

Reconsideration of the Public Diplomacy Act in Korea and a Few Suggestions

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Abstract

The Korean government has recently invigorated the activities of public diplomacy. It is based on the Public Diplomacy Act enacted in 2016. However, there is a widespread concern that it was belatedly enacted and showed necessity to a revision. We believe that this paper contains three contributions which were not sufficiently addressed before. First, we identify the current state of public diplomacy-related legislation in Korea. Second, we argue the necessity to critically review the legal adequacy of Public Diplomacy Act with a consideration of rapidly changing external environment. Lastly, we propose several ways of revision for the future development of public diplomacy in Korea. When revising the Act, it is necessary to make clear a legal connection between the general law and the special law as in the case of the Korea Foundation Act and the Public Diplomacy Act. In this regard, it is worth examining the relationship between the Framework Act on International Development Cooperation and related norms. In addition, the role of the private sector and subnational governments should be expanded. For this purpose, a method and level of cooperation with the private sector should be clearly defined.

Keywords: *Public Diplomacy, Public Diplomacy Act, Korean Law, Korea, Soft Power*

1. INTRODUCTION

The traditional diplomatic framework, where the center of diplomacy was limited to the authority of the single-state government, shows limitation. A new dimension of diplomacy has been implemented, with various changes of the subject and target of diplomacy. For instance, the method of communication has also been changing, which is defined by “Public Diplomacy.” Public diplomacy refers to diplomatic activities that seek to expand the influence by promoting the state’s history, tradition, culture, art, value, policy, vision, etc. through a direct communication with foreigners.

The concept of public diplomacy differs to a conventional way of diplomacy. Public diplomacy focuses on informal process of communication and negotiation between states, to approach the foreign public directly and so, to create a positive image by giving a positive impact to them. Then, states now face a situation in which they have to flexibly integrate the elements of public diplomacy in accordance with different circumstances [1].

Public diplomacy in modern society is also regarded as a means to tout the culture, attitude, and behavior of a nation. Many governments believe that the understanding and utilization of public diplomacy concepts can

influence the way people think at home and improve the national images through a communication [2]. At the same time, it means a shift from hard power-based diplomacy to soft power-based diplomacy.

Korea has created new images based on the results achieved by the international community. For example, Korea's unprecedented economic growth and political democratization serve as a growth model for developing countries, creating that Korea will be able to share development experiences and serve as a bridge between advanced and developing states. Some argues that Korea touts an image of a peace-promoting state [3], and the diligent and sincere characters of Koreans have been linked to an economic growth. The recent combination of Korea's diverse intellectual properties, dynamism, originality, universality, modernity and tradition serves as an opportunity for the members of international community to be more familiar about Korea with so-called Hallyu culture [4]. Considering them, Korea already has a positive background for promoting public diplomacy. The Foreign Ministry of Korea declared 2010 the "first year of public diplomacy." Now, the Korean government is aiming for so-called smart power diplomacy, which combines a hard power-based political and economic diplomacy with a soft power-based public diplomacy.

In 2016, while establishing a legal basis for the development of public diplomacy, such as the enactment of the Public Diplomacy Act and Enforcement Decree, the step-by-step and continuous development of public diplomacy is in place. A purpose of the Public Diplomacy Act is to establish a foundation for enhancing efficiency by clarifying legal matters necessary for the public diplomacy activities, and enhancing a national image and a status toward international community [5].

However, the Public Diplomacy Act, a basis of Korea's public diplomacy policies and activities, still shows a limitation to clarify the government-level responsibility, or consistency on a legal basis of public diplomacy. It is questionable whether the legal interpretation is available for agile and flexible adaptations to various international circumstances. For instance, public diplomacy becomes a subject to an international cooperation, and in order to so, it should meet international law standards.

The purpose of this article is to analyze domestic laws related to public diplomacy including the Public Diplomacy Act and to identify the points for the future development of Korea's public diplomacy-related laws. There are less volume of research and discussions on these issues. Before then, we start this paper with a review on the policy base of Korean public diplomacy.

