

# When Conflict Management is Institutionalized

## –Research Agenda on the Executive Order 19886 in Korea–\*

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### *Abstract*

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The demand for better conflict management system in public sectors in Korea had grown since early 2000s and culminated in the 2007 enactment of an Executive Order 19886 on Public Dispute Prevention and Resolution. With increasing interests in legislating a new basic Act on public dispute in Korea, rigorous and empirical evaluation of the Executive Order 19886 is necessary. Considering the effectiveness of the Executive Order 19886 in terms of conflict management hinges on two variables: 1) appropriate institutional design, and 2) compliance of government officials and other stakeholders, this article suggests that the institutional design of the Executive Order 19886 might be flawed and might affect the low compliance level of the government officials. This article conducts conceptual analysis on the institutional designs of the three main pillars of the Executive Order 19886: conflict impact assessment, conflict management advisory council and ad-hoc conflict resolution committee. Then, this article provides recommendations for institutional revision of a new Executive Order or a basic Act that may contribute to setting up experimental practices for future empirical studies in an effort to find the best institutional design for conflict management system in Korea.

**주제어:** 갈등관리, 제도화, 공공갈등, 제도 설계, 대통령령

**Key Words:** Conflict Management; Institutionalization; Public Disputes;  
Institutional Design; Executive Order

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## I. Introduction

For governments, frequent public disputes often mean crisis and costs, which may provide strong impetus for them to change their systems (Lynch, 2001). One of the usual approaches to changing the system in the conflict-stricken government is to enact a new legislation or law that dictates or guides disputants including the government officials to behave in more effective but predictable ways to resolve public disputes. For example, legislation of the Federal Administrative Dispute Resolution Act (FADR) of 1990 and the companion Negotiated Rulemaking Act in 1990 in the United States were driven by two main concerns - the enormous expense and delay due to litigation related to a wide array of federal actions and the glacial pace of decision making in many federal agencies (Susskind et al., 1993). However, the groundwork for the institutionalizations of conflict management in the U.S. was laid by experimentations of some federal agencies with alternative dispute resolution (ADR) techniques during the 1980s (ACUS, 1987; Susskind & McMahon, 1985) and empirical evidence for successful ADR innovation in the private sector<sup>1)</sup>, in local and state courts, and in state governments (Goldberg, et al., 1992; Riggs & Dorminey, 1987).

Introducing a new behavior or new routines into any organization is, however, rarely easy when established methods are deeply entrenched in an organization's culture. In general, new ideas from any external source are generally faced with skepticism and resistance. For an example, initial skepticism toward FADR in the U.S. had been a common reaction in almost every organization where managers and attorneys have had no personal first-hand experience with it. Underlying skepticism are doubts about unfamiliar and risky procedures. Many officials feared that ADR would remove control over the outcome of a dispute from the government officials, bringing in third parties who will manipulate the parties to agree to terms that they find undesirable. Or some officials perceived implementing the new programs as an additional responsibility and one that offered little

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1) Administrative Dispute Resolution Act of 1996 starts like this, "Sec. 2, Finding. The Congress finds that-(3) alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious; (4) such alternative means can lead to more creative, efficient, and sensible outcomes; (5) such alternative means may be used advantageously in a wide variety of administrative programs.

immediate reward. Attempting to use new methods and failing to resolve a conflict could lead to a poor performance evaluation (Susskind, Babbitt & Segal, 1993).

In the case of the Korean government that suffered from increasing number of serious, prolonged public disputes, the demand for better conflict management system in public sectors had grown during President Noh, Moo-Hyun's administration, so-called "Participatory government" (2003-2007) and culminated in the 2007 enactment of an Executive Order 19886 (hereafter, EO 19886) on Public Dispute Prevention and Resolution that endorses new approaches to the way central government agencies prevent and resolve conflicts. As the cases of the U.S. FADR, it might be very difficult to motivate government officials to follow a new behavior or new routines quickly. The best way to increase compliance of the new routine may be their own perception that the new routines could work for themselves.

Now, more than seven years have passed since the EO 19886 became in effect on May 2007. Seven-year implementation of the EO 1986 may accumulate enough data for empirical analysis for its effectiveness in terms of conflict management. However, no studies evaluate its efficacy rigorously enough to draw empirical implications yet. The success or failure of this system in the central government is likely to have a significant impact on the future of conflict management system in the Korean government including local governments, and may also serve as helpful examples for other governments in developing countries contemplating similar governmental efforts. To achieve this lofty vision, the EO 19886 must be evaluated empirically and analyzed rigorously to identify enabling or limiting factors.

