See Oguma 2002, 329.

unstable.<sup>62</sup> They indicate that the nationality policy for the people from the former colonies was developed for the convenience of the Japanese government. In the case of Koreans in particular, Japanese nationality was enforced over them during the colonial era to keep an eye on them, while it was denied after the end of the colonial rule. In case of enforcement of Japanese nationality, Japanese national security was emphasised, and enforcement and denial of Japanese nationality caused human insecurity of Koreans.

Colonialism established a legal framework that could securitise nationality in Korea. An interesting relationship between securitisation, law, and colonialism is observed. In securitisation studies, issues are either non-politicised, politicised, or securitised. When the Nationality Act was drafted and negotiated in 1899 and 1916, nationality became politicised because it was negotiated, and then it became a law. This is the story of nationality for mainland Japan. However, the nationality policies for the colonies were different from those for mainland Japan. Koreans were not allowed to renounce Japanese nationality. This colonial governmentality is observable not only in the policy difference, but also in the legal structure at the time. The laws of the mainland were not automatically enforced in the colonies, but an imperial ordinance or order was necessary for the mainland laws to be enforced in the colonies. Thus, the laws and regulations of the colonies were an issue outside of the law itself. This appears to be a case of securitisation over the colonies since the application of the law is evidence of its politicisation. This, in turn, is because the law was, in principle, discussed in the Diet and amendable to the results of the discussion. However, the discussion in the Diet was not directly relevant to the laws and regulations applying in the colonies. The Nationality Act was not enforced in Korea, and this allowed for the enforcement of Japanese nationality over Koreans.<sup>63</sup> Thus, the structure of colonialism allowed for the securitisation of nationality. This indicates that the colonies were regarded as an “exception”.<sup>64</sup> Colonies such as Korea were regarded as exception, and this is the reason why imperial ordinances, which are discussed at the administration level and not in the Diet, played the role of law in the colonies. As a result, Koreans were not allowed to renounce their nationality.

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<sup>62</sup> See Sokoloff 2005, 15-16.

<sup>63</sup> The Nationality Act was enforced in Taiwan as it was in mainland Japan, and the difference between Taiwan and Korea is not clear. The author hopes to explore this issue further in the future.

<sup>64</sup> This reminds the author of Schmitt’s famous quote, “[s]overeignty is he who decides on the exception”. Schmitt 1985, 5.

## 7. Conclusion

This article discusses that nationality can be enforced as a result of securitisation. It examined nationality from the perspectives of securitisation theory, as well as a postcolonial approach and a critical approach to human security. It introduced the case of the nationality of Koreans during the Japanese colonial rule. This case indicates that non-military issues were regarded as a security matter since the early twentieth century, and nationality can be a means to control individuals.

This article has implications for an analysis of the current international movement on nationality. After the end of WWII, some international instruments regarded nationality as a human right. Recently, statelessness has been regarded as a significant issue, and the Office of the United Nations High Commissioner for Refugees (UNHCR) is attempting to “end statelessness” by 2024.<sup>65</sup> This movement seems to be based on the understanding that nationality is a precondition to enjoy rights. However, as this article indicates, nationality can also be a means to control individuals. While the notion of human rights has developed since the end of WWII, nationality does not merely confer rights. It also gives obligations to individuals, and controlling individuals remains a feature of nationality. If statelessness were ended, all individuals would be a national of some state. In effect, all individuals would be controlled by a state at least in theory. This may strengthen states’ ability to control individuals. While the movement to prevent statelessness proceeds, the feature of nationality to control individuals, which can threaten human security, must be recognised.

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<sup>65</sup> See UNHCR 2014; Akiyama 2018.

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# **Causal Relationship between Choice of Applying for Refugee Status and Building an Ethnic Community: Case Study of Kurdish Applicants from Turkey in Japan**

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## **Abstract**

The rejection of all refugees of a certain nationality is expected to discourage others from the same nation from applying for refugee status in that country primarily because it is unfavorable to resettle in such a country without any public support, which is very beneficial for refugees. However, although no refugee has been accepted from Turkey, the number of Turkish refugee applicants has unexpectedly increased in Japan. The background becomes clear when looking at the feature of the Refugee Status Determination System as well as their ethnic community in Japan.

This paper explores the reasons for this phenomenon from the perspectives of both the system and the community. As a result, there are two main advantages for such refugee applicants to stay in Japan even though their legal status is unstable. One can be explained from the perspective of unique feature of the Refugee Status Determination System in the Immigration Control and Refugee Recognition Act. It influences the increasing number of such refugee status applicants and it is possible to stay in Japan as they keep reapplying for refugee status. The other is the formation of an ethnic community, which comprises close family members and relatives. It enables seeking mutual assistance although it is difficult to take support from the government.

**Keywords:** Refugee Application, the Refugee Status Determination System, Ethnic Community, Turkish Kurds, Refugee applicants in Japan

## **1. Introduction**

Japan ratified the 1951 Refugee Convention (convention relating to the status of refugees) and the 1967 Refugee Protocol (protocol relating to the status of refugees) and enacted their own Refugee Status Determination System in the Immigration Control and Refugee Recognition Act according to the standards developed in the International Refugee Convention in 1981<sup>2</sup>. In this system, people from all foreign countries can apply for refugee status after entering the country whether or not they have the relevant status as a resident.

In practice, refugee applicants have faced great difficulty in obtaining refugee status since the

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<sup>2</sup> In this paper, the author calls both 1951 Refugee Convention and 1967 Refugee Protocol as International Refugee Convention.

system has been established. In particular, applications from Turkish nationals have increased rapidly since the mid-1990s. Despite this fact, no Turkish national has ever been recognized as a refugee in Japan<sup>3</sup>. Normally, one would expect that the rejection of all refugees of a certain nationality would discourage others of the same nationality from applying for refugee status in that country. However, the number of refugee applicants of Turkish nationality has unexpectedly increased in Japan<sup>4</sup>.

Why does this phenomenon occur and what are the benefits for these Turkish nationals to apply for refugee status even though their status during their application is very unstable? The purpose of this paper is to explore the answers to these research questions. Then, this research contributes for immigration study as well as refugee study, focusing on “people on the move” especially on Japanese context.

In previous researches, first of all, they mainly focus on those who accepted as refugees and consider their rights compared to other countries or applying to the Refugee Convention<sup>5</sup>. They have pointed out what Japanese Refugee Status Determination System lacks on global perspective and provided ideal suggestions. For example, since about 0.2% of refugee status applications are approved on annual record in Japan, most of these previous studies mention that the Japanese System is far from the international standard for Refugee Status Determination in practice<sup>6</sup>. However, this point cannot answer why there is a phenomenon of increasing number of refugee applicants in spite of no determination while the rate has never changed dramatically.

Second, in terms of refugee applicants, the previous researches focus on the reality of their harsh livelihood with unstable status<sup>7</sup>. They have pointed out that applicants face the limitation or difficulties in various ways such as access to health care service or health condition, right to work, freedom of movement, from field survey. This is exactly so-called human insecurity situation as Mushakoji (2008) defined, analyzing Japanese immigration control in particular. However, none of previous researches examines what is benefit for refugee status applicants who have never accepted as refugees for long-term. Therefore, this paper also investigates the dynamism in the ethnic community of refugee applicants, extending arguments to refugees in the similar way that Mushakoji (2008) emphasizes the influence of informal and social ethnic network for immigrants.

Hence, this research provides new perspectives for immigration and refugee study by analysis both of the Refugee Status Determination System and the case of Kurdish refugee applicants from

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<sup>3</sup> See Ministry of Justice, 2018.

<sup>4</sup> Ibid.

<sup>5</sup> For example, Homma 2005, 94; Komai et al. 2007; Seki 2012.

<sup>6</sup> See Ministry of Justice, 2010-2018.

<sup>7</sup> For example, Ohnishi et al. 2012; Sato 2008.



Turkey in Japan. The significance of this research is to explain the phenomenon correctly and review the Japanese Refugee Status Determination System in different way from previous studies.

The author starts to analyze the reason behind the reapplication from the aspect of the Refugee Status Determination System. First, this paper overviews Japan's Immigration Control and Refugee Recognition Act and identifies features that may encourage refugee applications.

Second, this paper investigates the Kurdish ethnic community that has developed in Saitama Prefecture next to Tokyo. Since Turkish Kurd refugee applicants have not been targeted in previous refugee studies in Japan, the author has conducted ethnographic interviews in the community. Since 2010, the author has interviewed 20 Turkish Kurds who moved to Japan. In 2013, the author interviewed 13 Turkish Kurds living in Gaziantep in Turkey, the area from which most of the Kurdish people living in Japan come. When interviewing Turkish Kurds in Japan, the author mainly made use of Japanese and sometimes Turkish language because most of the interviewees had lived in Japan for more than 10 years and they were used to using Japanese. However, in cases that the interviewees could not understand Japanese, especially Kurdish women who culturally stay in the house and have less opportunity to use the language, other family members such as their children or husbands helped to interpret during the interviews, as children learn Japanese in public school in the region and husbands have opportunity to use Japanese at their work. In addition, the author interviewed some members of organizations in charge of providing support to Kurdish refugee applicants from 2014 to 2018, including a staff member of the local government's unit that promotes a multicultural society in Saitama Prefecture, two main staff members of the Kurdish association established in 2011, a member of the Japan Lawyers Network for Refugees, and a Japanese teacher of Kurdish Japanese language class<sup>8</sup>.

The research method used in this paper is a sociological approach because this kind of refugee study requires a comprehensive approach to accurately analyze the complicated phenomenon. Additionally, the results of interviews and participant observations were used as part of a qualitative investigation based on the ethnic community.

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<sup>8</sup> See Appendix.

## **2. Refugee Status Determination System in Japan and Statuses during Application Procedure**

Based primarily on the amendment to the Immigration Control Law of 2004, the legislative status of refugee applicants depends on whether they have residency status<sup>9</sup>.

First, those who enter Japan from a country exempted from visa requirements have a 90-day “short-term stay” status. However, due to the enforcement of the amended Immigration Control and Refugee Recognition Act in 2005, their period of stay can be renewed only during the refugee recognition process<sup>10</sup>. This is an important improvement because refugee applicants could not have renewed their period of stay after the first 90 days in the past. However, when one’s refugee application is rejected, their appeal is dismissed and the administrative procedure is over, their resident period can no longer be renewed. Moreover, from a humanitarian standpoint, the change of status of residence from “short-term stay” to “specific activity” has been urged during the refugee application process in recent years<sup>11</sup>.

