

THE EMERGENCE OF GLOBAL ADMINISTRATIVE SYSTEMS: THE CASE OF SPORT

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Abstract: The “global” dimension of sport is, in the first instance, regulatory, and it embraces the whole complex of norms produced and implemented by regulatory sporting regimes at the international and domestic levels. These rules include not only private norms set by the International Olympic Committee (IOC) and by International Federations (IFs) but also “hybrid” public-private norms approved by the World Anti-Doping Agency (WADA) and international law (such as the UNESCO Convention Against Doping in Sport). Sports law, therefore, is highly heterogeneous, and, above all, it is not simply transnational, but actually “global”. This law represents an autonomous global legal system, which displays distinctive features such as the presence of some separation of powers (in particular quasi-judicial, with the strategic role played by the Court of Arbitration for Sport) and the development of relevant procedural principles (e.g. fairness and due process); and these principles operate both in rulemaking procedures (e.g. the adoption of the WADA Code) and in adjudicatory ones (e.g. for disciplinary measures). Finally, this global legal system is made up with several international regulatory regimes, both private – such as the Olympic movement – and hybrid public and private – such as the world anti-doping regime. The paper will deal in particular with this latter issue. The analysis will focus on the global administrative dimensions of sports regimes, together with their inter-institutional relationships and its legal implications for the public and private interaction.

Keywords: global governance, sports law, global regulatory regimes, international organizations, international arbitration.

SPORTS LAW AS GLOBAL LAW

In the early 1990s, a judgment by the European Court of Justice on the free movement of football players within the European Community marked a milestone for sports law¹: the decision (the “*Bosman case*”) limited the autonomy of international sports orders, affirmed the supremacy of EC law over sports rules, and cast serious doubts on the legal theories thus far applied to the sports context².

In the twenty years that followed, the points of interaction between sports law, international law and national legal systems have increased enormously, to the extent that they have become innumerable and multifaceted: regulatory, institutional, procedural, and judicial³. Every branch of law must deal with sports-related issues, which arise in a most diverse range

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of fields: from anti-trust regulation to commercialization of radio and television broadcasting rights, from labour disputes to the protection of human rights⁴. In this connection, the legislative acts approved by States for hosting international sporting events are only one of several examples⁵. National laws “observe” the system of norms produced by international sporting institutions, and States comply with the provisions within the foundational documents of the latter. National norms often make reference to the Olympic Charter, which, in some cases, is even incorporated into domestic legislation⁶. States shape the national regulation of doping-related matters on the basis of a “Code” approved by the World Anti-Doping Agency (WADA), a public-private foundation created for the purpose and regulated by Swiss private law with its headquarters in Canada⁷.

Globalization further enhanced the social and economic growth of a phenomenon, which is, by its very nature, universal⁸. As a matter of fact, “sports law is not just international; it is non-governmental as well, and this differentiates it from all other forms of law”⁹. Sports rules are genuine “global law”, because they reach across the entire world, involve both international and domestic levels, and directly affect individuals (such as athletes): this is, for example, the case of the Olympic Charter, a private act with which all States comply¹⁰; or of the abovementioned World Anti-Doping Code, a document that provides the framework for harmonization of anti-doping policies, rules, and regulations within sports organizations and among public authorities¹¹.

These rules include not only transnational norms established by the International Olympic Committee (IOC) and International Federations (IFs) – i.e. “the principles that emerge from the rules and regulations of international sporting federations as a private contractual order”¹² –, but also “hybrid” public-private norms approved by WADA and international law (such as the UNESCO Convention Against Doping in Sport). Sports law is highly heterogeneous, and, above all, it is “global”: it consists not only of norms given by States, but also of the regulations of central sporting institutions (such as the IOC, IFs and WADA) and of national sporting bodies (such as National Olympic Committees and National Anti-Doping Organizations).

Sport has thus generated a set of institutions and rules that amounts to an autonomous legal *corpus*, which legal scholarship has variously referred to as “International Sports

Law”, “Global Sports Law” and *lex sportiva* (thus drawing a patent analogy with the *lex mercatoria* governing international trade)¹³.

GLOBAL GOVERNANCE OF SPORT AND THE EMERGENCE OF A GLOBAL LEGAL SYSTEM

Parallel to the worldwide growth of the sports phenomenon, most strikingly evidenced by the evolution of the Olympic games¹⁴, there has been a progressive “globalization” of sports law and its organizational apparatus – a process that originates from the Olympic Movement¹⁵.

Since the end of the 19th century, an organizational structure began to develop around the Olympics. This structure, which has become increasingly complex, has the IOC at its apex and International Federations (IFs) and National Federations (NFs), on one hand, and National Olympic Committees (NOCs), on the other hand, at its base. For both of these substructures, a “monopolistic” regime exists, as the IOC recognizes only one IF per sport, and one NOC per country. National Federations (also founded upon the principle of monopoly) are associated to each IF. Such a structure has been described as a double pyramid, one comprising the IOC and National Committees, and the other the International and National Federations¹⁶. However, the structure may be defined more accurately as a group, as a “network” of several pyramids: indeed, in addition to the pyramid of IOC and Olympic Committees, there are as many pyramids as international-level federations (i.e. about one hundred); furthermore, each pyramid is connected to the rest by multiple organizational relationships, of both vertical and horizontal nature.

Between the 1980s and 1990s, following the extraordinary development of the Olympic Movement – enhanced by the economic and financial success of sponsorships and by the end of the Cold War – the links between the international sports legal order and States became increasingly close. This led to a series of institutional effects: the number of sport organizations multiplied; international level public/private agencies, such as the World Anti-Doping Agency (WADA), were created; national entities to concretely perform the functions of international institutions proliferated; an international Court of Arbitration for Sport (CAS) was established and played a key role in ensuring uniform application of global

sports law. As a result, the institutional framework no longer appears to include only the IOC, IFs, Olympic Committees and National Federations, but also the world anti-doping authorities, (WADA and related national organizations [NADOs]), and the global system of sport justice, headed by the CAS.

