Lex Sportiva

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Transnational Sports Law

By Franck Latty*

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I. Introduction

Certain legal expressions are common in everyday usage, both in doctrine and in practice, as though their meaning were obvious, despite the conceptual vagueness that continues to surround them. The notion of “transnational sports law” undoubtedly falls into this category. In this paper, I aim to demonstrate that, regardless of the meaning given to the expression, the addition of the adjective “transnational” has conceptual virtues that provide sports law with a pertinent analytical framework.

II. The Existence of Sports Law

It remains necessary, however, to confirm the existence of “sports law”, a phenomenon which is not recognised by a certain school of thought. E. Grayson, for instance, has emphatically rejected its existence:

*Previously published in 1–2 The International Sports Law Journal (ISLJ) 2011, pp. 34–38 (“Transnational Sports Law”). For this publication, some editorial modifications have been made.
“No subject exists which jurisprudentially can be called sports law. As a soundbite headline, shorthand description, it has no juridical foundation; for common law and equity create no concept of law exclusively relating to sport. Each area of law applicable to sport does not differ from how it is found in any social or jurisprudential category [...]”\(^1\)

Rejecting the idea of sports law, these authors entitle their discipline “Sports and the Law”, which consists of an analysis of the manner in which the law – namely state law (e.g. employment law, contract law, criminal law, etc.) – applies to the sporting domain. At best, some of these authors recognise that the particularities of sport give rise to an independent offshoot of state law.\(^2\) This restrictive doctrinal approach can be criticised for at least two reasons:

First of all, it is only of relevance for certain countries – generally common law jurisdictions – which have not adopted legislation in the sporting domain. However, other states – often civil law jurisdictions – have legislated for this area. This is the case in France, which, since the second half of the 20\(^{th}\) century, has developed an increasingly dense body of legislation that is now grouped together in a sporting code\(^3\) which covers numerous aspects of sporting activities. The code essentially allocates responsibilities to government, regional authorities, associations, companies, federations, the National Olympic Committee, etc. in terms of the organisation of sporting activities and specifies the rights and obligations of the various parties involved (athletes, trainers), as well as the organisation of the anti-doping effort; it also regulates the practice of sporting activities (sports facilities, insurance, hygiene and safety, etc.) and includes other measures relating to the funding of sport. French law even operates a form of nationalisation of the national federations by means of a system of public service delegation: although the federations retain association status under private law, their decisions are regarded as administrative decisions and come under the competence of an administrative judge. Undoubtedly, therefore, there exists within French sports a type of law of state origin, to which the sporting standards of the federations apply, thus invalidating the theory of “Sports and the Law”.

Secondly, the “Sports and the Law” theory is state-centred, ignoring the law produced by sporting bodies, whether they are international (in particular, the


international federations and the International Olympic Committee) or national in scope. However, it is these bodies which, even before the states, organise the countless aspects of sporting competition (rules of play, technical rules, qualification of athletes, anti-doping rules, in some cases the status and contracts of athletes, etc.). The view that these standards cannot claim to have the quality of legal rules is a highly restrictive conception of the law which is well out of step with the realities on the ground. The “Sports and the Law” theory has its roots in the state positivism that necessarily links the law to the state, the sole entity capable of imposing compliance by means of physical constraint.\(^4\) However, pluralist theories have demonstrated that neither power nor law are linked to the state in essence, but that they manifest themselves in any organised social group, whether it be pre-, infra-, supra- or para-state.\(^5\) From this perspective, it becomes clear that sporting bodies do, indeed, produce legal rules – a fact which in no way prejudices the degree of autonomy they have with regard to the law emanating from the states.

III. Transnational Sports Law

Once the existence of sports law, resulting both from public (state or even, by extension, inter-state) and private sources (the rules of sporting bodies), has been confirmed, it is then necessary to analyse what the adjective “transnational” adds to or takes away from the concept.

An *e contrario* approach would permit the exclusion of sports law of national scope from the concept. If the idea of transnationality involves transceding a defined national territory, both the state rules applicable to sport and the rules of the national sporting bodies must be set aside. It should, however, be noted that the rules of the national federations are often a mere transposition of the rules laid down by the international federations.

Transnational sports law can also be distinguished from international sports law,\(^6\) as the concept of international law (interpreted as international public law) originally referred to the law applicable to inter-state relations. With the diversification of international society, international law now involves more varied subjects (intergovernmental organisations and private bodies, to a certain

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\(^4\) See the writings of Kant, Hegel, Carré de Malberg, Kelsen etc.


