

**STRUCTURAL DIFFICULTIES OF BUILDING A CONSENSUS IN THE ROK  
LEGISLATIVE SYSTEM**

**CASE STUDY OF ROK MEDIA LAW PASSING**

**By**

**Kim, Dong hyun**

THESIS

Submitted to  
KDI School of Public Policy and Management  
in partial fulfillment of the requirements  
for the degree of

MASTER OF PUBLIC POLICY

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## **ABSTRACT**

**By**

**Kim, Dong hyun**

Consensus building has often been used as an effective means to resolve dispute among interest groups in a highly democratic societies. As Republic of Korea has shifted from its dictatorship to a fully recognized democracy since the 90s, demands for achieving successive consensus building have started to gain recognition. Yet, many attempts failed in reaching a consensus in Republic of Korea when a “highly political involvement” took place. This study strives to get into the epicenter of such failures-The National Assembly in Republic of Korea, “the arena of politics”, where it is infamous for an excessive Win-Lose power struggle. Of course, sometimes it may be the nature of politics to strategically neglect the consensus building with the rivaling parties. However, National Assembly in Republic of Korea seems excessive in attempting to obstruct the opponent parties that “consensus building often does not reflect the needs of their people. Such excessive tendency of political rivalry combined with the reality of non-existence in having an effective consensus building mechanism may risk neglecting the needs of their people. Therefore an effective method of consensus building is demanded in ROK’s legislature system. Through the ROK media law passing case, this study attempts to articulate the current structural flaws which obstruct gaining an effective consensus building mechanism in the National Assembly. By identifying what and why it is so difficult in having an effective consensus in the “political arena” of ROK, this paper would contribute to the future discovery for obtaining better modeling and alternatives

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**Dedicated to**

Brotherhood in arms SSG Yoon, Jang ho,  
K.I.A. Bagram, Afghanistan Feb. 27<sup>th</sup> 2007

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## 1. Introduction

Consensus building has often been used as an effective means to resolve dispute among interest groups in a democratic society. Specific cases could be exemplified such as environmental conflict resolution regarding the Snoqualmie Dam dispute in the 1970s U.S. **(Kim Dong young, E-daily)** As Republic of Korea has shifted from its dictatorship to a fully recognized democracy since the 90s, various interest groups have enjoyed fully exerting their positional bargaining in certain issues. This in the mean time created, “Conflicts” between opposing interest parties. Such mood also has signaled its society to embrace an effective consensus building to resolve disputes democratically. In accordance with the “need”, ROK government has tried to implement consensus building in various issues. Successive cases as the relocation of Defense Security Command or the diesel automobile usage and Special Law on Air Improvement on Metropolitan Area prove that consensus building in South Korea could also effectively be implemented. However, there are still more prevalent failures such as the NEIS, the Hantan River Dam or Installment of Jeju Naval bases that speculate consensus building being too ideal for the reality in South Korea. Common aspects of such failures are that they were all involved in value-led conflicts, failed in obtaining an effective mediator and the most important, having political involvement in due process. **(Kim Dong young, Et al.)**The case in ROK Media Law shares alongside with these commonalities as well as having additional unique features. The following differences are as below.

### Unique Aspects of the Case in Passing of ROK Media Law

- i. The place that involved conflict was in the national assembly itself where majority-rule is the norm in the final process of passing the law
- ii. Actors in the conflict process were “Agents” representing the “Principals” that would eventually be affected by the Law.

- iii. Role of mediator, chairman of the national assembly, is in a difficult position to act neutral
- iv. Chairman of the national assembly has direct authority to use introduction of bill without the passing of the committee
- v. Characteristic of dead line for a possible agreement was short and easy to be manipulated
- vi. Joint fact finding involves highly political outcome
- vii. Within the discourse process, verbal and physical means of offences (filibuster) were implemented among party members

Since, most cases in South Korea which failed in consensus building involves political involvement, the subject on reviewing the ROK Media Law passing could be the cornerstone for suggesting why it is difficult to resolve conflict in political arena. Also, since most policy case studies in South Korea involves government vis-à-vis civil organization, civil organization vis-à-vis civil organization where Government acts as mediator, it is important to note that there are very few studies focusing on the conflict process model in the legislative sector. Previous studies such as “Research for Policy Decision-making Governance on Conflict Management Broadcasting-Communication Convergence” (*Korea Information Strategy Development Institute, 2008*) or “White Paper on Broadcasting-Communication Transfusion Initiative” (*Office for Government Policy Coordination, 2008*), all focus the role of government in implementing the policy. However, by studying how ROK Media Law making process failed in resolving conflict, this dissertation may suggest better understanding for the future studies on political consensus building model. Moreover, conflict regarding the IPTV related clauses could be defined as conflict among government agencies and the national assembly. Therefore, IPTV issues would not be specifically discussed in this paper.

## 2. Traits of decisions making process in ROK National Assembly

Before, developing the thesis, current traits of decision making process in ROK National assembly should be previously mentioned. By doing so, it is easy to understand the hypothesis and statement of problem in the case of ROK Media Law passing. The ineffective decision making-such as procrastination, filibustering, abuse of direct authority, etc within the National Assembly are nothing new of stratagems in the ROK political arena. On the contrary, the end-result of the ineffective decision making process is rather encouraged by the political actors in order to elicit best optimal selection. According to Park chanpyo, *“ROK National Assembly is in a status where conflict management is yet realized. In the Authoritarian regime it lacked basic frameworks for conflict managements to be rooted, resulting in an irrational development of conflicts with physical confrontations... After, the democratized era, still it has failed to be rooted as a system.. Such failure could be attributed to the political culture within the National Assembly”* (Park, 1997)

Especially during the 15<sup>th</sup> National Assembly, confrontation regarding the ground regulation of forming the National Assembly, stipulating specific time frame of forming committee members, critically delayed the opening of the National Assembly.

Moreover, the abuse of direct authority by the chairman of National Assembly and filibustering by the opposing party to obstruct the abuse is a well witnessed phenomenon in ROK National Assembly. Such tendency of resorting to irrationality of force makes the National Assembly ineffective in discussing the agenda “target-centered”. By referring from the past trends, it could be assumed that National Assembly in Republic of Korea seems excessive in attempting to obstruct the opponent parties that “consensus building often does not reflect the needs of their people. Such excessive tendency of political rivalry combined with the reality of non-existence in having an effective consensus building mechanism risk

neglecting the needs of their people. The reasons under such structural problems of trends could be roughly assumed as following: Firstly, procrastination of forming a National Assembly Committee is due to the discontent among parties to appoint opponents as Chairman of the National Assembly and the heads of each committee. This is due to the abuse of direct authority which these roles obtain, to lay a bill when consensus is not reached. Although, chairman and heads are assumed neutral for a fair facilitating and mediating to take place in the process, procrastination proves that either such expected roles in reality does not function properly or at least the roles are perceived unreliable among party members. Secondly, since the power of direct authority could compromise excluding proper deliberation process, discontented members may resort on filibustering even after the chairman or the heads of each committee are appointed. Such filibustering escalates conflicts among party members which greatly blurs the agenda deliberation to a force-led power struggle. In the following sections of this thesis, the traits of the ROK National Assembly would be closely studied. Moreover, it would clarify whether the assumptions explained above are justified by testing the hypothesis.

**Table No.1 <Law Draft Passed by usage of Direct Authority since 1993 ~2000>**

Date	Agenda	Majority Party	Facilitator	Notes
1993.12.2	1994 Fiscal planning draft	Minja	Hwang, nakjoon	Lee mansup chairman refuses facilitation
1994.12.2	1995 Fiscal Planning draft	Minja	Lee chun goo	passed from local press room of the plenary meeting using wireless mike
1995.5.5	Integrated Election Law Revision	Minja	Hwang nakjoo	Non-participation of Democratic Party
1996.12.26	11 law drafts including Labor Relation law revision	ShinHangook	Oh sae seng	Law passed in 6AM morning
1999.1.6~1.8	110 law drafts including Korea-Japan Fishing Treatment Ratification	Gookmin Hoiee, Jaminryun	Park joon kyu	Non-participation of Grand National Party
2000.7.24	National Assembly Law Revision draft	Gookhoiwoonyung Committee	Cheon jeongbae	Lee mansup chairman refuses use direct authority

<Korea National Assembly Development Research Committee, table 4>

### 3. Historical Background

#### 3.1. Initiative of Revision

Revision of ROK Media Law was proposed by the Grand National Party in December 3<sup>rd</sup> 2008 and with controversy in the due- process, had passed the law in July 22<sup>nd</sup> 2009. The related laws include 7 categories in “Newspaper Law”, “Press Mediation Law”, “Broadcasting Law”, “Internet Multimedia Broadcasting Business Law”, “Radio Wave Law”, “and Special Law on Transfer of Ground Wave Television Broadcasting to Digital ”, “ Law on Promotion of Information Communications Networks and Information Protection Law”

The initial proposal specifically allowed the capital investors to gain up to 20% of “Ground Wave TV” stock share, 49% of “Special Coverage Channel” and “General Program Service”.

