

SORBONNE-ICSS PROGRAMME
ON ETHICS AND SPORT
SECURITY

REPORT

**FIGHTING AGAINST THE MANIPULATION
OF SPORTS COMPETITIONS**

NOVEMBER
2014

Part 2
Stakeholder Logic
and
the manipulation of Sports Competitions

CONTENTS OF PART 2

PART TWO. STAKEHOLDER LOGIC AND THE MANIPULATION OF SPORTS COMPETITIONS.....6

Title 1. Understanding the Manipulation of Sports Competitions through the Economic Rationality of the Stakeholders.....7

Chapter 1. Identifying the Stakeholders, their Interests and their Risks7

Section 1. Description of the Stakeholders.....7

Section 2. Identifying the Victims of Fraud and Evaluating the Consequences of Fraud by Victim Type..... 17

Chapter 2. Identifying the Economic Rationality of Stakeholders27

Section 1. Bet Fixing and Fraudulent Sports Bets: Environment and Mechanisms27

Section 2. Analysis of Sporting Fraud according to the "Economics of Crime" Theory 35

Section 3. Renewal of Analysis: Interactions between Fraudulent Sporting Bets and Legal Sporting Bets.....41

Chapter 3. Recommendations Based on the Analysis of the Economic Rationality of Stakeholders 56

Section 1. The "Economics of Crime" Point of View.....57

Section 2. Renewal of the Economic Analysis67

Section 3: The Optimum of a Sporting Community 82

Title 2. Understanding the Ethical Challenges of the Manipulation of Sports Competitions by the World Public Opinion 100

Chapter 1. Identifying Ethical Issues 100

Section 1: Sports Ethics, from General Principles to the Call for Rules: Methodological Aspects 105

Section 2. Sport Ethics: Practical Problems and Conflicts of Values 132

Section 3. Responsibility and Institutions: The Search for Remedies 165

Chapter 2. Construction of Discourse on Sports Ethics	183
Section 1. Production of Ethical Statements in Sports (around 1945 – 1975)	194
Section 2. Biographical Research on the Dispositions and Stances of Ethical Producers and “Carriers”	206
Section 3: The Relationship between the Bodies Spreading Ethical Principles and the Governing Sport Institutions.....	216
Chapter 3. Understanding the Semiotic Discourse on Sports Ethics	225
Chapter 4. Expertise in Sports: A Major Ethical Stake; from Lobbying to Citizen Defence	233
Title 3. Understanding the Manipulation of Sports Competitions by Stakeholders with Regulatory Power	240
Chapter 1. Sports Institutions Faced with the Challenge of the Manipulation of Sports Competitions	240
Section 1. History of Sports Institutions and Sports Ethics.....	240
Section 2: Construction of a Sports Public Order and the Fight Against the Manipulation of Sports Competitions (Jurisprudential Approach).....	314
Section 3. Understanding the Stakes of Combating the Manipulation of Sports Competitions by Sports Institutions in Terms of Governance	327
Chapter 2 - Public Authorities in the Face of the Challenge of Manipulations of Sports Competitions	380
Section 1 - The Universal Awareness of the Stakes of the Manipulation of Sports Competitions.....	381
Section 2. Impact of the International Agenda on National Agendas	432
Chapter 3. The Sharing of Responsibilities between Sports Institutions and Public Authorities in the Fight against the Manipulation of Sports Competitions	452
Section 1: Origin, Scope, and Nature of the “Principle” of the Autonomy of the Sporting Movement	453
Section 2: Definition of the Autonomy of the Sporting Movement is in the Context of Combating the Manipulation of Sports Competitions	474

PART TWO. STAKEHOLDER LOGIC AND THE MANIPULATION OF SPORTS COMPETITIONS

The manipulation of sports competitions is a phenomenon underpinned by a powerful economic rationality (**Title 1**) the stakes of which, for world public opinion, go beyond mere sports ethics (**Title 2**). Match-fixing activities motivated by the prospect of gains from fraudulent sports bets constitute a striking example of this reality. Faced with this phenomenon, all stakeholders who possess regulatory powers and who are likely to participate in order to prevent or repress the manipulation of sports competitions have provided their own answers, along different timelines and through a variety of tools. Today, it is essential that these stakeholders, sports organisations and sports authorities act in a complementary manner (**Title 3**).

Title 1. Understanding the Manipulation of Sports Competitions through the Economic Rationality of the Stakeholders

This task requires identifying the stakeholders, their interests and their risks (**Chapter 1**) as well as the rationality that guides their actions (**Chapter 2**). The school of “crime economics”, whose analysis grid will be renewed, paves the way for strong recommendations (**Chapter 3**).

Chapter 1. Identifying the Stakeholders, their Interests and their Risks

It is necessary to understand the logic of the stakeholders prior to taking action towards modifying their behaviour. There are four types of parties involved: betting operators, gamblers, sports events organizers and public authorities.

Section 1. Description of the Stakeholders

In addition to operators (§ 1), bettors (§ 2), sports entities (§ 3), and authorities (§ 5), one must be careful not to forget the sports betting markets (§ 4), which provide a space in which the stakeholders' logic is deployed.

§ 1. The Operators

The development of sports betting followed the same paths as the ones trodden by market finance in the late 1980's: the use of computers led to a dematerialization of practices. It has also enabled the development of many new betting formulas and increased transaction volumes (which remain more moderate compared to finance)¹. The use of new technology has not only allowed a decrease in the cost of performing transactions significantly, it has also initiated a structural development of the offer on the market: with physical networks, the returns were more or less stable, whereas the fixed cost of an internet offer may be reduced following an increase in demand². There is therefore a tendency for natural monopoly, *i.e.* that one stakeholder can potentially capture the entire demand at minimum cost.

This perspective leads the operators in a race for growth to lower production costs. To this end, the competition circumvents the previous rules that excluded the types of bets that are most suitable for manipulation. In the UK, for example, bookmakers refrained, by gentlemen's agreements, from placing bets on a single football game (betting has to be done on at least three games), or from laying bets.

¹ See *supra* Part 1, Title 1, Chapter 2, Section 1, § 3.

² Thus, Betfair has grown from 31,000 transactions per day in 2001 to 1.7 million in 2006 and \$ 7 million in 2011. See "Stephen Morana Appointed as Interim CEO of Betfair", available at [<http://corporate.betfair.com/media/press-releases/2011/14-12-2011.aspx>]; see also "Betfair launches in Australia with perfect score", available at: [<http://www.zdnet.com/betfair-launches-in-australia-with-perfect-score-1339271182/>].

On the continent, operators in a monopoly situation generally offer mutual bets on several games (like the famous Italian *Totocalcio* which covered fourteen games), hence the appearance of bets on isolated matches, lay betting (initially via markets or betting exchange³), or "derived" bets which are much easier to manipulate than the previous formulas.

On the one hand, the pressure of online competition has also levelled out the margins: since the rate of return for bettors has almost doubled (from about 50% to over 95% in some countries), the opportunity to bet on an event and the computerization of betting have led to a decrease of more than 95% for the cost of bets. On the other hand, volumes have increased drastically: between 2000 and 2010, the gross gaming revenue in the European Union's 28 states increased from 2.2 billion Euros,⁴ as well as an average annual growth rate that exceeded 15%. But does the increase in volumes (and decrease in prices) evenly benefit all bettors?

§ 2. The Bettors

There are presumably many types of bettors.⁵ Prior to the advent of the globalisation phenomenon, many bettors were enthusiastic – about the sport, about their team and in most cases about betting in general. This enthusiasm led bettors in some cases to keep playing until spending a substantial part of their income.⁶

Of course, except in pathological cases, (Dostoyevsky's Gambler remains a perfect example of such a pathology⁷), these bettors set aside a limited budget for their passion (their demand varies inversely with the price so as to keep the budget constant), but this can change with income.⁸

³ It is a betting system in which the bookmaker serves only as a platform for the meeting of bettors. It is a system of exchanging bets, based on the principle of balance between supply and demand. The purchase of the bet, or "backing", is to bet on an event. The inverse of "backing" is "laying", which means betting against the event.

⁴ GBGC and CK Consulting.

⁵ Sociologists have distinguished these categories, see for example INSERM (2008), *Jeux de hasard et d'argent : contextes et addictions*, Paris, Les Éditions Inserm or R. LEWY, "Existe-t-il un profil psychosociologique particulier en fonction de la pratique de tel ou tel jeu?", *Les Cahiers Espaces, Casinos et tourisme*, no. 38, October 1994, pp. 145-158. While this is not always the case, economists sometimes seek to characterise the players. For illustrations, see B.R. HUMPHREYS, L. PEREZ, "Who Bets on Sports? Characteristics of Sports Bettors and the Consequences of Expanding Sports Betting Opportunities/¿Quién apuesta? Características de los apostantes deportivos y consecuencias de Estudios de Economía Aplicada", *Estudios de Economía Aplicada*, vol. 30, 2012, pp. 579-598. The classification we propose here is based on relative intuition concerning the sustainability of the practice. This classification was reproduced in this report, see *supra*, Part 1, Title 1, Chapter 2, Section 1, chart on types of players.

⁶ In the French case, the average of 50 Euros per month for a provided income of 1,750 Euros (less than 3%), as shown in connection with the investigation of the Regulatory Authority for Online betting, "Sociologie des joueurs en ligne", March 2013, available at: [<http://www.arjel.fr/IMG/pdf/sociologie-player-2013039.pdf>].

⁷ Libro, 2003.

⁸ It should be noted that the demand for gambling in general has significantly declined in Germany since 2007 and in Spain and the Netherlands since 2008, probably because of the economic crisis. In support of this psychology of "recreational bettors" may be mentioned Levi Perez and BR Humphreys, "The Income Elasticity of Lottery: New Evidence from Micro Data", *Public Finance Review*, Vol. 39 (4), 2011, pp. 551-570, July, showing that the demand for lottery varies depending on the income of agents while J. GARCIA, L. PEREZ, "La (Inelástica) Demanda De Juegos Lotto", *Revista de Economía Aplicada*, Universidad de Zaragoza, Departamento de Estructura Económica y Economía Pública, Vol. 21 (2), 2013, pp. 91-113, support the idea of a budget dedicated to lottery tickets which would be insensitive to the expected gain and thus the "price" of the bet.

On the contrary, there are bettors who, *on average*, derive positive gains and can therefore, in theory, produce an income. Of course, their primary interest is not the subject of the bet but the gain itself: we call them *opportunistic* bettors to distinguish them from enthusiasts (by their betting medium) or *recreational* bettors who, in general, accept losing. This distinction is at the same time sociological – it is possible to identify two groups of bettors by according to the state of their annual betting account – and analytical, when a particular bet is considered: enthusiasts represent demand while opportunists represent supply. Presumably, the subsequent gain from cost reduction was different for these two populations.

For enthusiasts, considering that the gain is less important than the context of the bet (sociability, enthusiasm for the show or for the team, excitement related to the bet, *etc.*), cost reduction has no substantial significance. However, opportunistic bettors purely interested in financial gains have benefited from the decrease of the cost of transactions and from opportunities related to the development of online games: in fact, they can gain more from the same bet, develop a wider volume of activities with the same capital, and eventually draw out higher revenue from this activity.

In addition, *opportunistic bettors* have access, via betting exchanges, to new gambling formulas once reserved to bookmakers (such as playing against or lay). The same betting exchanges allow bookmakers to limit their exposure: while they must commit to serve all demands when they publish the odds as bookmakers, as they are clients of betting exchanges, they can choose the number of contracts they agree to;⁹ in this way, they can hedge their position as bookmakers. Thus, the practices of bookmakers and opportunistic bettors are undeniably close, to the extent that they often use the same tools.

An important issue is the proportion of each type of bettors. Through an analogy with the food chain (it takes a lot of small fish to feed a large whale), one can surmise that it takes many bettors losing a little to feed the few who are going to win a lot. If this analogy proves appropriate, then recreational bettors would be, as may be imagined, much more numerous than opportunistic bettors.