\(^6\) Contra, see *J.A. Nafziger*, International Sports Law, 2nd edition, Transnational Publ. Dobbs Ferry, N.Y., 2004, p. 376, for whom the conception of international sports law is close to that which set out in the first part of this paper.
extent) and generally governs the status of or relations between these bodies. International law still intervenes only infrequently in the field of sport, so that, logically, the sporting bodies are not characterised as subjects of international law – with the possible exception of the International Olympic Committee, which has succeeded in obtaining quite unique status, not dissimilar to that of the International Committee of the Red Cross.\(^7\)

As the \textit{a contrario} approach proves insufficient in providing a sufficiently precise definition of the concept of transnational sports law, a positive definition becomes inevitable. If we depart from the sporting domain for a moment, it appears that the notion of transnational law, which is very common in legal literature and even in practice, is characterised by an ambiguity which, far from constituting an obstacle to its application to the field of sport, on the contrary, helps to highlight the diversity of the legal phenomenon that is sports law.

Three meanings can be drawn from this: a wide meaning, based on Jessup’s theory, covering any rule with external scope (I); a hybrid meaning, characterising the legal relations between public and private entities (II); and a strictly private meaning, referring to the sectoral rules produced by self-regulated private global parties (III). While the last of these is the most meaningful from a conceptual point of view, the fact remains that the first two help to illustrate the varied dimensions of sports law.

1. The Wide Conception: Jessup’s Transnational Law

The spread of the expression “transnational law” within legal circles owes a great deal to the book of the same name published in 1956 by the renowned American lawyer, Philip Jessup, who went on to become a judge in the International Court of Justice during the 1960s.

Mindful of going beyond the traditional distinctions between internal law and international law, and between public and private law, Jessup proposes the grouping together under a single description of all rules with an extra-national dimension:

“I shall use, instead of ‘international law’, the term ‘transnational law’ to include all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories.”\(^8\)


\(^8\) \textit{Ph. C. Jessup}, Transnational Law, New Haven, Yale University Press, 1956, p. 2.
Apart from the rules of public international law and the national rules of private international law, the concept also encompasses internal law with international scope – public and private (civil or criminal) – and the principles applied to legal relations forged directly between private bodies. Defined in this way, transnational law embraces all legal rules that exceed the framework of a single national legal order, independently of their origin. Through this emphasis of the existence of standards that were little known at the time, such as the law of international organisations or the general principles resulting from arbitration case law, Jessup raised the issue of the traditional boundaries of international law, which is a success still palpable today in terms of the theory of transnational law.

Applied to sports law, Jessup’s transnational law would make it possible to group all standards into a single set “which regulates actions or events that transcend national frontiers” in the area of sport. The private rules of the international federations and the International Olympic Committee would thus sit alongside the small number of rules which stem from the international legal order, such as the 2005 UNESCO Convention against Doping in Sport, the conventions of the Council of Europe against doping and violence in stadiums, and the texts imposing a sporting embargo on certain nations (United Nations Convention against Apartheid in Sport of 10 December 1985, Resolution 757 (1992) of the Security Council imposing an embargo on Yugoslavia). To this list can be added the numerous soft law texts adopted by the United Nations General Assembly, UNESCO and other international bodies. Finally, the state rules likely to be applied to transnational sporting relations, for instance, the Swiss law on associations – the IOC and most international federations have their headquarters in Switzerland – would also come under transnational sports law.

Nonetheless, Jessup’s theory is not intended to be merely descriptive, as his proposal consists of suggesting that any judge (national or international, public or private) faced with a dispute transcending state borders should be able to choose the rule of transnational law for the resolution of the dispute which they regard as being most commensurate with reason and justice. From this perspective, Jessup’s theory has been as successful as had been anticipated, due to the fact that each judge is an organ of an established legal order, meaning that he or she does not have the latitude to import external standards at will. It will

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10 See Ph.C. Jessup, op. cit. (fn. 8), pp. 106 et seq.
now be examined, however, whether this could be otherwise in relation to sport specifically.