In seeking to describe such a complex structure, the notion of “international regime” developed by political scientists may be useful¹⁷. As far as international regimes consist of “sets of implicit and explicit principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area”¹⁸, sports legal orders can be likened to the international-level “private regimes”, i.e. those regimes that are voluntarily formed and should be conceptually located beyond the mechanisms typically arising in international law¹⁹. A common feature to all private regimes is their foundation upon one or more international organizations. An example in this respect is the International Organization for Standardization (ISO), an association constituted by national agencies for standardization for the approval of technical standards eventually adopted in the rest of the world; this activity is similar to the legislative tasks performed by international sport federations and by WADA. Other examples are the Internet, or financial markets, both governed by special international organizations of a private nature²⁰.

In many private regimes, however, the role of international and national public authorities has recently begun to expand²¹. In the case of sport, “pressure” from States and the EU on sports institutions appears to be increasing²². Other than the Olympic Movement, governed by the IOC, and the technical-sporting regimes of the individual legal orders regulated by IFs, new international sports regimes have emerged, in which public authorities play a pivotal role: examples are the world anti-doping regime, led by WADA and having national terminals that, in the majority of cases, are public administrative bodies; or the regime governing the organization of Olympic Games, which is regulated by the IOC but concretely performed by special national bodies appointed by domestic public authorities for the purpose (i.e. the Olympic Games’ Organizing Committees).

The connections between these regimes have thus generated a global “network”²³. Not only is this structure based on soft norms – soft insofar as these rules are not produced according to the means traditionally used in international law – but it is also characterized by a considerable number of insti-

tutional relationships. The organization of sporting institutions consists of multiple pyramidal structures alongside horizontal-type relationships, which are formalized to varying degrees²⁴.

Therefore, although the notions of “regime” and “network” are taken from other fields of scholarly pursuit, they appear nevertheless to be extremely useful for understanding most of the legal relationships between the various international sporting institutions, and between these institutions and national bodies. But – for historical, political and socio-economic reasons – sport, unlike other regimes or networks, displays a much more advanced degree of legal and institutional development. The proliferation and diversification of the functions performed by sporting institutions, for example, have triggered the need to affirm the principle of the separation of “powers” – or a variation thereon – in international-level sport.

This requires consideration of the regulatory and institutional issues on which the notions of regime and network rest, but also of the nature of the activities carried out by sporting bodies. It is thus possible to identify two phenomena that have marked sports’ legal dimension in recent decades. First, the degree of proceduralization is ever-increasing: from the production of norms to the execution of anti-doping tests and the selection of Olympic Games’ host cities, each activity now follows a well-defined and detailed procedure. Second, since the 1980s and due to the growing role of the Court of Arbitration for Sport (CAS), sport has developed a sophisticated system of dispute resolution, which can be defined as a system of truly global sport justice.

The development of international sport regimes, together with a multi-level network organization, thus enables new hypotheses to be advanced for describing the legal dimension of sport. In particular, the interrelationship that exists – at regulatory, organizational and procedural levels – between the various sport regimes prompts reference to the concept of “system”, also borrowed from other social sciences²⁵. The notions of regime, network and system are closely interconnected²⁶; and it is revealing that the Italian scholar Santi Romano, in defining the meaning of the term “institution”, at the very foundation of his conception of legal orders, made frequent use of words such as “organization”, “structure” and the term “system” itself²⁷.

The set of international sports institutions (namely the IOC, WADA, CAS and the over one hundred IFs) and national institutions (such as the hundreds of Olympic Committees and national anti-doping agencies and the thousands of National Federations), which is regulated in detail by documents such as the Olympic Charter and the World Anti-Doping Code, features structural elements that begin to assume a clear systemic shape. In particular, this emerging system displays three main features: the rise of an institutional network; the growth of administrative tasks and procedural mechanisms; the key role of (quasi-)judicial bodies.

The Rise of An Institutional Network

The global sport system is the product of the interaction between a large number of institutions that each creates different regimes, each of which features both a superior body located at the international level and domestic terminals operating at the national level. This structure is excellent matter for a case study on the operational mechanisms of international organizations and their relationships with national bodies. As may be known, this is not a new subject, but rather one that can, to a certain extent, be traced back to Georges Scelle's intuition on the "*dédoublement fonctionnel*"²⁸. Furthermore, these issues have also been abundantly examined with reference to EU law, since the execution of European-level decisions necessarily involves an examination of the relations between supranational bodies and national administrative authorities²⁹.

Moreover, in national sport law, institutional solutions influenced by public law are progressively spreading, both in relation to organizational structures and to the system of rules which govern national sporting bodies. Cases differ according to the traditions of each State, as occurs for example with NOCs³⁰. Nevertheless, in this respect, it is possible to identify features that are common to all national legal systems such as, for example, the conferral of a public law nature to national anti-doping entities, or, in the context of the Olympic games, the involvement of the public authorities of a host city's country in the Board of the Organizing Committee.

The Growth of Administrative Tasks and Procedural Mechanisms

The increasing political, social and economic significance of sporting institutions has triggered a rise in the number of functions performed by these bodies and a rise in the corresponding rate of procedures: the case of the Olympic games' bidding process is emblematic in this respect.

This trend, linked to globalization, can be seen in most regimes derived from private law. Some scholars suggest that these regimes have developed such a high complexity of norms, institutions and procedures as to appear extremely similar to regimes of public law derivation³¹. However, additional factors surround this phenomenon. First, the circumstances in which decisions taken by sports institutions produce effects on both public interests and individual rights, whether protected by national or supranational legal systems, are increasingly expanding: be it sufficient, in this connection, to cite the European anti-doping measures, or anti-trust regulation. Second, issues concerning the legitimacy and accountability of sports institutions have become all the more relevant, especially in light of the legal and economic effects of decisions taken by sports institutions.

