China's Participation in Refugee Protection and Relief from the Perspective of International Law

Menqing Kong¹, *, †, Hongdao Yang², †, Junqing Yi³, †

¹School of Northeast Asia Studies, Shandong University, Weihai, China
²Guangzhou University Law School, Guangzhou University, Guangzhou, China
³Law School, East China University of Political Science and Law, Shanghai, China
*Corresponding author: MengqingKONG@mail.sdu.edu.cn
†These authors contributed equally.

Abstract. As the international society is paying more and more attention to refugee protection, there are still several controversies. The first one is whether granting asylum to refugees should be defined as an obligation of a state. The second one is whether the expansionary interpretation of the border of the non-refoulement principle should be applied. The third one is whether all states need legislation focusing on refugee protection. In this context, China has always adhered to a governance model that addresses both the symptoms and the root causes, and has gradually increased its participation in international refugee affairs, taking into account its national conditions. However, China still lacks an integrated system for refugee protection to further fully fulfill the relief obligation of great powers in the international community. Based on adhering to a multidimensional and co-governance model of governance and active extraterritorial material assistance, China should in the future expand its interpretation of the boundaries in the principle of non-refoulement of refugees from a humanitarian perspective and use this as a policy guide for legislation on the resettlement of refugees within its territory. China should use its action to call for a wider interpretation of the obligation to assist from a humanitarian perspective so that the international community can improve the overall level of refugee assistance.

Keywords: Refugee and Forced Migration; International Law; International Relations; International Development; Human Rights.

1. Introduction

The international refugee crisis has a long history. After World War II (WWII), it has become the focus of academic research at home and abroad. There are many deep-seated reasons, including the imbalance of international politics and economy, the struggle for spheres of influence among major countries, the inequality of the international system, and ethnic and religious contradictions. In addition, the refugee crisis has a lot to do with international security, international law, regional development, human rights protection, global governance, and many other areas. Scholars worldwide have done plenty of research on regional or national refugee issues, such as European refugees, Syrian refugees, Afghan refugees, and Rohingya refugees from Myanmar. However, systematic research on China's participation in refugee protection from the perspective of international law is relatively weak, which also leads to widespread prejudice and misunderstanding of China's "actions or omissions" in refugee protection. To shed light on China’s future path in international refugee protection and clarify the responsibility it should bear on the same issue, the essay parses the international legal framework of refugee protection, combs the history of China's participation, and analyzes its current role in this realm. The essay is of great theoretical and practical significance to deepen the understanding of the international refugee crisis, propose China’s countermeasures to solve the problem, and tackle the problem eventually.
2. The legal framework for refugee protection under international law

2.1 International law provisions on human rights protection

In the framework of international law, international conventions and the declarations on human rights protection, in which the right of individuals not to be expelled, repatriated, or extradited, play a programmatic role in the protection of refugees' fundamental human rights.

2.1.1 General provisions on human rights protection

Provisions that clearly proposed the protection of human rights are the Charter of the United Nations, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. Article 1 of The Charter of the United Nations points out the purpose of the United Nations is to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion [1]. Article 2 of The International Covenant on Civil and Political Rights points out that each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or another status [2]. Article 11 of The International Covenant on Economic, Social, and Cultural Rights further stipulates that the state parties to the present Covenant recognize the right of everyone to an adequate living for himself, including adequate food, clothing, and housing, and to the continuous improvement of living conditions [2].

2.1.2 The principle of non-refoulement

The principle of non-refoulement derives from the asylum principle in customary international law. With the increased attention paid by states to the refugee issue, the protection of the asylum principle has gradually expanded from foreigners who are subject to prosecution or imminent prosecution and punishment by other States for political and other reasons to refugees in the sense of modern international law. Therefore, the principle of non-refoulement of refugees has gradually taken shape in national legislation and international conventions. According to the non-refoulement principle, no State shall drive refugees or asylum seekers back to the borders of territories where their life or freedom might be threatened [3]. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Declaration on the Protection of all Persons from Enforced Disappearance. Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Declaration on the Protection of all Persons from Enforced Disappearance stipulates that no state party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture [4]. Article 8 of the Declaration on the Protection of all Persons from Enforced Disappearance points out that no state shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance [5].

