Follesdal, Wessel, Wouters (eds.) Multilevel Regulation and the EU, Martinus Nijnhoff Publishers 2007[1]

This book on modern conditions of regulation in the relation between international regulatory regimes and the European legal system is well worth investing the time to read and reflect upon. It contains sixteen contributions written from a multi-disciplinary approach on multilevel regulation for the setting of rules, standards and principles. The interdisciplinary review in the book is undertaken from a legal theory and a public choice background.

The point of departure is a review of three theoretic frameworks for response to the complexity of modern multilevel regulatory realities: Constitutionalism on the international level, which looks how to introduce 'horizontal' values such as human rights and democracy into decision-making on the international level. Global administrative law, which analyses the impact of the internationalised governance regimes, thereby seeks to understand how notions of administrative law and justice could improve standards of accountability and responsiveness in international regulatory regimes. Finally conflicts rules structuring the fragmentation of international law in absence of hierarchical meta-system available structuring international legal relations. Other frameworks such as the discussion of network theories, systems theory or legal pluralism occasionally are mentioned throughout the book.

The case studies within the book are good illustrations for the initial premise of the book that it has become difficult to draw clear dividing lines between the different types of legal regimes in the international, supranational and national spheres. They reflect on how to safeguard a coherent set of policy choices in the face of multi-level and multi-actor regulatory activity whilst ensuring legitimacy and accountability of public decision-making within this context. The different case studies in the book include contributions on little known international regulatory regimes such as in the area of pharmaceuticals by the International Conference on the Harmonisation of Technical Requirements for the Registration of Pharmaceutical for Human Use, the

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impact of financial trade associations on financial services, banking regulation through the so called Basel Committee, the regulatory governance of the internet, the international efforts to combat terrorist activities as well as finally a study on the transatlantic common aviation area. A second important part of the book focuses on possibilities of on the protection of human rights and more generally possibilities of judicial protection in multi-level contexts. It contains case studies on approaches to achieve solutions for the accountability problems, especially through judicial review.

The studies reveal that in this context we are still very much at the beginning of the understanding of the phenomena and that especially courts handling these issues need to become much more aware of the problems related to the related problems of multi-levelism. Several of the case studies offered in the book concentrate on the very problematic anti-terrorism cases of the recent years such as *Yusuf, Kadi* and *Al Barakaat* (which at the time of the writing of the book had only been decided by the CFI and not yet been addressed by Advocate General Maduro or the ECJ) and more generally the relation between the jurisdictions of supranational and international courts and the tensions with the lack of judicial review of actions of bodies such as the UN. The timing of the publication of these chapters is – without fault of the authors - unfortunate. The ECJ has since publication of the book re-established a rule of law based approach for reviewing anti-terrorism measures implemented within the EU on the basis of UN Security Council measures. Instead of targeting states or other legitimate subjects of public international law, these had been designed to target individuals under the self-congratulating title of 'smart sanctions' without providing for adequate due process rules, protection of fundamental rights or possibilities of judicial review. Insofar, the solution of the ECJ to submit the EU implementing acts to judicial review under criteria of European constitutional and administrative law constitutes an important if not historic step in clarifying the limits of multi-level regulation and the possibilities of judicial review in multi-level situations. The consequences of these developments, essential to their topic, the authors of the book unfortunately were not yet able to reflect upon.

Other studies offered in the book present the cases of international standardisation and questions of judicial review in the context of international economic regulation. The prevailing theory supported by the contributions to this part of the book is the

pluralism of judicial systems. In the last contribution on judicial review, it is suggested that the issues of hierarchies of norms and pluralism should be approached differently according to the policy area and taking the specific mix of jurisdictions regulating a certain matter into consideration. This chapter also will need to be viewed within the context of the time of its writing prior to the clarifications of the ECJ in *Kadi* and *Al Barakaat*.

The book concludes with considerations on future needs of legal research and political science research especially with view to creating conditions for a more accountable system of multi-level regulation. The answers given point to the development of administrative law standards capable of addressing the specificities of international bodies engaged in rule-making such as standard stetting. They aim at creating models of social justice and the degree of cultural and value diversity which are acceptable and incorporated in international rules play a role especially with respect to common standard setting in environmental, pharmaceutical, banking and aviation standards. Public policy analysis of the studied fields would include issues such as coordination and transaction costs, supervision problems in complex principle agent relations, agency capture by subjects of regulation and the contexts in which exit or voice strategies flourish.

Altogether, the thoughtfulness of the contributions as well as the editorial comments makes this book a valuable read. The research agenda of this book is wide and encompasses many interesting questions. The strengths of the book lie less in the development of new theoretic models, as in a combination of existing strands of debate and the reflection on the practical insight into a rich picking of well selected and varied regulatory regimes and their associated problems from a multi-disciplinary perspective. The richness of this edited book results also in certain imbalances, given that the policy area studies including pharmaceuticals, banking, finance and internet regulation, are matched with studies on judicial review and accountability mechanisms concentrating on human rights issues in anti-terrorism and security related matters. The answers given in respect to judicial review and accountability therefore are not always ideally suited to the problems of the former group. This might less be seen as a criticism of the book but more as a conclusion towards further research needs, which show that the analysis of judicial review of multi-level

procedures can have benefit from further work. I would especially mention the possibilities of work undertaken in multiple-level and composite administrative procedures to develop standards for European, global and international administrative law. In summary, the book gives ample food for thought and inspiration for further work. I highly recommend this book as an addition to a research library.