DYNAMICS OF INTERNATIONAL HARMONIZATION AND DIVERGENCE OF SAFETY STANDARDS: THE REGULATORY HYBRIDIZATION OF AUTOMOBILE AND FOOD SAFETY

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1. DIMENSIONS OF REGULATORY HYBRIDITY

The border between the national sphere and international sphere has become blurred with items under national jurisdiction receiving international attention. Similarly, the border between the governmental sphere and non-governmental sphere has also become undefined as non-governmental actors sometimes perform regulatory functions through self-regulation and other means. These non-governmental actors perform regulatory functions not only domestically but also across their national borders.

This phenomenon of blurring national/international spheres and governmental/non-governmental spheres is named the “transnational situation.” Under the transnational situation, regulatory function has to be organized in a hybrid way. The hybrid regulation has two dimensions: it is performed by the combination of national and international rules, and by the combination of governmental and non-governmental actors. It can be said that the state has lost its monopolistic rule-making status.

In relation to science and technology issues, there are additional dimensions of increasing uncertainty. This uncertainty pertains to scientific

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4 Relations between governmental actors and non-governmental actors are categorized by Jan Klabbers; see Jan Klabbers, ‘International Law and the Private Sector: Regulatory Hybridization and Accountability in International Law’ in this volume.
5 But it is different from a kind of secondary modeling of the state at the global level. Karr-Heinz Ladeur, ‘Globalization and Public Governance—A Contradiction?’ in Ladeur, supra note 2, at 10.
knowledge and the impact of technologies on society.\textsuperscript{6} When scientific knowledge is evidently clear, it is relatively easy to regulate using this knowledge. But with the increasing uncertainty of this knowledge, it is sometimes difficult to justify the criteria of regulations, and the legitimacy of regulatory processes becomes increasingly tenuous.\textsuperscript{7}

This article analyzes the hybrid regulations in the areas of automobile safety and food safety related to science and technology under a transnational situation, focusing on the dynamism between harmonization and divergence.\textsuperscript{8} This analysis will try to provide further analytical dimensions to the hybridity of regulations. First, there are a variety of non-governmental actors such as industrial actors and experts.\textsuperscript{9} These industrial actors and experts have different sectors and disciplines. Second, international harmonization can be decided and implemented either by international organizations or by national governments in parallel ways. Third, there are different types of international organizations. They may be functionally differentiated international sectoral bodies such as the international automobile safety standards body or the international food safety standards body. They also can be cross-sectoral or cross-functional bodies such as the World Trade Organization (WTO). Tensions and dynamics between sectoral/functional and cross-sectoral/functional regimes is also an important aspect of hybridity.\textsuperscript{10}

\textsuperscript{6} This relates to the necessity of ‘epistemological turn’ under the condition of increasing knowledge and information technology emphasized by Augsberg (in this volume).

\textsuperscript{7} Legitimacy issues are inherent in the hybrid regulation under a transnational situation. Nico Krisch and Benedict Kingsbury, ‘Introduction: Global Governance and Global Administrative Law in the International Legal Order’ 17 The European Journal of International Law (2006) 1. But the issues become more acute under the condition of scientific uncertainty because it is difficult to rely on scientific expertise as a source of legitimacy.

\textsuperscript{8} Analysis of automobile safety standards is based on the following article. Hideaki Shiroyama, ‘The Harmonization of Automobile Environmental Standards between Japan, the United States and Europe: The “Depoliticizing strategy” by Industry and the Dynamics between Firms and Governments in a Transnational Context’ 20(3) The Pacific Review (2007) 351–70.

\textsuperscript{9} Experts can sit on the advisory committee established by governments and intergovernmental organizations. But insofar as experts act independently as professional individuals not as representatives of government, those experts are called non-governmental actors in this article.