The issues listed above have drawn attention to the need to improve the procedural mechanisms followed by sporting institutions, to provide affected parties with participatory mechanisms and also to enable the review of actions taken by sport institutions. Consequently, typical principles of national legal systems, such as fairness, due process and the right to be heard, have often been invoked and applied.

Extremely significant examples to this effect may be found in the decisions given by the CAS, which has often referred to such principles and likened IFs as to public administrations. In the *Pistorius v. IAAF* case, for example, the CAS evaluated the IAAF's decision-making process to verify whether the decision challenged by the athlete was "procedurally unsound"³². Previously, the CAS highlighted "an evident analogy between sports-governing bodies and governmental bodies with respect to their role and functions as regulatory, administrative and sanctioning entities"³³.

Once again, a clear example of the increasing procedural dimension of sport legal orders may be seen in the world anti-doping regime, where we can identify both rulemaking activities (specifically, the creation of the World Anti-Doping Code)

that take place through consultations open to public bodies and sporting institutions, and adjudication activities (i.e. decisions related to doping, from exemptions to penalties) in which procedural safeguards and fair hearings are accorded to affected parties.

The Key Role of (quasi-)Judicial Bodies

The increase in norms, institutions, functions and procedures in the sports context inevitably requires review mechanisms and dispute settlement bodies to be instituted, to face the ever-more frequent (and complex) number of controversies. Thus, the sport system developed tools for reviewing the decisions taken by sports institutions and arbitration or (quasi)-judicial bodies.

For example, the anti-doping regime requires the establishment of dedicated tribunals for deciding appeals against the penalties imposed by National or International Federations. Furthermore, there are instances in which a central international body retains the power of verifying – and eventually modifying – decisions taken by national bodies, as in the case of the Therapeutic Use Exemption. Thus, a trend toward the establishment of centralized systems of review emerges, with the aim of ensuring uniformity in decision-making. The clearest example in this respect is the CAS³⁴.

Unlike other transnational realms, such as the *lex mercatoria*, where the norms or principles applied in arbitration proceedings are essentially borrowed from private law, sports-related disputes feature an extensive application of public law principles – more precisely, of principles peculiar to criminal and administrative law³⁵. In this framework, the issue of the role of national courts, and, in particular, the feasibility of judicial review of the activities of international sport institutions, remains, as yet, undefined.

FRAMING GLOBAL SPORTS LAW AND ITS HYBRID PUBLIC AND PRIVATE NATURE: THE ADMINISTRATIVE LAW PERSPECTIVE

If sports legal orders can be usefully framed within the theory of regimes, networks and systems, the foregoing analysis shows that an approach based on public and administrative

law may be even more fruitful³⁶. There are several analogies between the activities undertaken by international sporting institutions and by public authorities. In many cases – similarly to what occurs today in other international regimes – States are directly involved (as in the case of WADA), and the national bodies within the sport system are mostly of public nature (as are the majority of anti-doping authorities). Furthermore, international sporting organizations rely on solutions borrowed from public and administrative law to an ever-increasing extent: this phenomenon is common not only in sports, but also in many other ultra-state contexts.

An administrative law perspective can also productively interact with other legal disciplines that may have more experience with studying ultra-state phenomena, such as international law and the law of international organizations. In addition, an administrative law approach can be combined with other projects aimed at delineating the global legal context, such as, for example, “global constitutionalism”³⁷ or the theory based on the exercise of international “public authority”³⁸ or on the concept of Informal International Lawmaking (IN-LAW)³⁹.

Moreover, the administrative law perspective appears equipped to deal with supranational phenomena than one based on the notion of “legal order”⁴⁰. Italian legal scholarship has applied this notion to sport since the 1920s, because, *inter alia*, sport is an excellent subject for a case study, since all the features of a “legal order” can be traced: these features – identified by Massimo Severo Giannini in elaborating the hypothesis originally conceived by Santi Romano – are plurality of actors/addressees, organization, and norms⁴¹. As a consequence, sports law became one of the best fields for investigating the theory of legal orders, which thus rapidly turned into the main conceptual reference for the sector⁴². Furthermore, the notion was also recalled by courts and, subsequently, cited in legislation⁴³. The theory of legal order was used to preserve sports from interference by national forces, of both political and judicial kind; a necessity that, in several cases, is no longer as urgent today, due to the need, instead, to involve supranational and national public powers in the pursuit of common goals (for example, in the field of anti-doping)⁴⁴.

The transformations that took place in the last thirty years, especially the development of the international sports legal order and of its connections to national sport legal orders, made it almost impossible to clearly distinguish between

separate legal orders at world and national levels. This led to the conceptualization of the existence of a single global sports legal order⁴⁵. This legal order – which would be of a “transnational” nature, due to its private law – and voluntary – roots, would not be represented by one legal order alone: given the rule-making power enjoyed by IFs, it may be possible to identify as many legal orders as there are sports⁴⁶.

Under this perspective, the case of sports law seems to offer a clear example – perhaps one of the most ancient – of a transnational legal order (TLO) because it displays all the features that have been outlined thus far in order to identify such kind of orders: 1) sports norms and rules are mostly produced by a legal institution above the level of the nation state (e.g. IOC, WADA, IFs); 2) sports norms and rules are directed to legal institutions inside nation-states (and in many cases such domestic institutions are public entities, as it happens in the anti-doping regime); 3) sports norms and rules are produced in recognizable legal forms, to the extent that a sophisticated (quasi-)judicial system has been built to enforce those norms⁴⁷. Put briefly, the case of sport, on one hand, gives evidence of the existence of complex legal orders other than nation states and beyond them, on the other hand, it shows how these legal orders fast grow and develop transnationally.

