The Dynamic Structure of International Regulations of the Global Market Economy and Its Implication to the "Party Autonomy" Discourse — A Public Law Perspective (Summary)

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This paper claims that the interactions between the advancement of party autonomy principle in private international law (PIL) and the dynamics of international regulations of global market economy are much more intertwined and far-reaching than recognized in the recent intellectual debate on "party autonomy." The concept of so-called internationally mandatory rules which apply pursuant to a specific connection has been the *topos* for PIL literature to deal with the international regulations' implication vis-à-vis party autonomy principle; such framework is surely helpful but insufficient to appreciate the potential impact of the further advancement of party autonomy principle in PIL over the world as we know, including the dynamics of international regulations.

In order to make above point clear, this paper first introduces to the readers in PIL field the recent development of public law theory and practice on the globalized regulatory policy process. Ever-accelerating globalization of market economy amplifies the needs for broader and deeper transnational coordination among sovereign states' public law regulations (one should note that the most of regulations are still implemented via each sovereign states' public law system on the legal basis of domestic constitution and legislations), which makes each sovereign state regulatory system *de facto* apparatus of global regulatory regimes. Today, international regimes and transnational regulatory networks enjoy so prominent presence in a number of regulatory fields (such as banking and securities regulations, anti-trust, environmental regulations, and so on) that most domestic public regulations are no longer purely "domestic" and "state-specific." One might be inclined to claim that individual sovereign states' public regulations are more and more coordinated under transnationally-shared principles, becoming mutually complementary and somewhat interchangeable. Such observation might encourage PIL experts to revisit their traditional premise that public law and private law are fundamentally distinct. Such revision might favor the further application of internationally mandatory rules, or even further stretch as endorsing "conflict of laws approach to public law regulations", as recently suggested by

some public law scholars.

The other implication of the dynamics of international regulations vis-à-vis party autonomy discourse is somewhat more troublesome; although the advancement of party autonomy might be commendable for the interests of related parties (provided that due care be made to the interests of vulnerable parties), it could still be accompanied by the unintended "externality" disturbing the international regulations, at least in the following two contexts. *First*, the advancement of party autonomy will likely lower the individual parties' costs of making choice of laws, which intensifies "regulatory competitions" and perhaps even the "commodification of legal systems", which might serve either better (disciplinary effects over unreasonable national regulations) or worse (race to the bottom). Here one should carefully examine its impact on a case by case basis; public law scholars would appreciate if PIL experts take this potential externality into consideration in their debate over party autonomy principle. *Second*, the above-described globalization of public regulations could serve as the counterweight against the excessive regulatory competition. Indeed, the pressure of regulatory competition is one of the driving forces to induce sovereign states to join the globalized regulatory systems. Nevertheless, the democratic legitimacy deficits and other defects inherent to globalized regulatory system (such as issue-specific experts' myopia and fragmentation of policy making process) should be noted, too. This is the question that attracts recent public law scholarship's attention and induces the active theoretical development. The paper claims that the dialogue between PIL experts and public law scholars is desirable so as to situate the party autonomy discourse in a more comprehensive picture.