There is no doubt that, if a sport-related dispute is being heard by a judge at a state court – which is becoming a rarer phenomenon, due to the fact that recourse to the CAS is becoming more frequent –, that court would give precedence to its national law and take the applicable international law into account only if its constitution acknowledged its value, other states, and the laws of another state would be implemented if the mechanisms of private international law referred to it. Similarly, the court would apply the laws of international sporting bodies if authorised by national law to do so via an explicit reference, or by means of contractual mechanisms. However, under no circumstances would a state judge be authorised to draw on a patchwork of transnational rules potentially concerning the situation in dispute. It is for this reason that the French Conseil d’État traditionally considers the rules of the international federations to be devoid of legal effect in French law, unless they have been transposed by the national federations.

At the level of the Court of Arbitration for Sport, this is more of a grey area, as the CAS’s arbitration rules leave its arbitrators considerable room for manoeuvre. Within the framework of the appeals process, in addition to the “applicable regulations and the rules of law chosen by the parties” and, secondary to “the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled”, the CAS may apply “rules of law, the application of which the Panel deems appropriate.” In practice, it can be observed that the divisions of the CAS sometimes have differing interpretations of these provisions on the applicable law. While all divisions in the first instance apply the rules of the sporting bodies concerned, some make abundant reference to state law, sometimes making the

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11 In France, Art. 55 of the Constitution envisages that international treaties have a value superior to the law.

12 See E. Loquin, Sport et droit international privé, Lamy Droit du sport, nos. 186–95.

13 The French law of 1975 (amended on several occasions since 1984) thus envisaged that the sports federations were responsible for ensuring “compliance with the technical and ethical rules of their disciplines laid down by the international federations, the International Olympic Committee and the French National Olympic and Sports Committee.”

14 See, for example, the Conseil d’État’s advisory opinion dated 20 November 2003, in: Revue juridique et économique du sport, no. 72, September 2004, p. 65: “The international sports federations are subject to the legislation of the state where each of them has its headquarters and the regulations which they lay down do not apply within France’s internal law.”

15 Art. R58 of the Code of Sports-related Arbitration: “In the latter case, the Panel shall give reasons for its decision.”
sporting rules secondary to this, while others spontaneously free the sporting standards from any national legal order. Moreover, at the level of the relevant ad hoc division at the Olympic Games, "The Panel shall rule on the dispute pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate." The divisions of the CAS, therefore, enjoy a degree of freedom of choice in terms of the rules to be applied, which appears to correspond to Jessup's recommendations. The theory of transnational law is therefore implemented, at least to a certain extent, at the level of the CAS, not only in its descriptive aspects (diversity of the rules applicable to transnational sporting relations), but also in its operational aspects (application of the most relevant rules by the judge).

2. The Hybrid Conception: Transnational Law as the Law Governing Mixed Relations

The adjective "transnational" is commonly used in a specific sense to qualify relations between a state and a foreign private entity, especially in the context of investment law.

The practice of state contracts (a petrol concession contract, for instance) gives rise to "hybrid" or "asymmetrical" relations between the state and a foreign private company. The term "transnational" takes into account the atypical nature of these legal relations in which contractual equality and state sovereignty are opposed, in many cases without being wholly reduced to either national or international law. These contracts generally include an arbitration clause, stipulating a tribunal which will adjudicate on any disputes which occur between the parties. This is commonly referred to as "transnational arbitration"
or “mixed arbitration”. Much has been written about the law which can be applied to disputes of this type by transnational tribunals: the law of the contracting state? International public law? Other rules? In view of certain decisions reached in disputes of this type, where general principles belonging to no identified legal order have been applied, some authors have posited the idea of transnational law being specifically tailored to these mixed relations. Since the 1980s, however, the debate has lost its momentum and interest due to the exponential development of Bilateral Investment Treaties (BITs) between states. With the majority of disputes relating to investments now being raised on the basis of one of these BITs (even in the absence of contractual relations between the investor and the state), the transnational courts of arbitration are almost always called upon to settle disputes by applying international (public) law.

In the first place, transnational sports law, interpreted in this way, could offer a characterisation of the standards adopted by the World Anti-Doping Agency (WADA). This body, which is responsible for the World Anti-Doping Code and associated International Standards, is formed jointly by representatives of the public authorities and representatives of the Olympic movement. Formally at least, the standards which it produces are acts of private law, since the agency has foundation status under Swiss law, in spite of the fact that its premises are located in Montreal. However, the notion that the agency’s mixed composition affects the law which it produces – transnational law in the hybrid sense of the term – is not beyond the bounds of reason. The World Anti-Doping Code and the International Standards do not, however, possess any intrinsic legal force. They have an effect only insofar as the sporting bodies transpose their content into their own anti-doping regulations, while the states have adopted the UNESCO convention against doping, the main objective of which is to recognise the Code. However, it is precisely because of the fact that the


WADA’s global anti-doping programme is the product of co-regulation within the agency that it can obtain the consent of both the sporting bodies and the public authorities.