2. POLICY FOUNDATION AND STRUCTURE OF KOREAN PUBLIC DIPLOMACY

2.1 Background of Korean public diplomacy

The recent development of global communication, including that of globalization and social media, has further expanded the role of public opinion, which has led the government to realize the need to communicate directly with foreigners as well as governments [6]. Public diplomacy is mainly targeted at the foreign public, non-governmental organizations, universities. Media is included in the category of public diplomacy as well, considering that they have been playing an important role in shaping public opinion. In recent years, as foreign policy has narrowed down its scope into citizens, people, organizations, and institutions, the trend becomes more explicit [7].

Therefore, public diplomacy is a diplomatic activity often led by the subnational government to promote the understanding and trust of foreigner, but it requires voluntary participation of various subjects, in order to successfully perform public diplomacy [8]. As like the targets, public diplomacy activities are performed by various levels of actors, including people, NGOs, businesses, or local governments.

In modern society, the concept of public diplomacy emerged in the era of World War and Cold War, but the meaning of public diplomacy is emphasized as the importance of soft power has been highlighted [9]. Globalization and democratization has led to the emergence of non-state actors. For instance, new kinds of media outlets such as social media and social networks have evolved, contributing to the development of public

diplomacy [10]. Then, public diplomacy becomes an open diplomacy exercised by public, and has provided an opportunity to change the existing diplomatic paradigm.

Although Korea started its public diplomacy activities later than other advanced states, it has attempted various efforts since 2010 to promote its own public diplomacy activities. The state government of Korea has also been carrying out customized projects considering local customs, culture, and diplomatic relations by becoming an outpost of public diplomacy in order to gain trust and favor from the foreign public, and to increase understanding and support to Korea [11]. They have implemented interactive public diplomacy activities, not confined to an unilateral dissemination of culture [12].

Korea's public diplomacy aims to reflect the various characteristics and expectations of Korea in international community. While Korea was a beneficiary of official development assistance before, it joined the OECD Development Assistance Committee in 2010 to renew its position as a donor. Through this, Korea has become a model of both economic development and democracy to developing states, which has become an important axis for the Korea's public diplomacy.

The Korean government recognized the importance of the national image and launched the National Branding Committee in 2009, and also operates Arirang TV, which is a broadcast channel, which provides various languages service with the Korean Cultural Center. The King Sejong Institute Foundation for the International Distribution of Hangeul and the Korean Food Foundation for the Globalization of Korean Food also have performed a similar function as well. Recently, Hallyu culture, including K-pop, movies and dramas, has further highlighted Korea's successful and friendly image, and has become a key topic in public diplomacy activities [13]. It produces an active participation in public diplomacy activities in the private sector and also gives a positive impact to revitalize Korea's public diplomacy in various ways. Furthermore, foreigners' interest toward Korea due to Hallyu becomes a foundation for various fields such as tourism, economy, and education to grow along with the spread of Korean culture [14].

2.2 Domestic Laws of the Public Diplomacy Activities

Korea's public diplomacy is already undergoing various activities around the world. These public diplomacy activities can be linked to various fields of study depending on the subjects. Notably, since public diplomacy aims an international cooperation, it should be legally based on international treaties or functionally, in cooperation with international organizations established on that basis. In addition, because public diplomacy activities are often driven by the execution of the national budget or mobilization of civil servants, they should be based directly on domestic law.

On the other hand, the field of International Development Cooperation or Official Development Assistance (ODA) is closely linked to soft power, but still, is a range of public diplomacy. ODA activities trigger positive attitudes such as appreciation and respect for donor countries. Even if ODA is not officially carried out as a public diplomacy in any particular country, many agree that it plays a role of reinforcing soft power and supporting public diplomacy in favor of a donor diplomacy.

Korea's ODA activities are carried out by government agencies represented by the Korea International Cooperation Agency (KOICA), and are also exercised in the form of economic loans under the Economic Development Cooperation Fund (EDCF) of the Bank of Korea. In this regard, the Korea International Cooperation Organization Act (so-called the KOICA Act) and the Foreign Economic Cooperation Fund Act were enacted and applied as the basis for these activities. The state government also elaborated the Framework Act on International Development Cooperation in 2010 to secure a clearer legal basis for the Korea's official development assistance activities and to establish policies to increase efficiency [15].