Also in the case of “Foreign Capitals”, it allowed 20% of stock share in “Special Coverage Channel” and “General Program Service”<sup>1</sup>

**Table No.2**

#### <Comparison between Conventional and Proposal of Media related Law>

Owners / Objects	Individual Stock Share		Conglomerates		Newspaper / Broadcast		Foreign Capital	
	Conventional	Revised	Conventional	Revised	Conventional	Revised	Conventional	Revised
Ground Wave TV	30%	49%	Prohibited	20%	Prohibited	20%	Prohibited	Prohibited
General Program Service				30%		30%		20%
Special Coverage Program Provider	30%	49%	Prohibited	49%	Prohibited	49%	Prohibited	20%
General Cable Program	-	-	-	-	49%	49%	49%	49%
Satellite Broadcast	-	-		(Abolish)	33%	49%	33%	49%
General Program Provider	-	-	-	-	-	-	49%	49%

(Assorted from various Newspapers)

<sup>1</sup> In Korean it is called “Jong Hap Bodo Channel”

Regarding the cross-ownership issues, previously ROK Government, since the 1980's, had prohibited any cross-ownership between "Newspaper" and "Broadcasting" Also, the conventional laws limited "Newspaper Company" or "Broadcasting Media" to have rights in owning Cable TV's general service channel as well as "Special Coverage Channel"<sup>2,3</sup>. The rationale behind this prohibition clause of cross-ownership and the limitation of stock-sharing was based on "broadcasting public interest theory" (**Office of Prime Minister,2008,pp340-356**). According to the white paper published by the Prime Minister Office, "Traditionally, broadcast is considered in a public sphere where certain individuals or organizations are not allowed to monopolize, based on 'scarcity of frequency channels' and thus the 'limitation of usable channels'" (**p340**) Due to such characteristic, broadcasting sphere must pursue public virtue in "Enlarging access of political, economic, socio-cultural minorities", "Inhibiting monopoly and centralization of public opinion", "Induce public interest based programs in order to relax dominion of commercial programs" (**p340**). Such treatment of public concerns is also well proved in Mancur Olson's thesis of "The logic of collective Action". In his study he clearly states that, "Under an environment where the scale is small or provided by a selective inducement and the interest group is structured while its power increases, it eventually turns out to become a distribution coalition where it poses to lobby with the government and obtain preferred service to their own group"- "Such rationale devastates the wealth of the society and it is the role of the government is to prevent such group rationale activity" (**Olson, Mancur 1971**). As the conventional Media was in this category of small

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<sup>2</sup> "Special Coverage Channel" in Korean is "Bodo Junmun chaenul" which refers to media that merely covers NEWS. Equivalent examples in Foreign Medias are BBC, CNN

<sup>3</sup> In the conventional "ROK Newspaper Law", clause 15 dictates that Newspaper companies cannot cross-own Broadcasting companies. Also it states that share owner who gains more than 50% of the broadcasting company cannot own more than 50% share of other Newspaper companies. Moreover, in the conventional "ROK Broadcasting Law" it dictates that "Jonghap Ilganji", General Daily News papers, or "News Tongsininsa", News Communication Companies, are not allowed for act of cross-ownership nor gain percentage of stock share in Ground wave Broadcasting and General service Channel Business.

scale environment, it was natural for the government to concern its characteristic in protecting the public interest. Nevertheless, recent technological advancement has drastically changed the Media Environment. As technological leap has made it possible for Analog information to be converted to digital, demands of convergence of the Analog and digital sectors has come to rise. With surging demands of convergence, the previous conventional media law that distinctively regulated each media sector became obsolete to reflect the reality of Today's Media Trend. Such obsolete perimeter between broadcast and communication as well as newspaper along with introduction of new types of media, digital cable TV, Satellite TV, DMB, IPTV, obscured the conventional legitimacy of "Scarcity of Frequency channels" creating varieties of choices for viewers. On the other hand, excessive protection by the conventional media laws themselves created a bulwark of entrance for new media competitor to enter the market<sup>4</sup>. With such an oligarchic structure, concerns were raised of the media being occupied by small numbers of existing channels which eventually limits the representation of variety of opinions.

In such circumstance, the ROK Government's main target was to imbue competition among conventional media such as making News paper industries enter the broadcasting sector (Such management until now was prohibited) as well as loosing up restriction for large capital owners to participate in the media industries. By doing so, the government attempts to yield the following results-

- Introduce various selections of contents for the viewers
- By introducing IPTV, incubate media to smear into the digital ubiquitous environment enhanced by Internet, Social Media Service and the recent "SMART

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<sup>4</sup> Presently, ROK has only 4 ground cable broadcasting stations. (1 National and 3 private firms)-KBS, MBC,SBS,EBS

Industry”

- Promote deliberative democracy through providing various source of channel
- Allow capital corporate funds to gain access in the broadcasting media

Especially, regarding its ramification of positive effects in promoting democracy, environment of the Media convergence would be expected to induce five new values. Firstly, unlike the conventional media in which citizens were passive objects of information, the leap of technology in media convergence will give “more authority of freedom” to the citizens and consumers. (*Korea Information pp185*) Secondly, the Media convergence would alter civil participation from a limited deliberation to a various forms of deliberation. The paper points out that “Traditional norms of deliberation had not only limited structure of individual deliberation but also had characteristics of being mobilized or ‘Interpellation’ by certain media frame or ideologies. However, “means of choice through selective searching would provide users to directly participate or become a part of the programs, deciding the contents and agenda (**pp186**). Thirdly, since conventional media means such as Newspaper, broadcast have provided “limited information through small number of platform, “centralization” of opinions or preferences have been centralized. Due to such penchant, “civil deliberation has been centralized with homogeneity”. Nevertheless, convergence in media environment would “induce various converged media-based information, which unlike the conventional media would deliver “diverse and sporadic participation” of users who would participate in the contents making. (**pp187**). Moreover, such participation would create new values of “Creativity” based on public interest while, conferring values of “responsibility” for users to observe such public values.

### 3.2. Positions of Opposition Interest Groups

However, unlike such expectations, harsh criticism was raised by the opposition parties against the Grand National Party's proposal. Two important conflicts of themes were raised as below.

- Issues regarding the Cross-ownership of Newspaper and Broadcasting
- Issues regarding the propositional level of stock shares allowed for capital investors to gain in Ground-wave Television Broadcastings and Special Coverage Channels

The criticism generally underlined that pro-capitalistic law would generate oligarchic media, limiting the general public to deliberate. **(Hanguok, 2009)**

Especially regarding the propositional level of stock shares, Hankyurei Newspaper in December 12<sup>th</sup> 2008 Editorial quotes as below.

*“Especially, South Korea where public opinion market is still radically manipulated, merely with market logic, the law would more harm the public opinion market when the media conversion actually takes place... Such act only could be interpreted as the government and the ruling party giving rewards to strong conservative news media which had cooperated their regime change successful” “Media Law revision which for the means of securing regime should be stopped while the national assembly should carefully treat the issue by considering the public opinion monopoly and the damage of public characteristic in the Media that would eventually affect our society” (Hankyurei Editorial, Dec 2<sup>nd</sup>, 2008)*

Also, the National Media Labor Union<sup>5</sup> went on a general strike from Dec. 26<sup>th</sup> 2008.

According to the National Media Labor Union's Directive 6, it clarified that *“The revision bill proposed by Grand National Party, if passed, would bring monopoly of public opinion*

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<sup>5</sup> National Media Labor Union (Jun Gook NoJo) is the largest media related labor union under Korean Confederation of Trade Unions, one of the two largest labor unions in Republic of Korea. The National Media Labor Union accepts membership from News reporters, Producers, Engineers who works in Newspaper and Broadcasting Companies.

*and back-scratching alliance between power and capital... the general strike which starts from 26<sup>th</sup> would continue regardless of whether the bill is laid before the national assembly and Grand National Party rescind the bill” (E-daily, Dec 28<sup>th</sup>, 2008).*

Regarding the position of the opposing parties, Jung Se Kyun, the chairman of the Democratic Party, being largest among the opposition parties, states as below.

*“Failing to bulwark the passing of Grand National Parties budget plan bill, the opposition party would take clearly different stance from the previous failure... unlike budget plan, other laws (such as Media laws) have different characteristics” “legislation of anti-democratic laws involving the monitoring of the people, splitting sides, and giving preferential treatments toward conglomerates should not be passed in this year nor in the next years... The attitude of the opposition party toward fiscal planning and these laws is definitely different”. The chairman forewarned that the opposition party would “resort to force” (PreSSian, Dec 15<sup>th</sup>, 2008)*

In his other exclusive interview with IlyoSisa in Dec. 23<sup>rd</sup> article, he describes strategy of Democratic Party against the Grand National Party’s Medial Law Proposal.