Secondly, and *de lege ferenda*, the practice of state contracts referred to above could effectively be found to apply at *major international competitions* (the Olympic Games or the FIFA World Cup, for example). The legal framework developed for the staging of these events does not guarantee full legal security to the sporting institutions, which are only contractually bound to the host city (for the Olympic Games), or to the chosen federation (in the case of the FIFA World Cup). However, the holding of such events in a particular country involves commitments on the part of that country, if only to provide entry at its borders to athletes from all over the world. The states supply plenty of very precise guarantees, which are appended to the bid and then to the organisation contract\textsuperscript{25}, but in the event of a state defaulting, the sporting body runs the risk of only being able to count on its own resources to remind the state of its commitments. In practice, certain “hiccups” occur every now and then, such as the attempt by the Chinese authorities, on the eve of the opening of the Beijing Games, to limit accredited journalists’ access to websites deemed by it to be “subversive”\textsuperscript{26}, a problem eventually resolved via discreet “Olympic diplomacy”\textsuperscript{27}. Similarly, in the build-up to the 1976 Montreal Games, the Canadian authorities refused to let Taiwanese athletes enter their territory, as their country was not recognised by Canada\textsuperscript{28}.

Consequently, the international sporting bodies might seek to secure their legal relationship with the host state by entering into a “state contract” similar to those concluded by foreign private companies with the destination states for

\textsuperscript{25} As regards the requirements of the IOC on the subject, see F. Latty, *La lex sportiva – Recherche sur le droit transnational*, op. cit. (fn. 9), pp. 584 et seq. The state guarantees demanded by FIFA are not included in any public FIFA regulation. However, on reading the bid evaluation reports for the 2018 and 2022 World Cups, which include a paragraph headed “Legal and Government Guarantees”, one can identify the nature of FIFA’s requirements in this area. They concern access to the state’s territory for the competitors and persons affiliated to FIFA, security during the event (and the exclusion of any liability of FIFA in this regard), currency exchange, FIFA’s commercial rights, the use of national anthems and flags, telecommunications and the importing of the equipment required for the event’s organisation. These guarantees are also required to include total tax exemption for FIFA and its affiliates.

\textsuperscript{26} Essentially, websites belonging to human rights defence bodies or those in favour of a free Tibet.

\textsuperscript{27} “Internet: sous la pression, Pékin assouplit sa position” (Internet: under pressure, Beijing softens its stance), *Le Monde*, 3–4 August 2008.

their investments. Subject to international law (so as to avoid national law, which the contracting state has the power to amend to its advantage), such agreements strengthen the position of the private body, which is placed on equal footing with the sovereign state. The presence of arbitration clauses, pursuant to which any dispute is submitted to transnational arbitration, also possesses dissuasive virtues which might suffice to prevent disputes between the body and the state hosting the event. A proposal of this type was formulated during the 1980s by the authors of a study on the improvement of the IOC’s legal status, which it itself had commissioned\(^{29}\), but it failed to get past the Olympic drawing-board stage, and subsequent changes to international investment law mean that its revival would not be worthwhile.

Finally, it must be acknowledged that the development of Bilateral Investment Treaties (BIT) is likely to offer protection to international sporting bodies whose international events must be held on the territory of sovereign states. These treaties generally contain provisions whereby the state parties guarantee the investor parties equal, fair and non-discriminatory treatment (national treatment and/or treatment of the most favoured nation), together with full and complete protection and security. Some contain a clause calling on the state parties to respect the commitments made vis-à-vis investors, while the freedom of payments and money transfers relating to the investments is guaranteed. These treaties offer the investors direct lines of recourse against the state, usually before the International Centre for the Settlement of Investment Disputes (ICSID) or pursuant to the arbitration regulations of the UNCITRAL (United Nations Commission on International Trade Law).