The activities of the UNESCO Korea Committee have been evaluated as a legal representative of public diplomacy activities, which connects international organizations [16]. The UNESCO Korea Committee, established on the legal basis of the Act on UNESCO Activities since 1963, is a domestic organization that

operates under the control of the Korean government. In addition to supporting the UNESCO's domestic activities in the past, UNESCO's activities have been active in international activities such as setting up the UNESCO Asia-Pacific Institute of International Understanding and conducting educational activities in the region. It remains invigorative so far.

2.3 The Case of the Korea Foundation Act

The Korea Foundation is a representative Korean professional institution engaged in public diplomacy. The Korea Foundation was established in 1991 as an organization, which improves the image of Korea to the world. It supports public diplomacy so that international private networks take root in a cooperative manner. The Korea Foundation conducts various public diplomacy activities with foreign citizens, including the promotion of global Korean studies, international cooperation networking, cultural and artistic exchanges and media projects.

The Korea Foundation Act was enacted in 1991 for the establishment and activities of the Korea Foundation, and the Korea Foundation was also established on this law. Article 1 of the Act stated that the purpose of the Act is to establish the Korea Foundation to implement various exchange projects between Korea and foreign countries, promote proper awareness and understanding of Korea to international community, and to consolidate friendship.

The main contents of the Act are about the establishment and operation of the foundation. Details are set by the Enforcement Decree under the entrustment of the Act. The main activities of the Korea Foundation as specified in Article 6 of the Act are : 1)Hosting, supporting and participating in various events for the purpose of international exchange, 2)Dispatch and invitation of personnel for the purpose of international exchange, 3)Support for overseas Korean research and dissemination of research results, 4)All activities to encourage correct perception and understanding of Korea in the international community, 5)Enhancement of international amity through exchanges and cooperation with major international exchange organizations. Foundations established as corporations based on Article 2 of the Act are mainly operated with government contributions, and the Minister of Foreign Affairs is often involved in business.

As such, the activities of the Korea Foundation, which are operated for the support and involvement of the government, are representative of Korean public diplomacy [17]. The Korea Foundation Act, which provides the legal basis for the activities of the Korea Foundation, has been amended several times since its enactment in 1991, but there are no explicit provisions linked to the Public Diplomacy Act. Furthermore, this law does not explicitly mention the activities of 'public diplomacy,' although the Korea Foundation promotes it as a main task.

3. CHARACTERISTICS OF THE PUBLIC DIPLOMACY ACT AND PROPOSALS FOR FUTURE IMPROVEMENT

3.1 Main Contents of the Public Diplomacy Act

Public diplomacy has become a new platform that complements the existing diplomacy in many states [18]. Certainly, many international activities that can be included in the category of public diplomacy were conducted before the concept of public diplomacy was established in Korea. Around 2010's, then, a number of related domestic regulations were prepared. However, many pointed out that a coherent strategy is insufficient and long-term planning and goals of the government are absent. Accordingly, the necessity of setting national strategic goals, establishing a state-level cooperative system, institutionalizing organizations, and exercising legal systems has been consistently proposed [19].

In doing so, the state government of Korea implemented the 'Public Diplomacy Act' in 2016 to further

promote policy coordination of each institution for the efficient public diplomacy activities. It was also to prepare the legal foundation for an integrated and systematic public diplomacy led by subnational governments and the private sector. The reason for the enactment of the Public Diplomacy Act is to go beyond the realm of traditional diplomacy. It allows the Korean government to conduct public diplomacy activities that utilize various soft powers such as culture, knowledge, and policies against foreign citizens on a clearer legal basis. The Public Diplomacy Act is composed of 13 articles, and the main contents of the Act are as follows.

The main content of the Public Diplomacy Act starts from the definition of it. According to Article 2 of the Act, the concept of public diplomacy is defined as diplomatic activities by the state directly or in cooperation with local governments or the private sector to promote foreign nationals' understanding of and trust in Korea through culture, knowledge, and policies, and the Minister of Foreign Affairs is required to establish a basic public diplomacy plan every five years in consultation with the heads of relevant agencies and governors according to Article 6. In addition, Article 7 provides that the heads of relevant administrative agencies and the governors are required to establish an implementation plan every year in accordance with the basic plan, and to submit plans and results to the Minister of Foreign Affairs.