*“The 7 evil laws to control the media should be struggled for the preservation of Democratic order. Last Dec. 16<sup>th</sup> (We) have met with representatives of “National Media Labor Union”, “Media Active” which is composed of 50 civil NGOs in the Yoeido national assembly. On this day, I have stated that (Media Law) is a National problem and the People’s problem. This overpasses the interest of the party and directly involves the Democracy of ROK and the competitiveness of the Nation. How could we standstill witnessing President Lee, Myung bak’s regime with only 1 year in power regressing 20,30 years of the current situation. We would fight with certain awareness. Although our seats in the national assembly is small, but we are the largest opposing party attaining 80 seats. With bipartisanship between other opposing*

*parties we would obstruct the 7 evil (media) laws being passed. Also, we would meet with the representatives of the Media interest groups such as National Media Labor Union, Media Act, etc and co act to obstruct the Grand National Parties Proposal” (IlyoSisa, Dec.23<sup>rd</sup> 2008)*

In short, the concerns raised upon were regarding the reality that small numbers of newspaper companies occupies more than 50% of the Newspaper market, if the media law promises these Newspaper companies entering the broadcasting sector, it would result in broadcasting being dependent upon large capitals. This result in the meantime would expedite monopoly among large Newspaper companies eventually damaging the of selection of variety of choice, escalating insolvency to small-medium sized Newspaper companies and reducing the role of Media as a public voice, especially toward large conglomerates.

### **3.3.Due Process of Bill Passing.**

As the Chairman of the Democratic Party forewarned, in December 26<sup>th</sup> 2008, the Democratic Party congressmen occupied the Assembly plenary session, filibustering any attempt of laying the bill.

With filibustering taking place, with the order by Kim Hyung Oh, Chairman of the National Congress, trials of force-led disbanding was attempted in January 6<sup>th</sup> 2009. Regardless, in February 25<sup>th</sup> 2009 chairman of Culture and Broadcasting Committee, congressmen Koh, Heong Gil with “Direct authority clause”<sup>6</sup> laid bill to the committee. However, both ruling party and opposing party reached an agreement in March 2<sup>nd</sup> 2009, stating that they would cooperate to deal the passing of laws in the coming June by “receiving public opinions from the people of ROK”

Such abrupt change of tide in agreeing to negotiate seemed to bring hiatus to the conflict

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<sup>6</sup> In Korean. Jik Gwon Sang Jeong

escalation.

From March 13<sup>th</sup> 2009, by recommendation from both sides of ruling and opposing parties, 20 members were designated under the name of “Media Development National Committee”  
From March 13<sup>th</sup> discussions, experts panel, public hearings were held. However, right before the final version of documents was to be released in the committee members recommended by the Grand National Party withdrew from the committee. The reason behind this withdrawal was the disagreement of implementing poll survey. Grand National Party stated that in the initial consensus document that was agreed in March 2<sup>nd</sup> 2009, did not state any words of “implementing poll survey”

With joint-fact approach being failed, Democratic Party refused participating in the “June Interim National Assembly”. Park, Gun Hye ex-chairman of the Grand National Party, stepped in as a mediator to bring a settlement. The proposal suggested reducing the Newspaper and Broadcasting companies’ General Service Channel stock share by 30%, while a clause to limit the “Share of Audience Ratio” by 30% should be added. Responding to the settlement proposal, Grand National Party gave out a revision proposal of limiting the “Share of Audience Ratio” by 30% while compromising to delay the cross-ownership of Newspaper-Broadcasting until 2012. On the other hand, The Democratic Party, responded by proposing alternatives of lowering the “Share of Audience Ratio” below 25%.

Chairman of Congress, Kim Hyung Oh implied using “Direct Authority” to lay bill if no consensus was made before July 25<sup>th</sup> 2009, the date when the “June Interim National Assembly” ends.

With a time frame being limited, Grand National Party, then changes their initial revised proposal as a positional bargaining. The contents was greatly retreated from what the opposing parties expected, in which it returned to the original design of allowing cross-

ownership of Newspaper and Broadcasting companies.

As no compromise was reached between the parties, vice chairman of Congress, Lee, Yoon Sung with the “Direct Authority” laid bill and passed the Media Law by voting in July 22<sup>nd</sup> 2009.<sup>7</sup> The Democratic Party members, during the voting process could not participate due to their filibustering to stop members entering the plenary meeting place where the voting was held. However Voters entered in a different route which made the vote possible.

### **3.4.Aftermath of Bill Passing**

Protesting the result, the opposition party members filed constitutional petitions to the constitutional court against the chairman and vice chairman of National Assembly while petitioning the confirmation of legal nullification of the laws passed. Following is the abstract of the Constitutional Court’s verdicts.

#### **<Summary of the verdicts of the Constitutional Court>**

The Constitutional Court sentences verdicts in 2009 October 29<sup>th</sup> over the case filed regarding the incident of authority dispute between congressmen and chairman of the National Assembly as following: On the act of declaring the passing of the following law, “Proposal of Overall Revision of Newspaper Law on Guaranteeing Freedom and its Role” by 7:2 opinions, on the act of declaring the passing of the following law “Proposal of Partial Revision of Broadcasting Law” by 6:3 opinions concludes that the acts had violated against the authority of congressmen to deliberate and vote over the proposed law. However, the Constitutional Court dismisses the petition over confirmation of

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<sup>7</sup> The “Direct Authority” or “Jik-Gwon Sang jeong” was entrusted from the Chairman Kim Hyeong Oh

authority violation through the defendant's (Chairman of the National Assembly) act in declaring the passing of "Proposal of Partial Revision of Internet Multimedia Broadcasting Business Law" and "Proposal of Partial Revision of Financial Holding Company Law" by 5:4 opinions. Moreover, regarding the petition of legal nullification confirmation on the act of declaring the passing of the 4 law proposals mentioned above, the constitutional court sentences verdicts as following: Regarding the case of the Newspaper law Proposal by 6:3 opinions, regarding the case of the Broadcasting Law Proposal by 7:2 opinions, regarding the case of Internet Multimedia Law Proposal and Financial Holding Company Law Proposal by unanimous opinions, sentences verdict to dismiss the cases. Regarding the petition against the other defendant (Vice chairman of the National Assembly), the Constitutional Court dismisses the case due to the reason that the plaintiffs do not have the eligibility to file against the defendant (Vice chairman of the National Assembly)

**(Constitutional Court 2009헌라8)**

To summarize and interpret the verdict of the constitutional court, it was explicit that the deliberation process of conflict resolution was not held properly. The role of the mediator, Chairman of the National Assembly, did not keep the deliberation process amply nor the voting procedure fairly stating his act unconstitutional. However, the constitutional court also states, that it is not in the realm of prerogative of the Constitutional Court to nullify the role of the National Assembly in passing the bill. Therefore, regardless of the process being unconstitutional, the passing of the law stays effective.

#### 4. Literature Review

Since very few studies have been conveyed on consensus building process in the legislative system of Republic of Korea, there are limits in borrowing a well founded theory in developing the thesis. Nevertheless, Studies conveyed by the Korea National Assembly Development Research Committee gives some rough theoretical frame work that would be helpful in glimpsing on how the National Assembly consensus building process works.

According to the study conveyed by the Korea National Assembly Development Research committee on “Negotiation Process of forming a National Assembly”, it analyzes the empirical data from 13<sup>th</sup> to 16<sup>th</sup> National Assembly of each party’s negotiation strategies in making a consensus for the formation of committee members. The study shows that consensus tends to be reached when the size of the ruling party and the opposing parties have nearly symmetric size. (*National Assembly’s Negotiation Process , 2005*). It concludes that, the National Assembly’s politics after the democratization in ROK is a “politics of compromise within radical collision” (pp161). Particularly, radical collision that leads to the denial of forming the committee of the congress is a very rare phenomenon which is found only in ROK politics. It draws hypothesis that a party initiates bargaining strategies to maximize its politics and powers. With such strategies, in the bargaining process of forming a committee, rises competition, while radical competition frequently leads to the paralysis of the National Assembly. However, it concludes that even in such situation, the paralysis status would invite public criticism which subsequently makes actors avoid overall destruction of the system and therefore, would balance into an “interdependence game” for consensus building. In analyzing the ROK media law case, the theoretical frame works of the previous studies above would be borrowed to judge whether the case had a consensus building situation. For instance, it would be helpful in understanding why minority parties resort on

filibustering or coalition to galvanize public criticism when majority powers merely strives into supremacy of voting power. However since the limit of the previous studies were narrowly scoped within the formation process and not the actual law making bargaining such as the ROK media law passing, different hypothesis should be found on why the consensus building failed. Also, since most successful case in meeting a consensus in the previous literatures were presented when the ruling party and the other opposing parties had nearly symmetrical size, asymmetric strength of power in ROK media law passing should have different approach in articulating the failure.

Regarding the mediation and facilitating roles as well as the designing of joint fact finding in ROK national assembly, another study developed by the Korea National Assembly Development Research Committee, "*Research on the Leadership of the Chairman and the Management of the National Assembly*" is well depicted. As Susskind, L and J. Thomas Lamer is a well respected scholar in the designing of consensus building, the ideal model of Joint-Fact-Finding described by these scholar must be compared with reality depicted in the ROK national assembly study. Such analogy would be helpful in developing the hypothesis of this thesis since it gives clear understanding of the gap between reality and ideal of the contemporary politics in ROK National Assembly. Also, Moore, Christopher's work "*The Mediation Process: Practical Strategies for Resolving Conflict*" (Chapter 2) had been studied for identifying various types of mediators, in order to clarify what mediation style had efficacy in the ROK media law passing case.