2.2 Treaties and declarations focusing on the rights of refugees

Treaties and declarations focusing on the protection of refugee rights, including the Convention relating to the Status of Refugees, the Protocol Relating to the Status of Refugees, and the Declaration on Territorial Asylum. The convention and the protocol are legally binding, while the declaration has only legal influence. The Convention Relating to the Status of Refugees is a fundamental document of the United Nations High Commissioner for Refugees, which stipulates refugees' rights to work, education, and living conditions. The most influential articles in the convention are article 1 and article 33. Article 1 defines refugee, which directly states refugee refers to people who remained outside his/her country for a legitimate reason before 1951. Article 33 stipulates the non-refoulement principle of refugees, stating that no contracting state shall expel or return ("refouler") a refugee in
any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion [6]. Subsequently, the Protocol Relating to the Status of Refugees lifted the time and space restrictions on international refugees and reaffirmed the rights stipulated in the Convention. Besides, article 1 of the Declaration on Territorial Asylum invokes article 14 of the Universal Declaration of Human Rights and emphasizes the right to seek and enjoy asylum and to avoid persecution in other countries. Other than article 1, article 3 clearly states that no person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution and exception may be made to the foregoing principle only for overriding reasons of national security or to safeguard the population, as in the case a mass influx of persons [7].

The aforementioned conventions have listed the asylum and protection, refugees should receive after entering another country, and the declaration has reaffirmed the non-refoulement principle. However, three problems still exist in the current frame of refugee protection.

Firstly, the controversy of whether granting refugees asylum is a country’s obligation or right isn’t solved through any of the aforementioned conventions or declarations. According to the Convention Relating to the Status of Refugees, every state should protect refugees’ rights of receiving asylum through legislation. However, this provision places the controversy completely in the legislative discretion of states, and two perspectives appear through the legislation. One is presented by Germany and several other countries, at the revision conference of the Declaration on Territorial Asylum in 1977, these countries claimed that legislation should be enacted from a humanitarian perspective and granting refugee asylum should be defined as a country’s obligation [8]. While the other countries claimed granting refugees should be a country’s right, they emphasized that the state should take the economy and public safety into account when deciding whether to grant asylum to refugees. Eventually, the proposal put forward by Germany was rejected and the revision of the Declaration on Territorial Asylum did not provide refugees with any more substantive rights. To this day, different countries still have different attitudes towards this controversy.

Secondly, both the conventions and the declaration define the application point of the principle of non-refoulement as territorial boundaries, but none of these provisions stipulate the force of the non-refoulement principle outside the territorial boundary. The focus of the non-refoulement principle in international conventions lies in the protection of refugees that have entered a state's territory and should not be expelled or returned. But no provision has pointed out, whether it is legitimate to expel the refugees outside the border. However, different states have shown their legislative inclination in practice. The most typical cases are the executive order issued by the President of the United States to intercept refugees on the high seas and Australia's Maritime Rights Act. Both these two legal documents indicate that refugees on the high seas do not have the legitimacy to be granted asylum, and it is a state's right to intercept refugees on the high seas. Meanwhile, some countries think it is not legitimate to intercept refugees on the high seas as they think it is opposite to humanitarian principles. However, due to the lack of uniform legal constraints, whether the expulsion of refugees on the high seas violates the non-refoulement principle can only be analyzed through other fundamental principles protecting refugees in international law.

Thirdly, according to article 36 of the Convention Relating to the Status of Refugees, the contracting states shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention. For example, the Convention Governing the Specific Aspects of Refugee Problems in Africa, the Cartagena Declaration on Refugees, and the Refugee Law of each state is regional legal documents. However, not all states have come up with legal documents focusing on refugees, for instance, China proposed a draft of refugee law in 2003, but there is no official legal document focusing on protecting refugees till 2022.
2.3 The analysis of different interpretations of the non-refoulement principle