This would lead to completely revising the prevalent idea on the liberalisation of betting, which sees in the increase of volumes following decline in prices a sign of progression of the general welfare. One may think instead that nothing changed for most recreational bettors, that a few opportunist bettors are enriched, and that the real effect on the community depends on the impact on other stakeholders (in particular the State which collects taxes and organisers of sporting events).

⁹ They sell odds that may or may not be backed by other bettors.

One might object that these assumptions are fragile and are not supported by the empirical investigations that create a consensus among experts. There is, however, no consensus among specialists, and most studies on the price elasticity of demand provide conclusions that can only be made compatible¹⁰ with hypotheses such as those we propose. A recurring problem in empirical surveys is that they do not take into account the complexity of the environment of bettors.¹¹ In particular, the gambling class and household income are generally considered without describing all the existing substitutes of gambling, their cognitive demands in relation to the capacity of households considered, advertising, *etc.*

However, it seems that the number of opportunistic bettors has increased considerably in recent years, but also the variety of gambling practices to the point where traditional conflicts between enthusiasts and opportunists, or between bettors and bookmakers should be replaced by a continuum of very diverse usages that borrow their methods from a world foreign to the sports world and sports betting. For example, ancient traders developed algorithms comparable to those used in the financial market today. On a smaller scale, informed amateurs can exploit differences between different operators through complex arbitrages. Other techniques, developed by organised crime networks, can also benefit from this activity: particularly “Smurfing” (dividing large sums between a large number of “soldiers” or “smurfs”) which allows in this context to bet considerable amounts distributed across tens or hundreds of bookmakers.

Does this mean that all gamblers follow the new entrants and traditional operators are doomed to extinction? From this viewpoint, an accurate study of the price elasticity of demand of the gamblers per category seems to be missing. If the cost of access to offers such as *Betfair* is prohibitive for a significant part of the bettors (because betting exchanges require intellectual agility), the progress of education in new technologies could gradually erode the cultural barrier. This perspective has led to a mimetic reaction from operators who all thought that the first to commit to the dismantling of traditional (auto) regulations would gain a competitive advantage that could prove decisive. However, opportunistic bettors need recreational bettors that guarantee a positive income flow (from which they derive their own). However, it is obvious that many gamblers do not only consider the monetary profits of gambling, but also the convenience, the familiarity with the operator and the trust they place in him.¹² This suggests that the demand for bets increases when the prices fall, but the elasticity for recreational bettors may not be very high (an increase would result from opportunistic bettors or unwanted fixers), at least in the short term.

¹⁰ A recent report, written for the debate in the Dutch House of Representatives, shows the difficulties of interpretation of a literature that sometimes seems contradictory. P. WILMS, I. BLANKERS, K. DOUMA, “Substitutie tussen online en offline kansspelen – Eindrapportage”, *Aarts De Jong Wilms Goudriaan Public Economics*, 2011.

¹¹ However, the idea of substitution between betting practices allows reasoning based on lottery or casino games, see for example M.E.L. FARELL, I. WALKER, “A time series analysis of UK lottery sales: Long and short run price elasticities”, *Oxford Bulletin of Economics and Statistics*, 61(4), pp. 513-526, repeated by D. FORREST, L. PEREZ, «Football pools in: L. VAUGHAN WILLIAMS, D. SIEGEL (eds.), *Oxford Handbook of the Economics of Gambling*», Oxford University Press, 2013 or R. THALHEIMER, M. ALI, “The demand for parimutuel horse race wagering and attendance”, *Management Science*, 41(1), 129-143, 1995 and “The demand for casino gaming with special reference to a smoking ban”, *Economic Inquiry*, 46(2), 273-282, 2008. Though these studies sometimes distinguish between short-term and long-term elasticity, there are no distinctions between the categories of bettors.

¹² ARJEL, “Sociologie des joueurs en ligne”, *op. cit.*

Will we get a clearer picture of the behaviours of bettors in the long term? Certainly, studies will multiply, often at the request of betting operators looking to convince governments of the need to lower taxes to benefit from additional tax revenues due to the increase in demand. The problem with these studies is that they are often biased by the interests that funded them.¹³ Even those carried out for a sincere search for a more detailed knowledge generally rely on partial microeconomic investigations that are not capable of taking into account the precise context of the individual decision-making process. Macroeconomic data is therefore necessary to put into perspective the microeconomic data, in particular to calculate the income-elasticity and price-elasticity of the macroeconomic demand. Curiously, while their existence should naturally originate from the standardisation of national accounts,¹⁴ they are explicitly released only by Spain¹⁵ and France.¹⁶ Since the data exist and since it is virtually cost-free to publish them, it seems absolutely necessary to do so in order to improve the knowledge of the bettors in the interest of all the parties.

§ 3. Sports Entities

The effect of the globalisation of betting on sports entities cannot be analysed unequivocally. Thus, while the development of bets can lead to an increase in their revenues (through a betting right implemented in Australia or France for example), the American professional leagues, on the contrary, believe that the authorisation of betting would make them lose their revenue from advertisers and viewers who are against the practice of betting.¹⁷

¹³ A striking example is the report by MAG Consulenti Associati, "Jeux en ligne" in *The French Market - Key features, Strengths and Weaknesses of the French legal gaming offer*, 03/02/2011. This report written by Italian consulting firm MA-ca.it at the request of an unknown client represents the core of the reasoning of the European Gaming and Betting Association. On this point, see for example [<http://www.egba.eu/media/1107-EGBA-contribution-to-the-Green-Paper-on-online-gambling-in-the-Internal-Market.pdf>]. In fact, MAG-CA shows at p. 17 that the French gambling market would be paralysed by heavy regulation and taxation. Although the subject of gambling in general is beyond the scope of this report, we will focus on sports bets, almost 75% of which were made illegally in France in 2010 according to MAG-CA. This proportion is based primarily on an unverifiable number: there is no methodological justification of the volume of illegal bets in the report of MAG-CA. In addition to this first issue, the legal market considered by MAG-CA does not include physical bets whose volume in 2010 is even more important compared to online bets that were only allowed starting 1 July. Finally, the authors of MAG-CA studied bets and not the net gaming revenue, *i.e.* what the operator keeps when the gains of the bettors are paid. To go from bets to the net revenue, one must know the rate of return for bettors: the ARJEL report indicates 81% for legal operators, but for the alleged black market, one has to make an assumption. For a 93% rate of return for bettors (low estimate corresponding to the average of online sports betting operators based in countries with tax advantages), the gross revenues of fraudulent bets would be 23% of the total (against 77% for legal bets). For a 98% rate of return for the bettors (assumption corresponding to the practices of Asian operators), the gross revenues of fraudulent bets would only be 8% of the total. In all cases, the numbers of MAG-CA are biased to serve the interests of commercial operators of sports bets.

¹⁴ The International Standard Industrial Classification (ISIC) of the United Nations, in its 4th revision, contains a 92nd "gambling and betting activities", see UN (2009), International Standard Industrial Classification of all branches of economic activity (ISIC) - Revision 4, NY, United Nations; downloaded from: [http://unstats.un.org/unsd/publication/seriesM/seriesm_4rev4f.pdf]. The European Union revised in 2008 its Statistical Classification of Economic Activities in the European Community (NACE) to make this version 2.0 compatible with ISIC; it also includes a Division 92, "Gambling and betting Activities": Eurostat (2008), Nace Rev. 2, Statistical Classification of Economic Activities in the European Community, Luxembourg, European Communities, available from: [http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-RA-07-015/FR/KS-RA-07-015-FR.PDF]. However, the general databases (World Bank), and even the most specialised ones (such as the OECD's STAN) do not break down the accounts of *section R* (Divisions 90-93).

¹⁵ Which separately publishes on its website the accounts of Division 92, see [<http://www.ine.es/jaxi/menu.do?type=pcaxis&path=/t12/a119/a01/&file=pcaxis>].

¹⁶ Two numbers of the *INSEE Première* are dedicated to gambling (nos. 1016 and 1493).

¹⁷ See for example D. REICHE, "The Prohibition of Online Sports Betting: a Comparative Analysis of Germany and the United States", *European Sport Management Quarterly*, 2013 - 13:3, pp. 293-314.

More generally, some entities realised the risks associated with the manipulation of bets, and initiated a few years ago an expensive work of monitoring and risk management:¹⁸ an ARJEL report also shows that expenses of this type incurred by the French Tennis Federation increased by almost 80% between 2010 and 2012.¹⁹ These contrasting situations show that it is impossible to stick to generalities, and it is therefore necessary to refine the analysis to assess specific situations. Therefore, we must reason according to sources of income for sports organisations:

- *Broadcasting* : TV rights only concern important leagues, but many online betting²⁰ operators are now broadcasting, via the Internet²¹ (live streaming), sports events on which they offer bets (live betting). By doing so, they contribute to increasing the visibility of certain minor competitions. As we have seen, the increase in the volume of bets placed on sports events will create a window of criminal opportunities: the sporting event generates much interest (and therefore a lot of betting) making it more interesting to manipulate. In sum, the risk of match fixing motivated by the prospect of winnings through fraudulent sports bets (MFFB) increases in parallel with the degree of visibility of the sporting event made possible by the betting operators' live online broadcast.

Thus, in accepting the betting operators' money (via selling the rights to internet broadcasting), federations accept, indirectly and implicitly, an increase in their exposure to the risk of MFFB. In fact, they open the door to bettors worldwide (who are more likely to bet on an event they can watch online, even if that option is not a necessity, many bettors placing their bets without following the match that is streaming live), who generate in return enough cash to attract fixers.

- *Sports sponsorship*: various betting operators have established, when the national legislation allows it, commercial ties with professional teams. Betting operators also showcase this active sport funding by their industry. In addition to the potential conflict of interests²², not studied here, it is legitimate to ask whether sports funding by a betting operator is any different from that made by a bank or a car manufacturer. At an initial level of analysis, any action that contributes to the increase of the volume of bets placed on

¹⁸ it is necessary to distinguish between safety and operational risk management (including compliance with certain obligations, see Sections 3, 18 and 27 of Law No. 2010-476 of 12 May 2010 concerning the opening to competition and the regulation of the sector of betting and online gambling) and the problems associated with "bad governance", which cover rather different issues. Regarding the operational risk management, it is also necessary to distinguish the management of operational risks on a daily basis, which is quite effective, from the management of systemic risks in the medium and long term, which is more complex.

¹⁹ ARJEL, "Rapport de l'ARJEL sur le droit au pari", February 2013, p. 50, available at: [<http://arjel.fr/IMG/pdf/droit-au-pari-20130128.pdf>].

²⁰ Bet365 (pioneer and leader), Sportingbet, Bet-at-home, Betfair (equestrian), Bwin, Unibet, William Hill, Expekt, PaddyPower, PMU BetClick, etc.

²¹ Made possible by improving Internet bandwidth. It remains advisable to have a greater than 1 mb/sec throughput and an advanced version of Adobe Flash Player to "fully enjoy the experience". See: [<http://www.bettingwell.com/sports-betting-guide/online-sports-betting/live-streaming-matches-matches-and-fixtures-live-bookmake#heading2>].

²² Appears when an operator, whose commercial interests are related to the success of the sponsored team, offers bets on the team in question

matches of a given team increases the risk of MFFB. On the next level, the sponsorship of teams by betting operators will be more or less problematic depending on the category of the latter. Take the example of the English Premier League (hereafter, EPL) and separate the bookmakers into the following two categories:

- Betting operators dealing with EPL teams who exclusively hold the *EEA/Whitelist*²³ license²⁴: there is therefore a synergy between the sponsor and the entity that targets the United Kingdom's consumer market, where the bookmakers generally retain significant parts of the market²⁵.
- Betting operators dealing with EPL teams holding an *EEA/Whitelist & Cagayan*²⁶ *double-license*: Although the share of illegal bets that originate through Cagayan channels is not precisely known, it is considered very significant to some operators²⁷. It is therefore possible to consider equivalent figures for all operators established in this little province in the Philippines, which is the only one that allows online betting in Asia (CK), apart from the public monopolies in certain States. These shady betting operators seek to use the visibility of English teams in Asia to reach the Asian²⁸ betting markets. It should be noted that the English Premier League is increasingly under demand (And broadcasted) in this region of the world²⁹. Invoking the image of an English Premier League club strengthens the consumers' trust in their local betting operator. Although their combined market share in the United Kingdom does not exceed 8%, they sponsor 70% of EPL teams (90% of EPL teams have at least one betting operator among their trading partners).