## 5. Hypothesis and Research Methods

Under a proportional representation system, ruling party which exceeds 50% of voting seats while the Chairman of National Assembly had previously affiliated with the prevailing party, procedural approach of consensus building is difficult to be achieved. Such circumstance was also shown in the ROK Media Law passing. Of course, in politics, it is not always necessary to reach a consensus. Nevertheless, as with ROK Media Law case along with many other issues in the current ROK National Assembly, the consensus reaching processes are often blurred by violence of physical or verbal offences eventually escalating the conflict more difficult level to be resolved. Such cases of implementation in forces raised question on why an issue-targeted discourse which could be the basic outline for a rational conflict resolving, not rooted as a norm within the National Assembly. As response to such questions, this paper attempts to answer by proving the following hypothesis: the current congress system has structural problems within the national congress which makes the system difficult to achieve consensus building. Such structural problems are that actors along with the mediator easily break the ground rules which guarantee credibility for a proper consensus building to take place. This could be found by the mediator, in this case the Chairman, not giving credibility as keeping a neutral role, joint fact finding group's ground rules deliberately being neglected, and usage of verbal or physical offense such as filibustering by the actors. To analyze the mentioned structural problems, sources from the media which mention the opinions of the actors and mediators would be studied. Also previous academic journals or reports dealing with the negation process in the National assembly would be used.

## 6. Question to be addressed / Statement of the Problem

The ROK Media Law Passing is an exemplar case of how difficult it is to implement a successive conflict management process within political dynamics. This thesis, would attempt to find out what were the deciding factors that yielded such outcome by addressing crucial 6 questions.

- ① Is the bargaining power (In the ROK Media case, number of seats occupied by each party) a crucial factor in deciding the position of Grand National Party to easily obliterate procedural step in consensus building?
- ② In the ROK Media Case, how were the procedural steps of consensus building took place and why did some procedural such as joint-fact finding, mediation failed?
- ③ Were there any role of mediator and facilitator and how effective were there role?
- ④ If the conventional means to reach consensus building proved to be ineffective, what structural problems of the legislative system in Korea were revealed through the ROK Media Law passing?
- ⑤ Could there be suggested as an alternative to redeem the structural flaw?

In the beginning of the 18<sup>th</sup> national assembly the ruling party, Grand National Party, occupied 169 seats (Local constituency: 131, Proportional representation 22) out of 296 which exceeds half of the total seats. Also the former member of Grand National Party Kim Hyung Oh was elected as the “chairman of the national assembly” As explained in the brief history, the unequivocal size may have influenced the positional bargaining of Grand National Party to neglect procedural process for negotiation to take place. Such assumption is that since the ruling party occupies enough seats by themselves, it is an unnecessary choice of strategy to convene a negotiation. In such, asymmetric number of seats while having

chairman of national assembly as the former party member of the majority number, Bill is frequently passed in the ROK national assembly without any consensus process being reached between the minority parties. Such analysis was also assumed in the result of ROK Media Law passing. In the Case analysis, I would test whether this assumption lies valid of yielding an “uncompromising position” that bulwarked initial condition of consensus building (Q1.)

As for the following second to third questions, this thesis would articulate that the consensus building approach actually did take place mostly in accordance with textual manual. However, since it is also clear that tri-partisan task force of “Joint Fact Finding” failed while, role of mediator did not properly function, I would attempt to articulate what factors affected the failures (Q2)

Also, regarding question 3, with the preset condition being difficult to make a consensus, I would try to find out what other means (such as efficacy of mediator and facilitator) were used to reach a consensus (Q3)

Lastly, question 4 to 5, by proving that “Media Law Case” was highly expected to fail due to the weak mediating and facilitating ability of the chairman of the National Assembly as well as obscure role of the mediator, this paper attempts to seek any implication for future studies. (Q4, Q5)

## 7. Case Analysis

### 7.1. Assessment of Initial Condition of Consensus Building

To prove that the hypothesis that the current congress system has structural problems within the national congress which makes the system difficult to achieve consensus, it is important to address the first question: was the bargaining power (In the ROK Media case, number of seats occupied by each party) a crucial factor in deciding the position of Grand National Party to easily obliterate procedural step in consensus building?

According to the study of negotiation process of forming National Assembly of the past from 13<sup>th</sup> to 16<sup>th</sup> National Assembly, it gives empirical data that consensus building approach was positively engaged when the occupying seats of the “negotiation parties” were nearly symmetrical (*National Assembly’s Negotiation Process*, 2005). Formation of the National Assembly is the ground task for a newly elected National Assembly to be opened. Therefore forming a national assembly begins with the consensus being reached on the composing of committee members of each policy sectors and the formation of Chairman Committee. Of course, in the literature, it does not touch the overall process of negotiation structure in a National Assembly. However, it is important to note that the literature reveals the reality why parties strive to acquire head seats of the committees as well as attempting to appoint their affiliated members to the Chairman seat. This is because each head of committees has direct authority to lay law proposal to the plenary session when consensus in the committees is not met. Also, it is noteworthy that although, a Chairman should resign from the party he or she was affiliated, in order to prove neutrality in facilitating the National Assembly, harsh competition between parties shows that hidden influence and loyalty remains as a hinge when the National Assembly kicks off. The study concludes that under such circumstances of asymmetry in power, the ruling party attempts “to take compromise and yielding” as a

positive strategy in order for the objectives of the government and the ruling party to be achieved. Nevertheless if a ruling party which already had taken over 2/3 of the overall voting seats <sup>8</sup>, the ruling party does not feel such “compromises” with the opposing parties that the activity of the opposing parties becomes “listless” (pp26). Variable of possibility of consensus under such circumstance may be reached only if the excessive “uncompromising stance” of the majority party havocs public sentiment outside the National Assembly. Since the attitude of the majority party would invite public criticism of wrecking the activity of National Assembly, such attitude of the majority party would eventually destroy the “common benefit” to maintain a political infrastructure. Therefore, the majority party would seek to adjust the level of “uncompromising stance” (pp4) Going back to the question in judging how the ruling party, Grand National Party, set their position in the 18<sup>th</sup> National Assembly regarding the ROK Media Law passing, the proportion of seat occupancy in the 18<sup>th</sup> National Assembly and during the plenary voting period should be analyzed. As table No.2 exemplifies, in the beginning of the 18<sup>th</sup> National Assembly, Grand National Party gained 153 seats whereas Democratic Party gained 81. <sup>9</sup> Considering that the Chairman as well as the vice chairman resigned from the Grand National Party, the expected power balance of Grand National Party to the Democratic Party was roughly 151: 81

As 2/3 of the overall eligible voting population is 198 seats, it could be concluded that Grand National Parties had an asymmetric power advantage. However, it could also be said that Grand National Party was not in a position to take unilateral non-compromising stance since their number did not meet over 2/3 of the total population. Such interpretation could explain why the Grand National Party, although prevailing in power, attempted to seek joint-fact

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<sup>8</sup> 2/3 of the overall over all seats of the National Assembly makes the proposal of Laws possible

<sup>9</sup> Since Non-Negotiation party cannot participate in the committees, number of their seats is only an important factor when the final voting process is initiated.

finding to reach consensus. Also, it could be explained why the Democratic Party used filibustering or verbal abuse to mobilize support from the public sentiment while coalescing with principal organizations such as National Media Labor Union to expedite the public rage. As referred above, with an inferior number of seats, galvanizing public sentiment is a viable option to draw approach of consensus building from the majority party.

**Table No 3**

**<Seat Occupancy of Each Party in National Assembly in 2008 and the voting period>**

Negotiation Group	Name	Year 2008 Result (18 <sup>th</sup> National Assembly)	During the vote
		Total Seats	Total Seats
Grand National Party	<u>GNP</u>	153	169
	<u>DP</u>	81	<b>84</b>
Non-Negotiation Group	<b>Chin Park</b>	-	<b>5</b>
	Jayu	18	18
	Mirae Heemang	14	-
	MinJu Nodong	5	5
	ChangJo	3	3

	Hangook		
	Jinbo Shin	0	1
	<b>Non- Affiliated</b>	25	9
<b>Total</b>		299	294

<Source: Assorted from National Assembly Homepage>

Secondly, it is legitimate to test whether the 153 seats of the Grand National Party stayed loyal to the Party’s leadership. It is a known fact that in a public dispute a mediator should be neutral to gain credibility among the disputed parties. However, the ROK Media Law case is unique because the role of the mediator was conveyed by a congress woman whose affiliation was with the Grand National Party. As mentioned in the historical background, Grand National Party’s approach greatly shifted whenever, former head of the Grand National Party, expressed concerns regarding the Grand National Party’s initial proposal. Also, her mediation proposal gave positive shift to the Democratic Party in reducing “non-compromising stance” to reengage the bargaining. Specific analysis of her role would be addressed in the later sections. In this section, I would limit the focus on proving that Grand National Party’s superiority in numbers was not the crucial factor that bulwarked the consensus building. On the contrary, Park Gun hye and her supporting congressmen had positioned to become an “independent actors” within the Grand National Party due to the long rivalry between President Lee Myung Bak’s supporters. Since politics is a dynamic process where loyalty could be easily swayed, thus exact number of her supporters is rather vague to be identified. However considering that one of the non-negotiation party “Jayu Sunjin Party” had openly declared loyalty to her leadership which accounts 18 seats along with hidden supporters within the Grand National party, her bargaining power to pass or revoke the proposal of Law

could not be underestimated. The expected numbers of the Congressmen loyal to Park Gun Hye within the Grand National Party according to HankookKyungJae Newspaper was assumed around “60 seats” (Hankook, July 2008). Such figure suggests that 39% of the 153 seats that Grand National Party gained were unpredictable in supporting the initial proposal. Adding the seats of the non-negotiation party, Mirae Heemang, maximum of 78 seats were potential in supporting Park Gun hye’s decision. Combined with Democratic Party’s 81 Seats, the overall potential votes for vetoing could be estimated as 159. This clearly shows that number of superiority of the Grand National Party was not a crucial factor in deciding the position of Grand National Party to easily obliterate procedural step in consensus building. Therefore, consensus building for the Grand National party was not an optional but an optimal selection for the bills to be passed.