It is also worth noting that Brazil, which is due to host the FIFA World Cup in 2014 and the Rio Olympic Games in 2016, concluded a BIT in 1994 with Switzerland, the “home country” of both the FIFA and the IOC.\(^{30}\) Due to Brazil’s failure to ratify the treaty, it has not yet entered into force, but there is nothing to prevent this case being used as a basis for reasoning. If a state, by its behaviour, were to present an obstacle to the successful staging of the World Cup or the Olympic Games, or more prosaically, if it failed, for example, to ful-

\(^{29}\) B. Simm/Ch. Vedder, Suggestions for Improving the Legal Position of the IOC as Regards to its Relationship with States and Intergovernmental Bodies, 1985, study not published but referred to in: F. Latty, La lex sportiva – Recherche sur le droit transnational, op. cit (fn. 9), pp. 598–599. Cf. also the debate on the sedentarisation of the OG, launched at the time as the boycotts, when several proposals were formulated. Some of these involved the conclusion of contracts between the IOC and the states, covering the status of the permanent Olympic site, and governed by international law (see F.C. Rich, The Legal Regime for a Permanent Olympic Site” New York University Journal of International Law and Politics, vol. 15, 1982, pp. 1–53).

\(^{30}\) Agreement between the Swiss Confederation and the Federative Republic of Brazil concerning the Reciprocal Promotion and Protection of Investments, Brasilia, 11.11.1994.
fill the guarantees provided in terms of freedom of transfer of capital, could FIFA or the IOC not invoke its international liability on the basis of a BIT which was in force? The crucial—and novel—legal issue would be to determine whether the sporting competition could be regarded as an investment, as transnational case law fluctuates on this definition.\textsuperscript{31} After all, it must be acknowledged that the construction of the infrastructure required to stage the Olympic Games or the World Cup involves investment made not by the IOC or FIFA, but by local partners not protected by the BIT. Having said that, it is also of note that the Switzerland/Brazil BIT includes international property rights and expertise in its definition of the investment,\textsuperscript{32} which would facilitate the inclusion of international competition within the scope of the treaty. Once the a priori surmountable obstacle of the existence of an investment has been overcome, it would remain to be verified that the state concerned had indeed breached its international obligations arising from the treaty. At the end of the process, the system would enable the body to obtain compensation for any damage incurred\textsuperscript{33}, although it is doubtful whether the CIO or FIFA would wish to “jurisdictionalise” their generally peaceful relations with the states. The corrective, or even simply dissuasive, virtues of this mechanism, which is highly (overly?) favourable to investors, should, however, not be ignored.

3. The Private Conception: Transnational Law as a Form of Global Sectoral Self-Regulation

We will now deal with the final manner in which transnational sports law can be conceived, and in terms of the overall analysis of sports law, it should be noted that it is the most useful of the three.

Once again, it is in the economic sphere that this specific conception of transnational law has been developed, in order to refer to the self-regulation of international economic players. Observation of the contractual practices of private operators from international commerce and analysis of commercial arbitration case law in this field have led certain authors to propose the theory of a


\textsuperscript{32} Art. I § 2, of the Switzerland-Brazil BIT of 1994.

new *lex mercatoria* or New Law Merchant — in reference to the *lex mercatoria* of the Middle Ages, developed by market traders as a remedy for the legal insecurity arising from the multiplicity of feudal laws. The repeated use of standard contracts for commercial uses and the formulation by the arbitrators of general principles of law fuel this new *lex mercatoria*, which, for part of the doctrine, could even be used in relation to state contracts. The existence of a "*lex mercatoria* legal order", concurrent with the legal orders of the states, has even been propounded, taking the institutionalist theory of the Italian lawyer Santi Romano as a basis, an idea which has been written about extensively.

The debate concerning the *lex mercatoria*, the existence of which is still disputed, has had the advantage of promoting the idea that legal communities depending on transnational solidarity are likely to self-regulate outside of the framework of state law. Moreover, the phenomenon is not limited to the economic field, as an examination of the religious domain shows. The Catholic Church, the most institutionalised body within the three main monotheist religions, is a grouping of a transnational community of followers who are subject to the canon law produced by the Church. Similar to the *lex mercatoria*, canon law is, therefore, a manifestation of the legal phenomenon characterised as "transnational law": a law produced by private parties without the intervention of the states — and beyond their borders — and intended to govern activities within the community concerned. Several transnational legal orders can be said to exist: commercial, religious ... and sporting.

In effect, the law produced by the international sporting bodies (International Olympic Committee, international federations, continental federations, etc.)

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36 See supra III.2.