For those who have “short-term stay” or “specific activity” resident statuses and want to work, it is necessary to obtain permission for work beyond their respective status. After the enforcement of the amended Act, this permission can only be obtained after six months have passed from the submission of an applicant’s first refugee application. Therefore, since enforcement of the amended Act in 2005, the deadline for the renewal of the period of stay for applicants with a legal status of residence has been extended. It also has become possible to work during the application process even if the applicant has not yet been determined as a refugee. This is the only status for refugee applicants to work legally without any limited term because the Japanese government officially has not been admitted to accepting immigrants or foreign labors<sup>12</sup>. Still they cannot work legally in the first six months and, therefore, must depend on self-help efforts or private assistance. In addition, since enforcement of the law for partial amendment to the Immigration Control and Refugee Recognition Act in 2012, those with periods of residence of 90 days or more can apply for a resident card or a foreign resident card<sup>13</sup>. By doing so, it can be said that applicants can register with municipalities in their residential areas, making public services easier to receive.

Second, applicants lacking status of residence or those who have exceeded the period of

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<sup>9</sup> See The House of Representatives Japan 2004.

<sup>10</sup> Yamawaki 2017, 174.

<sup>11</sup> Japan Federation of Bar Association 2006, 136.

<sup>12</sup> Asakawa 2013, 391.

<sup>13</sup> Seki 2012, 16.

permission to stay, even during refugee status certification processes, are likely to be put through deportation procedures. It is because the administrative procedure for immigration control and refugee recognition procedure are performed separately<sup>14</sup>. However, since the enforcement of the 2004 amendment to the Immigration Control and Refugee Recognition Act, “foreign residents who have not obtained a status of residence” may be granted a “provisional stay” permit. It has provided legal resident status for those who wait for the results from refugee applications. The biggest differences from before are that they are allowed to stay legally and are not the target of deportation until the permit expires<sup>15</sup>.

Yet, there are multiple exclusion clauses for the “provisional stay” permit, which often become a barrier in practice. For example, those who apply for refugee status six months after entering the country, those who did not enter Japan directly from the country where they had been persecuted or had fear of persecution, or those who have a flight risk are exempted from qualifying for this permit<sup>16</sup>. However, the amount of these “provisional stay” permits that are granted is low in practice. Except the cases wherein “provisional stay” permits are granted, deportation procedure will be suspended and new ordinance letters and deportation obligations will not be issued. This does not apply in cases where a written deportation order has already been issued. In this case, it is assumed that “provisional stay” permits will not be granted<sup>17</sup>. In addition, the recipient of a “provisional stay” permit still has no permission to work. Moreover, several restrictions are imposed such as where to live, restriction of activity, and obligations to visit the Immigration Bureau regularly.

Those who are granted “provisional stay” permits and “landing permission for temporary refuse” are not able to register for resident cards but can be registered for foreign resident cards to enjoy administrative services provided by the local government. However, since both differ from regular status of residence, recipients are unable to work and their livelihoods remain unstable. In addition, if the administrative procedures including appeal have been completed, it will not be possible to renew the “provisional stay” permit.

In addition, for those who have not been granted “provisional stay,” who have canceled “provisional stay,” or whose period of permitted stay is over, they must wait for the results of their refugee application with an unlawful residency status, facing the possibility of forced deportation. However, during refugee recognition procedures, including appeal, deportation to a dangerous country cannot be carried out, as it violates the internationally established rights of refugee applicants. Only

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<sup>14</sup> Yamada and Kuroki 2010, 202.

<sup>15</sup> Asakawa 2013, 390.

<sup>16</sup> Yamawaki 2017, 18-19.

<sup>17</sup> Seki 2012, 15-16.

once the appeal is rejected and the administrative procedure is over can the written deportation order be executed. Besides, a person with deportation enforcement proceedings can be accommodated in Immigration Bureau facility due to detention order or deportation order. Incidentally, under the former a person can be accommodated in such a facility for 60 days, but the latter has no time limit, so individuals who receive such an order can be accommodated indefinitely. However, in recent years, long-term detention is being reconsidered<sup>18</sup>.

“Provisional release,” “special release,” and “suspension of execution of detention” orders can release individuals from being detained in immigration facilities. “Special release” and “suspension of execution of detention” cannot be expected in practice<sup>19</sup>. In “provisional release,” it is possible to gain a temporary suspension of accommodation by request or ex officio. However, “provisional release” does not provide legal resident status. In order to be permitted “provisional release,” it is necessary to prove that there is a disadvantage incurred by continuing accommodation, deprivation of a family life, a medical condition, and no possibility of running away. The Immigration Bureau judges the personality, assets, and circumstances of the detainees, taking their claims into account. In fact, there are cases wherein a person experiences illness during detention and requires medical treatment or cases wherein it is deemed necessary to take appropriate measures at a medical facility due to a preexisting illness<sup>20</sup>. Also, detainees are required to pay deposits within a range not exceeding three million yen. From interviews with refugee applicants who have experienced detention, it seems that an amount of around 300,000 yen is actually imposed<sup>21</sup>.

As a trend in recent years, permission for “provisional release” has increased and the refugee certification process progresses while an applicant is able to be at home. In addition, since September 2010, measures allowing lawyers to become proof of identity guarantors or cooperation proponents have been initiated, making it possible to actively proceed with “provisional release<sup>22</sup>.” In principle, “provisional release” imposes a duty of appearance once a month or once every three months. Similar to “provisional stay,” there are restrictions on residence and activity and work is prohibited. Additionally, no access to national health insurance or legal aid is granted. Furthermore, since they cannot register for residence cards or foreign resident cards, it is impossible for them receive public services from local municipalities. However, during the certification procedure, deportation is suspended. In conclusion, although a recipient of “provisional release” is allowed to reside at home,

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<sup>18</sup> Seki 2002, 78; Satou 2008, 12-19.

<sup>19</sup> Yamawaki 2017, 662-663.

<sup>20</sup> “Kabe no namida” seisaku jikkou iinkai 2009, 100-118.

<sup>21</sup> Japan Federation of Bar Association 2006, 144-145.

<sup>22</sup> Seki 2012, 16.

their actions and access to benefits are severely restricted.

Moreover, all in all, as one of interesting points of this system in Japan, there is no upper limit to number of applications for refugee status by individual. In this regard, the Refugee Status Determination System in Japan is unique when compared to the systems of other developed countries.

### **3. Trend of Refugee Application from Turkish Nationals**

From 1982 to 2017, after Japan became a part of the International Refugee Convention and implemented its own refugee recognition process, the highest number of refugee applications came from Burmese nationals (7,817) and the second largest number of applications came from Turkish nationals (6,679) based on data from the Ministry of Justice Immigration Bureau. Similarly, the cumulative number of Burmese refugees recognized is the largest one, whereas there have been no recognized Turkish refugees. From 1982 to 2011, approximately 1,600 Burmese nationals have been granted “special status of residence based on humanitarian affairs,” the highest for any nationality by far, while only about 40 Turkish nationals have received such status<sup>23</sup>. In other words, the receipt of refugee status and “special status of residence due to humanity considerations” for Burmese nationals is proportional to the number of Burmese applications; yet, Turkish nationals’ desire to attain refugee status recognition has not realized despite the number of applications.

However, when looking at the number of Turkish applications over time as Appendix (1) shows, a unique trend can be observed. Turkish nationals filed the most applications for refugee status in Japan in 2012 and 2013, and the number of applications has been increasing steadily from 2010 to 2017 compared to other nationals<sup>24</sup>. Normally, it is thought that the fact that the negative refugee certification results for those of the same nationality have been accredited over the past 20 years would lead to the deterrence of further applications, but refugee applications by Turkish nationals have actually increased. In order to determine the type of resident status that Turkish nationals have while applying for refugee status, the author asked the Japanese Lawyers Network for Refugees and gained the following information regarding applications statuses in 2013 from the Refugee Accreditation Office:

“For Turkey, the number one application by nationality, the application growth rate exceeded 50% of the previous year. Turkish applications from persons with ‘provisional stay’ status account for 70% of the total application, while for applications from irregular

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<sup>23</sup> See Ministry of Justice, 2011-2018.

<sup>24</sup> Ibid.

residents, more than 80% applied for refugee status after the written deportation order had been issued. Immigration Control Act shall not allow repatriation during the refugee recognition procedure and a person who has failed to obtain a special permission to stay and to be deported seems to apply for refugee status as a means to escape from deportation.<sup>25</sup>

Therefore, it seems that majority of applications for refugee status from Turkish nationals has been filed by those who with resident status in recent years. It means that the majority has “provisional stay” and can gain permission to work legally.

#### **4. Features of Kurdish Community in Japan**

The majority of Turkish nationals who apply for refugee status are Kurds. Kurdish people have a long history of discrimination and repression in the development of the Turkish nation-state. Most Kurds, who are primarily from four Middle Eastern countries — Iran, Iraq, Syria, and Turkey — have fled to Western countries. However, after the Cold War, many European countries that were home to Kurdish refugees and migrants implemented restrictions to their immigration policies. Therefore, since the mid-1990s, Turkish Kurds started to move to other countries, one of which is Japan.

Currently, it is estimated that there are about 3,000 Turkish Kurds living in Japan<sup>26</sup>. There are 1,606 Turkish nationals in Saitama Prefecture in December 2017. Many of them reside in Kawaguchi city by 1,329 in January 2018, and Warabi city next to Kawaguchi city by 62 Turkish nationals in Saitama Prefecture<sup>27</sup>. Kawaguchi city and Warabi city are home to many foreigners in Saitama Prefecture and rank in 5th in Japan<sup>28</sup>. In 2015, Kawaguchi city had 27,906 foreign residents and ranked first in the Prefecture by the number of foreigners residing per municipality. Warabi city ranked first by 6.4% and Kawaguchi city ranked second by 4.8% in the proportion of foreigners to residents<sup>29</sup>. Historically, both cities have had many small- and medium-sized factories. Therefore, since the amendment of the Immigration Control and Refugee Recognition Act of 1989, many foreign workers including Turkish Kurds, have come to live there to find economic opportunity<sup>30</sup>.

This Kurdish residential area is called “Warabistan” among Kurdish people, named after Kurdistan, the name of the state that the Kurdish people hope to establish in the Middle East and

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<sup>25</sup> Japan Lawyers Network for Refugees. (e-mail) answered on 22 October 2014.