## **7.2 Analysis on Consensus Building Structure**

Q2. ~ Q3. In the ROK Media Case, how were the procedural steps of consensus building took place and why did some procedural such as joint-fact finding, mediation failed? Also, what other options were implemented after the joint-fact finding failed?

Proving that the Grand National Party needed consensus building to pass the law proposal, facilitation of the chairman to reach consensus, implementation on tri-partisan joint fact finding, attempting to suggest written documents of the outcome of the joint fact finding, conflict mediation were witnessed. Therefore, it could be said that the consensus building followed the textural approach nominally. However, regardless of such methods, the result turned out as a failure. In this section, this paper would attempt to find out why such means did not work effectively in meeting a consensus.

### **7.2.1. Dynamics of Joint-Fact Finding**

Since congressman Koh heng Gil, committee head of the “Culture, Sports, Tourism, Broadcasting and Communication Committee”, laid the proposals of the Grand National Party using “Direct Authority” to the committee, conflict rapidly escalated. Nevertheless due to the procrastination of Democratic Party in agreeing on the laying of the law proposal to the plenary session along with coalition between principal groups protesting outside the National assembly, agreement was reached in March 2<sup>nd</sup> 6:25 PM to delay the matter in “June Interim National Assembly” and to form a tri-partisan joint-fact finding committee to collect public opinions. Following is the 3 negotiation parties’, Grand National Party, Democratic Party and Sunjin and Changjo Coalition<sup>10</sup>, memorandum. The joint-fact finding group was later, termed “Media Development National Committee” implementing a 100 day public opinion survey. It is worthy to note that such joint-fact finding composed of civilians was the first precedential in the history of ROK National Assembly while the national assembly was amidst session.

#### **<Timelines of the Media Development National Committee Activities>**

- March 2<sup>nd</sup> 2009- Ruling party and Opposing parties agreeing in installing Media Development National Committee
- March 13<sup>th</sup> 2009- 1<sup>st</sup> General meeting: Initiation of Media Development National Committee Joint Chairmen : Kang, sang hyun (Opposing Party’s recommendation) / Kim, woo ryong (Ruling Party’s recommendation)
- March 29<sup>th</sup> 2009- Ground rule of facilitation discussed

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<sup>10</sup> Although, Jayu Sunjin nor the Chanjo Hanguok Party had eligibility for becoming a negotiation party, by combining seats they became eligible. Such tactics of forming a coalition is well implemented in contemporary ROK politics. .

- March 27<sup>th</sup> - Sub Committee “Woon Young So Wi” established<sup>11</sup>
- April 3<sup>rd</sup> - 4<sup>th</sup> General meeting : Discussion on having 4 public hearings each by agendas and local areas
- April 10<sup>th</sup> - 5<sup>th</sup> General meeting: Discussion on ground rules of Local public hearing
- April 14<sup>th</sup> - 6<sup>th</sup> General meeting: Dispute among committee members on whether to initiate work shop and its methods
- April 24<sup>th</sup> – 7<sup>th</sup> General meeting / division meeting: Due to the request of change of schedule by the ruling party members, work shop was not implemented.  
Discussions on schedules, possibility of real-time Internet broadcasting and releasing of stenographic records of the agenda and local public hearings were held.
- May 1<sup>st</sup> – Agenda public hearings<sup>12</sup> on “Cross-ownership of Newspapers and Broadcastings” held / 8<sup>th</sup> General meeting / 2<sup>nd</sup> division meeting.
- May 6<sup>th</sup> – Busan local public hearing: <sup>13</sup>Canceled in intermission due to the unilateral declaration of closing by joint chairman Kim, woo ryong.
- May 8<sup>th</sup> – Agenda public hearing on “Restriction on Broadcasting Industry” held<sup>14</sup>.

9<sup>th</sup> General meeting <sup>15</sup>/ 3<sup>rd</sup> division meeting held.

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<sup>11</sup> In Korean, Woon Young So Wi : An sub-organization within the Media Development National Committee which was made to coordinate prior agendas which would later be laid in the general meeting as well as overall schedules etc. In other words, it acted in order to set the agenda of the general meeting. Two Chairmen and Two Assistant administrators were selected each among members recommended by the ruling and opposing party was selected (**Media Development National committee, pp29**)

<sup>12</sup> Date and location: May 1<sup>st</sup> 2009 from 10:00 AM in the conference room of Special Committee-National Assembly Congressmen hall.

<sup>13</sup> Date and location: May 6<sup>th</sup> 14:00 PM at Busan City hall media center.

<sup>14</sup> Date and location: May 8<sup>th</sup> 10:00 AM in the conference room 101 of Special Committee-National Assembly Congressmen hall.

<sup>15</sup>Consensus reached of organizing Public Survey sub-committee: 2 people each selected from Ruling and Opposing parties.

- May 13<sup>th</sup> – Chunchun Local Public hearing held <sup>16</sup>
- May 15<sup>th</sup> – Agenda public hearing on “Internet Regulation and Freedom of expression.” <sup>17</sup>  
 10<sup>th</sup> General meeting: Committee recommended from Grand National party announcing that public survey is impossible-Escalation of conflict between
- May 20<sup>th</sup> – Agenda public hearing on
- May 20<sup>th</sup> – Gwangju Province Public hearing : Agenda prepared by the ruling party members were only prepared / Verbal offense occurred by public speaker
- May 22<sup>nd</sup> – Agenda Public hearing on “ IPTV and regional characteristics” <sup>18</sup>  
 11<sup>th</sup> General meeting: Disputed among whether to implement Public polling, fact finding research, and local area debate
- June 5<sup>th</sup> – Consensus reached between ruling and opposing party’s assistant administrators of the “Culture, Sports, Tourism, Broadcasting and Communication Committee” to delay the ending of the “Media Development National Committee” to June 25<sup>th</sup> : committee members of Grand National Party and Jayu Sunjin party having a separated unilateral meeting.
- June 12<sup>th</sup> – 12<sup>th</sup> General meeting: Debate over implementation of public polling survey.
- May 15<sup>th</sup> – 13<sup>th</sup> General meeting: Committee members of Grand National Party refusing the implementation of public poll survey.

May 17<sup>th</sup> 2009 – 14<sup>th</sup> General Meeting: Denial of public polling survey led to the overall retire of committee members recommended from Democratic Party and Changjo Hanguk

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<sup>16</sup> Date and location: May 13<sup>th</sup> 14:00 PM in General meeting room of Gangwon Development Gongsu

<sup>17</sup> Date and location: May 15<sup>th</sup> 10:00 PM in AM in the conference room 101 of Special Committee-National Assembly Congressmen hall.

<sup>18</sup> Date and location: May 22<sup>nd</sup> 10:00 AM in the International conference room of Incheon Comprehensive Cultural Art Hall

Party. Media Development National Committee virtually dismantled.

**<Content of memorandum of Agreement on forming joint-fact finding group>**

*1. Media Related Law*

- 1) Proposals of Copyright Law, Digital Broadcasting Transfer Law would be handled in the current National Assembly*
- 2) 4 Proposals of Broadcasting Law, Newspaper Law, IPTV Law, and Information Communication Law would be handled and voted in June Interim National Congress through the process stated by the National Congress Law. In the mean time, a consultative organization under the jurisdiction of the “Culture, Sports, Tourism, Broadcasting and Communication Committee” consisting equal number of members recommended by Ruling and Opposing Parties would be formed in the beginning of March. This organization would be a social-deliberation organization which would take process such as collecting public opinion for 100 days in the “Culture, Sports, Tourism, Broadcasting and Communication Committee” After such process is over, would the voting process regarding the law proposals would be handled in the June Interim National Assembly for vote....*

*March 2nd 2009.*

*Signed: Grand National Party Floor Leader: Hong, joon pyo*

*Democratic Party Floor Leader: Won, hae young*

*Sunjin and Changjo Coalition Floor Leader: Moon, guk hyun*

**(Source: Memorandum of Agreement, March 2<sup>nd</sup> 2009)**

To test whether the joint-fact finding met the conditions for a positive consensus building some criteria should be drawn as below.