It is also significant that the Public Diplomacy Committee established under Article 8, which deals with major issues of public diplomacy in the Public Diplomacy Act, is being affiliated to the Minister of Foreign Affairs. Another characteristic of the Public Diplomacy Act under Article 9 is that the State may provide necessary support when subnational governments request cooperation. On the other hand, the State may provide such support in order to strengthen the private sector's participation in public diplomacy.

Along with the enactment of the Public Diplomacy Act, the Enforcement Decree of the Public Diplomacy Act, which consists of 11 articles, was prepared to clarify the matters necessary for the implementation of the existing law. The Enforcement Decree contains specific matters concerning the institutionalizations of public diplomacy activity plans, the composition and operation of the Public Diplomacy Committee, policy measurements both to subnational governments and the private sector, factual survey and implementation, and designation of public diplomacy promotion agencies.

3.2 Attempts to Revise the Public Diplomacy Act

The enactment of the Act has shown great significance. From then, Korea's public diplomacy activities started to be conducted on a separate legal basis with the Public Diplomacy Act and the Enforcement Decree. In addition, the Public Diplomacy Act is remarkable that the basis of a policy has entirely been protected under the law. However, as mentioned above, there is a limitation to apply the Public Diplomacy Act as a legal basis for the implementation of specific government policies. As a legal tool for the development of public diplomacy, there are still problems necessary to be addressed.

First of all, this Act lacks coherence and specificity in its system, and its institutional measures for the implementation are also flawed [20]. The Public Diplomacy Act has not been amended since its enactment in 2016, and necessities on the revision of the Act have been suggested with the above criticism. In particular, an amendment was proposed to add new regulations for the appointment and management of private public diplomacy ambassadors in 2019. This amendment was originally intended to provide a standard by which private public diplomacy ambassadors can clearly fulfill their responsibilities by specifying their responsibilities.

Recently, for the specification of public diplomacy activities and the implementation system, an amendment bill was prepared to clarify the subject of overseas public diplomacy activities as diplomatic missions. It was intended to add the clauses that were not explicitly stipulated in the current Public Diplomacy Act. The role and activities of diplomatic missions which have been in charge of overseas public diplomatic activities are specified in the Act. A few other bills, which had been proposed before, contain similar contents. The following table illustrates it.

Table 1. Recent attempts to revise the Public Diplomacy Act in 2021

Date	Chief Author of the Legislation	Main Contents
June 3, 2021	Jin Park (And 10 other legislators)	<ul style="list-style-type: none"> • To establish the digitalplus center of public diplomacy
March 3, 2021	Sangmin Lee (And 13 other legislators)	<ul style="list-style-type: none"> • Let the chief minister of Foreign Affairs to review the relevant projects • To establish any organization under a direct control of the chief minister
Feb. 18, 2021	Jaejung Lee (And 10 other legislators)	<ul style="list-style-type: none"> • To clarify the role and authority of overseas diplomatic offices
Dec. 21, 2020	Haesik Lee (And 14 other legislators)	<ul style="list-style-type: none"> • To clarify the authority and empower the local government in public diplomacy

It is no doubt that the Public Diplomacy Act should serve as the basic law for the establishment and implementation of Korea's public diplomacy policy, but it must be consistent or systematic with other relevant laws and regulations in the field of public diplomacy, which has been already existed even before the enactment of the Public Diplomacy Act [21]. In that sense, the Public Diplomacy Act has exposed serious problems in relation to other laws. In relation to other laws, Article 5 of the Public Diplomacy Act states in Paragraph 1 that 'Except where there are special provision in other Acts on public diplomacy, it shall be governed by the provisions of this Act', but states in Paragraph 2 that 'In the case of enactment or amendment of other public diplomacy law, it must complied with this Act'.

Therefore, the so-called 'Public Diplomacy-Related Act' includes all domestic laws regarding various activities that can be included in public diplomacy activities along with the Public Diplomacy Act. If the Public Diplomacy Act is to play the role of the Basic Act on Public Diplomacy in Korea, that role should be faithfully reflected through the revision of the Public Diplomacy Act.