<sup>26</sup> Japan Kurdish Cultural Association. (interview) taken on 14 September 2014.

<sup>27</sup> See Kawaguchi city, 2017.

Warabi city government (e-mail) answered on 30 August 2018.

<sup>28</sup> Ministry of Justice, December 2017.

<sup>29</sup> See “Saitama Prefecture: Honken no tabunka kyousei no genjo to kadai”, 6.

<sup>30</sup> Nihon Keizai Shimbun 8 September 2013.

Warabi station, nearest station of their place of residence in Saitama Prefecture. The name has also spread on the Internet, attracting new Kurdish immigrants from Turkey to Japan. According to Japan Kurdish Cultural Association which consists of Turkish Kurds, approximately 80% of the Turkish Kurds living in “Warabistan” are applying for refugee status<sup>31</sup>. In this way, a community of Kurdish people consisted of immigrants and refugee applicants has been formed across the two cities of Saitama Prefecture, both Kawaguchi city and Warabi city.

In addition to employment opportunities, a major reason for Turkish Kurds to choose to live in Kawaguchi city or Warabi city in Saitama Prefecture is because it is comfortable for them to live together ethnically within a community. In particular, interviews with refugee applicants from Turkish Kurds have revealed that many Kurds live with their families, relatives, and friends there. Most of Turkish Kurds are culturally Muslim; therefore, they commonly have big families. One said that “It is common to have about 10 siblings in families similar to mine.<sup>32</sup>” Thus, the size of the family unit seems to cause the expansion of “Warabistan” in Japan.

When the author interviewed local people in Gaziantep, a rural, predominantly Kurdish area from which Turkish Kurds living in Japan originated, it was found that many interviewees’ families, relatives, and friends live in Japan, especially in “Warabistan.” Some had lived in “Warabistan” but had given up being accepted as refugees and returned home. Some hoped to move to “Warabistan” in Japan where their family members live. One described, “In the Kurdish area of Turkey, there are 13 villages and my relatives live in neighborhood.” Looking at “Warabistan”, it is easy to find out that Kurdish family members and relatives usually live in same district. Therefore, the type of family living in Gaziantep is similar to the type in “Warabistan.”

Throughout the interviews with Kurdish refugee applicants in “Warabistan,” it became clear that everyone chose to move to Japan because their families, relatives, or friends lived there as Mushakoji (2008) finds this kind of phenomenon in his community case study<sup>33</sup>. Their movement from Gaziantep to Japan can be described as follows: One family member escaped from Turkey after experiencing some kind of persecution and later invited other family members over. Their movement is also strategic; different family members move to Japan in different years. For example, in one family, first, the father moved to Japan where his brother lived. A few years later, his wife came alone to Japan. Several years later, their two daughters (aged four and five) moved to Japan with the wife’s younger sister and her husband. For this reason, the daughter said, “If our all family moved to Japan after an

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<sup>31</sup> Japan Kurdish Cultural Association. (interview) taken on 14 September 2014.

<sup>32</sup> A Kurdish refugee applicant (interview) taken in 2011.

<sup>33</sup> See the Table of interviewees in different ages in Appendix (2).

incident, it is possible that the Turkish military police would become suspicious.” From this answer, the strategy how to move from Turkey to Japan is clear.

Nishinaka (2006) explains that the Turkish Kurds in Japan in the 1990s consisted mostly of single men, but after around 2000s, they started to invite their family members or wives from Turkey and new babies were born after they reunited<sup>34</sup>. In other words, there are Kurdish children who were born in Japan. Also, it has been more than 20 years since the first Turkish Kurds arrived in Japan and started to apply for refugee status; now even the second generation Kurds in Japan have got married to other Turkish nationals and given birth<sup>35</sup>.

The long-term stay in Japan seems to promote new marriages and births as applicants make their own livelihood here. The Kurdish population is increasing, not only from new arrivals but also within “Warabistan” through marriage and childbirth due to longer durations of residence in Japan. In these ways, Kurdish population has become larger in Kurdish community.

## **5. Mutual Support in the Community**

However, as mentioned before, it is difficult for local governments to grasp the exact population of Kurdish refugee applicants from Turkey as it is impossible for those who lack regular resident status. For example, those on “provisional release” cannot register and get resident cards or foreign resident cards. In addition, through interviews and exchanging e-mails with two local governments, which were conducted from July to August 2014 for Kawaguchi city government and Warabi city government, it was observed that the type of resident status is clearly stated in the resident registration in both cities. However, no information is provided to indicate who is in the process of applying for refugee status. Therefore, it is difficult for local governments to identify whether foreign nationals living in the municipality are “refugee applicants” or “refugees,” which makes it difficult to provide special consideration to such persons.

Still, there are safety nets available for Turkish Kurd refugee applicants, especially those who do not have status of residence, in the area where their ethnic community exists. In Warabi city, there are no official public benefits for refugee applicants lacking resident status, but “Newroz” which is a Kurdish celebration of the New Year, was held in Warabi Citizen Park until 2016. Also cultural exchanges that offer Kurdish cuisine were held at the government’s community restaurant “Platto”

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<sup>34</sup> Nishinaka 2016, 9.

<sup>35</sup> It became clear from participant observations in Saitama Prefecture.



and the public utility facility “Kururu.”<sup>36</sup>

In Kawaguchi city, mainly based on the effort of “the Kawaguchi Citizen Partner Station,” which is a unit of city government to promote multicultural society in the region, the volunteer editorial committee publishes the informational magazine “Kyu-pora” for both Japanese and foreign residents three times a year. It provides a lot of information on topics such as Japanese daily lifestyle, seasonal topics, volunteer group activities, Japanese language classes, and events. Japan Kurdish Cultural Association also circulates materials among Kurdish residents. In addition, the “Cross-Cultural Exchange Salon” is held responsible for introducing foreign cultures and the customs of foreign residents living in Kawaguchi city and for promoting cross-cultural understanding and exchange among the residents. Furthermore, upon the request of the city officials, staff of the ethnic organization guides the residents in Turkish language on how to dispose garbage. In addition to that, interpreters from the United Nations High Commissioner for Refugees (UNHCR) in Japan explained the traffic rules to Turkish Kurds there<sup>37</sup>.

Moreover, there is Kurdish Japanese language class organized by Japanese volunteers especially for Kurdish women. The class offers 100 yen as attendance fee per family unit<sup>38</sup>. Therefore, refugee applicants who do not have access to official Japanese language education provided as a refugee assistant have the opportunity to learn Japanese language to earn a livelihood in Japan. While the mothers learn Japanese language, their children their children work on their homework at the desks next to them. In addition, the staff of the “Cross-Cultural Exchange Salon” emphasizes the importance of the participation of Kurdish women in the Japanese language class because their Japanese communication skills affect the skills of Kurdish children who are likely not to attend pre-school<sup>39</sup>.

There is a Kurdish organization called Japan Kurdish Cultural Association. The association was founded in 2008 that is mainly organized by Turkish Kurds and based in Kawaguchi city. Their main purpose is to carry out cultural activities among the Kurdish people in Japan. Most of Turkish Kurds are members of the organization regardless of gender, status of residence, or refugee applicants. The organization’s activities promote comfortable lives both of Kurdish residents and other residents in “Warabistan.” For example, they provide explanations of Japanese rules, such as traffic rules, and support translation and interpretation, especially for those in need of hospital treatment. Regarding

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<sup>36</sup> Warabi city government (e-mail) answered on 17 July 2014.

<sup>37</sup> These data depend on the interviews and exchanging e-mails with Kawaguchi city government on from 9 July to 7 August 2014.

<sup>38</sup> Kurdish Japanese language class (interview) taken on 30 August 2018.

<sup>39</sup> Kurdish Japanese language class (interviews) and participant observations taken on 20 August 2016 to 18 February 2018.

refugee application processes, the association provides explanations of refugee status to promote accurate understanding it. They also visit detainees at Tokyo Immigration Bureau and the East Japan Immigration Control Center in Ushiku city in Ibaragi Prefecture. The official Facebook page uses both Japanese and Turkish languages to spread and share useful information as an election in Turkey approaches. Lecture is hosted by inviting Kurdish candidates to speak and a concert is organized by calling Kurdish artists from Turkey. In this way, even after immigrating to “Warabistan,” Turkish Kurds are able to have opportunities to inherit their own politics, and culture and maintain their identity.

Furthermore, the association cooperates with Kawaguchi city government to make their community more comfortable both for Kurdish and other residents. First, in order to prevent Kurdish children from becoming school refusal due to the fact that they do not understand Japanese and cannot communicate with the teachers, the association regularly sends Kurdish women to the school for about one or two hours a week to catch up the study to organize a support system for the learning of the younger generations. Likewise, Kawaguchi city’s crime prevention office said that the Japanese local residents frequently claimed that “Young Kurds are making noise at night.” or “Kurdish youth gather around the station and it looks unsafe.” Regarding these complaints, from the request of the Kawaguchi city hall, Japan Kurdish Cultural Association gathers young Kurdish people and informs them of the issues and the manner. Since mid-2015, about 10 male members also carry out nighttime patrols with local police<sup>40</sup>. From the above, it can be said that these activities of Japan Kurdish Cultural Association support Turkish Kurds including refugee applicants, and collaborate with municipalities so that Kurdish people can be integrated into the local community.

## **6. Causal Relationship of the increasing Numbers of Refugee Status Application and Ethnic Community**

The expansion of “Wallabistan” is considered to be proportional to the tendency of the refugee status applications to increase. Through interviews, Turkish Kurds who live in Japan often encourage their other family members, relatives, and friends residing in Turkey to migrate to Japan and urge them to file refugee applications. In fact, there are circumstances of long-time community members recommending those who newly arrive in Japan to apply for refugee status. As a result, there are some people who have applied for refugee status but do not accurately understand what “refugee” is or who do not recognize themselves as refugees. Thus, some people apply for refugee status solely because

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<sup>40</sup> Japan Kurdish Cultural Association (interview) taken on 14 September and 3 December 2014.

members of their community have suggested that they do so<sup>41</sup>.