<Criteria for assessing joint-fact finding in ROK-Medial Law passing>

- ① Credibility of the initial memorandum of consensus
- ② Availability of Ground rules
- ③ Analysis of structure and members

Related to such criteria some positive and negative aspects could be concluded.

Firstly, it seems that creating a memorandum signed by all interest parties' representatives in the initial stage was a positive aspect to boost credibility among the stifling parties. Although, memorandum itself does not have strong bounds as a contract, signatures from all represented parties give parties fear to risk in breaking the ground rules during the 100 day deliberation and the coming June Interim National Assembly. Moreover, equal numbers of agents within the committee gave balance in power for a fair. However, there were some negative aspects of the interpretation of memorandum that remained unresolved. After the by-election results of April 29<sup>th</sup>, the newly elected floor leader of Democratic Party, Congressman Lee, Kang rae in his inauguration announced as following.

“The public opinions re-confirmed through the result of April 29<sup>th</sup>'s by-election which led the total defeat of the Grand National Party that the vicious media law proposal should not be voted. Since such change of circumstance, the initial proposal should be rescinding”  
**(Yeonhap, May 20th)**

In response to such statement, the floor leader of Grand National Party congressman Hong, joon pyo responded as following: “Then- representative of Democratic Party had requested directly of putting a vote in June as well as composing of the Media Development National Committee. Talking about change in circumstance now is absurd since the contents of the

memorandum were received upon request of Then- representative of Democratic Party”  
**(Yeonhap, May 20th)**

Democratic Party’s spokesman Noh,young min explained that “The then- representative of Grand National Party, Park hee tae proposed that if promising to put vote the matter, we would consider delaying the issue 6 months later. Then, representative of Democratic Party, Jung, se kyun of course denied such proposal. However, due to the forewarning of chairman of the National Assembly, Kim hyung oh to lay the bill using direct authority, it was undesirable but to compromise” “The two that we compromised were the 100 days of period and clause to vote and the two that we received in return were forming of deliberation organization, the Media Development National Committee and the clause of passing law through receiving public opinions” **(Yeonhap, May 20th)** Grand National party floor leader Kim, jung kwon refuted that “The mediation process was achieved when the Democratic party did not have place to retreat. Therefore it is not wrong to state that it was on behalf of request that the memorandum of consensus was yielded. Also, it is a ridicule to abolish the memorandum of consensus on the excuse of change in the floor leader, when the representative who requested the consensus still remains” **(Yeonhap, May 20th)** Such shift in position, indeed havoc the credibility of the memorandum which later affected difficulty for interest parties in implementing other clauses based on ground rules

Also, the obscurity of the sentences mentioned in the memorandum was another problem.

The expression of “collecting public opinion” was not defined within the memorandum. Since the Media Development National Committee was dismantled due to the interpretation of “collecting public opinion”, specific definition should have been made. The interpretation of the Grand National Party was that the memorandum did not mention anything about public polling. To their interpretation “collecting public opinion” was considered as no more than a

reference for “voting” in the June Interim National Assembly. However, the Democratic Party narrowed the meaning of “collecting public opinion” to a public polling although, not specifically mentioned in the memorandum. Contrast of interpretation is well documented in the final report of the Media Development National Committee as following

“The Grand National Party, in discussing the means of collecting public opinions, discouraged the public polling along limiting the number of public hearings. In other words there was vast contrast in the recognition collecting public opinions. Grand National Party narrowed the scope of actors regarding the collecting public opinions to the committee members of the committee, not the general public. On the other hand, the Democratic Party interpreted the role of Media Development National Committee as a social deliberation organization for public collecting. It was positive in receiving guest from general public as well as professionals in the media which led to conflict between the Grand National Party”

**(Media Development, pp27-28)** <sup>19</sup>

Such neglect of specific definitions within the memorandum exposed risk of the Media Development National Committee to be eventually dismantled.

Secondly, the ground rules for an effective convening and facilitation in the committee did not meet with satisfaction. Although making a slim consensus on the structure of how the committee should be organized such as the installing of sub-committee or the agendas to be treated, the committee had initiated its deliberation without the procedural ground rules for facilitation from the very beginning. For instance, in the second general meeting, harsh

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<sup>19</sup> Reason why only the final report submitted by the opposing party was referred in this paper is because the Grand National party’s report does not have any description on how the actors within the committee were involved. The report merely focuses on the agendas that were deliberated. Since, this paper is not focused on the justification of ROK Media Law, but to identify the structural flaws for consensus building, Grand National party’s final report is omitted.

disagreement arose whether to expose the process of deliberation through the media. Even after the 6<sup>th</sup> general meeting, neither the selection of the sub-committee nor the implementation of public polling was set as a ground rules. According Such manners to decide ground rules in ad hoc situation while preceding the deliberation process affect bad facilitating.

Thirdly, there were structural flaws within the committee as well as the members itself to act as an apolitical joint-fact group. To be specific, there must be an analysis on the structure of the committee. Since, the Media Development National Committee was the first precedential joint-fact finding group in the history of ROK National assembly during session, it is important to note that the group was entangled amidst a political struggle between the ruling party and the opposing parties. Reviewing that the group was formed by the recommendation by each parties, it could be assumed that parties were the principal actors whereas the members being the agents. As criteria for a model joint-fact finding should be a neutral group, the selection process of the members exposed high possibility to be used as agents reflecting the interest of the principal actors. Of course, to reduce the political influences turning into an adversary science, there were some instruments such as putting 10:10 balance of numbers among the committee as well as putting dual Joint-chairmen so that the facilitators could be cross checked.

**Table No.4 <List of Joint Fact Finding Group Members>**

No.	Name	Occupation	Recommended from	Role
1	Kang, sang hyun	Professor	DP	Joint Chair
2	Choi, young mok	Professor	DP	Member
3	Lee, chang hyun	Professor	DP	Member
4	Cho, joon sang	Chairman, Research Institute	DP	Member
5	Ryu, sung woo	Labor union	DP	Member

		NGO		
6	Park, min	NGO	DP	Member
7	Kang, hye ran	Women Union NGO	DP	Member
8	Kim, ki joong	Lawyer	DP	Member
9	Park, kyung shin	Professor	Sunjin/Changjo	Member
10	Moon, jae hwan	Professor	Sunjin/Changjo	Member
11	Kim, woo ryong	Professor	GNP	Joint Chair
12	Hwang, gun	Professor	GNP	Member
13	Kang, gil mo	Chairman, NGO	GNP	Member
14	Choi, hong jae	NGO	GNP	Member
15	Byun, hee jae	Company, CEO	GNP	Member
16	Lee, hun	Lawyer, NGO	GNP	Member
17	Yoon, suk hong	Professor	GNP	Member
18	Choi, sun kyu	Professor	GNP	Member
19	Kim, young	Ex-CEO, MBC	GNP	Member
20	Lee, byung hae	Ex-Anchorman, KBS	GNP	Member

(Source: Media Development, pp28-29)

However, such check-balance structure could not fundamentally remove the committee members to be apolitical. According to Susskind, criteria for selecting joint fact finding experts should include fair selection process. He states that “*A consensus building group must design a fair selection process that allows for the identification of the most qualified and affordable candidates who will be acceptable to all parties*”(Susskind, 1999). In the Media Development National Committee case, it may have been fair considering the balance of number to counter-check influences by the principals, but the recommended members were “not acceptable to all parties”. Non-existence of denial mechanism against each party’s recommended list made it possible for the committee to be formed. However, putting members that have high political incentives only meant shifting the arena among principals to arena among agents. The analysis of records of each committee member proves such assumption to be standing. For instance, Kim woo ryong and Hwang, kun recommended by

the ruling party previously participated in the “Declaration of 100 intellectuals demanding the revision of Media Law” Moreover, committee member Byun hee jae, Kang gilmo, Lee hun was affiliated with the NGO, “Media Development National Coalition” which strongly demanded the privatization of KBS. In the criteria of recommending members by the opposing parties, Democratic Party stated as following: “Additional to their expertness and field experience, we considered logical combativeness and team work as an important criteria. **(March 12<sup>th</sup> ,Kyunghyang)**”. Thus, under such structure of win-lose perception dominating, the purpose of the joint-fact finding groups had high possibility to gain political stance, therefore excluding any apolitical joint-fact finding to properly function.

### **7.2.2 Role of Mediator and Facilitator after the failure of joint fact finding**

Although mediator or facilitator should be perceived neutral to all interest parties in order to achieve successive consensus building, mediator or facilitator within the political arena is difficult to achieve this status. Reasons are amply explained in the previous sections. Regardless of such difficulty, it could not be denied that some actors did play as a mediator or facilitator during the consensus building process-That is the role of Chairman of the National Assembly Kim hyung oh and Grand National Congresswoman, Park Gun hye. It is interesting to compare with other previous studies in which mediators are expected to be secluded from becoming a stakeholder. However, in the case of ROK Media Law passing, both players were stakeholders which make this study significant for future studies. Only few studies have been conducted on the matter where mediator also acts as a stakeholder. Therefore, analyzing the failure as a mediator and facilitator in the ROK Media Law passing could deepen the understanding of the reality of the ROK politics to achieve successful consensus building.