On 6 May 2009, refugees from Libya were halted by the Italian Revenue Police approximately 35 miles south of Lampedusa on the high seas, in the SAR zone under Maltese competence. Without any identification or assessment of these refugee protection claims, the refugees were sent back to Libya. On 26 May 2009, 11 Somalis and 13 Eritreans among the refugees filed the case to the European Court of Human Rights with the cause of action that Italy violated Article 3 and Article 13 of the European Convention of Human Rights and Article 4 of Protocol 4 to the European Convention of Human Rights. In this case, the court unanimously ruled that the expulsion of migrants and refugees on the high seas and their forced return to third countries without protection constituted a violation of human rights [9]. It can be interpreted that the court directly contemplated the refugees in Italian cabins on the high seas as inside the Italian territory boundary, which is an obvious expansion of the strict explanation of the border in the non-refoulement principle.

This expansion arises controversies that are directly correlated with the three aforementioned problems. Firstly, on the premise of not violating conventions and declarations, the controversy of whether to apply expansion to the strict explanation of the border in the non-refoulement principle is closely correlated with the controversy of whether it is a state’s obligation or right to grant refugee asylum. When a state view granting refugee asylum as its right, it tends to define the border in the non-refoulement principle with the territory border. When a state view granting refugee asylum as its obligation, it tends to apply expansion to the strict explanation of the border in the non-refoulement principle, so that the protection of refugees’ rights can be achieved. Based on the difference in opinions, the legislative intents of non-refoulement in states differ, the specific legislations differ and the methodology of explanation differs. Secondly, for those countries that do not have legislation focusing on refugees, their attitudes towards extraterritorial refugee assistance reflect their ideas on refugee protection, which indirectly indicate these countries’ methodologies in exploring the border in the non-refoulement principle. Take China as an example, China does not have any legislation focusing on extraterritorial refugee expulsion, and China claims that granting refugee asylum is an obligation of the states that evoke the refugee flow, a right to other countries. However, China chooses to receive refugees and provide extraterritorial refugees with assistance from a humanitarian perspective. Without any customary international law, China’s contribution to refugee protection coincides with the refugee protection idea indicated by the expansionary interpretation of borders in the non-refoulement principle.

This article thinks that the legislative intents of international conventions and declarations are to protect refugees' rights under the frame of humanitarian principles. Based on this opinion, this article thinks the expansionary interpretation of the border of the non-refoulement principle should be applied. To be more specific, the International Convention on Maritime Search and Rescue proposed to establish a pattern in which states shoulder the burden of refugee protection cooperatively. However, the convention does not stipulate granting refugees on high seas asylum as an obligation. As a result, it is left to the discretion of a State to receive refugees and send them to another haven, which makes the legislative intent of the convention impossible to achieve. As the aforementioned conventions fail to solve the controversy of whether granting refugee asylum is an obligation or right, the expansionary interpretation of borders in the non-refoulement principle has positive legal policy implications and will limit the discretion of states’ reluctance in protecting refugees. Even if states still refuse to grant refugee asylum before being prosecuted, the expansionary interpretation can enhance states’ obligation of assisting extraterritorial refugees, therefore can better achieve the fundamental intent of refugee protection.
3. China's role in international refugee protection and relief

3.1 History of China's participation in international refugee protection

The history of refugee protection in modern China dates back to WWII when nearly 30,000 Jewish refugees took refuge in Shanghai. When the war ended, an international mechanism for refugee governance gradually improved and matured, and so does the comprehensive national strength and a sense of international responsibility in China. Over the past 70 years, while increasing its efforts in aiding refugees, China has gradually reformed and expanded its approaches to protection and relief. As a result, a characteristic multi-dimensional governance mechanism that addresses both symptoms and root causes has been formed. China's development of refugee protection can be summarized into the following four stages according to the different concepts, practical emphases, and roles played by China in the protection and relief of international refugees in each period.

