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Expectations on and Possibilities of the “Convention on the Rights of Persons with Disabilities”

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1. What is the “Convention on the Rights of Persons with Disabilities”?

- There are presently seven major conventions on the human rights adopted by the United Nations such as the “Convention on the Rights of the Child” and the “Convention on the Elimination of All Forms of Discrimination against Women.” (Six of them have been ratified by the Japanese Government.)
- Conventions on the human rights are based on two major rights. One is the social rights, such as the right to education, labor, and social security. (International Covenant on Economic, Social and Cultural Rights)
The other is the right to protection of fundamental freedoms as a citizen, such as the right to liberty of movement and freedom to choose residence, right to file a lawsuit, and the right to participate in elections equally. (International Covenant on Civil and Political Rights)
- These two major rights serve as the foundation of conventions on the human rights. Because conventions are laws established through discussion among many member countries of the United Nations, the nations that decide to ratify (to observe) a convention, by making an international pledge, become obligated to implement the contents of the convention in their respective countries.
- If the “Convention on the Rights of Persons with Disabilities,” which aims to protect the rights of persons with disabilities, is established, it will become the eighth major international convention on the human rights.

2. Why is an international convention to ensure the rights of persons with disabilities imperative now?

- There are over 600 million people with disabilities throughout the world, and many of them live in developing countries. According to the United Nations’ statistics, 80% of people with disabilities live the lowest standard of living, because of discrimination in policy, environment, and the negative attitude of society or community.
- On the other hand, even in so-called developed countries, appropriate consideration is not made toward persons with disabilities, according to the type of disability and characteristics, as well as in all aspects of community life (i.e. acquiring of residence and various services; education; employment; use of facilities, access to structures and transportation; political participation; judicial proceedings, etc.). As a result, there are still many

barriers between citizens with disabilities and those without disabilities, and discrimination remains unresolved.

- In the past, various efforts have been made through the “UN Decade of Disabled Persons” and the “Asian and Pacific Decade of Disabled Persons.” In 1993, the United Nations also adopted the “Standard Rules on the Equalization of Opportunities for Persons with Disabilities,” which illustrated methods to realize social participation of persons with disabilities, prohibition of discrimination, promotion of equal opportunities, etc.
- However, the “Standard Rules on the Equalization of Opportunities for Persons with Disabilities” are only guidelines for reference; each nation’s interpretation and implementation vary. Altogether, not much has been achieved. Therefore, it is an international objective to realize the enactment of the “Convention on the Rights of Persons with Disabilities” which obliges countries to adopt and practice it in accordance with their system of organization.

3. The Convention in relation to the “Covenant on Civil and Political Rights” and the “Covenant on Economic, Social and Cultural Rights”

- **Covenant on Civil and Political Rights**
 - **(Immediate implementation) Against discrimination on the basis of disability in public and private sectors (among individuals)**
 - 1) Freedom to choose residence (contract issues)
 - 2) Information and communication
 - 3) Movement
 - 4) Transportation and buildings (use of libraries, restaurants, etc.)
 - 5) Political participation
 - 6) Access to justiceOthers
- **Covenant on Economic, Social and Cultural Rights**
 - **(Progressive implementation) On issues relative to environment and system development**
 - 1) Employment
 - 2) Education
 - 3) Income assurance
 - 4) Securing a residence
 - 5) Personal assistant services
 - 6) Medical careOthers

4. UN Convention on the Rights of Persons with Disabilities

-- The 8th Session of the Ad Hoc Committee

(1) Adoption of draft Convention

Up to the very last minute, the most contested subject which was referred to as a political issue was the “protection of persons with disabilities from a crisis during foreign occupation.” The members had to move to another room to resolve it by voting. As a result, the 102 countries who voted to retain the phrase “foreign occupation” in the Preamble won an overwhelming victory. Eight countries abstained. Those five who voted against it were Japan, Australia, the United States, Canada, and Israel for the reason that the provision gave political color to the Convention which should exclusively aim at the protection of human rights of persons with disabilities. It took them almost till 8:00 p.m. to finalize the report and adopt the draft Convention.

(2) Moment of adoption

When the report of the Ad Hoc Committee was adopted, the President of the United Nations General Assembly appeared, and was accorded a three-minute standing ovation. The congratulatory addresses were delivered by the UN General Assembly President and other dignitaries -- praises to Mr. Gallegos, the former President, to the DESA secretariat, and to Mr. MacKay. All the time as he was being praised, Mr. MacKay maintained a modest posture.

To show appreciation for their great contribution to the contents of the draft Convention, the government delegations also gave a standing ovation to the participants of NGOs who chanted continuously and meaningfully, “Nothing about us without us.”

(3) Significance and outline of the adoption of the Convention

The adopted draft Convention consists of the preamble and fifty articles. The Optional Protocol with eighteen articles, relative to the system of communications from individuals and the examination of information, is also incorporated. As the first comprehensive human rights agreement of the 21st century, this Convention is to be adopted in the General Assembly this autumn -- 58 years since the Universal Declaration of Human Rights and 20 years after it was first discussed, midway through the UN Decade of Disabled Persons (around 1987).

Although this convention did not intend to create no more rights than what persons without disabilities are already entitled, it confirms many new concepts that ensure substantial equality based on the international human rights law. We can say that it is the culmination of what the movement of people with disabilities and their supporters started over half a century ago during the postwar period. These concepts and provisions of rights spell the big difference in international human rights.