²³ The 2005 Gambling Act prohibited online gambling operators established outside Great Britain from advertise with players residing in the UK, unless located in one of the countries belonging to the European Economic Area (EEA) or the list called "white list". The Gambling (Licensing and Advertising) Act 2014 did not change this rule.

²⁴ PaddyPower, 32Red, Bwin, Bet365, MarathonBet.

²⁵ Bet365 (19% of the UK market), PaddyPower (12%).

²⁶ Sbobet, 12bet, 188Bet, 138Bet, TLC88, dafabet, Fun88.

²⁷ C. KALB, P. VERSCHUUREN, *Blanchiment d'argent, un nouveau fléau pour les paris sportifs*, IRIS 2013, indicate a figure over 85% for Unibet and Bettson, and 95% for Sbobet.

²⁸ Mishcon de Reya, "Betting Tie-Ups Become a Football Fixture", 22 August 2013, available at: [http://www.mishcon.com/assets/managed/docs/downloads/doc_2699/GamblingCompliance_Betting_Tie_Ups_Become_A_Football_Fixture_23_08_13.pdf].

²⁹ Audience breakdown for the 2011/2012 season: 31% in Asia, 23% in Europe excluding UK, 16% in UK, see Barclays Premier League, "Research and Insight season 2011/2012", available at: [<http://fansurvey.premierleague.com>].

Sponsorship of English Premier League Teams by Betting Operators³⁰

Premier League 2013-2014	Bookmaker sponsoring (Y/N)	Bookmaker(s)	Licence EEA/'Whitelist' (Y/N)	Licence Cagayan (Y/N)
Arsenal	Y	PaddyPower, Bodog	Y (île de man), Y (Antigua)	N, Y
Aston Villa	Y	32Red	Y (Gibraltar)	N
Cardiff	N (2009-2011)	SBOBet	Y (île de man)	Y
Chelsea	N (2011-2012)	188Bet	Y (île de man)	Y
Crystal Palace	Y	12Bet	Y (île de man)	Y
Everton	Y	PaddyPower, Dafabet	Y (île de man)	N, Y
Fulham	Y	MarathonBet	Y (Alderney)	N
Hull City	Y	SBOBet	Y (île de man)	Y
Liverpool	Y	188Bet	Y (île de man)	Y
Manchester City	Y	PaddyPower, 188Bet	Y (île de man), Y (île de man)	N, Y
Manchester United	Y	Bwin, HKJC	Y (Gibraltar), N	N, N
Newcastle	Y	138Bet	Y (île de man)	Y
Norwich City	Y	SBOBet	Y (île de man)	Y
Southampton	Y	SBOBet	Y (île de man)	Y
Stoke City	Y	Bet365	Y (Angleterre)	N
Sunderland	Y	TLC88	Y (île de man)	Y
Swansea City	Y	SBOBet	Y (île de man)	Y
Tottenham Hotspur	Y	Betfred, Fun88	Y (Gibraltar), Y (île de man)	N, Y
West Bromwich Albion	Y	TLC88	Y (île de man)	Y
West Ham United	Y	SBOBet	Y (île de man)	Y

It should be noted that the Gambling Act (2005)³¹ prohibited Premier League teams from advertising betting operators or casinos that are unlicensed in one of the countries of the EEA or those that are not on the Gambling Commission's white list³². It is the same for the jerseys of foreign teams playing on British territories during international competitions. Private betting operators (Sbobet, ibcbet, 188bet, etc.) set up in one of the countries on the white list (mainly the Isle of Man) to reach the Asian consumer markets indirectly, in which the proportion of illegal bets remains significant. Christian Kalb and Pim Verschuuren (2013) presented figures ranging between 80% and 95%. In accepting the sponsorship of Cagayan betting operators, English clubs (and their regulators) contribute in stimulating the development of illegally placed bets. This English model, amended in 2005 in order to allow local operators to survive in a competitive and globalised market, seems to show some limitations.

³⁰ Status on 1 February 2014. Colour code: white = team sponsored by a betting operator holding an EEA/Whitelist licence; yellow = team sponsored by a betting operator holding a licence in the Cagayan province; grey = team formerly sponsored by a betting operator holding a licence in the Cagayan province; green = only Premier League team sponsored by a betting operator that does not hold an EEA/Whitelist or Cagayan licence.

³¹ Available at: [<http://www.legislation.gov.uk/ukpga/2005/19/contents>].

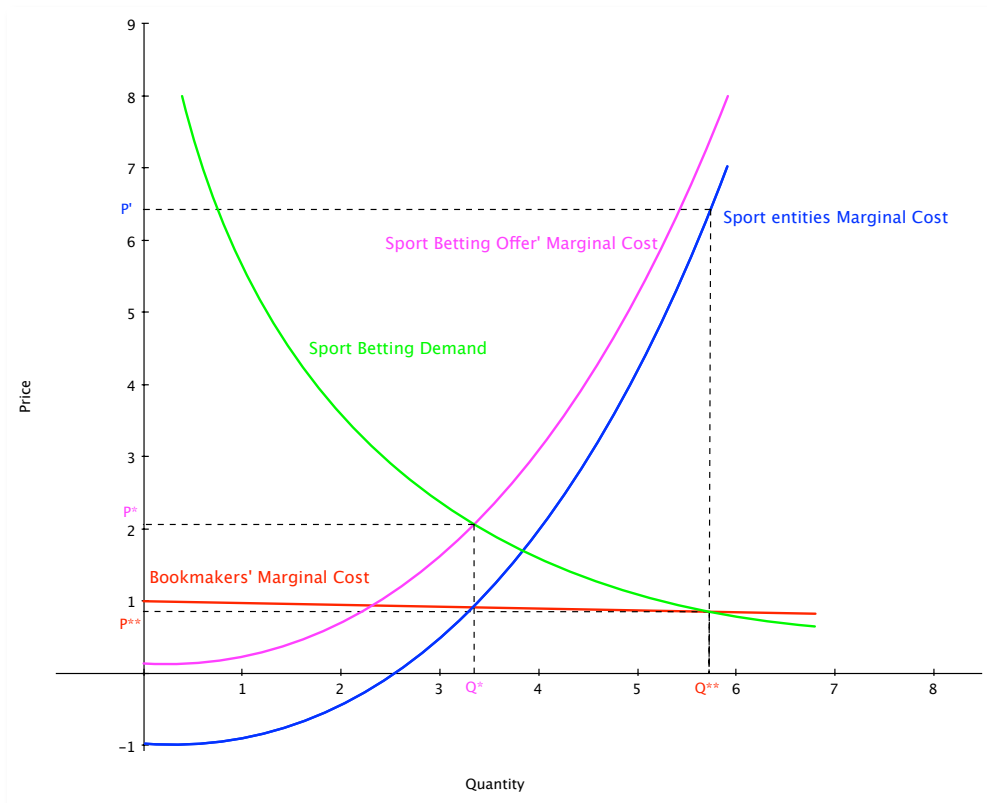
³² Antigua and Barbuda, Alderney, Gibraltar, Isle of Man and Tasmania.

It is possible to summarise these different behaviours after Dietl (2012),³³ by distinguishing two specific effects of variable magnitude depending on the case: on the one hand, the increase in the volume of bets attracts indirect revenues (notoriety, spectators and more advertisers); on the other hand, this increase in the volume of bets can attract fraudsters. Also, *sports entities want an increase in betting supply at the expense of rising costs: the latter could even be negative as long as the volume of bets remains low,³⁴ but beyond a certain threshold (for example, when the given sport creates the majority of bets placed worldwide) cost growth becomes exponential with respect to the volume of bets.*

§ 4. The Sports Betting Markets

The subject of betting formulas relative to an event was already evoked. At a more aggregated level, all bets related to all events organised by a sports entity in the course of a fiscal year should be considered. This is what we call a sports betting market. It allows the three groups of stakeholders that were just described to meet, which may well include the following conditions:

Figure 1- Competitive Equilibrium and the Optimum of Betting Stakeholders



³³ H. DIETL, C. WEINGÄRTNER, "Betting Scandals and Attenuated Property Rights - How Betting Related Match-fixing can be Prevented in Future", Working Papers, University of Zurich, Institute for Strategy and Business Economics (ISU) 0154, University of Zurich, Institute for Strategy and Business Economics (ISU), 2012.

³⁴ Indeed, bets lead to an increased visibility of sporting events, a form of advertising that is interesting even if it is expensive, but if it is less expensive than more traditional forms of advertising.

As we have observed, the demand for bets (from many categories of gamblers) increases when the prices fall: demand is therefore decreasing in respect to the cost. In terms of supply, the increasing returns of operators are represented in a supply curve that is also decreasing with the price. If we now consider the expectations of sports entities, the costs (essentially linked to the prevention of fraud) increase with the volume of bets.³⁵ The aggregate supply curve is the result of adding the costs of operators and entities.

The intersection of aggregate supply and demand determines an optimum for stakeholders (P^* , Q^*). However, if operators do not take into account the requirements of sports entities, the optimum will become (P^{**} , Q^{**}): a very low price and a large volume of bets (or very important revenue for operators, but with a small margin). For this quantity (Q^{**}), we notice that sports entities require a price (P') that is much higher, to properly combat fraud (by educating athletes and by prevention and repressive measures, all of which are costly). If they do not cover their necessary expenses, they are at risk, and this may even include the *collapse of their business model*.³⁶

§ 5. The Authorities

The market is an institution whose structure certainly depends on the habits, but also on the regulatory framework: it reveals the presence and work of authorities. In their regulative work, national authorities take into account the interests of stakeholders at a national level as represented in the political system. However, the importance given to stakeholders can vary greatly from one country to another. For example, in Sweden, the notion of autonomy of sports organisations is important; in the United Kingdom, bookmakers have a powerful influence. In general, European authorities are devoted to principles that allow safeguarding the interests of sports. This seems to be the case in the United States, where leagues are not in favour of the development of sports betting. *But in a country where the power of national sports entities remains limited, betting operators represent the dominant interest: for example, this is the case in micro-States, where operators form a significant element of the local economy (8% of the GDP in the Isle of Man³⁷, 20% in Antigua or Gibraltar;³⁸ but this information proved difficult to verify because the States concerned do not publish pertinent statistics on this subject, particularly not on the decomposition of national accounts into *divisions* consistent with the classification of the United Nations).* In this regard, it should be noted that the example of Antigua is particularly interesting because it shows how the interests of Antiguan authorities differ from those of the U.S authorities. As is the case with taxation, one can speak of States or uncooperative territories to designate those jurisdictions where the importance of the betting sector creates a potential conflict of interests with nations that organise sporting events.

³⁵ It is commonly considered that economic operators seek to maximise their profits. However, there are many examples of sports entities that are only interested in covering their operating costs: these entities are thus seeking to make their average cost equal to the price of the demand, while betting operators seek equality between the marginal cost and the price of the demand. This nuance does not change the following reasoning.

³⁶ See Part 2, Title 1, Chapter 1, Section 2, § 3.

³⁷ BBC News, "E-gaming to boost Isle of Man Employment", 15 January 2013, available at: [<http://www.bbc.co.uk/news/world-europe-isle-of-man-21029198>].

³⁸ Recruit Gibraltar, "E-gaming in Gibraltar in numbers", 25 January 2013, available at: [<http://recruitgibraltar.wordpress.com/2013/01/25/egaming-in-gibraltar-in-numbers/>].

There are several lists that identify uncooperative States or jurisdictions in terms of taxation, prudential regulations or money laundering³⁹, and one cannot stress enough the extremely deterrent effect of such a list as evidenced by the urge to make them disappear.

In fact, the first report published by the GAFI on the subject is no longer available⁴⁰ on the Internet today, the Standing Committee on Standards Implementation of the Financial Stability Board, that was committed in 2010 to publish a list of uncooperative States, never did this⁴¹, and the French Agency for Development did not publish the list it had conceived for its caretaker minister⁴².