This article addresses a few research agendas on the EO 19886 for future empirical studies. First of all, the effectiveness of the EO 19886 in terms of conflict management hinges on two variables: 1) appropriate institutional design, and 2) compliance of government officials and other stakeholders. If the institutional design of the EO 19886 is not appropriately designed, then the implementation efforts of the government may be futile in the end. Thus, this article intends to contribute to the academic discourse on the EO 19886 by giving a critical look at its institutional design and by proposing potential hypothesis for future empirical research on the EO 19886. This preliminary research agenda posits that the current EO may have faulty or inappropriate assumptions in its institutional

design that may make it difficult to evaluate the EO 19886 meaningfully.

The next section provides a brief legislative history of the EO 19886 first. Then, a simple, linear logical framework for evaluative research framework for the EO 19886 is constructed with consideration of design factor, compliance factor, and outcomes of conflict management factor as linked variables. The next section reviews recent evaluation of the implementation of the EO 19886 and conducts conceptual analysis of the design of the EO 19886 in terms of conflict impact assessment, conflict management advisory council, and ad-hoc conflict resolution committee in order to narrow down potential scenarios for evaluative research. This paper finds potential design flaws in the EO 19886 that may cause low level of compliance level, hence mal-function of conflict management system in Korea. Then, finally, this paper suggests ways to improve designing feature of the EO 19886 that is supposed to be tested in the future empirical or experimental research.

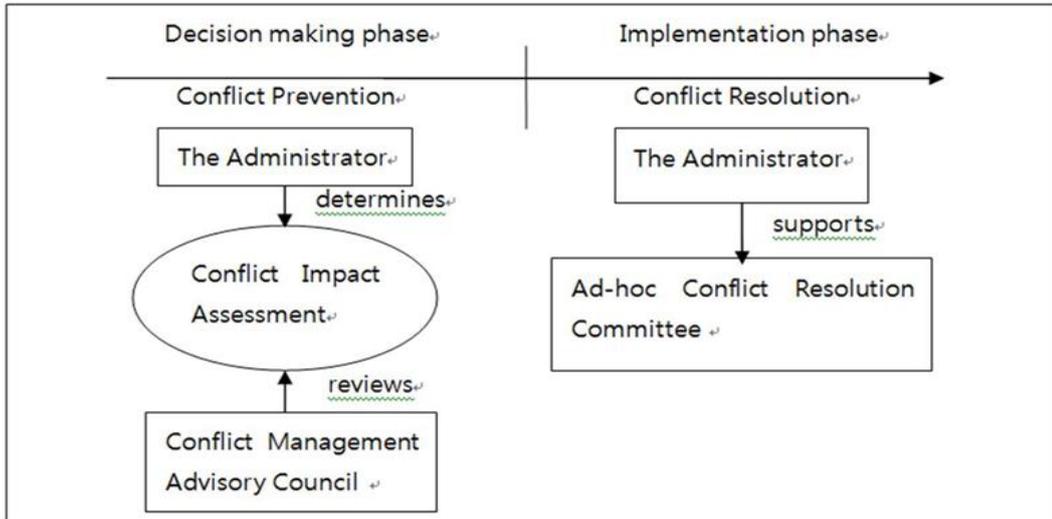
## II. Legislative History

Since the democratization in the late 1980s, South Korea has been suffering a lot from public disputes. Consequently, alternative approaches to unreasonably escalating public disputes have been explored. However, there have not been many successful public dispute resolution cases that used alternative techniques such as facilitation and mediation. In 2005, the South Korean government took the initiative in shifting the undesirable trend of ineffective public dispute resolution. Noh, Moo-Hyun administration, often called “Participatory government,” tried to institutionalize a public dispute resolution system by enacting ‘the Basic Act on Conflict Management for Public agencies’. However, it failed to pass the parliament due to the resistance from a few politicians and non-governmental organizations. Some legislators in the parliament regarded conflict management as their responsibility. NGOs did not accept the administration as conflict managers but rather as conflict generators. In 2007, the spirit of the Act reappeared in the form of an Executive Order. The Order maintained major components of the Act but narrowed its scope to central government agencies (local governments were excluded).

### III. Structure of the EO 19886

Both the scope and the goals of the EO 19886 are ambitious. While US Administrative Dispute Resolution Act of 1990 focused on the resolution of the apparent disputes involving federal agencies, the Korean EO 19886 prescribes both prevention and resolution as major goals, which are two major components in the concept of conflict management (Lynch, 2001). Also, the EO deals with all kinds of public conflict that may happen before decision-making and after implementation of any public policies involving central government agencies. And the last but most important goal of the EO 19886 is to make central government agencies 'conflict-competent' organizations by (1) making the agency accountable for developing comprehensive policies in order to enhance the capacity to prevent and resolve conflict, (2) improving regulations related to conflict prevention and resolution, (3) encouraging them to use various means to resolve the conflicts efficiently that inevitably arise in the conduct of central government business, (4) providing ADR training for selected agency personnel, and (5) considering 'conflict competency' as important criteria for personnel management inside organization.