3.1.1 From post-WWII to the early 1970s

During this period, China expressed political concerns under humanitarian principles and provided asylum and assistance to the international community within its capacity. During WWII, German Fascists persecuted Jews, and many European countries refused to accept Jewish refugees. However, The Chinese Consul General in Vienna, He Fengshan, issued visas to Jewish refugees and helped nearly 30,000 Jews to take refuge in Shanghai. In April 1955, during the Bandung Conference, Zhou Enlai, on behalf of the Chinese government, put the Question of Palestine on the agenda of the conference and advocated the solution to the Palestinian refugee issue [10]. In 1964, China adopted the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) for the first time, providing aid funds to Palestinian refugees [11]. In 1972, through the Red Cross Society of China, the Chinese government donated 4,000 tons of wheat, 252,600 meters of cotton cloth, 642 packages of knitwear, 22 tons of medicine, and 55 tons of enamels to Sudan as the relief for local refugees [12].

3.1.2 From the early 1970s to the mid-1980s

With the improvement of its comprehensive national strength, China has made more prominent humanitarian contributions to refugee protection, mainly in resettling Indochina refugees during the Sino-Vietnamese war in the late 1970s. A large proportion of them was ethnic Chinese. The Chinese government granted them refugee status and fulfilled its promise of "providing permanent asylum for every Vietnamese refugee who came to China", and resettled them mainly in provinces including Guangxi, Guangdong, and Yunnan. Today, except for some who have returned to their home countries, most of those who remained have become legal Chinese citizens and successfully integrated into Chinese society. After the UN restored the lawful seat of the People's Republic of China (PRC) in 1972, China began to formally and actively participate in the refugee protection work led by the UN. In 1982, China formally acceded to the 1951 Convention Relating to the Status of Refugees and its protocol in 1967.

3.1.3 From the mid-1980s to the early 1990s

During this period, China gradually increased its efforts to the international community in aiding refugees under its national conditions. In February 1986, China provided about $15,000 in aid to Lebanon to help refugees in southern Lebanon who suffered from Israel's invasion. In February 1987, China provided $50,000 to the Palestine Liberation Organization to assist Palestinian refugees in Lebanon [12]. In addition, China has tentatively explored legal protection of refugees' rights. Entry and Exit of Aliens Act 1985[13] Article 15 states: "Aliens who seek asylum for political reasons may be permitted to reside in China upon approval by the competent authorities of the Chinese government."
3.1.4 From the early 1990s to the early 21st century

During this period, while continuing to strengthen the protection and assistance of international refugees, China also gradually explored new ideas and formed a characteristic “multi-dimensional mechanism” that could address both the symptoms and root causes, as China has always laid great emphasis on solving the problem at its source. The “backward-looking” governance of international refugees, established after WWII, focused on helping those who were already refugees, not those who might be [14]. On September 28, 2015, Xi Jinping met with Alexis Tsipras, then Prime Minister of Greece. They talked about the Refugee crisis in Europe, stressing that the root cause of it lay in unbalanced development and regional instability in Europe. Apart from providing humanitarian aid to refugees, poverty and social stability should be effectively dealt with in particular [15].

To be more specific, China's practice of a "multi-dimensional mechanism" in international refugee protection is mainly reflected in the continuous improvement of the level of humanitarian assistance. This includes the expansion of the reception plans after the outbreak of the war in Kokang, the acceptance of more refugees, and shouldering more and more international responsibilities in economic assistance commensurate with the national capacity. Two civil wars happened in Kokang, Myanmar in August 2009 and February 2015 respectively. The media reported that about 100,000 Kokang refugees poured into the territory of China. The Chinese government resettled them and adopted local integration for Myanmar citizens who come to China. It was stipulated that all former Myanmar nationals who have registered as aliens and been issued alien residence permits should be treated as aliens. If they did not hold Burmese passports, or if their passports have expired and not been extended, they may be treated as stateless persons. If one wished to be naturalized as a Chinese national, he/she must apply for naturalization and approve it according to relevant regulations. Many of the refugees have returned to Myanmar after conditions improved, while some remain in China for quite a long period.

Since 1991, China's annual contribution to UNRWA has grown to about $60,000[16]. After entering the 21st century, China continued to increase its donation to UNRWA. Although there was still a relatively large gap between China and developed countries in terms of the scale and level of foreign aid, China could only gradually increase its participation in international refugee affairs considering its status as a developing country [17].