However, describing the phenomenon of world sport in terms of legal order alone does not seem capable of fully encompassing sports law’s current developments. Although this approach may allow for both international and national profiles to be examined, it may focus excessively on the autonomy of sport in relation to the “sovereign” legal order, whether this be of an international, or single-State, nature⁴⁸: there is a risk of neglecting important international-level legal aspects, especially those in which public authorities constitute an integral part of the sport system⁴⁹. This is why a perspective based exclusively on legal order theory may not be the most appropriate for explaining global sports law exhaustively⁵⁰. The sport system can therefore be appropriately analyzed by integrating such perspective with other approaches taken from international and administrative law.

One may question, however, why public law tools should be more suitable for investigating a phenomenon that originates from – and is traditionally linked to – private autonomy. In other words, we should explain why we would need to adopt an administrative law perspective to deal with issues that could be explored with a private law lens.

The answer is that sports law is now far from being understood from a private law perspective alone, because it presents, rather, a mixed nature, in which a regulatory framework based on private autonomy constantly interacts with public law norms. This phenomenon can be seen at national level especially, where dialogue between public and private law has always been intense. Furthermore, the Olympic regime, itself of private law derivation, has been flanked by other regimes in which States participate actively. On a national level, the domestic terminals of international sports regimes are often regulated by public law. From this point of view, the case of doping control measures offers a prime example, because the establishment of WADA and the adoption of the World Anti-Doping Code led to the creation of a uniform regulatory system, and, at the same time, of a dense network of national bodies, mainly of a public nature: see, for example, the French anti-doping agency (*Agence française de lutte contre le dopage*), «*autorité publique indépendante dotée de la personnalité morale*», which is entrusted with defining and implementing actions to fight doping in France, and which must cooperate with WADA and the IFs⁵¹.

In broader terms, the law of international sports orders no longer appears to fall within the sphere of private law alone. Also, the ways in which private autonomy and the public sphere interact are very often anchored to paradigms and institutions typical of administrative law. This is mostly due to the growing socio-economic relevance of sports, which is capable of having profound impact on several public interests such as, for example, the protection of health, the protection of human rights and other fundamental rights of athletes.

Therefore, administrative law – the branch of law in which the dialectic between public and private is clearest⁵² – plays a crucial role in framing global sports law⁵³. First, it enables better comprehension of the relations between legal orders. “The majority of legal orders (from the most ancient, pertaining to territorial groups, to the most recent, such as the sports legal system and sectoral legal orders) operate in the context of administrative law” and the latter, therefore, “must address them”⁵⁴. Second, the dynamics linked to the dialogue between private autonomy and public powers give rise to an ever-increasing degree of direct involvement of governments and domestic authorities in this field; this indicates that the significance of public administration and their law is constantly growing within sport legal orders⁵⁵. Third, the administra-

tive law perspective allows better investigation of sporting institutions, in terms of the organizational and procedural aspects and review mechanisms. Fourth, as mentioned above, sporting institutions themselves refer, increasingly often, to administrative law tools (as shown by the CAS awards)⁵⁶.

THE EMERGENCE OF GLOBAL ADMINISTRATIVE SYSTEMS?

The idea of conceptualizing global sports law as a global administrative system is a work in progress, which must necessarily consider that the phenomenon under examination is still on-going. The concept of “system” employed here, therefore, must be understood in both its meanings – that of “external” system (that is, in a “subjective” sense) and of “internal” system (in an “objective” sense)⁵⁷. On one hand, the “chaotic” state of the multiple relations – both regulatory and procedural – between the various sports legal orders requires huge effort of the interpreter, who must systematize this articulated mass of rules, bodies and procedures; on the other, the proliferation of sport regimes and the development of their respective apparatuses have followed a design that may have been spontaneous, but also consistent, to the extent that structures of a global sports legal system are emerging, with a sufficiently well-defined shape⁵⁸.

In particular, the global character of such a system derives from the fact that it exists on a global scale and, at the same time, is not limited to the international or supranational level, but also involves the national sphere and is directly relevant to private entities and individuals.

Thus, sports law illustrates the emergence of “global administrative systems”, which display the three main features above examined: the rise of an institutional network; the growth of administrative tasks and procedural mechanisms; the key role of (quasi-)judicial bodies. The administrative nature of these systems derives from three factors in particular. First, these systems present a high degree of interpenetration (in regulatory, institutional and procedural terms) between private autonomy and the public sphere. Second, States and national public administrations are actors operating within the system, and act in accordance with mechanisms for both consensus and authority. Third, the institutional models, procedures adopted and review mechanisms all follow models that

are typical of – if not directly subject to – administrative law. It can be further stated that global administrative systems provide for the direct application, to private entities or individuals, of norms and decisions made by ultra-state bodies, usually without any intermediation on part of States.

An administrative law perspective can facilitate comprehension of most sport-related phenomena: from the forms of cooperation between public and private actors to powers of oversight. Also, administrative law mechanisms have by now deeply penetrated into sports legal orders. This is evident from an examination of both the activities of sports institutions, and of the ways in which the latter interact with supranational and national public powers.

Such an analysis allows the analogies and differences between global sports law and other global administrative systems to be highlighted. The development of a network-type organization composed of several regimes, the “proceduralization” of the system, the differentiation of functions and the definition of a (quasi-)judicial activity are features that tend to be present, albeit in varying forms, in cases other than sport, and also in other international regimes. The global sport system, which clearly presents these elements, is a significant example of the development of administrative law mechanisms beyond the State.⁵⁹

NOTES

¹ ECJ, Case C-415/93, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others* and *Union des associations européennes de football (UEFA) v Jean-Marc Bosman*, 15 December 1995: see D. O’Keeffe and P. Osborne (1996), *L’affaire Bosman: un arrêt important pour le bon fonctionnement du Marché Unique Européen*, in “Rev. Marc. Un. Eur.”, p. 17.