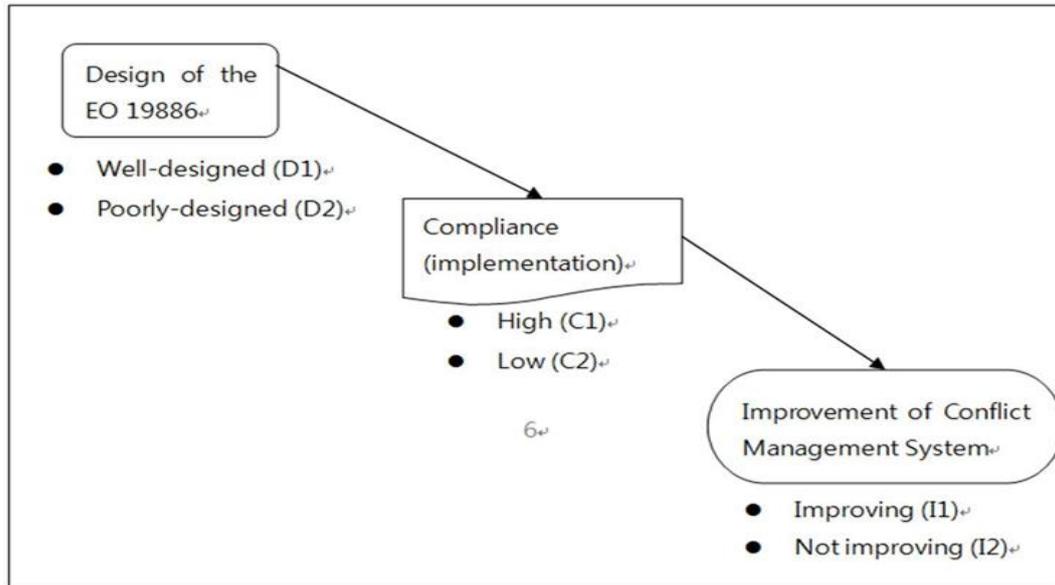
The EO 19886 establishes a procedure like the National Environmental Policy Act (NEPA) in the US. It encourages central government agencies to prepare and review "conflict impact assessment" before it formulates, implements, and modifies public policies which may cause public disputes. The EO 19886 is often considered as an imitation of dispute resolution systems in the US and Europe. However, it has a few distinctive features. First, every central public agency should establish 'conflict management advisory council' to review conflict impact assessments and advise agency on conflict resolution mechanisms. Second, an agency can establish a 'conflict resolution committee' for a specific dispute. Stakeholders and experts can participate in the committee, establish a ground rule, and try consensus building. Third, the government should fund research institutions for training and research in the field of conflict resolution.



<Figure 1> Structure of the EO 19886

#### IV. Research Agenda for Evaluation of the EO 19886

This paper argues that evaluating the effectiveness of the EO 19886 as a part of conflict management system require the analysis of the institutional design of the system first since the design of the system may affect compliance level, hence the effectiveness accordingly. Thus, for more logical evaluative research, this paper suggests a simple, linear, but systematic framework (Figure 2.) Potential evaluation may start with an assumption that the design of the EO 19886 may be flawed. And compliance level of government officials and other stakeholders to the EO 19886 plays as a mediating variable between the design and the effectiveness of the EO 19886. Thus, the frame can produce eight potential scenarios (Table 1).



<Figure 2> Analytic Framework

<Table 1> Eight possible evaluation scenarios and potential research agendas

Cases	Scenarios and Potential Research Agendas
D1 - C1 - I1	Well-designed EO is implemented so effectively that the outcomes from conflict management system are improving.
D1 - C1 - I2	Well-designed EO is implemented so effectively. But, the outcomes from conflict management system are not improving. (There may be other limiting factors that influence the conflict management system negatively. Or the design of EO should be reviewed again.)
D1 - C2 - I1	Well-designed EO is poorly implemented, but the outcomes from conflict management system are improving. (The design of the EO should be reviewed again. There may be other enabling factors.)
D1 - C2 - I2	Well-designed EO is poorly implemented, and the outcomes from conflict management system are not improving. (Research is needed to identify why the actors are not motivated to comply with the EO.)
D2 - C1 - I1	Poorly designed EO is well implemented, and the outcomes from conflict management system seems to be improving. (The design of EO might be good in reality. Or there may be other factors that contributing to improving the system.)