3.2 China's current mechanism for refugee protection and relief

At present, China continues to adhere to the “multi-dimensional mechanism” that addresses both the symptoms and root causes. China firmly maintains that the only way to eliminate the root causes of the refugee issue is to resolve regional conflicts fairly and reasonably and to strengthen international cooperation. Countries that created refugees should bear the main responsibility. Meanwhile, China advocates those other countries share the task of protecting and rescuing refugees.

3.2.1 China's approach to the relief of inland refugees

China's current cooperation mode on refugee relief affairs mainly consists of three actors: UNHCR China, the Ministry of Foreign Affairs of the PRC, and the Civil Affairs Department. UNHCR’s Regional Office in China is responsible for refugee registration, first-round, and second-round trials, and at the same time provides services for refugees and asylum seekers. The Ministry of Foreign Affairs of PRC is responsible for dealing with the diplomatic affairs related to UNHCR and its representative offices in China, such as implementing relevant conventions, adjusting the functions of the representative offices, personnel changes of diplomats, and accepting protests and making representations. The Civil Affairs Department is responsible for the Indo-Chinese refugee issue, including procurement and relief cooperation with UNHCR. In addition, six provinces and autonomous regions, including Guangxi, have set up special Indo-Chinese refugee resettlement offices.

China provides relief and resettlement of inland refugees in various aspects, including residence, identification, social equality, health and welfare, education, etc.
First of all, regarding residence, Article 46 of the Exit and Entry Administration Law, which took effect in July 2013, clearly stipulates: "Aliens applying for refugee status may stay in China based on temporary identity certificates issued by public security organs during the screening period for refugee status; Aliens recognized as refugees may stay or reside in China on the strength of refugee identity certificates issued by public security organs."

Secondly, in terms of identification, according to Article 7 of The Nationality Law of The People's Republic of China, to obtain Chinese nationality, at least the following conditions must be met: "A close relative of a Chinese citizen; Settled in China; Contributed to the Cause of the Chinese revolution or a foreign child adopted by Chinese citizens ", and he/she must successfully obtain a naturalization certificate. In addition, due to lacking a clear legal basis for Chinese authorities, the identification of refugee status is a case-by-case matter. The Department of International Affairs of the Foreign Ministry coordinates with UNHCR and relevant countries, and cooperates with the Ministry of Civil Affairs and other relevant domestic authorities to formulate policies for individual cases. In 2003, the civil affairs bureau of Yao Autonomous County in Hekou, Yunnan province applied to the higher authorities for permission to allow refugees to marry citizens and their children to become Chinese citizens and succeeded. Besides, public security authorities in China have issued identity documents for Indo-Chinese refugees, but the documents have not been connected to the national network, and there are still validity issues in matters such as the right of inter-provincial residency and the right to leave the county. It can be concluded that it is difficult for refugees to obtain nationality in China.

Third, regarding the issue of social equality. In terms of work, refugees currently do not have the right to work in China, because the status of refugees is not listed in the Regulations on the Administration of Employment of Foreigners in China. In terms of marriage, there is no unified national regulation of the marriage of refugees in China. However, in 2003, the Civil Affairs Bureau of Yao Autonomous County in Hekou, Yunnan Province obtained approval after asking for instructions from the higher authorities. Refugees can apply for marriage certificates if they get married. Furthermore, in terms of residence, according to the Measures for the Administration of Registration of Foreigners' Accommodation in Police Stations, if the refugees want to move, they need to apply to the police station first, before changing their accommodation registration. The police will check their relevant materials, indicate them in the "Remarks" column of the registration form of Foreigners' accommodation, and report to the Exit and Entry Administration department. From the above aspects, it can be concluded that although there are no systematic laws or administrative regulations to protect the social rights of refugees in China, the government can deal with them flexibly and properly when relevant problems arise, relevant rights of refugees are basically guaranteed in China.

What is more, in terms of health and well-being. Although refugees do not have Chinese nationality, they have been covered by urban medical insurance by the Chinese government and enjoy the most basic rights and treatment same as Chinese citizens. If their financial situation is too poor to afford medical care, refugees can apply to UNHCR for financial assistance. Reimbursement of medical expenses is a regular benefit provided by UNHCR from a UN fund determined by the number of refugees [18].