² See S. Gardiner, R. Parrish and R.C.R. Siekmann (eds.) (2009), *EU, Sport, Law and Policy. Regulation, Re-Regulation and Representation* (The Hague).

³ For an overview, see F. Latty (2007), *La “lex sportiva”. Recherche sur le droit transnational*, and L. Casini (2010), *Il diritto globale dello sport*.

⁴ On these issues, P. Weiler (2000), *Leveling the Playing Field. How the Law Can Make Sports Better for Fans* (Cambridge), and S. Greenfield and G. Osborn (eds.) (2000), *Law and Sport in Contemporary Society* (London).

⁵ Such as the *London Olympic Games and Paralympic Games Act 2006*, enacted for the 2012 Olympic Games.

⁶ As happened in Turkey, with the Parliamentary Act no. 3796 of 1992, the so-called “Turkish Olympic Law” (see A.M. Mestre [2009], *The Law of the Olympic Games* [The Hague], p. 21).

⁷ L. Casini (2009), *Global Hybrid Public-Private Bodies: The World Anti-Doping Agency (WADA)*, in L. Boisson de Chazournes, L. Casini and B. Kingsbury (eds.), “International Organizations Law Review”, 411 (6); and K. Henne (2010), *WADA*,

the Promises of Law and the Landscapes of Antidoping Regulation, in “Political and Legal Anthropology Review”, p. 306 (33).

⁸ R. Gulianotti and R. Robertson (eds.) (2007), *Globalization and Sport* (Oxford).

⁹ M. Beloff, T. Kerr and M. Demetriou (1999), *Sports Law*, 5. According to these authors, the term “sports law” is “a valid description of a system of law governing the practice of sports”. They also note that “the public’s limitless enthusiasm for sport and its importance to our cultural heritage makes sports law more than mere private law” (*ibidem*, p. 4).

¹⁰ See J.-L. Chappelet, B. Kübler-Mabbott, *The International Olympic Committee and the Olympic System: The governance of sport* (2008), and A.M. Mestre, *The Law of the Olympic Games* (2009).

¹¹ P. David, *A Guide to the World Anti-Doping Code. A Fight for the Spirit of Sport* (2008).

¹² K. Foster (2003), *Is There a Global Sports Law?*, in “Entertainment Law”, 2 (1), p. 1, 4, who describes “global sports law” as a “transnational autonomous legal order created by the private global institutions that govern international sport”, “a contractual order, with its binding force coming from agreements to submit to the authority and jurisdiction of international sporting federation” and not “governed by national legal systems” (*ibidem*, p. 2). This author considers “global sports law” a significant example of spontaneous global law without a State, according to the definition provided in *Global Law Without a State* (Gunther Teubner ed., 1997), and Gunther Teubner (2001), *Un droit spontané dans la société mondiale*, in C.-A. Morand (ed.), *Le droit saisi par la mondialisation*, p. 197.

¹³ On these issues, see R.C.R. Siekmann and J. Soek (eds.) (2012), *Lex Sportiva: What is Sports Law*, and J.A.R. Nafziger and S.F. Ross (eds.) (2011), *Handbook on International Sports Law* (Cheltenham). See also J.A.R. Nafziger (2004), *International Sports Law*, 1; J.-P. Karaquillo (2006), *Droit international du sport*, in *Recueil des Cours – Collected courses of the Hague Academy of International Law 2004*, tome 309; A. Wax (2009), *Internationales Sportrecht: Unter besonderer Berücksichtigung des Sportvölkerrechts*, p. 173; M. Greppi and E. Vellano (eds.) (2010), *Diritto internazionale dello sport*; formerly, M.S. Giannini (1996), *Ancora sugli ordinamenti giuridici sportivi*, in M.S. Giannini (2006), *Scritti*, vol. IX, 1991-1996, p. 441, who wrote that the term “international” refers, in sport, to a “diritto superstatale”, such that it does not mean the “diritto proprio di un ordinamento giuridico a sé”, but “una normativa interstato e superstato” (p. 444).

¹⁴ See A. Tomlinson (2005), *Olympic survivals: The Olympic Games as a global phenomenon*, in L. Allison (ed.), *The Global Politics of Sport. The Role of Global Institutions in Sport* (London), p. 46 et seq. To give an example, in 1896, in Athens, there were about 250 participating athletes, 14 Countries represented and 43 programmed events; in Rome, in 1960, over 5.000 athletes attended, representing 83 Countries for 150 events; in 2012, in London, more than 10.500 athletes competed, representing over 200 National Olympic Committees, in 302 events.

¹⁵ Governed by the International Olympic Committee (IOC), the Movement’s Olympic Charter represents almost a “constitution”, in which the fundamental principles and rules on the organization and functioning of the Olympics are established. However, the aims of the Charter are not restricted to the Olympic games alone. The Charter accomplishes three main tasks: first, it is a “basic instrument of a constitutional nature”, which establishes the Olympic principles and values; second, the Charter is the Statute of the IOC; third, the Charter defines the rights and duties of the three principal components of the Olympic Movement – the IOC, the International Federations (IFs), and the National Olympic Committees (NOCs) – and of the Organizing Committees for the Olympic Games (OCOGs).

¹⁶ M.R. Will (1994), *Les structures du sport international*, in P. Cendon (ed.), *Scritti in onore di Rodolfo Sacco* (Milano), p. 1211 et seq.