Before studying the unique role of Congresswoman Park, gun hye as a mediator, the

position of Park gun hye and her supporters should be understood as mentioned in section 5.1. To sum, before acting as a mediator, Park gun hye and her potential supporters served as a separate interest group within the Grand National party. The potential number of seats supporting her made Grand National Party impossible to unilaterally whims power over the opposing parties. Such pre-condition made it possible to reach agreement on taking a joint-fact finding among the interest parties while delaying the voting process until the coming June Interim National Assembly.

According to Moore and Christopher’s study in categorizing types of mediator, Park gun hye roughly fits with the “Vested interest mediator” As a Vested Interest Mediator, she had the “leverage or coercion to achieve an agreement” (**Moore, Christopher**) Her strength of possibility in changing the whole outcome was based on her voting power. Thus, when she criticized that the initial proposal of Grand National Party had “risk of welcoming monopoly of public opinion” and suggesting her own alternatives, the static status of the political arena shifted once again. Responding to her alternative solution, both the Democratic Party and the Grand National Party returned to the “negotiating table”. From the Grand National Party, a new revision of alternatives were drawn giving in some compromise while the Democratic Party members relaxed their muscles of non-negotiating mode and returned to the “table” It could be judged that the “Vested interest mediator’s” strategy may have fostered positive outcomes. Nevertheless, such mood for deliberation was short-lived due to the coming “dead line” for voting mentioned in the previous section.

**Table No.5 <Types of Mediators >**

Types of Mediator				
Social Network	Benevolent	Administrative / Managerial	<b>Vested Interest</b>	Independent
Prior and expected future	Mayor may not have a current or	Generally has ongoing authoritative relationships	<b>Has either a current or</b>	Neutral / impartial

relationship to parties tied into their social network	ongoing relationship with parties	with parties before and after dispute is terminated	<b>expected future relationship with a party or parties</b>	regarding relationship and specific outcomes
Not necessarily impartial, but perceived by all to be fair	Seeks best solution for all involved	Seeks solution developed jointly with the parties, within mandated parameters	Has a strong interest in the outcome of the dispute	Serves at the pleasure of parties
Very concerned with promoting stable long-term relationships between parties and their associates	Generally impartial regarding the specific substantive outcome of the dispute	Has authority to advise, suggest, or decide	Seeks solution that meets mediator's interests and / or those of a favored party	May be "professional mediator"
Frequently involved in implementation	Has authority to advise, suggest, or decide	May have resources to help in monitoring and implementation of agreement	<b>May use strong leverage or coercion to achieve an agreement</b>	Seeks a jointly acceptable, voluntary, and non-coerced solution developed by the parties
Generally has on-going relationships with parties after dispute is terminated	May have resources to help in monitoring and implementation of agreement	Has authority to advise, suggest, or decide	<b>May have resources to help in monitoring or implementation of agreement</b>	May or may not be involved in monitoring implementation
May use personal influence or peek / community pressure to promote adherence to agreement			<b>May use strong leverage or coercion to enforce agreement</b>	Has no authority to enforce agreement

(Source : Moore, Christopher, Table 2.1. Types of Mediator)

However, there should be a critical analysis on studying the outcomes of the re-negotiation.

The Revised proposal and the 2<sup>nd</sup> Revise proposal <sup>20</sup> of Grand National Party drawn after the forewarning of the Chairman in using direct power, all seemed to measure the "Zone of Possible Agreement" according to Park gun hye's proposal. In other words, alternatives raised

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<sup>20</sup> In July 21<sup>st</sup>, the Grand National Party drew its second revised alternatives. Compared to the first alternative it yielded more compromises. The contents included 10% limitation of ownership by the Conglomerates and Newspaper as well as accepting Park Gun hye's proposal in allowing 30% of limitation for Conglomerates in owning General Program Service and Special Coverage Program Provider. Also it agreed in installing a anti-public monopolization organization.

by the Democratic parties were not considered as a serious matter to be dealt.<sup>21</sup> Such analysis concludes that a “vested interest mediator” could always turn tides on behalf of its own interest. In the case of Park gun hye, her interest laid more in bargaining with the alternatives which she proposed. What lies underneath such interest is her objective “not to leave any more precedential of abuse of direct authority driven by the majority party (Hanguok Kyung Jae, July 20<sup>th</sup> 2008) With such demeanor, her mediating skills were limited in not able to deliberate interest reflecting the Democratic Party. Nevertheless, the mediation process done by Park could not be blamed upon since she also had an objective as a congresswoman to act as an interest party which goes prior to the role as a mediator. In fact, the case of Park gun hye actually proves some positive aspects in studying the structural flaws of ROK National Assembly. Regardless being a vested interest mediator, Park’s demeanor of deliberating against the ruling and opposing party was agenda-centered. Unlike the other Grand National Party congressmen who used joint fact finding as an adversary science to deny any claim pointed out by the opposing party, her active listening skills as a mediator gave credit over even the opposing party.

**Table No. 6 Alternatives from the original proposal**<sup>22</sup>

( ) is the alternative of Park, gun hye, < > is the 2nd alternative proposal of Grand National party

Owners / Objects	Individual Stock Share		Conglomerates		Newspaper / Broadcast		Foreign Capital	
	Conventional	Revised	Conventional	Revised	Conventional	Revised	Conventional	Revised
Ground Wave TV	30%	49%	Prohibited	20% <10 % >	Prohibited	20%	Prohibited	Prohibited

<sup>21</sup> The cross-ownership matter which the Democratic Party strongly opposed shifted to the original plan

<sup>22</sup> Regarding the alternatives by Park, gun hye, she also requested to add clause to limit the “Share of Audience Ratio” by 30%. In response, the Democratic Party, suggested below 25 %. Grand National Party’s alternative proposal compromised in delaying cross-ownership implementation of the Newspaper and Broadcasting by 2012 while limiting “Share of Audience Ratio” by 30% using German style of regulation

General Program Service				30% <30%>		30%		20%
Special Coverage Program Provider	30%	49%	Prohibited	49% (30%) <30%>	Prohibited	49%	Prohibited	20%
General Cable Program	-	-	-	-	49%	49%	49%	49%
Satellite Broadcast	-	-		Abolish	33%	49%	33%	49%
General Program Provider	-	-	-	-	-	-	49%	49%

(Assorted from various Newspapers)

In contrast, the demeanor of Kim hyung oh as a facilitator and mediator had shown intrinsic structural flaws which the ROK National Assembly have. To assess Kim hyung oh's effectiveness in building a consensus as the chairman of the National Assembly; his scope of role should be reviewed. Legal stature of a chairman must "gain political neutrality" since most convening process in a national assembly is conducted by the conferred authority of the chairman (Shin myung soon, 2000).

**Table No.7**

**<Roles and Functions of a Chairman of National Assembly>**

	Role and Function
Facilitator	Promote stability and predictability of the legislative system
Mediator	<ul style="list-style-type: none"> <li>• Limit conflicts within the National Assembly while coordinate and resolve conflicts</li> <li>• Secure the opportunity of the congressmen in giving out opinion and make sure whether submission of law proposal is fairly implemented in the related committee</li> </ul>
Representative	As a representative of the legislative body, conduct symbolic political activity
Administrator	Through deliberation with the heads of the chairman of each committee, suggest direction of laying a bill and gain control of the committee and lower legislative organization

(Source : Kim hyun woo, 2001, Table 5-1)

The reality of the current National Assembly in Korea contradicts with such nominal expectations mentioned above, although it is clearly stated in National Assembly Law Clause 20<sup>23</sup>.

“Virtually, the efficacy of the National Assembly Law Clause 20 is rather pessimistic. Reason behind such perspective is that after his or her term as a chairman is over, the ex-chairman would automatically gain back membership from the previously affiliated party. Moreover, when running for an election it is possible to gain back the previous membership within 90 days before his or her term is over. Since the term is only limited for 2 years, the chairman tends to weigh more on future position within the previously affiliated party rather than emphasizing on his or her current role as a chairman... Past empirical data proves that the more neutral the chairmen were, the higher risk returned of them not being re-elected for as congressmen” (**Korea National Assembly Development Research Committee, 2002**)

The failure of Chairman’s facilitation and mediation was due to such political affiliation intrinsic in the role of Chairman. His frequent forewarning of using “the direct authority” gave discredit among the opposing parties. Since the opposing party in a weaker stance to vote, threatening to use such means only gave strong assumption of the hidden political ties he may have been influenced. Also, his conference of power to the vice chairman to use “direct power” and such power resulting in the laying of bill amidst deliberation violated the ground rules of convening (**Constitutional Court, 2009**). Such flimsy demeanor as a facilitator and mediator eventually resulted in the proxy voting of Grand National parties to pass the bill which was later reprimanded of breaking another ground rules.