If this is the case, then what does it mean for Turkish Kurds who come to Japan to apply for refugee status? What has emerged through interviews is that refugee applications are one of the tools that allow Kurds to continue living in Japan. In fact, in both the Kurdish region of Turkey and the Kurdish community in Japan, the fact that Japan has never accepted refugees from Turkish nationals is widely known. There are also cases of those who have experienced detention making international calls to family residing in Turkey and telling them about their harsh days in the accommodation facility. However, after examining the trend of the number of refugee applications so far, these negative factors are not deterrents for application. The population of “Warabistan” has been increasing, and it is believed that the strength of family connection is a stronger factor for migration than the achievement of refugee recognition. Therefore, a strong family connection successively encourages new Kurdish immigrants to move to Japan, even if the treatment under refugee application process is not desirable. The refugee status application is regarded as a tool for Kurdish family members, relatives, and friends to continue to live together in Japan.

In addition, since 2005, the refugee applicant status of residence has been allowed to be changed from “short-term stay” to “specific activity,” which allows Turkish Kurds to work legally during the refugee application process. One said, “In Turkey, depending on the national policy, it was difficult to get a good job and earn a lot of money, but in Japan, it is safe to live and it is easy to work and earn lots of money compared to Turkey.” Kurdish women culturally engage in domestic affairs, but Kurdish men living in “Warabistan” commonly work in the dismantling and transportation industries. In particular, there are some cases of Kurds who have not applied for refugee status starting up their own companies and hiring Kurds who live in “Warabistan.” Therefore, the refugee status application process in Japan provides employment opportunities within the ethnic community. The author does not mean those Turkish Kurds apply for refugee status in order to work legally.

In previous research of Wahlbeck (1998) shows an example of Kurdish organizations in London, which is not exactly the organizations supporting Kurdish refugee but originally political associations play a very important role in refugees’ social lives. Moreover the informal social network of individual refugees is also based on their families<sup>42</sup>. This logic can also be applied to the Turkish Kurds in “Warabistan.” Japan Kurdish Cultural Association is not an organization which has aim of supporting refugees but it focuses on promoting cultural understanding between Kurdish residents and Japanese residents there. However, they also support Kurdish refugee applicants in the area. Therefore Kurdish

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<sup>41</sup> Kurdish refugee applicants (interview) and participant observations in the community taken in 2010 to 2018.

<sup>42</sup> Wahlbeck 1998.

refugee applicants in Saitama Prefecture can also enjoy informal assistances from their ethnic organization similar to the case in London.

## **7. Conclusion**

Turkish Kurds seem to have developed their own survival strategy within Japan. From a policy perspective, once their initial application for refugee status is rejected, they may continue to reapply for refugee status repeatedly. Even though their legal status during the refugee recognition process is unstable, they are allowed to stay in Japan, updating their resident period. Also, if they apply for refugee status while having status of residence, they have been allowed to stay and work legally since 2005.

Based on the development of an ethnic community, the population has been increasing because they have invited their family members, relatives, and friends in order to build family structures like those that they had in their home region in Turkey. In addition to the increasing number of Turkish immigrants, long-term residents make livelihood while waiting for the results of refugee recognition. Young Kurdish applicants get married and have children during the long refugee status determination process. Therefore, from both the outside and inside, the Kurdish population in Japan is increasing and the ethnic community “Warabistan” has expanded.

As this community expands, Turkish Kurds themselves have established their ethnic associations that conduct their cultural activities and promote an understanding of their culture for local people to actively integrate them in the community. Also cooperation between the association and local government make local community better both for Kurdish residents and other residents. These support systems and initiatives are additional benefits for the livelihood of refugee applicants who lack public support in the Refugee Status Determination System.

In short, there are some aspects that the Refugee Status Determination System has become means of prolonging Turkish Kurds’ residence in Japan regardless of resident status. Also the support system in ethnic community and the prolonged refugee recognition process promotes new arrivals and births within the community. Furthermore, the expansion of the community has a causal relationship with the increasing number of refugee applicants. This is why the number of Turkish nationals in Japan has increased in recent years despite no Turkish Kurd having been recognized as a refugee. Despite less chance of success and still remaining in unstable status, there are some benefits for Turkish Kurds who apply for refugee status.

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## Appendix

### (1) Number of refugee applicants by nationals 2010-2017

2010		2011		2012		2013		2014		2015		2016		2017	
Nationality	Number	Nationality	Number	Nationality	Number	Nationality	Number	Nationality	Number	Nationality	Number	Nationality	Number	Nationality	Number
Burma	342	Burma	491	Turkey	423	Turkey	568	Nepal	1,293	Nepal	1,768	Indonesia	1,829	Philippines	4,895
Sri Lanka	171	Nepal	251	Burma	368	Nepal	544	Turkey	845	Indonesia	969	Nepal	1,451	Vietnam	3,116
Turkey	126	Turkey	234	Nepal	320	Burma	380	Sri Lanka	485	Turkey	926	Philippines	1,412	Sri Lanka	2,226
Nepal	109	Sri Lanka	224	Pakistan	298	Sri Lanka	345	Burma	434	Burma	808	Turkey	1,143	Indonesia	2,038
India	91	Pakistan	169	Sri Lanka	255	Pakistan	241	Vietnam	294	Vietnam	574	Vietnam	1,072	Nepal	1,451
N/A		N/A		Bangladesh	169	Bangladesh	190	Bangladesh	284	Sri Lanka	469	Sri Lanka	938	Turkey	1,195

Source: The author made this table using the data from Ministry of Justice.

### (2) Interviews with Turkish Kurd refugee applicants in Japan.

Number	Sex	Age	Status	Date and Times	Place
1	Male	40s	None	30 December 2010 to 17 September 2012 8 Times	Saitama Prefecture
2	Male	40s	Provisional Release	17 July 2011 to 9 November 2014 5 Times	Saitama Prefecture
3	Female	30s	Provisional Release	17 July 2011 to 9 November 2014 10 Times	Saitama Prefecture
4	Female	20s	Provisional Release	17 July 2011 to 27 April 2018 24 Times	Saitama Prefecture Immigration Facility
5	Female	10s	Provisional Release	17 July 2011 to 27 April 2018 7 Times	Saitama Prefecture
6	Male	10s	Provisional Release	17 July 2011 to 9 November 2014 4 Times	Saitama Prefecture
7	Male	20s	None	19 July 2011	Immigration Facility
8	Male	20s	None	19 July 2011	Immigration Facility
9	Male	30s	None	19 July 2011	Immigration Facility
10	Female	30s	Provisional Stay	11 August 2012 to 25 May 2013 3 Times	Saitama Prefecture
11	Female	10s	Special Activity	25 May 2013	Saitama Prefecture
12	Female	10s	Provisional Stay	20 December 2014	Saitama Prefecture
13	Female	10s	Provisional Release	20 December 2014 to 8 April 2018 11 Times	Saitama Prefecture Tokyo
14	Female	30s	Provisional Release	16 January 2016 to 27 February 2016 2 Times	Saitama Prefecture
15	Female	30s	Provisional Release	16 January 2016 to 27 February 2016 2 Time	Saitama Prefecture
16	Female	20s	Provisional Release	16 January 2016 to 18 February 2018 5 Times	Saitama Prefecture
17	Female	30s	Provisional Release	28 November 2017	Immigration Facility
18	Female	8	Provisional Stay	28 November 2017	Immigration Facility
19	Male	40s	Provisional Release	18 February 2018	Saitama Prefecture
20	Female	30s	Provisional Release	18 February 2018	Saitama Prefecture

(3) Interviews with Turkish Kurds in Gaziantep in Turkey on 16-21 August 2014.

Number	Sex	Age
1	Male	40s
2	Female	40s
3	Female	70s
4	Male	40s
5	Male	10s
6	Female	10s
7	Female	20s
8	Female	20s
9	Female	30s
10	Female	20s
11	Male	20s
12	Female	40s
13	Male	70s

(4) Interviews with Organizations

Name	Date	Means
Warabi city government	8, 10, 13, 15, 17, 20 August 2014 and 30 August 2018.	e-mail
Kawaguchi city government	9, 13, 14, 19, 30 July. 5 and 7 August 2014.	e-mail interview
Japan Kurdish Cultural Association	14 September 2014 and 3 December 2014	interview
Japan Lawyers Network for Refugees	18, 20, 21, 22 October 2014	e-mail
Kurdish Japanese language class in Kawaguchi	20 August 2016 to 30 July 2018 5 Times	interview

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Their answers for the interviews from Turkish Kurds both in Japan and Turkey were valuable for new findings. As the author promised with them to protect their privacy, their names are hidden. The answers for the interviews both face to face and exchanging e-mail with organizations and data shared with them were significant as objective indicators.



## **The National Security Policies of the Australian Turnbull Government: Heading Towards Illiberal Democracy?**

Craig Mark<sup>1</sup>

### **Abstract**

The now former Australian Prime Minister Malcolm Turnbull overthrew his predecessor Tony Abbott in a party room challenge in September 2015, to take leadership of the ruling conservative Liberal Party, which governs in a Coalition with the rural-based conservative National Party. Those who expected the professedly moderate Turnbull to shift the Australian government towards a more liberal national security policy direction were soon disappointed. The Turnbull government maintained the policies of the Abbott government, which have had a generally adverse human security impact.

Harsh treatment of asylum seekers arriving by boat continued, being automatically detained in poor conditions, offshore from the Australian continental mainland, a policy which criticised by the United Nations (UN) and human rights organizations. The Turnbull government also continued Australia's participation in the US-led military coalition against the Islamic State terrorist network, in the ongoing wars in Iraq and Syria, and in the long-running war against the Taliban in Afghanistan. Criticism arose over Australian involvement in airstrikes in Iraq and Syria that led to civilian casualties, and an inquiry was launched into possible violations of human rights law by Australian Defence Force (ADF) personnel in Afghanistan. There were also concerns over the ADF taking an advisory role to the Philippines' military forces.

The Turnbull government's approach to counter-terrorism and counterespionage was another related concern for civil liberties. Similar to its key allies, the USA and Japan, the national security policies of the Turnbull government, ostensibly aimed at preventing terrorism and foreign interference, demonstrate the risk of 'illiberal' practices being pursued by liberal democracies. Turnbull was in turn overthrown in August 2018, in yet another party room challenge, with his former Treasurer Scott Morrison succeeding him as Prime Minister. Being from the 'moderate' conservative faction of the Liberal Party (rivals to the 'hardline' conservative faction of Abbott), under Morrison, the LNP Coalition government is likely to continue the overall policy direction inherited from Abbott and Turnbull.

**Keywords:** Australian Foreign Policy; Asylum Seekers; Expeditionary Warfare; Counter-terrorism; Government Surveillance.