Finally, about the issue of education. At the end of 2012, China's Foreign Ministry, along with the ministries of Public Security, Education, and Civil Affairs, signed an agreement, allowing refugee children to attend public schools in China [19].

3.2.2 China's approach to the relief of overseas refugees

For overseas refugees, China has also actively cooperated with governments of other countries and international organizations such as the World Food Program and UNHCR, and called on the international community to boost aid spending for refugees, forming a relief mode with Chinese characteristics and unique advantages.

First, China maintains friendly and stable bilateral relations with countries where the refugees reside, especially those in the Middle East. It provides China a political foundation for its participation...
in refugee relief and assistance [20]. According to statistics, by March 2018, the Chinese government had provided a total of $9.1 million in humanitarian emergency assistance to the Jordanian government. At the same time, China has also provided economic assistance to Jordan for infrastructure construction projects including water supply, housing construction, and road construction [21]. China's good political image in the countries and regions alike will help it play a constructive role in refugee governance, thus reducing unnecessary political obstacles.

Second, due to the improvement of economic and comprehensive national strength, China has closer economic ties with the countries where refugees reside. This lays a solid material foundation for China's participation in international affairs, including refugee governance. In 2016, China launched a project to assist Syrian refugees in Iraq. And by March 2018, the project had been completed with a total investment of $2 million. With the support of the Kurdish Regional Government, China has made great contributions to the Syrian refugees in terms of drinking water, community infrastructure, and camp construction. As a result, 98,000 Syrian refugees have access to safe drinking water and 1,200 Syrian refugee families have access to sanitation [22]. Since 2016, the Chinese government has assisted hundreds of thousands of refugees, people forcibly displaced and returnees in Afghanistan, Angola, Iraq, the Republic of Congo, and Zimbabwe through the Assistance Fund for South-South Cooperation, in cooperation with the UNHCR [23].

Third, China maintains a good cooperative relationship with the UNHCR and other international organizations, which provides an institutional basis for China's refugee relief mode. China worked closely with the World Food Programme (WFP), and until 2018, China has donated 1,000 tons of wheat in Humanitarian Aid to Syrian Refugees in Lebanon [24]. In February 2018, the Chinese government provided $1 million in earmarked funds to the WFP to provide free assistance to Iraqi and Afghan refugees in Iran, helping about 30,000 refugees. China's Assistance Program for Refugees in Iran has been completed [25]. In addition, China cooperates with the International Federation of Red Cross and Red Crescent Societies (IFRC) and provides comprehensive humanitarian projects for refugees in Syria, which include sanitation, water supply, photovoltaic power generation, health care, and winter supplies [25]. What is also notable is the cooperation of China with UNICEF. In February 2017, the Chinese government and UNICEF signed an agreement to assist Syrian refugees in Lebanon, in which China provided $1 million, benefiting more than 86,000 Syrian refugee children [26]. The 17th Chinese peacekeeping construction and engineering detachment to Lebanon have donated school supplies, sports goods, and commonly used medicines to Lebanon's Rumesh Public Middle School, which receives Syrian refugee students [27]. At the end of 2020, the Chinese government and UNHCR have signed a new deal to support UNHCR in the region to carry out the new epidemic emergency response activities. These activities include aiding refugees, internally displaced persons, host community residents, and health workers in Kenya, South Sudan, and Tanzania by providing masks, protective suits, gloves, goggles, and rubber boots to primary health care units [28].

Despite the advantages mentioned above, China still has a long way to go in improving the international refugee relief mechanism. Compared with European and American countries which have dominated refugee relief affairs for a long time, China not only lacks the means to exert greater substantive influence, but also is inadequate in the capital, technology, and experience. It can only rely on international organizations and host governments to provide humanitarian assistance [29]. In addition, China's ability to implement the concept of treating both the symptoms and the root causes of the problem and to reform the refugee governance mechanism is still inadequate. There is still a long way to go for China at present in terms of how to balance its ability and willingness, interests and responsibilities, and the relationship between an extraterritorial power and a regional power on the issue of refugee governance.
4. China's role in the future of international refugee protection and relief