¹⁷ See J.G. Ruggie (1975), *International responses to technology: concepts and trends*, in “International Organization”, 29, p. 557, who defined regimes as “set of mutual expectations, rules and regulations, plans, organizational energies and financial commitments, which have been accepted by a group of States” (p. 570); and S.D. Krasner (ed.) (1983), *International Regimes* (London), particularly S.D. Krasner, *Structural causes and regime consequences: regimes as intervening variables*, p. 1 et seq.,

and R.O. Keohane, *The demand for international regimes*, p. 141 et seq.; see also K. Raustiala (2002), *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, in "Vanderbilt Journal of International Law", 1 (43); A. Hasenclever, P. Mayer and V. Rittberger (1997), *Theories of International Regimes* (Cambridge); and V. Rittberger (ed.) (1993), *Regime Theory and International relations* (Oxford). As to sports law, the expression "regulatory regimes" is adopted by S. Gardiner et al. (2006), *Sports Law* (Oxford), p. 38 et seq.

¹⁸ Krasner, above, p. 2, who clarifies that "Principles are beliefs of facts, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice".

¹⁹ G. Teubner (2004), *Global Private Regimes: Neo-Spontaneous Law and Dual Constitution of Autonomous Sector?*, in K.H. Ladeur (ed.), *Public Governance in the Age of Globalization*, Aldershot, p. 71 et seq.; and H. Schepel (2005), *The Constitution of Private Governance. Product Standards in the Regulation of Integrating Market* (Oxford and Portland).

²⁰ See M. De Bellis (2012), *La regolazione dei mercati finanziari* (Milan: Giuffrè), and G. Napolitano (2011), *The Two Ways Of Global Governance After The Financial Crisis Multilateralism versus Cooperation Among Governments, I-Con*, p. 310.

²¹ On these issues, see M. De Bellis (2011), *Public law and private regulators in the global legal space*, in "I-Con", 9, p. 425.

²² J.A.R. Nafziger (2006), *The Future Of International Sports Law*, in "Willamette Law Review", 42, p. 86.

²³ See K.-H. Ladeur (2009), *Der Staat der „Gesellschaft der Netzwerke“. Zur Notwendigkeit der Fortentwicklung des Paradigmas des „Gewährleistungsstaates“*, in *Der Staat*, n. 2, p. 162; M.O. Jackson (2008), *Social and Economic Networks* (Princeton); and M. Castells (1996), *The Rise of the Network Society* (Oxford). On transgovernmental networks, see A.-M. Slaughter (2004), *A New World Order*; S. Picciotto (1996), *The Regulatory Criss-Cross: Interaction Between Jurisdictions and the Construction of Global Regulatory Networks*, in W. Bratton, J. McCahery, S. Picciotto and C. Scott (eds.), *International Regulatory Competition and Coordination: Perspective on Economic Regulation in Europe and the United States* (New York), p. 89 et seq.; and K. Jayasuriya (1999), *Globalization, Law, and the Transformation of Sovereignty: The Emergence of Global Regulatory Governance*, in "Indiana Journal of Global Legal Studies", 6, p. 425. More recently, see P.-H. Verdier (2009), *Transnational Regulatory Networks and Their Limits*, in "Yale Journal of International Law", 34, p. 113; M. Amstutz and G. Teubner (eds.) (2009), *Networks. Legal Issues of Multilateral Cooperation* (Oxford), focused on "private" and "contractual" networks; and M.J. Warning (2009), *Transnational Public Governance. Networks, Law and Legitimacy* (New York).

²⁴ F. Ost and M. van de Kerchove (2002), *De la pyramide au réseau? Pour une théorie dialectique du droit* (Bruxelles), p. 23 et seq. With regard to public administration, P. Bogason and T.A.J. Toonen (1998), *Introduction: networks in public administration*, in "Public Administration", 76, p. 205, A.L. Oliver and M. Ebers (1998), *Networking Network Studies: An Analysis of Conceptual Configurations in the Study of Inter-organizational Relationships*, in "Organization Studies", 19, p. 549; and W.J.M. Kickert, E.H. Klijn and J.F.M. Koppenjan (eds.) (1997), *Managing Complex Networks* (London).

²⁵ See M.G. Losano (2002), *Sistema e struttura nel diritto* (Milano); M.G. Losano (1968), *Sistema e struttura nel diritto* (Torino); N. Bobbio (1960), *Teoria dell'ordinamento giuridico* (Torino), p. 74 et seq.; J. Raz (1970), *The Concept of a Legal System. An Introduction to the Theory of Legal System*; and L.M. Friedman (1975), *The Legal System. A Social Science Perspective*. See also T. Parsons (1939), *The Structure of social action* (New York); T. Parsons (1951), *The Social System* (Chicago); T. Parsons (1970), *On Building Social Systems Theory: A Personal History*, in "Daedalus. Journal of the American Academy of Arts and Science", p. 826 et seq.; N. Luhmann (1984), *Soziale Systeme. Grundri einer allgemeinen Theorie* (Frankfurt am Main); and N. Luhmann (1993), *Das Recht der Gesellschaft* (Frankfurt am Main).

²⁶ T. Parsons (1951), *The Social System*, p. 25: who referred to “system of processes of interaction between actors, it is the structure of the *relations* between the actors as involved in the interactive process which is essentially the structure of social system”, so that a system is a “network of such relationships”. R. Keohane and J. Nye (1977), *Power and Interdependence* (Boston), p. 19, clarify that the notion of “regime” includes “networks of rules, norms, and procedures that regularize behavior and control its effects”.

²⁷ See S. Romano (1951), *L'ordinamento giuridico* (Firenze), p. 42 et seq. This point is highlighted by N. Bobbio (1975), *Teoria e ideologia nella dottrina di Santi Romano*, in N. Bobbio (2007), *Dalla struttura alla funzione. Nuovi studi di teoria del diritto*, p. 146 et seq.