### **1. Introduction**

Though the generally accepted definition of human security as outlined by the United Nations Development Programme (UNDP) gives it a very broad scope, the results of national security policies

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of governments can readily be seen in some particularly specific areas. Following the UNDP's classification, the recent national security policies of the Australian Turnbull Coalition government have had an adverse effect in the areas of Personal security, Community security, and Political security.<sup>2</sup> More specifically, this article will concentrate on the effects of recent Australian policies towards the human rights of asylum seekers, the sanctity of humanitarian law in war zones, and pressure on domestic civil liberties in the name of counter-terrorism. Analysing these related areas thus provides an overall assessment of their consequently combined 'illiberal' human security impact.<sup>3</sup>

This also leads to the question of what does this illiberal direction of Australian policies tell us about the nature of contemporary Australian politics? Examining the record of the previous decade, from the social-democratic Rudd/Gillard/Rudd Australian Labor Party (ALP) governments, succeeded by the conservatives' Abbott Liberal-National Party (LNP) Coalition government, then by the Turnbull and now the Morrison LNP governments, a general trend can be observed. Mainly, the electorate is less worried about foreign and security policy than domestic political and economic issues. In particular, the Australian public is consistently more concerned over standards of Australia's political leadership and the quality of its political system, and costs of living; housing affordability, energy prices, wage stagnation and employment insecurity.<sup>4</sup>

The issues with some bearing on foreign policy/security policy, which occasionally emerge to have some traction in Australian public debate are: fear of terrorism, and opposition to high levels of immigration and asylum seekers, which can be readily exploited by political parties for electoral gain. Therefore, there is a risk, similar to other democracies in Europe, and in the US, that security-related policies can be steered into an illiberal direction, through manipulating xenophobia, and exploiting public anxieties, in this post-2008-Global Financial Crisis-era of rising populism, amid the deteriorating post-Cold War international political order.

Implementing a security policy framework that projects an impression of imposing strength, even at the expense of eroding traditional liberal-democratic values, is also a narrative appealing to voters' desire for stability and safety. This narrative has been interrupted by the relatively high rate of recent leadership changes in Australian politics, recently seen again in the replacement of Malcolm Turnbull with Scott Morrison. This shows the fragility and insecurity felt by politicians among

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<sup>2</sup> UNDP 1994, 24-25.

<sup>3</sup> While beyond the scope of this article, there are also concerns over Australia's wider human security record, particularly regarding: entrenched income inequality, inaction on climate change, gender equality, the treatment of indigenous people, and civil rights for the homeless, the disabled, and victims of institutional abuse. Human Rights Watch 2018, 49-51.

<sup>4</sup> Roy Morgan Research 2018. Recent national accounts figures show 3.4% economic growth in the 12 months to June 2018; corporate profits rose 8.3%, but average compensation per employee only increased 1.7%. Colebatch, 2018.

Australia's major political parties, as they desperately switch leaders, in the often vain pursuit of electoral popularity. However, such efforts have been paradoxically undermined by the near-endemic factional rivalry among the Labor and Liberal-National Parties, which for more than a decade now have led to such frequent leadership challenges in contemporary Australian politics.

## **2. The Development of Australia's Asylum Seeker Policy**

The example of a purportedly liberal democratic country gradually moving towards pursuing illiberal, if formally legal policies, is demonstrated in the recent history of Australia's border protection policies. The first major wave of asylum seeker arrivals in modern Australian history came in the wake of the Vietnam War, when Vietnamese refugees began arriving by boat from 1976, primarily at the port of Darwin in the Northern Territory. The conservative government of Prime Minister Malcolm Fraser accepted these refugees, and others from camps in Asia. This continued Australia's post-war migration policy of accepting a significant proportion of refugees among its migrant intake.<sup>5</sup> A signatory to the UN Refugee Convention since 1954, in the immediate period following the Second World War, Australia accepted large numbers of refugees from Europe, who made an invaluable contribution to Australian society. The intake of Vietnamese refugees by the Fraser Liberal government followed the abolition of the post-war White Australia Policy by the Whitlam Labor government in 1972.<sup>6</sup>

The Keating Labor government began mandatory detention of asylum seekers arriving by boat in 1992, after several boatloads of asylum seekers coming mostly from China and Cambodia reached northern Australia. A steady increase in asylum seeker arrivals into the 1990s, mostly from the Middle East and Afghanistan, principally via Indonesia, saw their numbers reach over 3000 by 1999. In August 2001, the Howard LNP Coalition government deployed the Royal Australian Navy (RAN) to seize the Norwegian cargo ship MV Tampa, which had rescued 438 asylum seekers from a sinking boat. The Howard government argued these forceful measures were necessary to deter further arrivals, and thus prevent asylum seekers from risking their lives at sea at the hands of unscrupulous people-smuggling criminal networks, facilitated by corrupted Indonesian authorities; 352 drowned when a boat sunk on October 19, 2001. The policy was also defended as protecting the integrity of Australia's refugee and immigration program.<sup>7</sup>

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<sup>5</sup> Megalogenis 2012, 115-119.

<sup>6</sup> Firth 1999, 18, 24.

<sup>7</sup> Barker 2011, 23.

An arrangement was then made with the Republic of Nauru, to establish and fund a detention camp on the tiny Micronesian island nation to house and process asylum seekers arriving by boat, beginning Australia's policy of offshore detention in the South Pacific. Another Australian-funded detention camp was opened on Manus Island in Papua New Guinea (PNG), in a policy termed the 'Pacific Solution'. Despite criticism from human rights groups over asylum seekers being held in what was effectively indefinite detention, the electorally popular Pacific Solution, which incorporated the use of ADF vessels and aircraft to intercept and detain asylum seeker boats, saw the number of boat arrivals drop into single figures after 2001.<sup>8</sup>

Citing the escalating costs, and human rights concerns over the effect of indefinite mandatory offshore detention, the Labor government from 2007 under Prime Minister Kevin Rudd dismantled the Pacific Solution, which had cost around \$1 billion, closing the Manus Island and Nauru detention camps by 2008, and closing remote facilities in Australia that were holding asylum seekers. However, the Rudd government (followed by Julia Gillard's Labor government, from 2010-2013), intercepted nearly 750 boats, carrying over 44,000 asylum seekers, most near the Australian territory of Christmas Island in the Indian Ocean. The majority of asylum seekers were found to be genuine refugees after processing through the island's soon overcrowded detention centre, and were gradually released into the community. The number of refugees for Australia's separate humanitarian program was increased in 2012, from 13,750 to 20,000.<sup>9</sup>

To politically capitalise on concerns in the electorate over the increase in boat arrivals under Labor, the opposition LNP Coalition, now led by Tony Abbott, made 'stop the boats' a major slogan for the 2010 and 2013 election campaigns. Abbott vowed to restore offshore processing, in order to prevent asylum seekers risking their lives, claiming over 1000 had drowned attempting to reach Australian territory, due to Labor dismantling the Pacific Solution.<sup>10</sup> As Howard had done, Abbott repeatedly and falsely referred to the asylum seekers as 'illegal', even though they are entitled to seek refuge under international law.<sup>11</sup>

The Gillard Labor government attempted to establish a regional processing centre in a neighbouring country, such as Malaysia, East Timor or Indonesia, in cooperation with the UN High Commissioner for Refugees (UNHCR), but was unsuccessful. When Kevin Rudd returned for a brief tenure as Prime Minister in 2013, after challenging Julia Gillard for the Labor leadership, one of his

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<sup>8</sup> Burke 2008, 213. Nauru has a population of around 11,000 residents, in an area of 21 square kilometres, the third-smallest state in the world after the Vatican and Monaco.

<sup>9</sup> Phillips and Spinks 2013.

<sup>10</sup> Liberal Party of Australia and the Nationals 2013, 3.

<sup>11</sup> Cassidy 2010, 59-61.

first acts was to arrange the re-opening of the detention centres on Nauru and Manus Island, again funded and supervised by Australian immigration authorities. This restored offshore processing, and Rudd vowed no asylum seeker arriving by boat would be allowed to re-settle in Australia.<sup>12</sup>

However, this was not enough to forestall Labor's defeat in the 2013 election, and Tony Abbott's LNP Coalition government began the forceful turn-back of asylum seeker boats into Indonesian waters by the RAN and Customs vessels. This militarized approach under ADF command, launched as Operation Sovereign Borders by Immigration Minister Scott Morrison, soon claimed success, as only one boat arrived after January 2014. 157 Tamil asylum seekers from Sri Lanka arrived in a boat at Christmas Island in July 2014, and were detained and transferred to Nauru.<sup>13</sup> On July 1, 2015, the Australian Customs and Border Protection Service (ACBPS) was integrated into the Department of Immigration and Border Protections, being shifted from the Department of Justice, to establish the paramilitary Australian Border Force (ABF).<sup>14</sup>

Human rights groups criticized the Abbott government's lack of transparency regarding the Abbott government's asylum seeker detention, particularly the isolated, harsh tropical conditions of the offshore detention centres. Security and logistics were provided through private contractors. Medical and other support staff were thus commercially bound to secrecy, and the media was rarely granted access. Both heavily dependent on Australian aid funding, the governments of PNG and Nauru were inclined to be compliant in obstructing outside scrutiny. This was especially restricted after an asylum seeker died in a riot on Manus Island in February 2014, after being attacked by local staff, with others being injured. Later that year, another asylum seeker died from an easily-treatable infection, due to lack of access to adequate medical care. Reports also continued to leak out of asylum seekers self-harming, due to the psychological stress of their indefinite detention, and of women and children being sexually assaulted by other detainees and detention centre staff.<sup>15</sup>

After returning to government in 2013, the Coalition released over 24,000 asylum seekers into the community, most of whom had arrived during the period of the previous Labor government, and were already on the Australian mainland. Over 1,700 were left detained offshore (in September 2013, 591 were on Nauru and 1137 on Manus), as the policy of not allowing those arriving by boat to ever reach Australia continued.<sup>16</sup> The peak number of those held in offshore detention was 2,450 in April 2014, as more boats were intercepted. Of 4,258 then held in detention, both offshore and in Australia,

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<sup>12</sup> Walsh 2014, 137.

<sup>13</sup> Phillips 2017a.

<sup>14</sup> Department of Home Affairs 2018a.

<sup>15</sup> Rundle 2017a.

<sup>16</sup> Department of Immigration and Border Protection (DIBP) 2013.

