

#### 4. The Elimination of Hate Speech Act

(1) Relevant Articles of ICERD

- Article 1-1 and Article 5 of ICERD

(2) Main Points

- (a) “The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan” (\*1) (hereinafter referred to as the “Elimination of Hate Speech Act”) is a discriminatory against Japanese nationals and infringes upon the International Convention to Eliminate All Forms of Racial Discrimination.
- (b) The Elimination of Hate Speech Act suppresses freedom of speech and expression and invites totalitarianism.
- (c) Since the Elimination of Hate Speech Act came into effect, hate speech against Japanese people has increased and freedom of speech has been obstructed.
- (d) Measures that should be taken to eliminate hate speech are to stop making fabrications about historical matters, such as the comfort women issue, to abolish special privileges provided for Korean residents in Japan and to nullify the Elimination of Hate Speech Act.

(3) Background

- (a) The establishment of the Discrimination against Japanese Act, which infringes upon ICERD

On May 24, 2016, the bizarrely named act called “The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan” was passed by the House of Representatives during a regular session and became law. “Unfair Discriminatory Speech and Behavior” refers to so-called hate speech, and this act is popularly called the “Elimination of Hate Speech Act”.

This Act is entirely discriminatory against Japanese people. Bias against

Japanese people appears in the very appellation of the Act “on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan [underlined by the author]. Usually, when this kind of act is created, lawmakers usually come up with titles such as “the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior Based on Racial Bias and Other Forms of Discrimination.”

However, rather than stating “based on racial bias and other forms of discrimination,” the Act pointedly refers to “Persons Originating Outside Japan.” In the usual lawmaking process, laws are meant to be applied to everyone. In Japan, laws are made for everyone living within Japan, thereby “addressing unfair discriminatory speech and behavior.” This should be the main basis for the Convention on the Elimination of All Forms of Racial Discrimination. However, as its appellation indicates, this Act deals exclusively with hate speech against persons originating from outside Japan. Hate speech against Japanese persons is entirely ignored. In other words, this act discriminates against the Japanese, allowing generation of hate speech against Japanese persons.

It is Article 3 that most clearly demonstrates bias against Japanese:

*Article 3 The general public shall further their understanding of the need to eliminate unfair discriminatory speech and behavior against persons originating from outside Japan and shall endeavor to contribute to the realization of a society free from unfair discriminatory speech and behavior against persons originating from outside Japan.*

In ordinary countries, “the general public”, the subject in this context, would have been stipulated as “any person”. Likewise, “unfair discriminatory speech and behavior against persons originating from outside Japan” would have stated “unfair discriminatory speech and behavior due to racial bias and other reasons.” In Article 3, the subject is “the general public,” therefore, the Article imposes responsibility merely on the general public. Foreign residents in Japan, however, are free from responsibility.

Why was such a stipulation made? This is because there are those who believe that the Japanese people latently discriminatory. The Japanese people are solely to blame for discrimination. The thought that foreigners discriminate against the Japanese never occurred to these people. In reality, Korean residents in Japan, in particular, under the umbrella of the General Association of Korean Residents

in Japan, continue to lash out against the Japanese, in unison with anti-Japan Japanese, fabricating issues such as the “comfort women” and “forced abduction of Koreans.” These lies have not been considered hate speech or discriminatory.

Moreover, in postwar Japan, Japanese people do not always sit at the top of the society. In a sense, first come Americans, and then Koreans and Chinese. They sit above Japanese. But no laws have clearly stipulated a distinction against the Japanese. This new Act plainly insinuates that the Japanese are latent discriminators and bad people. This Act regards the Japanese as bad and foreigners as good, officially putting foreigners above Japanese. In a sense, the Japanese have legally become a discriminatory people.

Thus, one can conclude that this Act openly discriminates against the Japanese, based on its appellation and Article 3.

Speaking of discrimination, this Act favors Korean residents in Japan over white Americans. During consideration of this Act, it was agreed that “Americans, go home!” is permissible, but “Koreans, go home!” is not.

(b) This Act suppresses freedom of expression and invites totalitarianism

The danger of this Act is that it involves the suppression of freedom of ideas and expression, which is indispensable in a free and democratic society. Hate speech is a mental and spiritual matter and, accordingly, the regulation of hate speech should be dealt with in terms of morality and conscience. It is an iron-clad rule of a democratic society that laws do not interfere in matters of thought and spirit. If laws were created to interfere in spiritual matters, the state becomes even more likely to turn totalitarian, as a communist or fascist state. By the way, those Japanese who pressured the United Nations to force the Japanese government to make a law regulating hate speech are very fond of communist totalitarian states like China and North Korea. They are indeed working to make Japan a totalitarian state.