In subsequent parts of the report, the focus will mainly concentrate on authorities that seek a social optimum as defined in the economic theory (Pareto optimum) in a political context where sports entities, betting operators and bettors are represented as well as... non-betting sports fans: this category has a strong interest in the absence of match-fixing and therefore in preventing sports betting, particularly bets that are most likely to damage the integrity of sport.

Section 2. Identifying the Victims of Fraud and Evaluating the Consequences of Fraud by Victim Type

Three categories of losses will be studied in ascending order of the number of people involved: sanctioned individuals (§ 1), manipulated bettors (§ 2) and sports leagues running the risk of collapsing (§ 3).

§ 1. The Punishment of Cheaters

Participation in fixing operations is punishable by fines, suspensions, lifetime bans and even prison sentences. However, the multiplication of problems since the early 2000s suggests that current penalties are not dissuasive, neither for athletes nor for the criminals who corrupt them. This problem can evoke the case of the United States during the 1970s, when it appeared to observers that the means of combating crime were no longer adaptable to the situation. The founders of the economics of crime advocated tougher penalties against offenders, in line

³⁹ See notably the Decree of 12 February 2010 adopted from the second paragraph of 1 of article 238-0 A of the general tax code (amended by Decree of 21 August 2014 – NOR: EFIE1314936A).

⁴⁰ FATF, *Report aiming to identify the non-cooperative countries or territories: improve efficiency, on the world scale, measures to fight laundering*, 22 June 2011. Available at: [http://www.fatgafi.org/NCCT_fr.htm](see for example [<http://www.oecd.org/fr/presse/legafidecidedenepasimposerdecontre-mesuresauxphilippines.htm>]), now only available at [<http://www.mafhoum.com/press2/71P31.pdf>].

⁴¹ Financial Stability Board, "Promoting Global Adherence to International Cooperation and Information Exchange Standards", 10 March 2010, available at [http://www.financialstabilityboard.org/publications/r_100310.pdf].

⁴² Le Monde, "Suisse, Panama... Paris met à l'index dix-sept paradis fiscaux", 27 May 2013, available at: [http://www.lemonde.fr/economie/article/2013/05/27/suisse-panama-paris-met-a-l-index-dix-sept-paradis-fiscaux_3418004_3234.html].

with the Republicans' political options.⁴³ This policy resulted in a fivefold increase in the prison population between 1980 and 2005⁴⁴.

This option appears as radical as it is ill-suited to the international nature of sporting fraud, since it is difficult to consider a hardening of this magnitude on a global scale. Still, the effectiveness of a sanction does not come solely from its nature, as one must also take into account the *probability* of it being imposed. First, the probability of the imposition of a sanction seems much lower in cases of sports manipulation than in common law offenses: the proof is that cases of manipulation are often an unexpected development of a criminal case. Thus, this probability should be used as a basis for improvement, since it is insufficient to provoke a fear of the consequences in those who engage in illegal activities. This question could be researched by collecting information from those who have been convicted of sporting fraud⁴⁵. But it may be necessary to analyse in more detail the mechanisms of fraud to be able to reflect on the particularities of sporting fraud: even if the use of the model of crime economy is inevitable, there is no reason to believe that solutions are the same as for ordinary crime.

§ 2. The Losses of Bettors

By definition, sporting bets always consist of redistributing the losers' bets (**A**) among the winners (**B** and **C**).

A. Redistribution of the Losers' Bets

As part of a parimutuel bet, this relation is simple since the operators and the winners share the bets (in the absence of tax levies) as illustrated in example 1.

Example 1- Gains from Pool betting⁴⁶

Situation	Bets	Gains
Match between AC Milan and FC Barcelona	Bettor W: 100 € on ACM	State: 50 € ⁴⁷
ACM wins	Bettor L: 100 € on FCB	Operator: 30 €
		Bettor W: 120 €

⁴³ Ronald Regan's "Get tough on crime"; R. GIULIANI, "broken window theory".

⁴⁴ Justice Policy Institute, "The Punishing Decade: Prison and Jail Estimates at the Millennium", May 2000, pp. 1-7; W.J. SABOL, T.D. MINTON, P.M. HARRISON, "Prison and Jail Inmates at Midyear 2006", *Bureau of Justice Statistics Bulletin*, June 2007, pp. 1-22.

⁴⁵ for a first approach, see *supra*, Part 1, Title 2, Chapter 3.

⁴⁶ It is known, however, that no operator offers pool bets on one match only in order to avoid fraud. Pool bets are then open on many matches (generally between 9 and 20).

⁴⁷ In the pool betting formulas, the State, in general, imposes bets directly (we assume here a rate of 25%).

In the other formulas, in particular fixed odds betting, it seems more difficult to precisely determine who will lose: indeed, if the betting operator wrongly estimated the probabilities, he could find himself in a situation where he has to pay from his own funds. However, we know that he is protected, either by the judicious pricing of his odds in order to exploit the bettors' cognitive bias (which he cannot do unless he is protected from competition), or by taking opposite positions in the betting markets (*hedging*).

Example 2 - Gains from fixed odds betting

Situation	Bets	Gains
Match between AC Milan (6,25) and FC Barcelona (2,7)	Bettor W: 100 € on ACM	Bettor G: $6,25 \times 100 = 625 \text{ €}$
ACM wins	Bettor L: 100 € on FCB	Operator: $200 - 625 = -425 \text{ €}$
		State: -85 €^{48}

The organisation of a refinancing by big bettors (like bookmakers) leads to the confusion of two questions, the first concerning the final payor and the other concerning systematic stability.

Example 3- Gains from fixed odds betting with hedging

Situation	Bets	Gains
Match between AC Milan (6,25) and FC Barcelona (2,7)	Bettor W: 100 € on ACM	Bettor W: $6,25 \times 100 = 625 \text{ €}$
	Bettor L: 100 € on FCB	Operator: $200 - 60 - 625 + 375 = -110 \text{ €}$.
ACM wins	Operator: 60 € on AMC on Betfair	State: -22 €
		Provider of hedge: $60 - 375 = -315 \text{ €}$

⁴⁸ The amount of *tax shortfall* depends on the imposition methods of operators. If the Gross Product of Games is imposed, the tax shortfall is proportional to the operator's loss (here Denmark's 20% is considered). It should be noted that it is not only the rate but the taxation system that influences how the State is interested in the results.

B. The Final Payor

When bookmakers hedge their odds, it is not clear who will actually bear the losses from fraud. The interest of the bookmakers in cases of fraud is proportional only to the part of risk that they retain: this means in particular that the bookmakers can be completely indifferent regarding cases of fraud⁴⁹. Beyond these theoretical facts, there is no information regarding the actual mechanisms for the transfer of risks that, although similar to those in the financial sector, do not justify them being monitored except when they produce a systematic risk.

C. The Stability of the System

One can imagine that in the face of abnormal volumes of bets (signalling a massive fraud), betting operators decide to hedge their bets by dealing with those among them that are willing to accept the risks. As a result of a fraud, hedge buyers cannot pay without soliciting their hedge providers who are insolvent. An imperfect secure risk-transfer mechanism would have given the illusion of stability and created the conditions of a collective moral hazard. Such a scenario is reminiscent of the *subprime* crisis and of all those financial crises prompted by an instrument thought to be effective but which actually dissimulated reality.

The purpose of this report is not to assess the likelihood of such a scenario: as has been evidenced⁵⁰, financial flows remain much smaller than real flows in the case of sports betting, whereas the opposite is true for general finance which, as a result, can destabilise the real economy. The main risk that bets burden sports with does not seem at the moment to be similar to the systematic risks of finance: rather, one should consider the risks of a collapse of a league, whose economic model and credibility would be eroded due to corruption.

§ 3. The Collapse of an Economic Model (league collapse)

In his article⁵¹ entitled “A Critical Mass of Corruption: Why Some Football Leagues Have More Match-Fixing than Others”, Declan Hill proposes an evaluation of the impact of scandals from match-fixing on the popularity (and financial health) of national football leagues. The hypothesis considered is that of the existence of a threshold for the degradation of the fans’ trust in matches organised by their national professional league. Hill warns against the risk of both sports and financial collapse, which occurred in certain national Leagues through terminating the championship and imposing severe disciplinary sanctions.

⁴⁹ C. EATON: “While this may be good for these betting businesses and for the governments that attract them to their shores, it also makes them attractive to criminals. As they already skate the borders of legality, and as they often hedge off betting bulges into the black illegal market to protect their commissions and profit margins, they are highly vulnerable to criminal attack and compromise. Even if they were concerned about losses due to betting fraud, it is extremely unlikely they would complain to any government agency, including where they are registered. It is more likely they would either take matters into their own hands or just ignore it and write it off. After all is said and done, it is the individual gamblers of the world who lose the most money in a betting fraud anyway, not the commission-taking, non-risk bookmakers that dominate the grey market.” in: C. EATON, “How Betting Fraud is Initiating and Financing the International Corruption of Sport”, ICSS, 13 March 2013, project number: SSI-12-118.

⁵⁰ See Part 1, Title 1, Chapter 1, Section 1, § 3.

⁵¹ D. HILL, “A Critical Mass of Corruption: Why Some Football Leagues Have More Match Fixing than Others”, *International Journal of Sports Marketing and Sponsorship*, Vol. 11, No. 3, 2010.

Specifically, the Chinese (*Jia A-league*) and Malaysian (*M-league*) championships are specifically analysed and therefore illustrate what the professional football world might expect. Current developments do not address the factors favouring the involvement of sports stakeholders in match-fixing (discussed later in the report), but rather the sector-based impact of the occurrence of scandals on sports entities. Also, on the one hand, the field of the author's study will be expanded, and on the other hand, a reading of certain scandals of manipulation of sports competitions through studying the evolution the sports federations' sources of revenue would be proposed.

Let us begin by defining the concepts (**A**) before presenting the financial consequences (**B**).

A. Definitions

A sports league is regarded as highly corrupt by Hill when the following three conditions are met:

- i. Frequent corruption and bribery, particularly in matches where one of the participants no longer has stakes to win (especially end of championship matches that are decisive to the promotion or relegation of one of the two teams⁵²).
- ii. Development of illegal betting networks in the country and/or cases of match-fixing during the season.
- iii. Institutional paralysis created by important connections between corruption in the sports world and corruption in the betting world.

A sports league can go from *highly corrupt* to *collapsed* when the two following conditions are met:

- i. the perception is widespread among the public that sports are just a huge theatrical performance, the loss of trust is total in the "glorious uncertainty of sports";
- ii. This perception can directly translate into public disaffection, with a marked decrease in the average level of stadium attendance (40% decline according to the author) and a loss in private investment of the same scale.

What are the subsequent consequences of these situations?