27% were from Iran, 16% from Vietnam, 12% from Sri Lanka, 11% were stateless, and 5% from Afghanistan; the next largest groups of nationalities were from Iraq, Pakistan, China, Somalia, and then 'Others'.<sup>17</sup>

Attempts were made to arrange settlement in a third country; a resettlement deal was signed in 2014 with Cambodia, promising \$55 million in extra development aid, but only seven asylum seekers ended up accepting the offer. All except one were to leave voluntarily by 2016, and Australia found itself potentially morally compromised, in pursuing such a dubious arrangement with the increasingly authoritarian Cambodian government of the Hun Sen regime.<sup>18</sup> By 2017, about 500 asylum seekers had chosen to voluntarily return to their countries of origin, to escape the limbo of remaining in indefinite detention, a violation of the Article 33 *refoulement* provisions of the Refugee Convention.<sup>19</sup>

### **3. Asylum Seeker Policy Under Turnbull**

When Malcolm Turnbull took over the Liberal Party leadership from Abbott to become Prime Minister in September 2015, he continued the LNP government's asylum seeker policy, which now included a pledge to directly accept 12,000 additional refugees from Syria.<sup>20</sup> In June 2016, Turnbull announced that 28 boats containing 734 asylum seekers had been turned back since the commencement of Operation Sovereign Borders in September 2013, including a boat returned to Vietnam, in July 2015.<sup>21</sup> Despite this claimed success, Turnbull gained no political benefit when he dissolved parliament for a federal election on July 2, 2016, as his government was only barely returned, with the barest of majorities.<sup>22</sup> The Labor opposition had also embraced boat turn-backs as part of its platform by 2015, making their asylum seeker policy essentially the same as that of the LNP government.<sup>23</sup>

The Turnbull government was then confronted with a dilemma. In April 2016, the Supreme Court of PNG ruled the operation of the Australian-funded detention centre on Manus Island was unconstitutional, and the PNG government announced it would be closed. Since 2014, the Australian government had been pushing both Nauru and PNG to accept asylum seekers for resettlement, and small numbers had done so, but now there was immediate pressure to resolve their fate. The UNCHR

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<sup>17</sup> DIBP 2014.

<sup>18</sup> Pheap 2016.

<sup>19</sup> Blades 2017.

<sup>20</sup> Hurst and Murphy 2015.

<sup>21</sup> Turnbull 2016.

<sup>22</sup> Ross and Dziedzic 2016.

<sup>23</sup> Phillips 2017b.

applied further demands that detainees be moved into humane conditions, declaring in May 2016 that the arrangements on both Nauru and Manus were ‘completely untenable’.<sup>24</sup>

Faced with this development, the Turnbull government then directed the Australian Embassy in Washington D.C. to pursue the possibility of resettlement in the United States (US). In its final weeks in November 2016, the Democratic Obama Administration agreed to a deal where refugees in the US from Central America would be accepted by Australia, in return for those from Manus Island and Nauru who could pass the ‘extreme vetting’ process for acceptance into the US, with around 80% already assessed as genuinely persecuted refugees. After the election of Republican Donald Trump, in his first official phone call to Turnbull as President-elect in January 2017, Trump expressed his extreme displeasure with the proposed refugee swap. However, Trump reluctantly committed to honouring the deal.<sup>25</sup>

By September 2017, the first 54 asylum seekers left Manus for the US, with around 1,250 potentially eligible to follow. Even if all those vetted are accepted, that would still leave at least over 700 asylum seekers remaining in indefinite detention. Under the Trump administration’s travel bans on citizens from seven Muslim countries (recently upheld by the US Supreme Court), detainees from Iran, Libya, Somalia, Syria and Yemen will not be accepted. As the first refugees departed for the US, Australia’s then Immigration Minister Peter Dutton falsely disparaged them as ‘economic refugees’, unwittingly undermining the case for the Trump administration to accept them.<sup>26</sup>

In the meantime, in August 2017 another asylum seeker had died by suicide on Manus Island. Legal action by human rights groups also culminated in a decision by the Victorian Supreme Court in September 2017 to award \$70 million in compensation to 1,383 detainees on Manus Island (out of 1,923), the largest human rights class action payout in Australian legal history.<sup>27</sup> This is yet another additional expense to the government’s policy, which has cost Australian taxpayers around \$10 billion over the past four years, to carry out Operation Sovereign Borders, and maintain the detention centres on Manus Island and Nauru. As the Manus detention centre faced its deadline to close by the end of October 2017, detainees were offered transfer to Nauru, which they were reluctant to accept. Even as the Rohingya refugee crisis escalated, Rohingya asylum seekers in Australian custody were encouraged to return to Myanmar.<sup>28</sup>

After the passing of the October 31 deadline, the Australian government instructed the Manus

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<sup>24</sup> UNHCR 2016.

<sup>25</sup> On learning of Australia’s treatment of asylum seekers, Trump responded to Turnbull, “You are worse than I am.” Hirsch 2017.

<sup>26</sup> Grattan 2017.

<sup>27</sup> *ABC News* 2017.

<sup>28</sup> *BBC News* 2017.

Island camp contractors to cut off the water, food and medical supplies, and electric power. The detainees held peaceful protests for nearly a month, until a raid by PNG police and Immigration officials on 23-24 November saw them forcibly transferred to three transit centres around the island's main town of Lorengau. While no longer in detention camps, concerns remain over the safety of the around 700 asylum seekers left on Manus, as they are subject to the risk of criminal violence, and have poor access to health and other community services. Some 140 refugees and asylum seekers who have been transferred to PNG'S capital Port Moresby since October 2017 are similarly vulnerable to assault and robbery from local criminals, and face similar problems in accessing adequate health, welfare and employment services to help them integrate into local society.<sup>29</sup>

Before the detention camp's closure, a Sri Lankan asylum seeker had died in a suspected suicide on Manus Island at the beginning of October. A Bangladeshi asylum seeker was killed in a motorbike accident on Nauru at the beginning of November. In May 2018, a Rohingya asylum seeker died by suicide on Manus Island, and in June, an Iranian asylum seeker also killed himself on Nauru. As of July 2018, there had been twelve deaths in custody on either Manus Island or Nauru since 2013.<sup>30</sup> In order to avoid any detainees requiring advanced medical treatment reaching Australia, since 2017, the Turnbull government reached an agreement with Taiwan, to allow those detained on Nauru to be treated in Taiwanese hospitals. Since Taiwan is not a signatory to the 1951 Refugee Convention, they cannot lodge claims for asylum while receiving treatment.<sup>31</sup> To make the policy of deterrence even harsher, in March 2018, the Department of Home Affairs directed that around 12,500 asylum seekers residing in Australia on temporary protection visas will have their Status Resolution Support Services (SRSS) welfare payments cut.<sup>32</sup>

A standing offer since 2013 by New Zealand to take 150 refugees from offshore detention has so far not been taken up by the Turnbull government.<sup>33</sup> The resettlement program with the US has meanwhile continued, with a second group of 58 refugees, mostly from Pakistan and Afghanistan, leaving PNG in January.<sup>34</sup> As of August 29, 2018, around 900 people were left on Nauru, including 109 children, all having been there for more than four years; around 690 remained in PNG, and 371 refugees had been resettled in the US.<sup>35</sup>

Two days after Scott Morrison took office, an asylum seeker boat containing 17 Vietnamese

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<sup>29</sup> Amnesty International 2018, 7-8, 14-17.

<sup>30</sup> Border Crossing Observatory 2018.

<sup>31</sup> Wahlquist 2018.

<sup>32</sup> Hekmat 2018.

<sup>33</sup> Roy 2018.

<sup>34</sup> Mercer 2018.

<sup>35</sup> Refugee Council of Australia and Asylum Seeker Resource Centre 2018, 3.



nationals landed on the far north coast of Queensland, the first to reach Australia's mainland immigration zone since July 2014. They were quickly transferred to Christmas Island for processing, immediately giving an early demonstration that under his premiership, Morrison would maintain the strict policies he implemented during his earlier tenure as Immigration Minister.<sup>36</sup> Even as Nauru hosted the 2018 Pacific Islands Forum summit, medical staff reported at least 20 children held in its Australian-run Regional Processing Centre 1 were at risk of permanent harm or death due to refusing food and fluids, requiring immediate medical evacuation; dozens of other children were also suffering acute mental illness.<sup>37</sup>

#### **4. Australia Inspires Harsher International Treatment of Refugees**

Prominent Australian human rights barrister Julian Burnside, in a wide-ranging international survey of the treatment of refugees, considered that Australia's treatment of asylum seekers was the worst among Western developed countries.<sup>38</sup> Hard-line anti-immigrant populist politicians such as former UKIP leader Nigel Farage, the new deputy Prime Minister of Italy, *Lega* party leader Matteo Salvini, and Trump White House policy advisor Stephen Miller, have all lauded the harsh example of Australia's border protection policies.<sup>39</sup> Australia has therefore become a pioneering model that governments in the US and Europe have used to justify their tougher stance against asylum seekers. The European Union's leaders have been struggling with the rise of anti-refugee sentiment following the influx of over 1.8 million asylum seekers to Europe since 2014.<sup>40</sup> In the US, the Trump administration generated an intense political backlash, after separating over 2,300 children from their families crossing the border, as part of a 'zero tolerance' deterrence policy implemented from April 2018. While President Donald Trump backed down from family separations in June 2018, after a widespread domestic and international outcry, asylum seeker families still face either potential indefinite detention, or *refoulement*.<sup>41</sup>

As for the likely development of Australia's policy should there be a change of government after the next election due by 2019, the Labor party has retained its strict policy adopted under the previous Rudd government. Current Opposition Leader Bill Shorten has pledged any future Labor government

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<sup>36</sup> Sexton-McGrath and Mounter 2018.

<sup>37</sup> The government of Nauru has also steadily eroded the independence of its judiciary, jailed opposition politicians, and intimidated the media, all effectively under Australian tutelage. Doherty and Davies 2018.

<sup>38</sup> Baxendale 2018.

<sup>39</sup> Miller 2018.

<sup>40</sup> Lawler 2018.