D2 - C1 - I2	Poorly designed EO is well implemented, and the outcomes from conflict management system are not improving. (The design of EO should be reviewed and revised.)
D2 - C2 - I1	Poorly designed EO is not implemented well, and the outcomes from conflict management system are improving. (There are other factors that contribute to improving conflict management system.)
D2 - C2 - I2	Poorly designed EO is not implemented well, and the outcomes from conflict management system are not improving. (The design of the EO should be reviewed first.)

## V. Preliminary review of compliance of the agencies with the EO 19886 and the design of the EO 19886

This section conducts conceptual analysis of the design features of the three main pillars of the EO 19886: Conflict Impact Assessment, Conflict Management Advisory Council, and Ad-hoc Conflict Resolution Committee and intends to identify potential design flaws that may affect compliance level negatively, which can be tested empirically or experimentally in the future research.

### 1. Conflict Impact Assessment

#### 1) Structure

The EO 19886 defines ‘Conflict Impact Assessment’ as the assessment of the possible impact of conflict that specific public policy-making or implementation may have on the society by identifying factors that lead to conflict and by determining ways to manage the expected conflict. The administrators of central government agencies may determine whether to undertake ‘Conflict Impact Assessment’ when any public decision-making is likely to make significant impact on the society at large or incur excessive social costs due to conflicts. Then, the conflict management advisory council should review the assessment report and suggest to the administrator appropriate steps to manage the conflict.

## 2) Preliminary assessment

Despite the potential benefits of conflict impact assessment, the number of conflict impact assessment conducted by central agencies and the number of central agencies that conducted conflict impact assessment have been decreasing since 2011 (Table 2). Although fewer cases of conflict impact assessment may mean that there were fewer cases of policies that might cause potential conflict<sup>2)</sup>, most of the conflict impact assessment reports were perfunctory one with succinct summary of the cases rather than genuinely helpful in preparing conflict resolution processes(Lim, 2010).

<Table 2> Conflict Impact Assessments conducted by the central agencies  
(Unit: Number of case)

Central Agencies (Ministries)	2011	2012	2013
Ministry of Land, Infrastructure and Transport	1	18	11
Ministry of Oceans and Fisheries	0	0	0
Ministry of Science, ICT and Future Planning	0	0	1
Ministry of Environment	7	6	3
Ministry for Health and Welfare	3	9	3
Ministry of Trade, Industry and Energy	0	0	2
Cultural Heritage Administration	1	0	0
Ministry of Defense	1	1	0
Ministry of Education	2	2	2
Ministry of Justice	0	0	0
Ministry of Culture, Sports, and Tourism	4	0	0
Ministry of Government Administration and Home Affairs	1	3	0
Ministry of Agriculture, Food and Rural Affairs	3	1	0
Ministry of Employment and Labor	2	1	1
Ministry of Gender Equality and Family	1	1	0
Ministry of Patriots and Veterans Affairs	0	4	0
Small and Medium Business Administration	29	4	3
Ministry of Food and Drug Safety	3	0	0
Korea Forest Service	1	1	0
<b>Total</b>	<b>59</b>	<b>51</b>	<b>26</b>

Source: Han(2014)

2) According to Lee et al.(2014), the number of public disputes in Korea has decreased from 53 cases in 2011, 49 cases in 2012, and 16 cases in 2013.

### 3) Flawed design?

Under the current EO 19886, conflict impact assessment is regarded as a tool for conflict prevention because it should be always conducted before any public decision is made. In this way, conflict impact assessment is very similar to environmental impact assessment, which should be conducted before any projects or plans are determined. However this earlier application of conflict impact assessment as a preventive tool may limit meaningful utilization of conflict impact assessment on a few grounds.

First, the term, 'conflict impact assessment' may have negative connotation for government officials. When administrators who expect serious conflict related to any proposed public policy may mandate conflict impact assessment, but situation is not ripe (i.e., stakeholders are not clear and mobilized yet), government officials may fear naturally that interview activities of neutral persons for conflict impact assessment with stakeholders or residents may arouse unnecessary conflict. Also, the fact that conflict impact assessment is supposed to be conducted may signal publicly that a proposed policy will be controversial.

Second, originally, conflict impact assessment in the EO 19886 seems to be modeled from conflict assessment (Susskind et al., 1999) in the United States. But, conflict assessment is utilized mostly when there is already apparent conflict. In this case, the primary purposes of the assessment are to identify stakeholders, explore their interests by outside professional neutrals, assess the possibility of proceeding to any consensus building procedures, suggest appropriate dispute resolution procedures, and induce stakeholders to come to a negotiating table. Thus, conflict assessment is usually linked to conflict resolution process. But, under the current structure of the EO 19886, conflict impact assessment is separated from conflict resolution procedure and exists independently from the resolution when there is no apparent conflict yet.