(4) Convention Fundamentals

- Preamble
- Article 1 (Purpose)
- Article 2 (Definitions)
- Article 3 (General Principles)
- Article 4 (General Obligations)
- Article 5 (Equality and Non-Discrimination)
- Article 6 (Women with Disabilities)
- Article 7 (Children with Disabilities)
- Article 8 (Awareness-Raising)
- Article 9 (Accessibility)
- Article 10 (Right to Life)
- Article 11 (Situations of Risk)
- Article 12 (Equal Recognition before the Law)
- Article 13 (Access to Justice)
- Article 14 (Liberty and Security of the Person)
- Article 15 (Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment)
- Article 16 (Freedom from Exploitation, Violence and Abuse)
- Article 17 (Protecting the Integrity of the Person)
- Article 18 (Liberty of Movement)
- Article 19 (Living Independently and Being Included in the Community)
- Article 20 (Personal Mobility)
- Article 21 (Freedom of Expression and Opinion, and Access to Information)
- Article 22 (Respect for Privacy)
- Article 23 (Respect for Home and the Family)
- Article 24 (Education)
- Article 25 (Health)
- Article 26 (Habilitation and Rehabilitation)
- Article 27 (Work and Employment)
- Article 28 (Adequate Standard of Living and Social Protection)
- Article 29 (Participation in Political and Public Life)
- Article 30 (Participation in Cultural Life, Recreation, Leisure and Sport)
- Article 31 (Statistics and Data Collection)
- Article 32 (International Cooperation)
- Article 33 (National Implementation and Monitoring)
- Article 34 – 40 (Articles on the international implementation system <follow-up mechanism>)
- Article 41 – 50 (Articles on other matters)

(5) Next steps

The Ad Hoc Committee on its 8th session will go on recess. A drafting group composed of government representatives will be established to submit the final draft to the 61st UN General Assembly, and to work on the words and phrases in the UN official languages. After that, the 8th Session of the Ad Hoc Committee will resume. Here, the Convention shall be approved and then proposed to the 61st General Assembly as a formal draft Convention. After adoption as a formal Convention, signatures shall be affixed by each country. It takes effect as soon as 20 countries shall have ratified it.

(6) Issues to note

- Indirect discrimination (relative to Article 2: Definitions)
 - The phrase “indirect discrimination” was almost decided to be included. It was, however, deleted because of the objection and contention of Japan and China. By this deletion, the interpretation of the word “discrimination” might be limited or narrowed down – the substantial rights of persons with disabilities might not be secured.

- Reasonable accommodation (relative to Article 2: Definitions)
 - A new concept – “reasonable accommodation” – has also been introduced. Denial of “reasonable accommodation” is therefore defined as discrimination and is very significant.

- Definitions of disabilities / persons with disabilities (relative to Article 2: Definitions)
 - The definitions are included in the preamble and Article 1 (purpose).
 - The phrases indicating social models are included in the preamble which has no binding authority legally, while Article 1 shows medical models, which ended up appearing ambiguous.

- Legal capacity, involuntary or compulsory medical treatment, and compulsory institutionalization (Article 12, Article 17)
 - The IDC (International Disability Convention Caucus) and JDF (Japan Disability Forum) insisted on the deletion of a paragraph which rested on the premise that the existence of guardians be allowed. After all, a note was put to Paragraph 2, and the paragraph referring to safeguards was left untouched as can be seen in the revised Chairman’s draft. However, it is significant that this new concept of “self-decision with support” was discussed in the UN.

- Education (Article 24)
 - In relation to the principle of inclusive education, the Japanese government at last stated clearly in the briefing to the gallery that its separation policy shall be changed. The officer-in-charge said clearly that the School Education Law Enforcement Ordinance would be amended. Of course, the question is to what extent it would be amended, but it is definite that we came to a point where the government could not avoid a major change in its policy.

- Work and employment (Article 27)
 - The prohibition of discrimination regarding all forms of employment was stipulated. However, the stipulation of alternative employment (proposed by JDF) was not included.
 - Exclusion of application of the Minimum Wage Law

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- Domestic monitoring (Article 33)
 - To establish a coordinating body in the government to handle matters relative to the implementation of the Convention
 - To establish an independent system to implement and protect the Convention by domestic legal and administrative procedures (in relation to the Human Rights Protection Bill)
- Article 34 – Article 40: Articles on the international implementation system <follow-up mechanism>
 - The issue of establishing an independent international monitoring body
 - The relationship between international cooperation and domestic implementation

5. Toward the Ratification of the Convention and Its Domestic Implementation

- Approval of the National Diet will be the biggest issue. Here, massive support from the society and public opinion is desired.
- An international convention has a binding authority almost second to that of the national constitution. A nation that has ratified a convention is obliged to review domestic laws with reference to the convention, and to establish a new law or system, if necessary.
- For Japan, it will become easier to facilitate the revision of existing laws, such as the Basic Law for Persons with Disabilities, the Barrier-Free Transportation Law, the Heart Building Law (Building Access Law), and the Law for Employment Promotion, etc. of Disabled Persons, according to the convention, and also to facilitate the establishment of the “Law to Prohibit Discrimination against Persons with Disabilities,” which shall prohibit discrimination on the basis of disability.
- The Japanese Government and private NGOs shall submit reports on the state of implementation of the Convention, which will show if the Convention is being observed in Japan. If it is apparent that the Convention is not being observed, a monitoring agency shall issue an advisory, and it shall have to be addressed properly.