<sup>41</sup> Beauchamp 2018.

will maintain the current practice of turning back asylum seeker boats. Asylum seekers policy remains a thorny issue within Labor, since the current policy is opposed by many members of its Left faction, who would prefer a swift end to offshore detention. This dispute will likely generate heated controversy at the next national Labor policy conference due before the election, and so these internal party divisions are consistently exploited by the Coalition for political advantage.<sup>42</sup>

Therefore, despite domestic and international criticism from human rights lawyers and advocacy groups, the Turnbull government was determined to continue a hardline policy towards asylum seekers. Although the US refugee deal will significantly reduce the numbers held, it will still leave hundreds stuck in a dire fate of indefinite detention. Australian governments have thus sought the political benefits of displaying severe deterrence towards asylum seekers. This is particularly concerning at a time in history when the international refugee crisis is at its worst since the Second World War; 68.5 million people were forcibly displaced, including 25.4 million refugees, and 3.1 million asylum seekers, as of June 19, 2018.<sup>43</sup> While permissible under the sovereign powers Australia possesses under international law, the policies of the Australian government have certainly violated the spirit of the Refugee Convention.

## **5. Australia's Ongoing Foreign Wars**

Since the terrorist attacks of September 11, 2001 in the US, Australian governments have been a consistent supporter of US military operations conducted in the strategically incoherent 'War on Terror', as originally termed by the Bush Administration. The ADF has been involved in the war in Afghanistan since October 2001, as one of the 59 countries contributing to the US-led NATO/ISAF military effort to counter the insurgencies of Al-Qaeda and the Taliban, and later Islamic State.<sup>44</sup> Beginning with Special Forces units, other ground forces and supporting units built up to a peak deployment of around 1,550 by 2011, termed Operation Slipper. Combat troops were withdrawn in December 2013, but around 400 ADF advisers have remained deployed in training and counter-terrorism roles, in Operation Highroad. As the Trump administration is again increasing the numbers of US troops in Afghanistan, a subsequent increase of ADF advisers may also be expected, as the war seems set to continue into the foreseeable future. Over 26,000 ADF personnel have served so far in Afghanistan; 41 have been killed in action, and at least 8% of veterans have developed Post-Traumatic

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<sup>42</sup> Norman 2018.

<sup>43</sup> UNCHR 2018.

<sup>44</sup> Bacevich 2016, 297; Coll 2018, 665, 676.

Stress Disorder (PTSD).<sup>45</sup>

While the ADF maintains it strictly upholds the rule of war according to the Geneva Conventions, allegations of human rights abuses committed in Afghanistan by ADF troops have emerged, amid concerns that a 'toxic culture' has become entrenched among the ADF's Special Forces. Allegations of Afghan noncombatants, including children being killed, are now subject to investigation.<sup>46</sup> Under Australia's Rome Statute obligations, the ADF's Inspector-General has officially informed the International Criminal Court in The Hague that a formal war crimes investigation has commenced.<sup>47</sup>

Australia also participated in the US invasion of Iraq, from March 2003. Although ADF occupation forces were withdrawn from Iraq in 2008, from August 2014, the ADF renewed operations in Iraq, and Syria, as part of the US-led coalition against the insurgency of the Islamic State terrorist group. This has involved military advisers training and assisting the Iraqi Army, called Operation Accordion; and the Royal Australian Air Force (RAAF) conducted airstrikes, in Operation Okra.<sup>48</sup> However, the ADF has also been implicated in 'collateral damage', the unintended civilian casualties from US-directed military operations. At least 735 civilians died since 2014 in airstrikes carried out by US and allied coalition forces in Iraq and Syria, although the number of casualties could be in the thousands.<sup>49</sup>

On at least two occasions in 2017, Iraqi civilians, including children, were killed in RAAF bombing raids against Islamic State targets. As with its experience in Afghanistan, the ADF, alongside its American allies, may be indirectly complicit in human rights abuses committed by the Iraqi forces they are advising, as territory was liberated from Islamic State.<sup>50</sup> The RAAF ended combat operations in Iraq and Syria in December 2017, following the capture of the city of Raqqa from Islamic State, with over 2,700 airstrikes against Islamic State targets having been made during Operation Okra. Operation Accordion remains ongoing. As US forces seem likely to remain deployed in the Greater Middle East for the foreseeable future, it is also likely the ADF will continue in its subordinate supporting role as well, even though there are no direct strategic threats to Australia to justify their presence.<sup>51</sup> Australian security policy has therefore contributed its minor share of responsibility for the geostrategic instability inflicted by US-led military intervention in the region, and the resulting

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<sup>45</sup> Department of Defence (DoD) 2017a.

<sup>46</sup> MacKenzie 2017. See also Masters 2017.

<sup>47</sup> Greene 2018a.

<sup>48</sup> DoD 2017b.

<sup>49</sup> Ward 2018.

<sup>50</sup> Greene and McGhee 2017.

<sup>51</sup> McLaughlin 2017.

deterioration in the Personal, Community and Political Security of the affected local populations in Iraq, Syria and Afghanistan.

Similar concerns have also developed in the Asia-Pacific region, where Australia has also been involved in providing military assistance to the Philippines. The Philippine military engaged in a large-scale counter-offensive in May-October 2017 against militant groups aligned to the Islamic State, which attempted to seize the city of Marawi on the island of Mindanao. The ADF joined US military forces (present since 2001 in a counter-terrorist role) to assist the Philippine security forces to break the fiercely contested siege in close-quarter urban combat, the heaviest fighting in the Philippines since the Second World War.<sup>52</sup> The RAAF provided surveillance flights, Army Special Forces advisers were sent, and the RAN joined the US Navy in patrols in the border waters between the Philippines and Indonesia, to interdict potential terrorist infiltration.<sup>53</sup> Known as Operation Augury, this largely covert support mission has not had its budget revealed, for 'security reasons'. The cost of the ADF's other deployments to Afghanistan and the Middle East in 2017 was over A\$3 billion.<sup>54</sup>

As with Iraq and Afghanistan, Australia has therefore risked becoming implicated in human rights abuses, even if only implicitly by association, in giving material military support to the government of President Rodrigo Duterte. His 'anti-drug' campaign has been widely condemned, as over 12,000 have died in extra-judicial killings by police and vigilantes since 2016. The steady erosion of press freedoms and judicial independence has also been part of the authoritarian tendency of the Duterte government.<sup>55</sup> Even as Japan has increased its security cooperation with the Philippines, ostensibly as overseas development aid (ODA) for law enforcement and maritime security, supplying Coast Guard vessels and aircraft, and holding joint training exercises, there similarly appears to be little recognition or concern by the Abe government over these potential moral dilemmas.<sup>56</sup>

## **6. The Australian Surveillance State**

Related to Australia's participation in expeditionary wars as a junior coalition partner against Islamic extremism has been the steady expansion of the federal government's counter-terrorist powers since 2001. Such measures have included: broadening the range and penalties for terrorist offenses,

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<sup>52</sup> Abuza 2018.

<sup>53</sup> DoD 2017c.

<sup>54</sup> Jennet 2018. The new Chief of Navy has indicated the RAN is refocusing its priorities back towards the southwest Pacific, after nearly thirty years' presence in the Middle East. Greene 2018c.

<sup>55</sup> Kine 2018.

<sup>56</sup> Parameswaran 2018.

easier detention of terrorist suspects, and more surveillance by authorities such as the Australian Federal Police (AFP), the Australian Security Intelligence Organisation (ASIO), and the Australian Signals Directorate (ASD), including retention of citizens' metadata. While claimed to be necessary to safeguard the public from terrorist attack, there is a danger that these increased counter-terrorist powers can erode civil liberties. Before becoming Prime Minister, Malcolm Turnbull had stated in 2015 that the threat of terrorism should not be exaggerated, and the traditional liberal values and freedoms of democratic states like Australia should not be compromised by counter-terrorism measures.<sup>57</sup>

However, as Prime Minister, Turnbull's policies shifted away from his previously-held liberal stance. In July 2016, the Turnbull government announced it would introduce new laws to allow those charged with terrorism-related offences, such as travelling overseas to join organizations like Islamic State, to be imprisoned indefinitely.<sup>58</sup> In July 2017, using ADF personnel as a backdrop, Turnbull announced the military would be given more authority to train and support state police in counter-terrorism operations.<sup>59</sup> Legislation to amend the Defence Act to allow such easier call-out powers was introduced into the Australian Parliament in June 2018.<sup>60</sup>

Turnbull also announced in July 2017 that a new Home Affairs ministry would be established, replacing the Department of Immigration and Border Protection, an unprecedented concentration of power among Australia's federal security services. Retaining the ABF, among other bureaucratic restructuring, the new ministry took over control of the AFP and ASIO, transferred from the Attorney-General's Department. The Attorney-General will still issue warrants for ASIO to conduct covert surveillance and arrests, and retain the oversight function of the Intelligence and Security Inspector-General. A new Office of National Intelligence (ONI) was also announced, subsuming the previous Office of National Assessments (ONA), retained under the portfolio of the Department of Prime Minister and Cabinet.<sup>61</sup> The Department of Home Affairs was officially established on December 20, 2017, with Peter Dutton becoming the first Home Affairs Minister; the ONI is expected to be formally established by the end of 2018.<sup>62</sup>

In August 2017, Turnbull announced yet another anti-terrorism strategy, titled Australia's Strategy For Protecting Crowded Places From Terrorism, to coordinate state police forces, local

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<sup>57</sup> Jones 2015.

<sup>58</sup> Taylor 2017.

<sup>59</sup> Yaxley 2017a.

<sup>60</sup> Greene 2018b.

<sup>61</sup> Barker and Fallon 2017..

<sup>62</sup> Tingle, 2018.

governments and businesses in preventing mass casualty attacks in public areas.<sup>63</sup> In another measure, the Turnbull government announced that terrorist suspects may be held for two weeks without charge, including children over 10 years old.<sup>64</sup> The federal government also planned to coordinate with state and Territory governments to collate a national database of driver's licence photos, and utilise facial recognition software in public surveillance, to assist tracking terrorist suspects.<sup>65</sup>

Human rights lawyers and civil liberties groups, including the NSW Council of Civil Liberties, criticised the Turnbull government's anti-terrorism measures, claiming safeguards were insufficient, and judges will be improperly implicated in detention without charge, a misuse of the traditional role of the courts. While the government claimed the new measures will be used for counterterrorism purposes only, there is little to prevent the scope of such powers being expanded to other crimes in future, such as welfare fraud, or even to political dissent deemed threatening to public order and safety.<sup>66</sup> The Turnbull government pointed to the necessity of the increase in the powers and funding of the security and intelligence agencies, since 16 terrorist plots have been uncovered and thwarted in Australia since 2001. From 2014, spending on the security agencies rose by \$3.55 billion. However, Australia's involvement in the US-led military campaigns in the Middle East heightened Australia's vulnerability as a potential terrorist target.<sup>67</sup>

In another striking development by the Turnbull government, yet more potentially wide-reaching legislation was also passed by Parliament: the *National Security Legislation Amendment (Espionage And Foreign Interference) Bill 2017*; and the *Foreign Influence Transparency Scheme Bill 2017*. The espionage and foreign interference bill targets covert attempts by foreign intelligence agents to influence politicians, the Australian media, businesses, civil society organizations, and the political system in general. It is principally aimed at preventing interference in Australian politics by China, Russia, and other potentially hostile powers. The related foreign influence transparency scheme bill requires corporations, organizations, and individuals acting on behalf of foreign countries to be listed on a public register.<sup>68</sup>

Amendments to the legislation, made after negotiations with Labor, partly mollified criticism of earlier drafts of the bills, that journalists, public service whistle-blowers, foreign-based NGOs, and environmental and political protestors may be subject to malicious criminal prosecution by future Australian governments, which could use a broad interpretation of these laws to repress anti-

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<sup>63</sup> *Sky News* 2017.