Third, when an administrative procedure is institutionalized, there is often a risk that the procedure turns into little more than a formality. Although an administrator may mandate a conflict impact assessment, the assessment may be regarded as just a regulatory burden by government officials and be conducted in a way to satisfy the minimal condition of the formality. In many cases, the government officials in charge of specific policies wrote many conflict impact

assessment reports by themselves in a way to contain the information required by the EO 19886.

## **2. Conflict Management Advisory Council**

### **1) Structure**

According to the EO 19886, every central agency should set up a conflict management advisory council. The advisory council should consist of less than eleven members who are appointed by the administrator of the agency. Within the council, more civilian members should participate than government official members. The appointed members serve two-year term. The council members should review all the documents related to the efforts of the agency to manage its conflict, including comprehensive conflict management policies, conflict impact assessment reports, and training programs. The stipulation on conflict management advisory council is introduced to the EO 19886 on the ground that outside professionals in the field of conflict management may help government officials who are not accustomed to the new ways of managing conflict.

### **2) Preliminary assessment**

Although the total number of conflict management council convened by all the central agencies has been increasing a little bit from 14 in 2011 to 27 in 2013, most of the agencies convened the council meeting once or twice a year in order to have their annual basic conflict management plan reviewed by the council members (Table 3). According to the recent review by Han(2014), the reviews of the council members were in general perfunctory. Looking at the list of the council members, one or two members have expertise in dispute resolution and negotiation and others are experts in specific policy areas. Very often, the council meetings were conducted by email correspondences with attached documents that include the feedback of the council members on specific cases rather than face-to-face meetings. In such cases, the feedbacks from the council members were not enough to provide meaningful advice since the council members gave feedbacks based on the succinct summary of given conflict cases only.

<Table 3> Conflict Management Advisory Council convened by the central agencies  
(Unit: Number of case)

Central Agencies (Ministries)	2011	2012	2013
Ministry of Land, Infrastructure and Transport	0	3	5
Ministry of Oceans and Fisheries	0	0	3
Ministry of Science, ICT and Future Planning	0	0	2
Ministry of Environment	1	2	1
Ministry for Health and Welfare	3	9	3
Ministry of Trade, Industry and Energy	1	1	1
Cultural Heritage Administration	1	2	3
Ministry of Defense	1	2	1
Ministry of Education	1	2	2
Ministry of Justice	0	0	0
Ministry of Culture, Sports, and Tourism	0	0	2
Ministry of Government Administration and Home Affairs	1	0	0
Ministry of Agriculture, Food and Rural Affairs	1	3	0
Ministry of Employment and Labor	1	3	1
Ministry of Gender Equality and Family	1	0	1
Ministry of Patriots and Veterans Affairs	1	0	0
Small and Medium Business Administration	1	1	1
Ministry of Food and Drug Safety	1	0	0
<b>Total</b>	<b>14</b>	<b>19</b>	<b>27</b>

Source: Han(2014).

### 3) Flawed design?

The non-or lukewarm use of conflict management advisory council by the agencies may be partly explained by the assumption embedded in the creation of this council and a few design flaws. First, the basic assumption inherent in conflict management advisory council is that government officials lack capacity to prevent and resolve conflicts and even they are part of the problems. The conflict management council is supposed to be a kind of therapy to malfunctioning system. That is how and why government officials may regard the conflict management advisory council as another interfering body that increases workload for them.

Second, advisory council members are supposed to serve by two-year term. But, the types of public disputes and substantive issues are diverse. Intractable

public disputes may require more than two years for consensus building process. Review of a conflict impact assessment that addresses specific policy issues may require relevant expertise in the substantive issues. However, current composition of permanent membership in conflict management advisory council for two years may not be appropriate and flexible enough to respond to various types and lengths of public disputes.

Third, the lack of human resources, especially professionals who have expertise in conflict resolution, negotiation, and facilitation may make it difficult for the agencies to compose their conflict management advisory council. Thus, a few professionals in the field of conflict resolution serve in many different agencies as a council member.

### **3. Ad-hoc Conflict Resolution Committee**

#### **1) Structure**

The EO 19886 stipulates that central agencies can establish a conflict resolution committee on ad-hoc basis when they need to resolve a specific public dispute that happens during the implementation of a specific policy or program. In an Ad-hoc Conflict Resolution Committee, agency representatives, key stakeholders, and experts in relevant fields should participate and appoint a neutral person as a chairperson of the Committee. In practice, the chairperson plays a role of facilitator or mediator for the committee. The Committee should set up a ground rule, prescribing the purpose or goal of the Committee, time schedule for deliberation, identification of potential stakeholders, and so forth. The EO 19886 does not specifically mention consensus building as a decision-making rule in the Conflict Resolution Committee but specify that the administrator should try to incorporate the outcomes from deliberations of the Committee into the final government decision-making.