²⁸ G. Scelle (1932), *Précis de droit des gens* (Paris), pp. 43, 54 et seq., 217, who also stated that “les agents dotés d'une compétence institutionnelle ou investis par un ordre juridique utilisent leur capacité ‘fonctionnelle’ telle qu'elle est organisée dans l'ordre juridique qui les institués, mais pour assurer l'efficacité des normes d'un autre ordre juridique privé des organes nécessaires à cette réalisation, ou n'en possédant que d'insuffisants” [G. Scelle (1956), *Le phénomène juridique du dédoublement fonctionnel*, in W. Scätzel and H.-J. Schlochauer (eds.), *Rechtsfragen der Internationalen Organisation – Festschrift für Hans Weberg zu seinem 70. geburtstag* (Frankfurt am Main), p. 324 et seq., here p. 331). On Scelle, H. Thierry (1990), *The Thought of Georges Scelle*, in “European Journal of Integrational Law”, 1, p. 193; and A. Cassese (2004), *Remarks on Scelle's Theory of “Role Splitting” (dédoublement fonctionnel)*, in “European Journal of Integrational Law”, 1, p. 210; see also M. Koskenniemi (2004), *The Gentle Civilizer of Nations. The Rise and Fall of International Law 1870-1960* (Cambridge), p. 327 et seq.

²⁹ P.P. Craig (2006), *EU Administrative Law* (Oxford); J.-B. Auby et J. Dutheil de la Rochère (eds.) (2007), *Droit Administratif Européen* (Bruxelles); and J. Schwarze (2005), *Europäische Verwaltungsrecht* (Baden-Baden).

³⁰ See J.-L. Chappelet and B. Kübler-Mabbott, *The International Olympic Committee and the Olympic System: The governance of sport*, pp. 49 et seq, 54.

³¹ A. Riles (2008), *The Anti-Network: Private Global Governance, Legal Knowledge, and the Legitimacy of the State*, in “Am. J. Comp. L.”, 56, p. 605, for instance, observes that “global private law” is “not a radical departure from state law, but really more of the same” (p. 629).

³² CAS 2008/A/1480, especially para. 56 et seq.

³³ CAS 98/2000, *AEK Atene & S.K. Slavia Praga v. UEFA*, award of 20 August 1999, par. 58.

³⁴ I.S. Blackshaw, R.C.R. Siekmann and J. Soek (eds.) (2006), *The Court of Arbitration for Sport 1984-2004* (The Hague); A. Rigozzi (2005), *L'arbitrage international en matière de sport* (Basilea), p. 132; A. Merone (2009), *Il Tribunale arbitrale dello sport* (Torino); and S. Stebler (2009), *Court of Arbitration for Sport (CAS)*, in P. Gola, C. Götz Staehelin and K. Graf, *Institutional Arbitration. Tasks and Powers of Different Arbitration Institutions* (Zurich-Basel-Geneva), p. 255. Lastly, see R.H. McLaren (2009), *The Court of Arbitration for Sport*, in *Handbook on International Sports Law*, p. 32 et seq.; and L. Casini (2011), *The Making of a Lex Sportiva by the Court of Arbitration for Sport*, in “German Law Journal”, 12, p. 1317.

³⁵ F. Latty, *La “lex sportiva”. Recherche sur le droit transnational*, above, p. 320 et seq. In CAS-JO[-TUR] 06/008, *Isabella Dal Balcon v. Comitato Olimpico Nazionale Italiano (CONI) & Federazione Italiana Sport Invernali (FISI)*, for example, the activity of the Italian National Olympic Committee and Italian National Skiing Federation, which excluded an athlete from the Olympic team, was judged “arbitrary” and “unfair”.

³⁶ See B. Kingsbury et al. (2005), *The Emergence of Global Administrative Law*, in “Law and Contemporary Problems”, 68, pp. 15-62. More recently, see G. Anthony et al. (eds.) (2011), *Values in Global Administrative Law* (Oxford: Hart).

³⁷ On “global constitutionalism”, see C.E. J. Schwöbel (2011), *Global Constitutionalism in International Legal Perspective* (The Hague: Martinus Nijhoff); J.L. Dunoff and J.P. Trachtman (eds.) (2009), *Ruling the World? Constitutionalism, International Law, and Global Governance* (Cambridge: Cambridge University Press); and J. Klabbers, A. Peters, and G. Ulfstein (2009), *The Constitutionalization of International Law* (Oxford: Oxford University Press).

³⁸ A. von Bogdandy, R. Wolfrum, J. von Bernstorff, P. Dann and M. Goldmann (eds.) (2010), *The Exercise of Public Authority by International Institutions. Advancing International Institutional Law* (Heidelberg).

³⁹ IN-LAW can be meant as “[c]ross-border cooperation between public authorities, with or without the participation of private actors and/or international organisations (IOs), in a forum other than a traditional IO (process informality), and/or as between actors other than traditional diplomatic actors (such as regulators or agencies) (actor informality), and/or which does not result in a formal treaty or other traditional source of international law (output informality)”: J. Pauwelyn (2012), *Informal International Lawmaking: Framing the Concept and Research Questions*, in J. Pauwelyn, R. Wessel, and J. Wouters (eds.), *Informal International Lawmaking* (Oxford: Oxford University Press).

⁴⁰ S. Romano (1918), *L’ordinamento giuridico* (Pisa); A.E. Cammarata (1926), *Il concetto del diritto e la “pluralità degli ordinamenti giuridici”*, in A.E. Cammarata (1963), *Formalismo e sapere giuridico* (Milano), p. 185 et seq., specialmente p. 211 et seq.; W. Cesarini Sforza (1933), *La teoria degli ordinamenti giuridici e il diritto sportivo*, in “Foro italiano”, c. 1381 et seq.; and M.S. Giannini (1950), *Sulla pluralità degli ordinamenti giuridici*, now in M.S. Giannini (2003), *Scritti*, vol. III, 1949-1954 (Milano), p. 403 et seq.; and M.S. Giannini (1946), *Prime osservazioni sugli Ordinamenti giuridici sportivi*; F. Modugno, *Ordinamento giuridico (dottrine generali) and Pluralità degli ordinamenti*, both in *Enciclopedia del diritto*, XXX (Milano, 1980), p. 678 et seq. and XXXIV (Milano, 1983), p. 32 et seq.; and F.P. Luiso (1975), *La giustizia sportiva* (Milano), particularly p. 363 et seq.