<sup>64</sup> Karp 2017.

<sup>65</sup> Yaxley 2017b.

<sup>66</sup> Gomes 2017.

<sup>67</sup> Keane 2017b.

<sup>68</sup> Hansard 2018, 43-68.

government critics. However, civil liberty advocates remain concerned.<sup>69</sup> Independent MP Andrew Wilkie, a former long-serving military intelligence officer and Iraq War whistle-blower, pointed out the potential for these new laws to be abused, claiming their addition to the over 60 changes made to security laws since the 9/11 terrorist attacks in 2001 make Australia a ‘pre-police state’.<sup>70</sup>

As if to emphasise this danger, on the same day the espionage and foreign interference bills were passed, the Commonwealth Department of Public Prosecutions filed criminal charges against a former Australian Secret Intelligence Service agent *and* his lawyer, for publicly revealing in 2012 that Australia had bugged the cabinet offices of neighbouring East Timor in 2004.<sup>71</sup> While the minority Greens Party and cross-bench Independents such as Wilkie expressed alarm at this significant threat to free speech, exemplified in this prosecution, as the alternative party of government, the Labor Party generally gave qualified support for the Turnbull government’s approach towards national security.<sup>72</sup> Labor may soon return to power, if current opinion polling is replicated in the next election result, and its leader Bill Shorten is therefore likely to continue this mostly bipartisan approach to counter-terrorism policy, if only to avoid being labelled ‘weak’ by the LNP Coalition in the upcoming electoral contest.<sup>73</sup>

## **7. Continuing Into an Illiberal Future Under the Morrison Government?**

Despite implementing the policies described above, the Turnbull LNP government remained stubbornly behind in opinion polling, as Abbott’s had before. Poor performances in July by-elections, ongoing internal divisions over climate change policy, driven by climate science deniers in the ultra-conservative faction of the Liberal Party (generally backed by its rural-based National Party coalition partners), as well as in other policy areas such as levels of immigration and corporate tax cuts, culminated in a party room leadership challenge brought on by Home Affairs Minister Peter Dutton. He was backed by supporters of former Prime Minister Tony Abbott, News Corporation media and commercial radio ‘shock jocks’. Turnbull won this first challenge from Dutton on August 21, 2018, by 48-35 votes of the Liberal Party’s members of parliament.<sup>74</sup>

However, with his support collapsing, in extraordinary scenes which saw the early suspension

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<sup>69</sup> Ludlam 2018.

<sup>70</sup> Wilkie 2018, 10.

<sup>71</sup> This espionage operation was conducted in order to gain an illegal advantage in negotiations over the maritime boundary between Australia and East Timor, to exploit oil and gas resources. Greene and Sweeney 2018.

<sup>72</sup> Coughlan 2018.

<sup>73</sup> Keane 2017a.

<sup>74</sup> Kwai and Graham-McLay 2018.

of Parliament, Turnbull was driven to step down before a second challenge on August 24. This was eventually won by his Treasurer Scott Morrison, who in an apparently long-planned strategy, gained the support of the outgoing Turnbull's moderate faction supporters, as well as Morrison's own supporters among the faction of less-hardline conservatives. After moderate contender Julie Bishop, then the Foreign Minister, was sidelined in the first ballot, Dutton was defeated 45-40.<sup>75</sup> This outcome exposed the inept tactics of the hard-right conservative faction of the Liberals. They had instigated the challenge against Turnbull out of a sense of grievance and revenge over Abbott's fall in 2015; but their candidate Dutton was outmatched by Turnbull's (reluctantly) preferred successor Morrison.<sup>76</sup>

The new Prime Minister Scott Morrison is likely to broadly continue the national security policies of the Turnbull government, having been the hard-line Immigration Minister under Abbott, as long as the Liberal-National Party continues in government to the next election. It will likely be held in May 2019, although the parliamentary instability caused by the recent leadership change could yet see an early election. The leadership spill resulted in a turnover in senior Cabinet positions, particularly in the national security-related portfolios; former Defence Minister Marise Payne replaced former deputy Liberal Party leader Julie Bishop as Foreign Minister, and former Defence Industry Minister Christopher Pyne became Defence Minister. Peter Dutton remained Home Affairs Minister, retaining control of the Australian Border Force; but significantly, responsibility for immigration moved to the new Minister for Immigration, Citizenship and Multicultural Affairs, David Colman.<sup>77</sup>

Hence, there is now uncertainty over which Minister will have more control over handling asylum seekers.<sup>78</sup> These personnel changes to the Ministry may therefore result in some minor policy shifts, but the broad overall direction of the LNP government should remain fairly similar from Turnbull to Morrison.<sup>79</sup> Yet more counter-terrorist legislation prepared under the Turnbull government is being introduced to parliament by the Morrison government; the *Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018* aims to give the police and ASIO powers to access private encrypted information of digital content companies' customers, if demanded.<sup>80</sup> While the government claims this is necessary to counter terrorism and organized crime, civil liberties groups counter that existing laws are already adequate, and the new bills are a dangerous encroachment on internet freedoms.<sup>81</sup>

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<sup>75</sup> Kirby 2018.

<sup>76</sup> Middleton 2018.

<sup>77</sup> Commonwealth Government 2018.

<sup>78</sup> Abjorensen 2018.

<sup>79</sup> Mares 2018.

<sup>80</sup> Parliament of the Commonwealth of Australia 2018.

<sup>81</sup> ABC 2018.



Notable critics have thus warned of the illiberal direction Australia is heading towards; the former President of the Australian Human Rights Commission, Professor Gillian Triggs, assessed that human rights in Australia declined during her 2012-2017 tenure.<sup>82</sup> University of NSW Professor George Williams has traced a longer-term deterioration in civic and legal freedoms, particularly since the onset of the ‘War on Terror’ from 2001. Williams argues Australia needs a Charter, or Bill of Rights, to guard against the erosion of human rights, as governments incrementally amass more coercive powers.<sup>83</sup> Despite these concerns over its gradually deteriorating human rights record, Australia was still appointed to a seat on the UN Human Rights Council (UNHRC) for another term, from 2018 to 2020.<sup>84</sup> The new UN High Commissioner for Human Rights, Michelle Bachelet, in her first speech to the UNHRC surveying the global state of human rights, nevertheless called Australia’s offshore processing centres “an affront to the protection of human rights”.<sup>85</sup>

The lack of major political and public opposition in Australia to its asylum seeker policy, participation in wars in the Middle East, and the gradual encroachment of government surveillance powers, shows how liberal democratic societies can drift towards illiberal autocracy. Weakening civil liberties, where Personal, Community, and Political security is compromised by greater powers for the surveillance state can result in the decline of independent civil society. A liberal country can certainly transform into a post-liberal one, as the Australian experience threatens to demonstrate.<sup>86</sup>

Placed in the wider international context, the Australian drift away from protection of human rights is part of a worrying trend in other liberal democracies. The Trump administration is continuing the tendency of American governments, under the pretext of counter-terrorism and national security, to undermine civic norms and legal institutions in the US.<sup>87</sup> The Abe government in Japan may also attempt to do so through constitutional amendment.<sup>88</sup> Other democracies in Europe, particularly Hungary and Poland, are also moving in a more illiberal direction. The ‘Arab Spring’ failed to bring democratic reforms to the Middle East; in other regions, there is a constitutional crisis and autocratic rule in Venezuela, and erosion of human rights in Southeast Asia, such as in Cambodia, Myanmar, and the Philippines.<sup>89</sup>

Meanwhile, China and Russia are attempting to reassert their hegemonic geopolitical influence,

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<sup>82</sup> Slezak 2017.

<sup>83</sup> Australian Broadcasting Corporation (ABC) 2017.

<sup>84</sup> Doherty 2017.

<sup>85</sup> Office of the High Commissioner 2018.

<sup>86</sup> Rundle 2017b.

<sup>87</sup> Glennon 2016, 236; Levitsky and Ziblatt 2018, 176-203.

<sup>88</sup> Mark 2016, 132.

<sup>89</sup> Luce 2017, 82, 137-138.

claiming a revisionist validation of their authoritarian systems of government.<sup>90</sup> This contemporary global trend away from democratic values shows the danger of even long-established democracies such as Australia suffering from a slow erosion of human rights.<sup>91</sup> There seems little likelihood of much improvement in the opinion polls for Morrison though, as the Australian public once again confronts disillusionment wrought by leadership turmoil, eroding confidence in the operation of Australia's democratic political system.<sup>92</sup> The latest changeover has seen a record of seven Prime Ministers over the last eleven years, with five over the last five years being deposed by their own party without getting to complete a normal three-year term in office.<sup>93</sup>

This relatively high degree of leadership change has also disrupted any long-term effort to address a sense of drift in the direction and suitability of Australian foreign policy (as well as government policy in general), particularly in managing regional relations among China, the US, Japan, India and ASEAN.<sup>94</sup> Vigilance and resistance by civil rights advocates, NGOs, whistle-blowers, a free media, lawyers and a truly independent judiciary, engaged scholars, and wider civil society therefore remains vital.

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<sup>90</sup> Bolt & Cross 2018, 290-292.

<sup>91</sup> Keane 2018.

<sup>92</sup> As of September 2018, Labor remained ahead of the LNP 56% to 44%, in a two-party preferred poll. Benson 2018.

<sup>93</sup> Grattan 2018.

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