#### **2) Preliminary assessment**

For the past three years since 2011 almost fifty cases of ad-hoc conflict resolution committees have been established across the central ministries in Korea. The Ministry of Land, Infrastructure and Transport and the Ministry of

Trade, Industry and energy, and the Ministry of Defense used conflict resolution committees more than other Ministries (Table 4). Since there are no qualitative evaluations on each case of conflict resolution committees, it is too early to judge the effectiveness of the EO 19886 in terms of ad-hoc conflict resolution committees. However, constant use of conflict resolution committees in many agencies for many years may manifest that the process are getting legitimacy among the government officials.

<Table 4> Ad-hoc Conflict Resolution Committee convened by the central agencies  
(Unit: Number of case)

Central Agencies (Ministries)	2011	2012	2013
Ministry of Land, Infrastructure and Transport	2	10	9
Ministry of Oceans and Fisheries	0	0	1
Ministry of Science, ICT and Future Planning	0	0	1
Ministry of Environment	1	1	1
Ministry for Health and Welfare	1	1	3
Ministry of Trade, Industry and Energy	6	4	8
Cultural Heritage Administration	0	1	1
Ministry of Defense	12	8	7
Ministry of Education	5	5	5
Ministry of Justice	0	0	2
Ministry of Culture, Sports, and Tourism	3	1	3
Ministry of Government Administration and Home Affairs	4	3	0
Ministry of Agriculture, Food and Rural Affairs	4	5	2
Ministry of Employment and Labor	1	3	1
Ministry of Gender Equality and Family	0	0	1
Ministry of Patriots and Veterans Affairs	2	1	0
Small and Medium Business Administration	3	2	3
Ministry of Food and Drug Safety	2	3	3
Korea Forest Service	1	0	0
<b>Total</b>	<b>47</b>	<b>48</b>	<b>51</b>

Source: Han(2014)

### **3) Evaluation of the design of the ad-hoc conflict resolution committee**

Although the EO 19886 encourages the central agencies to use diverse participatory and deliberative decision-making mechanisms, it only specifies ad-hoc conflict resolution committee as a mechanism for conflict resolution. However, design of conflict resolution process cannot be universal but diverse according to the contexts of conflicts. For example, sometimes, direct negotiations among stakeholders including the government without any help from the third party, such as a facilitator or mediator may be more effective under certain contexts. Or, disputants should go to the court rather than engage in consensus building process for more efficient solutions especially when the controversial issue is constitutional rather than distributional (Harter, 1987; Susskind & Cruikshank, 1987).

Ideally, appropriate conflict resolution process can be suggested by conflict (impact) assessment or stakeholder analysis that identifies relevant stakeholders and induces them to consensus building process by helping them to decide the design of the process (Susskind et al., 1999). However, current EO 19886 does not clarify the linkage between conflict (impact) assessment and ad-hoc conflict resolution committee. Instead, current EO 19886 describes that conflict resolution advisory council may suggest appropriate conflict resolution process. Unless the council members understand the interests of broad stakeholders in terms on conflict resolution process, their suggestion may not be useful. Also, disputants may use different names of the process for their own consensus building process or conflict resolution rather than one 'conflict resolution committee.' For example, the parties may use 'fact-finding committee,' 'public-private collaborative committee for specific problem,' or 'consensus building process.'

## **VI. Potential research agenda on the evaluation of the EO 19886**

The general and potential barriers, such as fear, unfamiliarity, and lack of incentives to take risk in a new routine, as in the U.S. case, may be applicable in explaining the low compliance level of the central agencies with the EO 19886 in Korea. But, this paper suggests in the previous sections that inherent

obstacles may be embedded in the designs and its assumptions of the EO 19886.

The recent assessment of the compliance level of the central agencies with the EO 19886 (Han, 2014) suggests that current compliance level is relatively or very low (C2 in analytic framework) (Figure 2). Also, conceptual reviews of the design of the EO 19886 in the previous section suggest that the current design of the EO may be flawed (D2 in analytic framework) in many aspects. So, using the analytic framework described above, research can narrow down the potential diagnosis into only two cases (Table 5).

<Table 5> Potential scenarios and research agenda for evaluation of the EO 19886

Cases	Scenarios and Potential Research Agendas
D2 - C2 - I1	Poorly designed EO is not implemented well, and the outcomes from conflict management system are improving. (There are other factors that contribute to improving conflict management system.)
D2 - C2 - I2	Poorly designed EO is not implemented well, and the outcomes from conflict management system are not improving. (The design of the EO should be reviewed first.)