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<sup>23</sup> It states that the Chairman of the National Assembly cannot be affiliated with any political parties and remain neutral

**Table No 8**

**<List of participated voters (Grand National Party, Chin Park Coalition, Jayu Sunjin)>**

Bold letter and Underlined = Proxy Voter / Shaded area = Potential Suspects of Proxy Voting

Kang yong Suk	Go seung duk	<b><u>Ko heong gil</u></b>	Kong seong jin	Gang Kil bu
Goo sang chan	Kwon kyung suk	Kwon young sei	Kwon young jin	Kwon taek gi
Kim moo sung	Kim sun dong	Kim seong soo	Kim seong shik	Kim seong jo
Kim yeong sun	Kim young woo	Kim ok i	Kim young tae	Kim jang soo
Kim tae won	Kim tae hwan	Kim hak song	Kim hak young	Kim hyo jae
Park dae hae	Park min shik	Park bo hwan	Park sang eun	Park soon ja
Park jin	Pae young shik	Pae eun hee	Paek sung woon	Seo byung soo
Song kwang ho	Shin sang jin	Shin seong bum	Shin young soo	<b><u>Shin ji ho</u></b>
Ahn hong joon	Ahn hyo dae	Yeo sang kyu	Won yoo chul	Won hee ryong
Yoo jae joong	Yoo jeong bok	Yoo jeong hyun	Yoon sang hyun	Yoon seok young
Lee du a	Lee myung kyu	Lee bum gwan	Lee bum rae	Lee byung suk
<b><u>Lee yoon sung</u></b>	Lee eun jae	Lee in ki	Lee jeong seon	Lee jeong hyun
Lee chul woo	Lee chun shik	Lee hak jae	Lee han goo	Lee han sung
Rim du sung	Rim tae hee	Rim hae kyu	Jang kwang gun	Jang yoon suk
Jeong du on	Jeong mong joon	Jeong mi kyung	Jeong byung kuk	Jeong yang suk
Jeong tae gun	Jeong hae gul	Jeong hee su	Cho moon hwan	Cho won jin
Cho hae jin	Chu gwang duk	Chu sung young	Chu ho young	Chin sung ho
Choi gu shik	Choi byung gook	Han seon kyo	Heo bum do	Heo won jae
Hong sa duk	Hong il pyo	Hong jang pyo	Hong jeong wook	Hong joon pyo
Kang myung soon	Kang seok ho	Kang seong cheon	Kang seung kyu	
Kim gwang rim	Kim Kum rae	Kim ki hyun	Kim dong sung	
Kim seong tae	Kim seong hoi	Kim sei yun	Kim so nam	

Kim jae kyung	Kim jung gwon	Kim jeong hoon	Kim choong hwan
<b><u>Na gyung won</u></b>	Na sung rin	Nam gyung pil	Park gun hye
Park young a	Park jeong kun	Park jong hee	Park joon sun
Seo sang gi	Seong yoon hwan	Seon bum kyu	Son sookmi
Shim jae chul	Ahn kyung ryul	An sang soo	Ahn hyung hwan
Won hee mok	Yoo ki joon	Yoo seung min	Yoo il ho
Yoon yeong	Lee kyung jae	Lee kye jin	Lee gun hyun
Lee sa chul	Lee sang duk	Lee sung hun	Lee ae ju
Lee joeng ku	Lee jong hyuk	Lee joo young	Lee jin bok
Lee hae bong	Lee hye hoon	Lee hwa soo	Rim dong gyu
Jang je won	Jeon yeo ok	Jeon jae hee	Jeong gap yoon
Jeong ok im	Jeong ee hwa	Jeong jin suk	Jeong jin sup
Cho yoon sun	Cho chun hyuk	Cho jin rae	Cho jin hyung
Chin soo hee	Chin young	Cha myung jin	Choi gyung hwan
Heo chun	Heo tae yul	Hyun gyung byung	Hyun ki hwan
Hwang young chul	Hwang woo yeo	Hwang chin ha	<b><u>Kim hyung oh</u></b>

## **8. Overall analysis and Conclusion / Policy Recommendations**

Q4. .If the conventional means to reach consensus building proves to be ineffective, what structural problems of the legislative system in Korea were revealed through the ROK Media Law passing?

In conclusion, the failures of consensus building approach above prove that adherence of ground rules is important to be recognized among actors. Nevertheless, the diagnosis that was conveyed in the previous sections: From the initial stage of conflict escalation by using violent means as filibustering, failure of Joint fact finding and the analysis of failed facilitation and mediation all prove that underneath the motive of such lies a common misperception- A misperception that compromise over rivaling party's request would decrease its own influence. With such agitation to win over other parties, ground rules are seen as a thin line between exploitation and an obstacle. Therefore the structure of consensus building should be conveyed in reducing or improving such misperception. For instance, during the Joint fact finding, the structure was designed with no difference between the struggles inside the National Assembly. The committee itself could be described as a reduced scale of agent's struggle acting behalf their recommenders. Therefore, it was easy to become an adversity science group. Also, the facilitation and mediation of the chairman clearly shows that ground rules of being neutral do not properly function as it should be. This is due to the nature of his future expectation of post-term to return to his former- affiliated party.. Moreover proxy voting and the non-neutral facilitation by the vice chairman during the voting process explicitly shows that ground rules could be easily manipulated. These all proves that the structure of the National Assembly have tendency in neglecting the ground rules in order to win superior position of one's rival. However, some positive aspects in the ROK media law case could be also found. Although structural flaws of weak obeisance to

ground rules and misperception of “using harsher forces guarantees victory” is wide spread in the ROK national assembly, the role of Park gun hye as how the misconception of the actors in the National Assembly should be redressed. Although it is true that her shift in position in the later voting stage invited harsh criticism among the opposing parties, it should be noted that unlike Chairman Kim, hyung oh who should have acted as an “Independent mediator”, her role acted on behalf of an “vested interest mediator”. Therefore, there was no obligation for her to act neutral. Also, her style of strategy in intervening amidst a conflict was “Issue-targeted” with “Active listening” obtained. Such demeanor gave legitimacy in fostering the mood of re-negotiation among parties while yielding a positive compromise from the initial proposal.

The purpose of this study is to identify what lies behind the obstacles that make consensus building difficult. By closely observing the Media Law case in ROK, this thesis concludes that the main momentum of irrational consensus building occurs by thin ground rules and perspective of actors to obstruct the opponents. Then, Questions could be raised whether the reasons behind such hazard comes from actors simply not keeping the ground rules or the laxness of design the ground rules have. In regards to such questions, it is noteworthy of reviewing the process of how joint fact finding failed in ROK media law passing. As the joint fact finding turned out nothing more than a proxy battle of agents, recognition of opponents had little chance to be altered as a neutral ground for fact findings. Therefore some recommendations of designing the ground rules could be suggested. Firstly, the design of the ground rules should be aimed for reducing the source of agent problem since joint fact finding’s main purpose is to convey an objective fact finding that could be agreed among all actors. Referring to the U.S jury system’s ground rule of selecting a jury could be a good future study in this matter. Also known as *Voir dire* in legal term, it is a mean used to select

potential juries from both sides of prosecution and defense. The essence of the process is that, the candidate pools of either side are cross-checked by questionnaires prepared by the opponents. After going through carefully designed questioning, if some candidates of the opposite side are perceived to be 'biased', the prosecutor or the defendant could deny those candidates in becoming jury. Only after repeated cross-checking leading to a consensus of the list of jury, the court is opened. Purpose of such design is to eliminate any possible agents of either sides of prosecutor or the defendant influencing the verdict. Thus, the U.S jury system has basic frame work of being credible among all actors. On the other hand the joint fact finding process in ROK media law passing did not have such credibility checking system which merely started off when the list of recommended actors of both parties were formed. Without any credibility secured, the existing recognition of rivalry would not had been abolished which subsequently distorted the process of joint-fact finding to be highly subjective. Therefore, credibility check system should be existed from the selection of candidates for joint-fact finding group. Since the chairman has strong executive power to lay a bill without any consensus being made, framework of balancing the abuse of "direct authority" should be studied for future studies to minimize its abuse

Secondly, regarding the mediating and facilitating role of the chairman of the National assembly, previous sections showed that the chairman is easily manipulated by his previous affiliated party due to his expectation after the term of chairman is over. In regards to this matter, limited access of references denies specific alternatives to be suggested within this thesis. However, as the National Assembly Development Research Committee points out in "*Research on the Leadership of the Chairman and the Management of the National Assembly*", research studies related to improve such structural flaws are currently under budgeted. (**Leadership, National Assembly Development Research**). Therefore,

significance of identifying the structural problem of the chairman as a mediator and facilitator itself, would give rough hints for future studies to improve the limits that were revealed in the chairman's role. It should be admitted repeatedly that only limited amount academic research are implementing dealing with the problems. Therefore, due to the fact that data were mostly collected by interviews and journal articles, some assessment may be incorrect. However, since only a few academic works are done on the consensus building dynamics in the current ROK political system, this study may give some positive implications for future studies to in addressing the obstacles for a better alternative consensus building modeling in politics.

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