⁴¹ M.S. Giannini (1958), *Gli elementi degli ordinamenti giuridici*, in “Riv. trim. dir. pubbl.”, p. 219 ss., now in M.S. Giannini (2004), *Scritti*, vol. IV, 1955-1962 (Milano), p. 337 et seq.

⁴² Lastly, see G. Manfredi (2007), *Pluralità degli ordinamenti e tutela giurisdizionale. I rapporti tra giustizia statale e giustizia sportiva* (Torino); F. Goisis (2007), *La giustizia sportiva tra funzione amministrativa ed arbitrato* (Milano); and R. Morzenti Pellegrini, *L’evoluzione dei rapporti tra fenomeno sportivo e ordinamento statale* (Milano). A different perspective is adopted by L. Ferrara (2007), *L’ordinamento sportivo: meno e più della libertà privata*, in “Diritto Pubblico”, 1.

⁴³ See, for instance, Cassazione 2 aprile 1963, n. 811, in “Foro italiano”, 1963, I, c. 894 et seq., but, above all, article 117 of Italian Constitution, as amended in 2001, which mentions the “ordinamento sportivo”, and Italian Law no. 280/2003, art. 1.

⁴⁴ The theory of plurality of legal orders was adopted essentially to shed light on the relationships between sports and the national legal system, such as conflicts of norms or the relations between sports justice and national justice. These studies, while recognizing the relevance of the links between national and international spheres, were nevertheless mostly focused on domestic contexts and on the relationships between sport and the national legal orders. This happened also in French legal scholarship: see G. Simon (1990), *Puissance sportive et ordre juridique étatique. Contribution à l’étude des relations entre la puissance publique et les institutions privées* (Paris).

⁴⁵ See the work by F. Latty, *La lex sportiva. Recherche sur le droit transnational*.

⁴⁶ F. Latty, *La lex sportiva. Recherche sur le droit transnational*, p. 32 et seq.

⁴⁷ T. Halliday and Gregory Shaffer, *Transnational Legal Orders*, Project Framing paper.

⁴⁸ Giannini, *Prime osservazioni sugli Ordinamenti giuridici sportivi*, p. 101.

⁴⁹ And, paradoxically, the very presence of all the elements typical of a legal order – plurality of actors/addressees; organization; norms – confers uniqueness and originality to the sports phenomenon, which in itself is not amenable to straightforward comparison with other experiences. As a matter of fact, terms for comparison used in describing the global sports legal order have been found in the canon law of the Roman Catholic Church, or, to highlight the transactional element, the *lex mercatoria*. On these issues, see A. Röthel (2007), *Lex mercatoria, lex sportiva, lex technica – Private Rechtsetzung jenseits des Nationalstaats?*, in “JZ”, 62, p. 755 et seq.

⁵⁰ In Europe, for instance, the European Court of Justice’s interventions aimed at censoring the sport norms that conflict with European law has raised several issues regarding the true nature of the sports legal order and the relationship between the sports legal order and other supranational legal orders, thereby casting doubt on the

comprehensiveness of a theoretical approach based on the application of the notion of “legal order” to sport.

⁵¹ *Code du Sport*, Art. L232-5.

⁵² M. Ruffert (ed.) (2009), *The Public-Private Law Divide: Potential for Transformation?* (London); and G. Napolitano (2003), *Pubblico e privato nel diritto amministrativo* (Milano).

⁵³ A first attempt was made in in A. Van Varenbergh, *Regulatory features and administrative law dimensions of the Olympic movement's anti-doping regime*, IILJ Working Paper 2005/11 (Global Administrative Law Series); see also L. Casini, *Il diritto globale dello sport*, above. However, many sports legal issues can be approached from different perspectives. In several cases, the same problem can be explained either through the application of administrative law tools or through private law. In case of dispute resolution through arbitration, for example, one may investigate sports justice with sole regard to private law, civil procedure and private international law, without any need to turn to public law: on these issues, see L. Ferrara, *L'ordinamento sportivo: meno e più della libertà privata*, above, p. 20 et seq.

⁵⁴ M.S. Giannini (1993), *Diritto amministrativo* (Milano), I, p. 97 (translation by the Author).

⁵⁵ A. Wax, *Internationales Sportrecht. Unter besonderer Berücksichtigung des Sportvölkerrechts*, above, p. 83 et seq.

⁵⁶ On these issues, L. Casini, *The Making of a Lex Sportiva by the Court of Arbitration for Sport*, above.

⁵⁷ See M.G. Losano, *Sistema e struttura nel diritto*, *ibid.*, I, p. 42 et seq.; formerly, F.C. de Savigny (1840), *System des heutigen Römischen Rechts*, Italian translation by Vittorio Scialoja (1886) (Turin), p. 21.

⁵⁸ The term “system”, for instance, is used by J.-L. Chappelet e B. Kübler-Mabbott, *The International Olympic Committee and the Olympic System: The governance of sport*, above, and is adopted in other international contexts: see B. Buzan and R. Little (2000), *International Systems in World History. Remaking the Study of International Relations* (Oxford), and P.F. Diehl and C. Ku (2010), *The Dynamics of International Law* (Cambridge).

⁵⁹ S. Battini (2011), *The procedural side of legal globalization: The case of the World Heritage Convention*, in “I-Con”, p. 340.