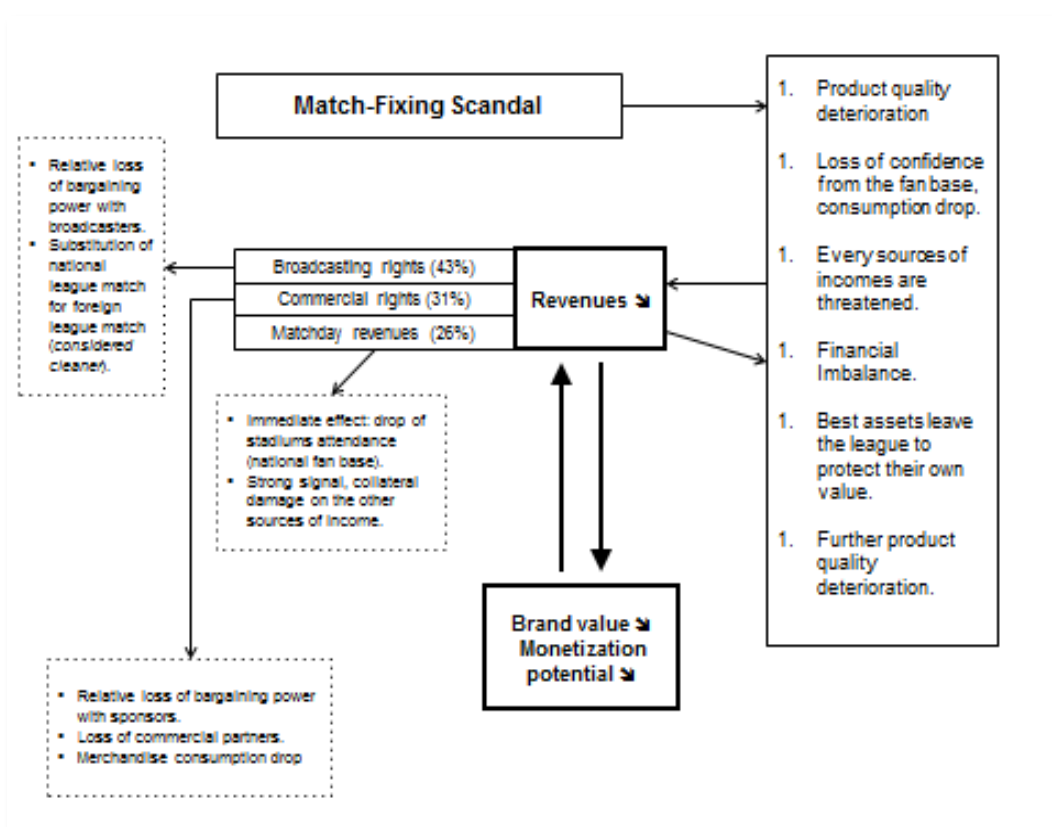
B. Approach through the Sources of Revenue of Federations

The absence of faith shown by fans in the integrity of a sporting event will incite a shift in their level of consumption, which will impact (directly or indirectly) all sources of revenue of teams and/or federations. The vulnerability of a sports entity to a scandal of manipulation of sports competitions will be much more important when the diversification of sources of revenue is at low levels.

⁵² On the questions of inciting at contests (contest design), see *infra* Chapter 3, Section 1, § 2, "Risk Management Elements of Sporting Bets".

A great dependence on a small number of rights holders (media or sponsor) will contribute to an effective collapse of some leagues. Without the possibility of amortisation or compensation, financial and sports bankruptcy will ensue, leading to a vicious cycle of debts (as observed with teams wishing to remain competitive, with a fall in revenues), from which it would be difficult to escape. Everything can change very quickly for a team (or league) that has suffered a brutal blow to its reputation.

Figure 2 – Negative Demand Shock: the Impact of a Match-Fixing Scandal on a National Federation⁵³



(1) Relative contributions of the federations' three sources of revenue, obtained by averaging the figures, were reported in the annual report 2011/2012 of 5 professional European leagues: Premier League (England), *Liga* (Spain), *Serie A* (Italy), *Bundesliga* (Germany), *Ligue 1* (France).

It is legitimate to ask why some leagues were able to withstand shocks of this nature. Armed with this grid of events, we will focus, in line with Declan Hill's article, on the trajectories of national football leagues facing scandals of manipulations of sports competitions and on the disparity in the resilience that has been observed.

⁵³ Deloitte, "Captains of Industry - Football Money League", January 2013.

Among the criteria common to collapsed leagues, the author retains: (i.) the observation (by the stakeholders) of a general climate of corruption, (ii.) the existence of a national market of illegal bets. These two criteria will increase the rate of participation of stakeholders in the manipulation of matches. *While it is now possible to bet anywhere in the world on any given sporting event, the approach and corruption of participants through organised crime remains a local issue. However, the illegality of sports betting tends to promote the development of criminal networks organising the black market. Citing Preston and Szymanski,⁵⁴ Hill stresses the importance of this criminal breeding ground according to its degree of infiltration in local sport. According to Preston and Szymanski, the combination of clandestine activity and a high number of bets would thus create the ideal environment for large-scale manipulations.*

The observations made by the author in the specific case of the Malaysian championship match correspond with the results of the 2011 study conducted by the International Federation of Professional Footballers (FIFpro):⁵⁵ on the one hand, the perception of the sports officials⁵⁶ corruption helps break down the moral barriers of some players;⁵⁷ on the other hand, illegal betting networks promote criminal infiltration in the local sporting community. What matters, however, is the last criterion related to the impact of introducing a replacement market on the consumer behaviour of fans facing a match-fixing scandal (1). The impact of match-fixing should also be considered in terms of stadium attendance (2) and commercial revenues (3) resulting from sponsoring, merchandising, licensing and other sources of revenue.

1. Broadcasting Rights and the Introduction of a Replacement Market (see *supra* Figure 2)

The sale price of broadcasting rights (first source of income for major professional sports federations) depends largely on the audience that the broadcast program can reach. *What drives big fans to stop consuming sporting events is not the mere fact that the league is highly corrupt, but the introduction of a choice of alternative consumption. A phenomenon of deferral of consumption demand may be observed from the local Asian Championships "festered" by corruption and scandals of manipulations of sports competitions, towards the European Championships, deemed cleaner, especially the English Premier League. This rejection of the audience is as intense as the proportion of bettors among its members.* The unpredictability of the outcome of a sporting event is a central element of its economic value, as a spectacle but also as a support for betting. In addition to the quality of the spectacle offered in the Premier League, this substitution phenomenon has allowed Asian consumers (spectators and bettors) to regain this interest associated with the uncertainty of sport.

⁵⁴ S. SZYMANSKI, I. PRESTON, "Cheating in Contests", *Oxford Rev. Econ. Policy*, 19-4, 2003, pp. 612-624.

⁵⁵ FIFpro, *Black book of Eastern Europe*, 2012, available at: [<http://www.fifpro.org/en/news/download-fifpro-black-book-eastern-europe>].

⁵⁶ Cannot be generalised in the atmosphere of the country's general affairs (Ranking CPI 2012: Malaysia (54th) vs. Singapore (5th), see Transparency International, *Corruption Perception Index 2012*, available at: [<http://www.transparency.org/cpi2012/results>].

⁵⁷ Such phenomena are studied by economists who place them in the category of "social interactions outside the market", see *infra* Chapter 2, § 3, B, "The contemporary economics of fixed bets".

The Malaysian⁵⁸ championship suffered a match-fixing scandal [1989-1994], and did not entirely collapse in terms of audience and stadium attendance until televised⁵⁹ broadcasts of Premier League matches were initiated. The same phenomenon is observed by the author following the scandal of the Chinese *Jia-League*⁶⁰ [2001-2004], when spectators neglected their national championship after regional⁶¹ channels began broadcasting matches. This factor explains, according to the author, the disparities in resilience between different championships affected by shocks of a similar nature and magnitude. A cited example is that of the *Football League First Division*⁶² which succeeded in retaining its consumers in a post-war England damaged by scandals of manipulations of sports competitions (for lack of something better?). *The globalisation and broadcasting of football weakens championships that are unable to provide a minimum threshold of integrity and drives them to a breaking point beyond which a fall in consumption will cause the collapse of the league.*

2. Stadium Attendance (see *supra* Figure 2)

Several studies have sought to highlight the response of fans to scandals of manipulations of sports competitions by focusing on the changing numbers (often public) of stadium attendance. It should be noted that it is difficult to rigorously attribute these changes to a “rejection” of match-fixing⁶³. Among the possible explanations (other than this form of “moral disapproval”), is the loss of competitiveness of the supported team (due to disciplinary sanctions by the federation or due to the departure of “star” players), or even episodes of violence, sometimes in parallel with scandals of manipulations of sports competitions (particularly in the case of the Italian *Calciopoli*). Whatever reasons the fans might have, the results confirm a significant and systematic decrease in the attendance of stadiums following the media coverage of scandals of manipulations of sports competitions involving teams from the 1st division.

It should be noted that these “match earnings” are more important for less popular championships, which do not have the needed diversity of resources to withstand a strong decline, even temporarily, in stadium attendance. A drop in the number of television audiences and in the level of stadium attendance decreases the attractiveness of these championships to sponsors. Beyond the reduction of the quantity of consumers, scandals tarnish the image of the championship, as far as rethinking the opportunity of building commercial ties with the latter.

⁵⁸ 16 teams upon its creation in 1988, including two from Singapore.

⁵⁹ Astro SuperSport, then Fox Sports Asia.

⁶⁰ First Chinese Division.

⁶¹ Guangdong Sports Channel, Guangzhou Sports Channel.

⁶² English First Division (1888-1992) before changing its name to Premier League (since 1992).

⁶³ B. BURAIMO, G. MIGALI, R. SIMMONS, “Corruption Does Not Pay: An Analysis of Consumer Response to Italy’s Calciopoli Scandal”, *Società italiana di economia pubblica*, XXIV Conferenza, 25 September 2012.

3. Commercial Revenues: Sponsoring, Merchandising and Licensing (see Figure 2)

Sports sponsorship is based and capitalises on the image (presumably positive) of the athlete-team-federation, through a process of cognitive association between the sponsor and the attributes and values of the sponsored entity. With the increased risk of manipulations of sports competitions, the relative attractiveness of some championships diminishes and the power to negotiate sponsoring contracts may evolve to the disadvantage of clubs and federations.

In some (extreme) cases, sponsors might withdraw from their investment by explicitly citing “ethical” reasons directly related to corruption and match-fixing.

Puma, the German sportswear company, and the ABSA Banking group withdrew their funding from the *South African Football Association (SAFA)*, explaining that the South African federation had failed to take adequate measures to respond to the allegations of match-fixing (such measures should have included the suspension of federation officials⁶⁴). In China, the main sponsor (Greentown China⁶⁵) of Zhejiang Lucheng, the Chinese 1st division team (*Jia A-League*) withdrew in 2001, also invoking match-fixing.

Country, Championship, considered period	Evolution of Stadium Attendance (post-scandal)
China - Chinese Jia A-league [2001-2004]	-31% ¹
Malaysia ¹ - M-League, Super League [1989-1993]	-40% ¹
Italy - Calcio [2004-2006, Calciopoli ¹]	-22% for guilty teams, -15% for other Calcio teams ¹
Greece - Greek Super League [2008-2010, Koriopolis ¹]	-37% ¹

Apart from a few exceptions, sponsors seem to avoid taking positions on the subject of match-fixing. Without denying the obvious, they demonstrate neutrality and rarely fuel debates. Indispensable to the survival of federations, sponsors have a powerful influence that constitutes leverage over federations; such is the case of the Emirates airline company that demanded results from FIFA regarding the fight against match-fixing as a condition to the renewal of their sponsorship⁶⁶ partnership.

⁶⁴ [<http://www.sabc.co.za/news/a/1aa8ac00417cb282ba2cfb30da795182/Puma-pulls-plug-on-Bafana-sponsorship-deal-20131710>]; [<http://www.sport24.co.za/Soccer/South-Africa/Puma-dumps-SAFA-over-fixing-20131017>].

⁶⁵ [<http://www.greentownchina.com/eng/global/home.php>].

⁶⁶ [<http://msn.foxsports.com/foxsoccer/premierleague/story/emirates-airlines-demands-fifa-reforms-extends-arsenal-deal-sepp-blatter-112312>].

It seems probable that the increasing number of scandals of manipulations of sports competitions will lead rights holders (sponsors and media) to reevaluate their risk management strategies. In an industry where one of the main sponsors of FIFA (Budweiser) manages to pass a bill lifting the ban on alcohol consumption in Brazilian⁶⁷ stadiums (during the 2014 world cup in Brazil), it is difficult to imagine that rights holders do not have the means to influence federations when the stakes are considered strategic enough.

Conclusion of Chapter 1

This chapter established the elements that draw different sports betting participants and the nature of fraud-related threats. One should avoid a naive point of view that would suggest, for example, that bettors are only concerned with the prices of bets (and therefore RRB), whereas, for example, bets represent for some players a passion for a team and an associated sociability, of which the bet is only a factor. Similarly, the position of States depends on their representatives: some may be more concerned with the interests of the sport, while others are close to betting operators as a branch of the financial industry in general (this is the case for tax havens that have been hosting online operators since the 2000s). This classification has two objectives: to identify the factors that influence the decisions of both parties in order to propose models of economic behaviour; identify possible allies in a campaign to fight against fraud. The example of tax havens demonstrates that, in certain jurisdictions, this fight has no relay and that it should be lead from the outside; the experience acquired while fighting against tax evasion and money laundering is valuable in this regard.