## VII. Suggestions to improve the design of the EO 19886

This section provides suggestions to improve the design of the EO 19886 with the assumption that current design of the EO 19886 may be flawed. Suggestions for each pillar of the EO may be subject to test empirically or experimentally in the future research.

### 1. Conflict impact assessment

If the term, ‘conflict impact assessment’ causes government official to hesitate to use it due to its negative connotation, the EO 19886 may consider the change of the name into stakeholder analysis or issue assessment that has the same purposes with those of conflict impact assessment in a way to lower the

threshold for the government officials to be motivated to use it.

Overall, the EO 19886 uses the dichotomy between conflict prevention and resolution but each goal is applied to the two administrative phases respectively: decision-making phase and implementation phase. But, prevention and resolution should be distinguished by the degree of conflict rather than the two administrative phases since conflict may happen during decision-making process. Thus, even when the level of conflict seems to be increasing or serious during the decision-making phase, then conflict resolution process could be initiated. Considering the benefits of conflict (impact) assessment, conflict impact assessment is not only a tool for prevention but also for resolution. Thus, a new EO should specify that central agencies could use conflict impact assessment even when they face a full-blown conflict as a useful tool to bring key stakeholders into a consensus building process.

One of the purposes of conflict assessment is to earn trust among stakeholders through sincere efforts to listen actively to their concerns and interests and document them in a report accurately. Thus, the report usually addresses procedural advice from the third party who suggests impartially the best appropriate way to proceed to all the stakeholders rather than suggests substantive solutions to the controversy. Thus, a new EO needs to clarify this point more clearly in order to prevent unnecessary conflict due to loss of neutrality of the report.

To maximize the benefits of conflict impact assessment, the third party who earns trust from stakeholders should conduct assessment so that they can reveal their information on their interests and concerns in a frank manner to the assessor. Thus, a new EO should mention about the role of the third party in conducting conflict impact assessment.

Finally, a new EO needs to link between the conflict impact assessment to ad-hoc conflict resolution committee since the parties can choose ad-hoc consensus building process as the most appropriate conflict resolution procedure from the advice in the conflict impact assessment. In other words, a new EO may specify that an ad-hoc conflict resolution committee can be initiated by the recommendation of the conflict impact assessment.

## 2. Conflict Management Advisory Council

Current design of conflict management advisory council seems to produce perfunctory and nominal advisory activities from the council members that may not be helpful in improving conflict management system in each agency. Thus, a new EO may assign different roles to conflict management advisory council from those in the current EO 19886.

A new but important mandate for conflict management advisory council may be that the council should help to develop coherent and objective evaluation criteria for performance in terms of conflict management of an agency. No instruments for evaluation have yet been developed that adequately capture the costs or benefits of the EO 19886, either qualitatively or quantitatively. Conflict management advisory councils should work with agencies to develop such instruments and be able to consult to the agency on how to improve its own dispute systems design<sup>3)</sup>.

Diagnosing the conflict management system requires a comprehensive audit of disputes and dispute handling within an agency. This involves identifying the kinds of disputes that the agency finds itself in, both internally and with external parties, establishing a baseline that describes the ways in which disputes are currently being handled, eliciting the views of insiders on the effectiveness of the current system, and uncovering organizational obstacles to using new dispute resolution methods systematically (Bingham & Wise, 1996). With this information in hand, as well as a firm understanding of agency culture and mission, it is more likely that subsequent efforts to formulate a conflict management policy, building support for pilot projects, target appropriate training, and alter organizational incentives appropriately will be effective.

Who should undertake an agency's dispute audit? It should be someone with enough distance from the agency to be truly impartial, but also someone whose judgment and experience are widely respected by insiders. The auditor must be willing and able to work with insiders to gather the information needed. An analysis of written documents is not enough. The auditor must be trusted sufficiently by the staff to obtain the insiders' true reflections on what is and is

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3) For more information on dispute systems design, See Ury, Brett & Goldberg(1988)

not working (Susskind, Babbitt & Segal, 1993). Conflict Management Advisory Council members should be recruited so that they could conduct such advisory function for the agency.

However, for handling specific cases of public disputes, conflict management advisory council may not be necessary. As long as conflict assessment can be conducted by a trusted neutral party and generate a report that suggests conflict resolution procedures, non-governmental stakeholders are more likely to choose appropriate procedures for themselves without the help of conflict management advisory council.