If we were ever to create a law that would interfere with spiritual matters, it would still be necessary to clearly define what “hate speech” is to be eliminated, from the perspective of the “principle of deciding crime and punishment by law,” which is the general concept of modern laws. However, Article 2, which refers to the definition of hate speech, stipulates:

*Article 2 In this Act, “unfair discriminatory speech and behavior against persons originating from outside Japan” shall mean unfair discriminatory*

*speech and behavior to incite the exclusion of persons originating exclusively from a country or region other than Japan or their descendants and who are lawfully residing in Japan (hereinafter referred to in this Article as “persons originating from outside Japan”) from the local community by reason of such persons originating from a country or region other than Japan, such as openly announcing to the effect of harming the life, body, freedom, reputation or property of, or to significantly insult, persons originating from outside Japan with the objective of encouraging or inducing discriminatory feeling against such persons originating from outside Japan.*

Very few people clearly understand the definition of “hate speech”, after reading Article 2. Japan’s Ministry of Justice puts hate speech into three categories:

- 1) To incite the exclusion of persons of certain ethnicity or nationality without rational reasons (“Get out of Japan,” “Go home,” etc.)
- 2) To threaten to harm persons of a certain ethnicity or nationality (“Kill them,” “Throw them into the sea,” etc.)
- 3) To degrade persons of a certain ethnicity or nationality (Comparing a person from a certain country to an insect or animal, etc.)

The explanation of these categories of “hate speech” is insufficient and the inclusion of “etc.” makes the context more ambiguous.

Ambiguity of this extent instills fear—speech criticizing other countries in order to vindicate Japan and Japanese people could be regarded as “hate speech”.

It is not only what the Act contains but also why and how the Act was made that is unjust and questionable. Consideration regarding the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan was held only three times, on April 19, April 26 and May 12, 2016 in the House of Councilors Legislative Committee and only once, on May 20, in the House of Representatives Legislative Committee, for merely an hour. Moreover, while the Committees reportedly heard “anti-hate speech” supporters, they never heard from those who were fundamentally opposed to the basis of “hate-speech” legislation, such as those against special privileges given to Korean residents in Japan. The Act was created in an extremely quick, rough and unfair manner.

However, what matters most is that lawmakers never considered why and how hate speech came into existence in the first place. The original factor that brought hate speech was anti-Japanese policies on the part of South and North Korea and China. And “hate speech” itself was created by anti-Japan hate speech based on anti-Japanese policies and bogus issues such as the comfort women issue, and by resentment of the special privileges provided for the Korean residents in Japan. “Hate speech” against Korean residents in Japan was a counterattack against anti-Japanese hate speech and the special privileges provided to Korean residents in Japan by the Japanese government. In spite of all of these factors, the Committees never discussed any of these.

Without discussing the cause, it is impossible to decide on effective countermeasures. Thus, legislators came up with the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan, which is totally off the mark.

- (c) Since the Act came into effect, hate speech against Japanese people has increased and freedom of speech has been restricted

Since the Act was implemented, anything that vindicates Japan and the Japanese people has been stifled. Public campaigns criticizing North Korea have come to be labelled as “hate speech” by the mass media. Even lawful demonstrations permitted by the Authorities and organized by conservative groups are labelled as “hate demonstrations,” and when demonstrators are attacked by communists, totalitarians and rightwing North Koreans, the Japanese police do nothing.

On the contrary, demonstrations organized by communists campaigning against the Emperor receive thorough police protection. During a demonstration held on November 26, 2017 by communists, there were placards stating: “We Don’t Need an Emperor,” “I Hate Japan,” “I Hate Japanese Way of Thinking,” “Japanese Are Lunatics,” “Never Forgive the Japanese,” and “Annihilate Japan.” These clearly demonstrate hate speech and go well beyond the boundaries of civility. The sign stating “Annihilate Japan” is a candid wish for genocide, the annihilation of an entire race.

And recently, another incident occurred. On June 3, 2018, a lecture organized by a society convened to reflect on the Elimination of Hate Speech Act to be held at Kawasaki City Educational and Cultural Hall was forcibly cancelled by leftists. The lecture was to have been given by a lawyer, with the aim of discussing

whether or not the Elimination of Hate Speech Act is sufficient. Kawasaki City had allowed the lecture to be held. The mass media reported that the lecture was going to make “hate speech” and with that, leftist thugs attacked the lecture. In Japan itself, freely speaking on Japan and the Japanese people is not permitted.

(d) Measures to eliminate hate speech

Based on the previous discussion, it is pretty clear what measures need to be taken to eliminate hate speech. First, we must restrain anti-Japanese policies on the part of China and both Koreas. Second, we must not allow them to make issues based on fabrications like the comfort women issue. Third, special privileges given to Korean residents in Japan must be abolished. If the second and the third measures are realized, hate speech against South and North Korean residents in Japan will soon be eradicated.

We will state again, however, that hate speech against Japanese persons has increased since the implementation of the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan. To eliminate this kind of hate speech, against Japanese people, it is of utmost necessity, first and foremost, to abolish the Act.

(4) Conclusions and Recommendations

- (a) “The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan” breaches the International Convention on the Elimination of All Forms of Racial Discrimination.
- (b) The Japanese government should abolish the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan in order to protect free speech for the Japanese people and to stop discrimination against the Japanese people.
- (c) If the abovementioned Act is not to be abolished, then the Japanese government should create a new law that eliminates discriminatory speech and behavior against Japanese persons, which has been rising in Japan and abroad as well.

Reported by “Study Group on Freedom of Expression”

Note:

(\*1) The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan

<http://www.moj.go.jp/content/001199550.pdf>