The issue of threats reveals the conflicts of interest between the stakeholders: although the sports entities and operators seem to have a common interest in increasing the volume of debts, this sharing of the same interests is corroborated only up to a certain point. It appears that the increase in volumes of debts undoubtedly attracts criminal organisations, which, as a result of this increase find an important source of profits while incurring a low level of risk. Betting operators can partially protect themselves against the effects of fraud because their bets constitute the earnings made by criminals, while bettors and sports entities sustain losses because it is their image that allows criminals to reap the gains. Fraud will not fail to tarnish this image to varying degrees, sometimes reaching complete discredit that could ruin the business model of a sports federation and lead to poor social consequences for employees, and for enthusiasts who would witness the collapse of their idols.

In order to prevent these dramatic consequences, the motives of fraudsters must be identified in order to outsmart them.

⁶⁷ "Brazil senate approves controversial world cup law", available at: [<http://www.bbc.co.uk/news/world-latin-america-18017540>].

Chapter 2. Identifying the Economic Rationality of Stakeholders

In order to take action against sporting fraud, one must understand how this phenomenon works. One must also study the factors that lead to fraud by examining the environment and mechanisms of match-fixing (**Section 1**) to report on its development and prevalence. An economic analysis of crime will be solicited (**Section 2**) although the sporting world requires the taking into account of the specific factors that allow the recurrence of fraud (**Section 3**) as well as taking a step back to grasp the logic of general interest (**Section 4**).

Section 1. Match-Fixing and Fraudulent Sports Bets: Environment and Mechanisms

The joint evolution of the sports industry and of sports betting created a very attractive environment for criminal organisations. If the phenomenon of match-fixing, motivated by prospects of gain achievable through fraudulent sports betting (MFFB), is in itself not new, its scale and diversity are reaching alarming levels.

There exists today a real match-fixing criminal market, primarily financed by gains achieved through sports betting (MFFB). The supply for this kind of manipulation of sports (fix) comes from participants in the match (who have the power to manipulate them), including referees; the demand for fixes originates from criminal organisations that use this privileged information (which allows the elimination of sports uncertainty) to extract fraudulent profits from a number of uninformed bettors. This demand for fixes is therefore directly derived from profits that could be made through fraudulent sports betting markets, which are also largely dependent on the level of cash flow. In the following paragraphs the stakeholders (§ 1) and the terms of such manipulations (§ 2 to § 5) will be presented.

§ 1. Stakeholders and Types of Fixing

English speaking authors (Forrest (2008)⁶⁸ for example) distinguish between petty crime and organised crime. In French, however, the notion of crime refers to a very serious criminal offense: there are therefore no small crimes, but offences and contraventions (**A**). Other alternative qualifications and classifications must be researched (**B**).

A. Classification According to the Type of Actors of Fraud

In order to demonstrate how organised criminal intervention deeply modifies the nature of the fraud, two cases, the characteristics of which allow opposition, can be chosen here

⁶⁸ D. FORREST, I. MCHALE, K. MCAULEY, "Risks to the Integrity of Sport from Betting Corruption", *Report for the Central Council for Physical Recreation by the Center for the Study of Gambling*, University of Salford, February 2008.

To illustrate *fraud without intervention of organised transnational crime*, we can imagine the case of two cyclists leading a race: one of them can, a few kilometres from the finish line, offer the other to "buy" the victory from him.

On the contrary, the trials of Bochum showed *real organised crime* that allowed fixing hundreds of matches.⁶⁹

So far, the distinction is clear, but where should the line be drawn between these two cases? For example, the scandal of English football in 1915 involved several players on each team: it was neither an individual fraud nor a fraud related to the intervention of foreign organised crime.⁷⁰

Perhaps it is therefore relevant to distinguish the *cases where one category of sports stakeholders is concerned* (players) and those that involve *several categories of stakeholders*: referees, club officials, intermediaries, etc. A criminal organisation would naturally suppose this plurality of types of participants. There is good reason to believe that, beyond a purely "ethical" approach, fraud linked to criminal organisations have much greater financial consequences than the others, which thus may be considered still minor.

B. Classification According to the Motives of Fraud

Another distinction can be useful; it is related to the motives of fraud. In fact, this could help fulfil the objectives proper to sports (in particular qualifying for a competition or continuing to compete in a championship), or solely serve as a *base for financial gain* (via bets or not).

Take the example of the two cyclists leading a race: a distinction between two cases should be made: the first case where they simply want to win and the case where they also make live bets seconds before the finish (for example through the help of an accomplice with whom they communicate during the race, which is done easily considering the means of communication at their disposal). The first case is a simple collusion between stakeholders. However, if one is to consider a fraud linked to organised crime, this would constitute a major event that would likely call into question the public interest in the sport in question.

The typology formed by these two distinctions may be represented in a classification table:⁷¹

⁶⁹ See: [http://de.wikipedia.org/wiki/Fu%C3%9Fball-Wettskandal_2009].

⁷⁰ See: [http://en.wikipedia.org/wiki/1915_British_football_betting_scandal].

⁷¹ Based on the categories presented in Title 2, Chapter 1, Section 2, § 2.

	Fraud with the intervention of organised crime	Fraud without the intervention of organised crime
Fraud led by gains from bets	Totonero 1980, 1986 (Italy, Football) European scandal 2009 (The Bochum case, Europe, Football)	Black Sox 1919 (United States, Baseball) Case of suspected bets 2012 (France, Handball)
Fraud without betting stakes	Apito Dourado 2004 (Portugal, Football) Calciopoli 2006 (Italy, Football) Apito Dourado 2004 (Portugal, Football) Calciopoli 2006 (Italy, Football)	British Football scandal 1915 Caso Genoa 2005 (Italy, Football) Caso Genoa 2005 (Italy, Football)

Cases of fraud involving organised crime that are not related to sports betting are less documented: they often escape detection, particularly when carried out individually. The examples presented in the table above are of a fixed-match in the Italian B League in 2005 and the case known as the golden whistle affair (*apito dourado* in Portuguese). In both cases, the judgments do not mention a potential association between fixing matches and taking bets, even if it cannot be guaranteed that these cases were explained in depth.

These distinctions allow us to present an ideal type of sports manipulation with all its variants.

§ 2. Match-fixing – Managing a Criminal Plan and the Analytical Framework

Consider a match-fixing operation as a temporary action that mobilises specific resources, costs and identified risks, and becomes the subject of resource budgeting. Before embarking on the development of an intricate plan, the criminal organisation evaluates the financial attractiveness (cost vs. expected profitability).

The amounts of money that can be extracted fraudulently from sports betting markets through the placement of bets should be substantial enough to cover the costs related to the organisation and execution of the criminal operation. This level of anticipated profit will be largely determined by the cash flow in the market of the bets associated with the fix that is executed through one or more participants in the sport. This is a key element in the ex-ante evaluation of the MFFB plan.

With a constant risk of detection, the higher the liquidity level in a betting market⁷², the higher the potential profits made of a criminal organisation.

A MFFB operation can be split up into four main steps:

Steps in a MFFB Operation – General case

- **Step n° 1. (t):** conception of the criminal plan, selection of the pair **[Fix / betting formula(s) that would allow to profit from the fix]**⁷³
- **Step n° 2. (t+1):** corruption of sports⁷⁴ participants that will create the fix in (t+3) **[Investment]**
- **Step n° 3. (t+2):** exploiting the fix in betting markets, through one or more betting formulas

----- (Start of the match) -----

- **Step n° 4. (t+3):** Producing the fix (through a participant in the sporting event) **[Return on investment]**

----- (End of match) -----

Note: In the case of live betting. Step n° 3 can be achieved after the start of the match, during the competition.

Steps for a MFFB Operation – In the case of live betting

- **Step n° 1. (t):** Conception of the criminal plan, selection of the pair **[Fix / betting formula(s) that would allow to profit from the fix]**
- **Step n° 2. (t+1):** corruption of sports participants that will create the fix in (t+3) **[Investment]**

----- (Start of the match) -----

- **Step n° 3. (t+2):** exploiting the fix in the betting markets, through one or more betting formulas.
- **Step n° 4. (t+3):** Producing the fix (through a participant in the sporting event) **[Return on investment]**

----- (End of match) -----

⁷² See *infra* § 3 and § 4 of this section.

⁷³ See *infra* § 4 of this section.

⁷⁴ This category includes athletes themselves but also all the officials who have a decision power in the match (referee, coach, caretaker, manager, etc.).

This analytical framework allows separating the stakeholders involved in different forms of MFFB and the associated risks:

- If the production of the fix is exploited by the cheater himself (sports participant), who chooses to conduct the operation independently, this constitutes *fraud without the intervention of organised crime*;
- Otherwise, the expression “fraud orchestrated by a *criminal organisation*” will be used. Criminal organisations seek to achieve, for a constant risk of detection, the best returns on investment; this occurs following a reduction of costs and maximisation of profit for a given fix.
- In the case where one or more participants-cheaters conceive and exploit their own *fix*, without the intervention of a criminal organisation (collective⁷⁵ or individual fraud), there is no act of corruption, and step 2 does not exist.

The steps of a MFFB Operation – the case of fraud without the intervention of a criminal organisation:

- Step n° 1. (t): Conception of the criminal plan, selection of the pair [**fix / betting formula(s) that would allow to profit from the fix**]
- Step n° 3. (t+2): exploiting the fix in betting markets, through one or more betting formulas.

----- (Start of the match) -----

- Step n° 4. (t+3): Producing the *fix* (through a participant in the sporting event). [**Return on investment**]

----- (End of match) -----

It is now possible to analyse the mechanisms of manipulation by using the previously defined analytical instruments.

§ 3. Types of Fixing related to Bets

Take the example of a criminal organisation that wishes to invest in the act of corruption of one or more sports players. In the preliminary assessment phase of a plan of this type, the criminal organisation conducts a cost-efficiency analysis. Only financially viable⁷⁶ plans are selected. Fraudulent profits extracted from sports betting must exceed the costs incurred in the planning and execution of the operation. In contrast, an individual athlete-cheater doesn't have to bear the costs associated with the corruption of participants. He can therefore benefit from a “minor” rigging (for example losing a game of tennis), which is made profitable via a betting formula with a reduced liquidity level. The hope for a positive gain from rigging must outweigh the negative risks (for example a suspicion that is likely to damage the athlete's good reputation).

⁷⁵ See *infra* Part 2, Title 1, Chapter 2, Section 3.

⁷⁶ The difference between monetary gains derived from the fixed bet and the costs of implementing the fix, increased by sanctions in case of detection.

These two types of MFFB do not have the same mechanisms, do not use the same resources, nor do they take into account the same factors. We see, in particular, that a given betting formula may be of interest whether or not related to the intervention of a criminal organisation. It should be noted, however, that the influx of criminal organisations is a relatively recent phenomenon, which is mainly due to the explosion of potential gains in sports betting.

Furthermore, several factors lead us to believe that risk levels are much higher when generated by organised crime.

- *Criminal expertise*: cheating athletes and criminal organisations do not have the same expertise in the management of criminal plans. Mafias have added MFFB to their portfolio of criminal activities by using existing networks (human means, laundering circuits, etc). They protect their network, and know how to avoid detection: their specialisation allows them to accumulate a criminal experience that can lead to a form of expertise (through the repetition of the activity). This is often not the case for athletes whose simplistic fraud methods lead to an easy detection. Take for example the case of the potentially fixed handball match in France in the spring of 2012, fraudsters demonstrated a striking amateurism that led to their detection⁷⁷.
- *Technical resources*: with the same privileged information, criminal organisations will be able to extract significantly higher profits. In fact, effective concealment requires technological expertise and advanced information technology, in particular to avoid the detection of fraud. Cheating athletes do not have, most of the time, access to this level of sophistication (this is especially true for fraud conducted through live betting⁷⁸).
- *Financial resources*: to maximise profits in a MFFB requires mobilising substantial capital during step 3 of the process (placing bets). The higher the liquidity of a given market, the higher the threshold of detecting fraudulent bets. Criminal organisations seek high liquidity because they can therefore bet according to the theoretical limit of detection. Instead, cheating athletes do not usually have the opportunity to bet large sums of money without being detected: on average, their rate of return remains limited.