Thus, it might be much useful for the government to establish a roster of experts in the field of conflict resolution, negotiation, and mediation who can play a potential role of the neutral third party in an e-portal service. Then, every public entity can access to the roster and identify the most appropriate experts for the specific contexts of conflicts. Those people can serve as a neutral assessor for conflict impact assessment, facilitator or mediator for conflict resolution procedures.

### **3. Ad-hoc Conflict Resolution Committee**

Current EO 19886 specifies 'conflict resolution committee' as an official mechanism that the agencies can adopt as a resolution mechanism. However, a new EO may only use more general expression in its language in order to increase the option for the parties to choose as conflict resolution mechanism. For example, it might be expressed that the agency may consider using alternative dispute resolution procedures such as facilitation, negotiation, and mediation for their conflict resolution.

However, since those alternative dispute resolution procedures are more likely to need the help of neutral party, a new EO may need to elaborate more concretely and clearly the credentials, roles, and responsibilities of the third party neutral(s) who can serve as assessor, facilitator, and/or mediator. Also, a new EO may provide a guideline on the context where neutral third party is necessary. For example, when there is a perception on power imbalance among the parties, when there is distrust and no communication channel among the

parties, when there is scientific and technical uncertainty and complexity, and when there are multi- parties with multi-issues, the help of the third party neutrals can be crucial in resolving conflicts.

## VIII. Conclusion

With increasing interests in legislating a new basic Act on public dispute in Korea, rigorous and empirical evaluation of the Executive Order 19886 is necessary. The new Act or a newly revised EO should be designed carefully in a way to maximize its potential to motivate the actors to behave more effectively by following new routines for conflict prevention and resolution.

Considering the effectiveness of the Executive Order 19886 in terms of conflict management hinges on two variables: 1) appropriate institutional design, and 2) compliance of government officials and other stakeholders, this article suggests that the institutional design of the Executive Order 19886 might be flawed and might affect the low compliance level of the government officials.

This article conducts a conceptual analysis on the institutional designs of the three main pillars of the Executive Order 19886: conflict impact assessment, conflict management advisory council and ad-hoc conflict resolution committee. Then, this article provides recommendations for institutional revision of a new Executive Order or a basic Act that may contribute to setting up experimental practices for future empirical studies in an effort to find the best institutional design for conflict management system in Korea.

## <Reference>

- ACUS (1987). An Overview of Federal Agency Use of Alternative Means of Dispute Resolution. *The Administrative Law Journal*, 1: 405-426.
- Bingham, Lisa B. & Charles, R. Wise. (1996). The Administrative Dispute Resolution Act of 1990: How Do We Evaluate Its Success? *Journal of Public Administration Research & Theory*, 6(3): 383-405.

- Goldberg, S. B., Sander, F. E. A. & Rogers, N. H. (1992). *Dispute Resolution: Negotiation, Mediation, and Other Processes*(2nd. ed.). Boston: Little, Brown and Co..
- Han, Noh-Duck. (2014). *A Study on Improving Public Conflict Management System Analysis*. National Assembly Budget Office.
- Harter, Philip J. (1987). Points on Continuum: Dispute Resolution Procedures and the Administrative Process. *Administrative Law Journal*, 1(14): 141–211
- Lee, Joo-Hyung et. al. (2014). *A Study on Korean Public Dispute Cases and Public Conflict Management Systems*. National Assembly Budget Office.
- Lim, Dong-Jin. (2010). *A Study on Public Conflict Management Systems for Effective Conflict Management of the Central Government*. Korea Institute of Public Administration.
- Lynch, Q. C. Jennifer. (2001). Beyond ADR: A Systems Approach to Conflict Management. *Negotiation Journal*, 17(3): 207–215.
- Riggs, Douglas A. & Elizabeth, K. Dorminey. (1987). Federal Agencies Use of Alternative Means of Dispute Resolution. *Administrative Law Journal*, 1(14): 125–139.
- Senger, Jeffrey M. (2004). *Federal Dispute Resolution: Using ADR with the United States Government*. Jossey-Bass.
- Susskind, Lawrence, Babbit, Eileen & Segal, Phyllis. (1993). When ADR Becomes the Law: A Review of Federal Practice. *Negotiation Journal*, 9(1): 59–75.
- Susskind, L. & J. Cruikshank. (1987). *Breaking the Impasse. Consensual Approaches to Resolving Public Disputes*. Basic Books: New York.
- Susskind, Lawrence, McKernan, Sarah, & Jennifer, Thomas-Larmer. (1999). *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement*. Sage Publications.
- Susskind, L. & G. McMahon. (1985). The Theory and Practice of Negotiated Rulemaking. *Yale Journal on Regulation*, 3: 133-165.
- Ury, W. L., Brett, J. M. & Goldberg, S. B. (1988). *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict*. San Francisco: Jossey Bass.

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