37 *S. Romano*, L’ordre juridique, op. cit. (fn. 5).


constitutes a legal phenomenon similar to the *lex mercatoria* or to religious laws, insofar as these bodies – which are private entities – produce globally, or at least extra-nationally-applied, rules, designed to govern the system of sporting competition. Thus, the neologism "*lex sportiva*" is increasingly used as a direct reference to the *lex mercatoria*, either to indicate the set of transnational sporting rules,\(^{40}\) or in a more limited sense, referring only to the case law of the Court of Arbitration for Sport.\(^{41}\) As in the case of the arbitrators of international commerce, the CAS has formulated a whole series of legal principles, directly inspired by internal laws or deduced from the necessities of the sporting competition.\(^{42}\) Applied to the Olympic Movement as a whole, these principles combine with the Olympic Charter and the World Anti-Doping Code to ensure the unity of the transnational sporting legal order. Considerably more institutionalised than the *lex mercatoria* (through the Olympic Movement), the *lex sportiva* constitutes a particularly clear manifestation of “transnational law”.

The *lex mercatoria* theory’s sole aim is not to describe the “internal coherence”\(^{43}\) specific to the community of economic operators. It encompasses an “external” dimension which requires the verification of its “survival” when it comes up against state or inter-state standards. This question of the degree of autonomy of transnational standards is precisely the same one which is endlessly posed on the subject of sporting standards. In this regard, the theory of transnational law offers a framework that makes it possible to understand this question in terms of relations between legal orders, or “relations between systems”, as Kelsen would say.\(^{44}\) Santi Romano, who has defended a pluralist conception of the law, as distinct from Kelsen’s monism, has very specifically set out the various relationships likely to be forged between legal orders: a relationship in which one order is the presupposition of another; a relationship in which several orders which are independent of each other depend on one another; relevance granted unilaterally by one order to another from which it is independent; a relation of succession between several orders.\(^{45}\)

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\(^{40}\) See, for example, *E. Loquin*, Sport et droit international privé, op. cit. (fn. 12), nos. 186–90.


\(^{42}\) See *F. Latty*, La *lex sportiva* – Recherche sur le droit transnational, op. cit. (fn. 9), pp. 301 et seq.

\(^{43}\) *Ph. Kahn*, Droit international économique, droit international du développement, *lex mercatoria*: concept juridique unique ou pluralité des ordres juridiques, op. cit. (fn. 38), p. 100.

\(^{44}\) *H. Kelsen*, Les rapports de système entre le droit interne et le droit international public, Collected Courses of the Hague Academy of International Law, 1926-IV, vol. 14, pp. 227 et seq.

\(^{45}\) *S. Romano*, L’ordre juridique, op. cit. (fn. 5), pp. 107 et seq.
Due to the difficulty of confirming in a few lines the degree of autonomy of the *lex sportiva* in relation to the legal orders likely to restrict its effectiveness, only a few main “trends” concerning the relationship between the transnational sporting legal order and the national, international and European Union legal orders will be mentioned.

Insofar as the international sporting bodies have internal legal statutes, they are, by nature, subject to the legal order of their headquarters. This being so, the liberalism of Western democracies permits the self-regulation of the associations, as long as they do not come up against the public order of the states concerned. Even in this last scenario, with regard to the multiplicity of sovereignties, the transnational standard deprived of effects in a given territory is likely to continue to be applied in the rest of the world. What is more, the increasingly widespread recognition of the CAS by sporting bodies is having the mechanical effect of dispensing with the state judge, and often, even of dispensing with the application of the states’ laws. The recognition by the states of the World Anti-Doping Code through the 2005 UNESCO Convention against doping is also helping to ensure that the sporting bodies’ anti-doping standards are applied, without the states’ laws presenting an obstacle any longer.

The issue of doping aside, inter-state solidarity is too weak in the sporting field for the international legal order to be able to channel, or even just effectively rival, the *lex sportiva*. At European Union level, on the other hand, the autonomy of the *lex sportiva* is likely to be affected as soon as its standards have an economic scope, which is increasingly the case as a result of the commodification and professionalization of sport since the Samaranch era. This is because the integration of twenty-seven states into a single legal order has effectively permitted the transnational standard to be countered. The loss of autonomy is only limited, however, by the recognition of sport’s peculiarities by European Union law.\(^{47}\)

### IV. Conclusion

The concept of transnational sports law therefore offers a suitable theoretical framework for the analysis of the system of relations forged between the sporting legal order and the “public” legal orders – the sole obstacles to the unlimited development of the *lex sportiva*.

\(^{46}\) For a more in-depth examination of this question, see *F. Latty*, La *lex sportiva* – Recherche sur le droit transnational, op. cit. (fn. 9), pp. 415 et seq.

Rudolf Streinz

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