It should be kept in mind that *although some factors of MFFB are the same (in particular the probability of detection), whether or not related to organised crime, most of them are separate (cost of corruption, remuneration of criminal organisations, liquidity of different betting formulas, for more details⁷⁹)*. In subsequent parts of the report, the focus will mainly concentrate on the mechanisms of criminal organisations because they constitute a far more important danger to the integrity of sports.

⁷⁷ See *supra* Part 1, Title 2, Chapter 3.

⁷⁸ See *supra* Part 1, Title 1, Chapter 2, Section 1, § 3.

⁷⁹ See *supra* Part 1, Title 1, Chapter 2, Section 1, § 3, F, "One Event, Several Formulas, One Liquidity".

§ 4. Criminal Targeting Policy and the Factors of the Demand for Fixing

The resources of organised crime can be mobilised if the stakes are interesting enough. The decryption of the criminal selection process based on a sports fix and a betting formula will help maximise the financial exploitation of the privileged information related to the fix.

Given the increased liquidity across the sports betting markets, the proportion of sporting events exposed to the risk of MFFB will mechanically increase. The recent history of MFFB showed that all competitions could be affected by this phenomenon, from the Italian *Serie A*⁸⁰ to the Australian Victorian Premier League.

Although it is not very risky and relatively easy to profit from a MFFB operation, the purpose of this section is to evaluate the relative attractiveness of different pairs [fix /betting formula(s)] for criminals. This analysis will include a study of the selection criteria used by criminals during the first stage of a MFFB plan. These two elements are inseparable, and it is therefore vital to study them together.

Among the costs incurred by a criminal organisation to carry out a MFFB, the following elements can be found:

- The compensation of the criminal network;
- The cost of corrupting participants in a sporting event, to create the fix, that also depends on:
 - The profession of the approached participant(s) (referee, athlete, official, *etc.*);
 - The characteristics of the approached participant(s): age, financial insecurities, ethical values, morals, *etc.*;
 - For a football player, his position on the field (an manipulation scheme becomes more expensive when the position is “closer” to the goalkeeper);
 - The type of the fix (much more expensive if the fix is highly correlated to the outcome of the match)
 - The stakes of the match (the higher the stakes, the more expensive the fix becomes)
- Investment of capitals in the sports betting markets before the production of the fix (betting input);

⁸⁰<http://www.goal.com/en/news/10/italy/2013/06/25/4072904/italian-police-raid-18-serie-a-clubs?ICID=AR>.

- The cost of money laundering (Christian Kalb and Pim Verschuuren (2013)⁸¹ estimate it at around 25% of gross profits from traditional methods) if the bets are sold at physical outlets and paid for in cash.

For a plan to be selected, it is necessary that the gains made in the sports betting markets (betting outcome), are sufficient to cover the costs incurred and to generate enough profit to justify taking the risk.

The criminal organisation must ensure that the money invested in the sports betting markets produces enough gains, thanks to the privileged information, (obtained through corruption) all the while passing through the mesh of existing detection in the betting industry. Criminals therefore seek to:

- Maximise their return on investment (ROI): in order to do this, they will develop a strategy for the selection of formulas and optimise the placement of fraudulent bets accordingly.
- Control the costs of a MFFB (logistics, production, protection), especially through targeting reliable and inexpensive participants if possible.

It should be noted that the success of a MFFB criminal operation is far from systematic. Among the risks that could lead to its failure, the following risks can be mentioned:

- Failure in the production of the fix (from the side of the sports participants)
- Failure in the placement of fraudulent bets (from the side of the bettors)
- Poor coordination between the fix and the bets (maximisation not attained)
- The MFFB plan is detective even before the fix is produced (t-1)
- The MFFB is detected on the spot (t)
- The MFFB is detected afterwards (t+1)

The demand being identified, the elements of the offer should now be considered.

§ 5. Factors of Match-Fixing Offer by Participants in Sports Competitions

It is important to incorporate the factors influencing the decision to participate in sports rigging (considered here as the offer for fixes), which are well known by the heads of the criminal plan. These factors represent costs and influence the targeting policies of criminal organisations.

Although these variables are mostly not directly observable (or measurable), their inclusion allows designing an appropriate business model. Therefore, it is important to mention the following signs: [the sign (-) represents a negative effect on supply, in contrast to the positive sign (+)].

- The probability that the fix is detected (-):

⁸¹ C. KALB, P. VERSCHUUREN, *Blanchiment d'argent, un nouveau fléau pour les paris sportifs*, *op. cit.*

- (if detected) the likelihood that the fix is sanctioned (-);
 - The financial cost of sanctions (-);
- The monetary value of the disutility for the participant as a result of his underperformance carried out to rig the sports results coming from:
 - The effect of negative reputation (-);
 - The renunciation to a victory in his record (-);
 - Blame from his peers (-);
 - Loss of income due to detection (income which the cheating athlete would have been entitled to if he had not been caught: wages, bonuses, advertising contracts) (-);
 - Loss of reputation due to underperformance (-) which can be measured by the present value of future income, in particular:
 - The athlete's value on the transfer market
 - Advertising contracts.
 - Moral disutility, ethics (-): typically less significant if participants consider their national sports environment as corrupt (+)⁸².

The more expensive the fix is considered by the participant, the greater the expected compensation.

There are now sufficient elements to consider a model of behaviour to carry out an economic analysis of sports fraud.

Section 2. Analysis of Sporting Fraud according to the "Economics of Crime" Theory

Before the advent of online betting and the globalization of MFFB, the economic analysis of corruption in sport relied on the paradigm called the economics of crime,⁸³ which earned the author the Nobel Prize in Economics. This theory will be presented (§ 1) before showing how it can explain the conditions and behaviours through unfortunately unobservable parameters (§ 2). Another difficulty the model presents is the lack of representation of the supply of fraud (§ 3).

⁸² FIFpro, *Black book of Eastern Europe*, 2012, available at: [\[www.fifpro.org\]](http://www.fifpro.org) [<http://www.fifpro.org/en/news/download-fifpro-black-book-eastern-europe>]; D. HILL, *The Fix: Soccer and Organized Crime*, McClelland & Stewart. April 13, 2010.

⁸³ G.S. BECKER, "Crime and Punishment: An Economic Approach", *Journal of Political Economy*, Vol. 76, No. 2, 1968, pp. 169-217.

§ 1. The Canonical Model

Adapting the model of Ehrlich and Becker to the problem of match-fixing, as was done for example by David Forrest (2008),⁸⁴ one can consider that an individual will engage in an activity of match-fixing - as in any economic activity, criminal or not - if he finds a personal interest in doing so. One can, for example, take the notations of Forrest (2008).⁸⁵

$$E\{U\} = (1-p)[qU(Y+G)] + (1-p)[(1-q)U(Y)] + p[U(Y-F)] - U(Y) + U(C) \quad (1)$$

Where:

p is the probability that fraud is detected and sanctioned,

q : the probability that the fraud would succeed,

Y : the wealth of the agent,

G : the gain resulting from a successful and undetected fraud,

F : financial loss resulting from detection (fines, loss of income following a suspension, termination of contracts, sponsorship, etc.).

$U(C)$: subjective assessment of the act of cheating itself, whether or not detected; it can be positive (for the excitement it provides) or negative (because of guilt).

It can be deduced from this model that athletes will not engage in fraud unless it yields a net gain, this means $E\{U\} > 0$. This model allows us to understand that the prevalence of fraud increases with gains G and $U(C)$ and with the probability of its success (q) and decreases with the probability and severity of the penalty. However, the gain can come from both monetary and non-monetary compensation G or from the act of fraud itself $U(C)$: the model is very simplified.

In order to reflect the scope of the Beckerian analysis, the table below includes the implications of the decision equation mentioned above:

Variable	Effect	Interpretation
G	+	Fraud gains: monetary profits (gains from bets, briberies) or non-monetary (psychological benefits related to victory).
	(-)	These gains must be net of the loss of the "sporting value" associated with a poor performance in the event that the fraud requires the athlete to lose voluntarily.
U(C)	+	Subjective assessment of the act of cheating.
	(-)	This value can be negative due to the psychological discomfort associated with cheating.

⁸⁴ D. FORREST, I MCHALE, K. MCAULEY, "Risks to the Integrity of Sport from Betting Corruption", *Report for the Central Council for Physical Recreation by the Center for the Study of Gambling*, University of Salford, February 2008.

⁸⁵ *Id.*

Q	+	Success probability of fraud.
F	-	Sanctions Assessment: includes both direct sanctions imposed by the court or by the sports organizations, and indirect sanctions related to the loss of sponsors.
P	-	Probability of detecting fraud.

The Beckerian analysis therefore takes into account the moral values or personal ethics of the athlete beyond his rational behaviour and economic decisions. By rigging matches, he violates to some extent his own values and ethics. This is followed by a form dissatisfaction or disutility from rigging which can also be expressed by tensions with his teammates. *The distribution of ethical values in the population therefore influences the prevalence of rigging and the volume of match-fixing. The stronger and more widespread the concept of ethics is in the population, the higher the amount of expected gains should be in order for a number of individuals to engage in match-fixing. If ethics is eroding in the society, an increasing portion of the population, with equal gains will become, as a result, attracted by match-fixing while another fraction will engage in lower profit fixes when the inequation (1) is observed with lower values of U (C).*

Nevertheless, if the model describes in a fairly credible manner the choice of an individual who is reluctant to cheat to achieve monetary gain, it recognises it as an isolated decision. *Stricto sensu*, the model only describes *individual fraud*.

§ 2. An Explanatory Model but with Unobservable Parameters

The model can be made more sophisticated in order to accurately reflect the psychology of fraud and stakes. For example, this is what Maennig (2002)⁸⁶ proposes as a decision equation:

$$E\{U\} = (1-p)[qU(Y + G + NPB - DC - POC - NOC)] \\ + \\ (1 - p)[(1 - q)U(Y - DC)] + p[U(Y - DC - POC - NOC - F - LR)] - U(Y)$$

(2)

Therefore the following shall be added:

NPB: non-pecuniary benefit (e.g. prestige of victory and prerogatives attached to it).

DC: the direct cost of fraud (e.g. expenditures to prevent detection).

⁸⁶ W. MAENNIG, "Corruption in International Sports and How it May Be Combated", Working Papers, International Association of Sports Economists; North American Association of Sports Economists 0813, International Association of Sports Economists; North American Association of Sports Economists, 2008.

POC: Pecuniary opportunity cost of financial fraud (if successful), in particular the decline in 'sporting value' of one who commits a successful fraud (and compromises his record).

NOC: non-pecuniary opportunity cost, in particular psychological discomfort vis-à-vis his conscience or his colleagues, related to having cheated.

LR: the cost of loss of reputation associated with fraud detection.

Compared with the previous analysis, a distinction was made in $U(C)$ between a part *NOC* that is systematic, and the part *NPB* conditional to the success and lack of detection of a fraud: this allows, for example, the analysis of collusive fraud. Two cyclists leading a race may choose to arrange the win for a sum of money. For the first cyclist (choosing to get paid for not winning), the equation becomes:

$$E\{U_1\} = (1-p)[qU(Y_1 + G - NPB - POC - NOC)] + (1-p)[(1-q)U(Y_1 + NPB)] + p[U(Y_1 - POC - NOC - F - LR)] - U(Y_1) > 0$$

And for the second cyclist (that chooses to get paid for winning):

$$E\{U_2\} = (1-p)[qU(Y_2 - G + NPB - POC - NOC)] + (1-p)[(1-q)U(Y_2 - NPB)] + p[U(Y_2 - POC - NOC - F - LR)] - U(Y_2) > 0$$

In this case, it is considered that $p = 0$. The two cyclists therefore decide to exchange G for the victory if G exists, as such:

$$E\{U_1\} = (1-p)[qU(Y_1 + G - NPB - POC - NOC)] + p[U(Y_1 - POC - NOC - F - LR)] - U(Y_1) > 0$$

and

$$E\{U_2\} = (1-p)[qU(Y_2 - G + NPB - POC - NOC)] + p[U(Y_2 - POC - NOC - F - LR)] - U(Y_2) > 0$$

However, the model should be improved further, in particular by distinguishing (via G) direct gain (linked to bribes) from the gain obtained through bets.