4.1 China's completion of refugee protection and relief

For a long time, in the refugee crises caused by emergencies in neighboring countries, the Chinese government has always insisted on strictly abiding by the UN Charter and the Convention Relating to the Status of Refugees, and has taken in numerous refugees with the idea of promoting human well-being. In addition, the Chinese government adheres to the "common but differentiated principle" [30] as well as the concept of " coping with the refugee issue from the origin". China has provided financial and material assistance to relevant countries on many occasions. As a state party to the Vienna Declaration and Programme of Action, China has fulfilled its corresponding obligations with responsibility as a great power.

Besides, China has achieved extremely high completeness in its commitments to humanitarian aid. In May 2016, Liu Jieyi, China's Permanent Representative to the UN, signed an agreement on the establishment of the China-UN Peace and Development Fund on behalf of the Chinese government, pledging to pay $20 million annually for ten years to finance peace, security, and development at the UN headquarters [31]. During the five years to December 2020, the Chinese government had provided a total of $100 million to support several international projects aided by the fund. In the meantime, The Quick Response Systems Project supported 21 UN mediating actions during its implementation, 53 percent of which were carried out in Africa. The Chinese government has not yet slowed down the pace in providing humanitarian aid, even if China itself alongside the world is suffering from the economic downturn in the post-epidemic era. In early 2021, the China International Development Cooperation Agency (CIDA) and UNHCR signed two cooperation agreements for the South-South Cooperation Assistance Fund project. China had pledged to provide emergency shelter supplies and education support to conflict-affected vulnerable groups in Afghanistan. It also provided personal protective equipment for UNHCR's assistance projects in East Africa in response to the COVID-19 epidemic. Through this agreement, UNHCR has procured, transported and distributed masks, protective clothing, gloves, goggles, and rubber boots to health facilities in Kenya, South Sudan, and Tanzania, benefiting 1 million refugees [32]. It is evident that China adheres to the basic principles of international law and has always provided necessary assistance within its ability to show its style as a great power.

Although China has contributed much to foreign aid and origin management, it has yet to establish a complete legal system for refugee relief. China established the National Immigration Administration in 2018, however, it is not a refugee management agency and legislation on refugees has been stalled. Simultaneously, China's current law system lacks the definition to screen the status of refugees. The provisions on the duration and rights of their stay are also unclear. Currently, the situation is in stark contrast to Japan's Immigration Control and Refugee Recognition Law and South Korea's Refugee Law [33]. Under these circumstances, Indochinese refugees who settled in China only had temporary identity documents from beginning to end, and their rights of residence, exit, and basic education could not be fully guaranteed, which highlights a major drawback of China's lack of a comprehensive legal system for internal refugee relief.

However, on the other hand, China is relatively late in participating in international affairs, especially regarding the refugee issue. It was not until the 1980s did China officially established a cooperative relationship with the UNHCR. Compared with European countries that once expanded their colonies in Africa and the United States, which has intervened in Middle East affairs since World War II, China is inexperienced. The major reason is that China has never actively "created" any refugee problems. In the context of Western interventionism, Iraq, Libya, Syria, Afghanistan, and other countries have millions of refugee sources, which directly or indirectly led to the European refugee wave in 2015. Therefore, although they remain some problems in refugee protection, China still fulfilled its international obligations to refugees and minimum standards as always, and this alleged gap that does not meet the "expectations" of other countries is not inconsistent or irresponsible.
4.2 China's concept of refugee relief in the future

While China has provided great help in refugee protection, there is still a certain gap compared with European developed countries and the United States. For example, after the 2015 European refugee wave, the German government formulated a refugee policy, focusing on the distribution of social assistance and the introduction of the Federal Integration Act in response to this wave, accepting millions of refugees [34]. While Common European Asylum System was established by the European Union through a series of treaties and regulations in this century. The system clearly stipulates the specific obligations of the European Council and the European Commission in refugee affairs, and clarifies the processing methods of "international asylum" as well as a real-world application of the Prohibition of Expulsion or Return [35]. Taking this as an example, China can update its concept in the following aspects in the future.