3.3 Improvements for the Public Diplomacy Act

As mentioned above, Article 2 of the Public Diplomacy Act defines public diplomacy as "activities that the State does directly or indirectly in cooperation with local governments or the private sector to promote foreigners' understanding of and trust in Korea through culture, knowledge, and policies." This definition is interpreted that Korea gives an initiative of public diplomacy to the State by itself. Since public diplomacy is a deliberate state policy having a clear purpose to influence foreign citizens, this interpretation can be fully sympathized with.

However, the public diplomacy law should provide a mechanism for the State to have a systematic and effective method for establishing and implementing public diplomacy policies. Considering the concept of public diplomacy, it is clear that the role of the private sector and subnational governments should be expanded. A method and level of cooperation with the private sector should be clearly defined and, the idea of the current public diplomacy law should be refined accordingly [22].

In the field of public diplomacy aside of a realm of conventional diplomacy, the role and function of the state needs to be confined as well. For it, the divisions of government-led initiatives, private cooperation, and affiliated organizations needs to be distinguished respectively in the Public Diplomacy Act. In doing so, we expect that various policy conflicts occurred in different tiers of government could be resolved to some extent.

Article 12 of the Public Diplomacy Act stipulates that the Minister of Foreign Affairs may designate public

diplomacy promotion agencies to efficiently carry out the specific projects required for the promotion of public diplomacy. However, further details were not stipulated in this law. In this case, there is a possibility of arbitrary judgment and political intervention by the government, which gives a negative impact to the consistent operation of the promotion agency.

The Enforcement Decree of the Public Diplomacy Act states that the Korea Foundation could serve as a public diplomacy promotion agency, but there are no explicit comments on the cultural centers or cooperation organizations that actually engage in public diplomacy activities. In this case, juridical doubt may arise about the difference between the Korea Foundation and other organizations specified in the Enforcement Decree. At least for the institutions carrying out clear public diplomacy activities, the level of regulations at the Korea Foundation level may be necessary.

The connection between the Korea Foundation Act and the Public Diplomacy Act is found in some provisions of the Enforcement Decree but it is not clearly established as a legal clause. While the Public Diplomacy Act is a general, and a basic law that controls the basic matters of public diplomacy in Korea, the Korea Foundation Act is a special law for the promotion organizations that practically carry out public diplomacy activities. The clear connection between the two laws is a matter of difference between general and special law in some parts, but this is only an interpretive conclusion, and there is still an issue for the clear classification. As such, the legal mechanism can be properly manifested only when the connection between the Public Diplomacy Act and the public diplomacy-related laws is clearly established.

In order to solve this problem, it is necessary to watch over the case of the Framework Act on International Development Cooperation. The Framework Act on International Development Cooperation was organized to establish national policies and strategies for international development cooperation and to allow subnational governments to discuss general matters. As a result, the Korea International Cooperation Agency Act and the Economic Development Cooperation Fund Act were being controlled and protected under this basic law. It is remarkable that this connection can help related laws to be faithful to the disciplines of the basic law and the basic law to operate with open relevance to other laws.

4. CONCLUSION

All Korea's public diplomacy has made a rapid progress. Subnational government in Korea has recognized the importance of public diplomacy and has made efforts to refine related laws. As a result, the Public Diplomacy Act was enacted in 2016. Despite this, however, some shortcomings remain unsolved, and it still needs to be improved upon the dynamics of Korea's public diplomacy concepts.

In addition to the Public Diplomacy Act, there are various projects, which are recognized as public diplomacy activities, and these need to be protected and encouraged under a relevant law. However, the problem is that the public diplomacy law and the relationship between these laws are not defined properly yet. To solve this problem, it is necessary to make clear a legal connection between the general law and the special law. In addition, practical issues such as the establishment of a promotion agency for public diplomacy activities must be considered. In resolving these issues, it is necessary to examine the cases in which the Framework Act on International Development Cooperation and related norms have connected.

In this regard, it can be said that the goal of Korean public diplomacy needs to be more specific and clear. Based on the concept of public diplomacy, it seems that the role of the private sector needs to be enhanced. However, concerning the problem of rent-seeking in the private sector, we have witnessed the authority and range of public diplomacy tends to be limited in the level of traditional diplomacy. We need to concern how we can determine the legal status and authority of local government and private actors in the level of public diplomacy.

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