The first is to expand China's role in the field of international refugee issues. With the Belt and Road Initiative as a prerequisite for policy orientation, China could act as an intermediary in mediating or brokering complex situations in unstable regions (such as the Middle East and Africa). This would not only advance the process of its strategic deployment but also be able to shoulder the responsibility that a major country should take and make more prominent contributions to regional peace and stability. And this is precisely the fundamental strategic goal of governing the refugee problem from its origin. In addition, while ensuring its domestic assistance and foreign cooperation, the Chinese government can improve its global governance level and broaden its governance channels through public internships and strengthening cooperation with international organizations, to better solve the refugee problem from the origin.

The second is to establish a complete domestic refugee relief system. Regarding the extension of the international refugee issue in its territory, China still has room for improvement. Take the perspective of foreign refugee governance as an example: the United States, as a major refugee receiving country, has been influenced by its values and has established a legal system for refugees to participate in social, cultural, and economic life. When Eastern European countries expressed a negative attitude towards the refugee crisis, Germany took the opposite approach and partially solved the problems of population aging and labor shortage while accepting refugees. In recent years, China has also faced problems such as an aging population and a significant shortage of labor caused by declining fertility rates. Therefore, in the future, China can refer to the practices of the United States and Germany to establish a complete system of refugee protection on the mainland, which can not only provide more help for refugees but also partly solve social problems. This essay provides a simplified idea for the system: first of all, the relief system in Germany can be introduced as a sample and combined with the existing subsistence allowance system for domestic residents to ensure the basic survival of the existing refugees. Secondly, referring to the practice of a special agency of the U.S. Department of Homeland Security: the "U.S. Citizenship and Immigration Services (USCIS)"[36], a Refugee Eligibility Examination Office is set up under the Ministry of State Security of the People's Republic of China (MSS), and the power of the National Immigration Administration is expanded to accept the refugees who have passed the qualification examination. The National Immigration Administration will then coordinate with domestic charitable organizations such as the China Charity Federation to provide refugees with basic housing, language training, and employment skills training. Subordinate agencies are also set up to continuously follow up on the development of refugees who have completed the above procedures.

The third is to promote the construction of China's refugee legal system. Although China is constantly improving its legal system, there has been no significant progress in systematic refugee legislation. The right of political asylum stipulated in the Constitution and Article 46 of the Exit and Entry Administration Law is not enough [37]. This essay argues that the foundation of the establishment of a comprehensive refugee protection legal system is the formulation of the Refugee Law, which should include the existing definition of refugees and the conditions for identification of status in the substantive law. Otherwise, the aforementioned issues of refugee qualification examination, status acquisition, and protection system will not be supported and will be structured.
Under the above-mentioned situation, the Immigration Residence Law, and the Refugee Relief Law can be further established to ensure that the safeguards of the aforementioned system are implemented and that the authorities responsible for each specific task are clearly defined. Even if the process of pushing for legislation from the center will take a long time and will be hampered by obstacles. However, it is foreseeable that China will gradually strengthen its role in refugee relief and that an organized legal system will be established.

5. Conclusions

The international community is not increasingly concerned about the protection of the rights of refugees. With the principle of "non-refoulement" and Respect for human rights as its legal basis, China has taken on international responsibilities and obligations on the refugee issue from the perspective of humanitarian concern and moral requirements while moving towards the center of the world stage. China has always adhered to the concept of "prevention first, the country that produces refugees should bear the main responsibility" and the concept of addressing the refugee issue from the origin. For this reason, China has mainly assisted refugees through economic or material means but has not yet completed the transformation or incorporation of legal rules in the field of refugees under the framework of international law. In the future, China will need to continue to maintain its role as a major power. At present, when global governance is deeply integrated, China needs to combine the solution to the refugee issue with its international positioning and policies, take the initiative to stay at the center of the refugee issue, as well as actively conduct mediated actions. In the meantime, China should actively promote domestic refugee relief legislation and the construction of the refugee relief system, improve refugee governance capabilities, and contribute Chinese wisdom to the international refugee aid system while fully safeguarding the rights of refugees.

References