Under these conditions, if $G = B + W$, where B denotes the amount of bribes received and W : the amount of earnings related to bets, the following is obtained:

$$E\{U\} = (1-p)[qU(Y + W + NPB - DC - POC - NOC)] + (1-p)[(1-q)U(Y - DC)] + p[U(Y - DC - POC - NOC - F - LR)] - U(Y) > 0$$

if the athlete is ready to commit individual fraud to win the bets

and

$$E\{U\} = (1-p)[qU(Y + B + W - M + NPB - DC - POC - NOC)] + (1-p)[(1-q)U(Y - DC)] + p[U(Y - DC - POC - NOC - F - LR)] - U(Y) > 0$$

(3)

If the athlete is ready to participate in an organised fraud in which he is rewarded through bribery (and can potentially also win the bets).

Slightly different conditions are therefore available according to the terms of our classification:

	Fraud involving a criminal organisation	Individual fraud
Fraud motivated by gains related to bets	$E\{U\} = (1-p)[qU(Y + B + W - M + NPB - DC - POC - NOC)] + (1-p)[(1-q)U(Y - DC - M)] + p[U(Y - M - DC - POC - NOC - F - LR)] - U(Y) > 0$	$E\{U\} = (1-p)[qU(Y + W - M + NPB - DC - POC - NOC)] + (1-p)[(1-q)U(Y - M - DC)] + p[U(Y - M - DC - POC - NOC - F - LR)] - U(Y) > 0$
collusive fraud not related to sporting bets	$E\{U\} = (1-p)[qU(Y + B + NPB - DC - POC - NOC)] + (1-p)[(1-q)U(Y - DC)] + p[U(Y - DC - POC - NOC - F - LR)] - U(Y) > 0$	$E\{U_1\} = (1-p)[qU(Y_1 + B - NPB - POC - NOC)] + p[U(Y_1 - POC - NOC - F - LR)] - U(Y_1) > 0$ <p>and</p> $E\{U_2\} = (1-p)[qU(Y_2 - B + NPB - POC - NOC)] + p[U(Y_2 - POC - NOC - F - LR)] - U(Y_2) > 0$

In the case of an organised collusive fraud, the function of an athlete's decision is of the same nature as for fraud driven by gains from bets. The only difference comes from the nature of demand requested from athletes, which is driven by gains from bets rather than other motives (for example, maximising the profits of a club).

Compared to the model of Becker-Forrest, the one of Maennig seems to be better suited to situations of corruption in sports, all while respecting the same logic of analysis of individual behaviour. But there is a demand model; the determinants of the match-fixing offer generally from sports insiders (athletes, referees or sporting directors) are not included in the analysis, any more than the bribes that motivate their offer.⁸⁷

⁸⁷ Moreover they can bet themselves or through their relatives on the match result they fix (e.g. case of French handball).

One advantage of the Maennig model, not the least of which is that it demonstrates more clearly than Becker's as to how the economic approach is based on variables that are not observable or measurable (hence the impossibility to test the model with empirical data). So there are non-monetary opportunity costs, either deriving from non-monetary utility of MFFB or from effects on reputations, which obviously vary from one athlete to another, even in the case of individual collusive fraud. The analysis remains purely theoretical.

In the case of crime organised fraud, the decision of athletes to participate in fixing is motivated by the payment of a bribe (which may be limited to in-kind or psychological benefits). Forrest *et al.* (2008)⁸⁸ consider, for example, fixes organised by bettors (Bochum Case) or even by bookmakers (*e.g.*, union for Indian bettors in the South African cricket). However, they do not associate equation (3) with a corresponding demand function of match-fixing related to various sporting bets. Therefore it is considered that (3) is representative of the match-fixing offer by athletes, but that there is not a complete model of supply and demand for fixed matches.

With the models of Maennig and Forrest, one follows the same logic of the corrupt, the athlete reacting to a demand for match-fixing that he chooses to either accept or reject according to whether it derives a net gain or not. Diversifying the supply of sporting bets is evaluated in the analytic continuation of this model as a factor of the increase in the demand for match-fixing. Ideally, however, a demand function should be introduced in the model. Although Forrest (2012)⁸⁹ adds some interesting considerations on the *modus operandi* of those who partake in match-fixing, techniques for online betting offers and innovation in sporting bets, (*e.g.* new formulas of bets available) a complete model of supply-demand is not available yet.

The idea is outlined by Forrest (2013)⁹⁰. Although it is illegal, match-fixing is presented as an item bought and sold in a match-fixing market; So there is supply and demand as in any market. From the supply side are insiders of the sport, mostly players and referees, as well as owners of sports teams, coaches, officials and even club doctors; if their supply is met by a corresponding demand, they are considered corrupt in MFFB. From the demand side are criminals (broadly defined by Beckerian crime) and fixers who want to profit from sporting bets markets. If their demand meets a corresponding supply, they are manipulators in MFFB. It is this complete model that should be represented. Therefore it is a matter of renewing the theoretical framework of the analysis of fraud.

⁸⁸ D. FORREST, I. MCHALE, K. MCAULEY, "Risks to the Integrity of Sport from Betting Corruption", *Report for the Central Council for Physical Recreation by the Center for the Study of Gambling*, University of Salford, February 2008.

⁸⁹ D. FORREST, "The Threat to Football from Betting-Related Corruption", *International Journal of Sport Finance*, 7-2, 2012; pp. 99-116.

⁹⁰ D. FORREST, "Incentives to Avoid Match Fixing", *ICSS Journal*, 1-2, 2013, pp. 30-35.

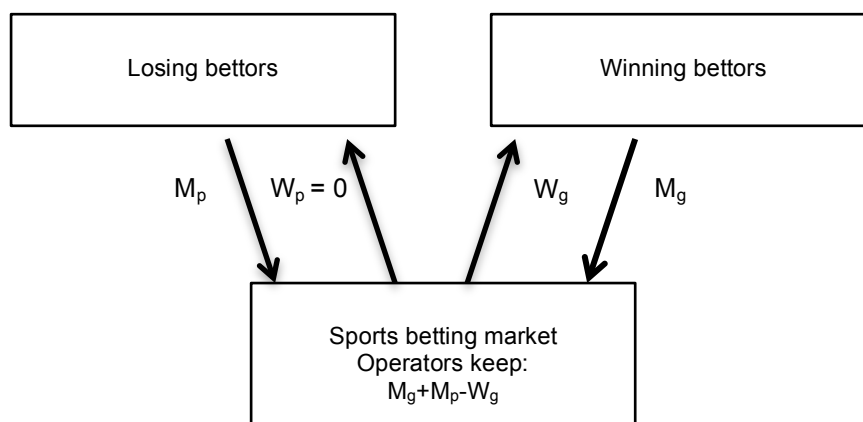
Section 3. Renewal of Analysis: Interactions between Fraudulent Sporting Bets and Legal Sporting Bets

It has been considered previously, with reference to the literature, that the supply of fix was the result of a process influenced by the bets market, but that is not directly related to fixes and bets. However, the interactions between these two factors may be more complex than what the representations of models from the economics of crime would suggest: the microeconomic approach was thoroughly renewed by the inclusion of social interactions⁹¹ (e.g. imitation effects), but also by the representation of carryover effects between markets. Thus, a renewed analytical framework will be proposed (§ 1) to be followed by an interpretation (§ 2).

§ 1. Analytical Framework

The complexity of real life situations can be reconstructed, by distinguishing between two markets: the first, the upstream market, is the "supplier" of the other, and is called the match-fixing market. The second is the sports betting market. If not provided in fixed matches ($T = 0$), the sports betting market operates normally and its analysis is thus almost identical to that of a normal financial market.

Figure 3 - The sports betting market without match-fixing

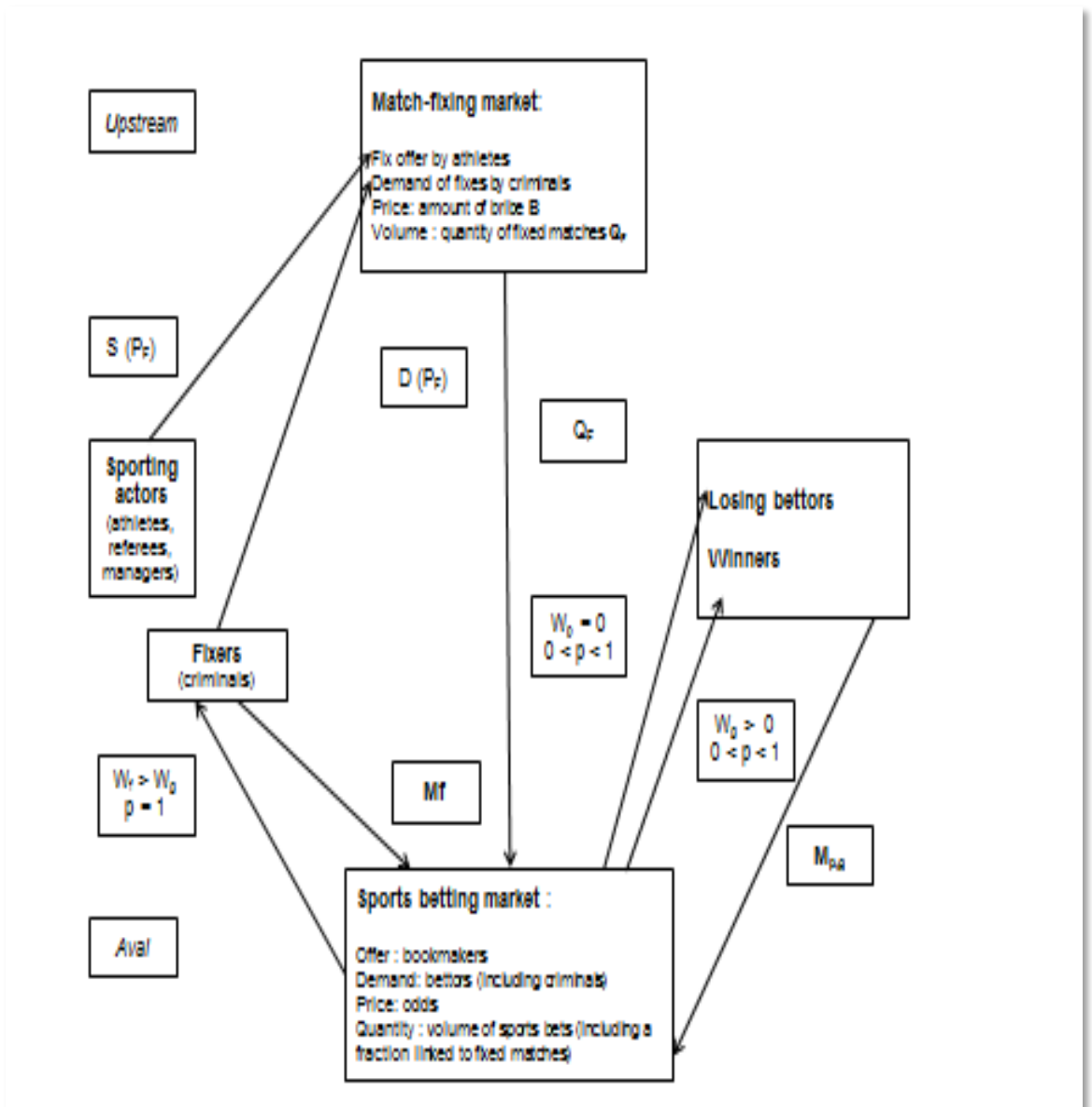


The losers bet M_p but receive nothing ($W_p = 0$), the winners bet M_w and receive W_g , and the betting operators keep the difference between the bets and the gains.

If, in the upstream level, the match-fixing market « books » a certain number of fixed matches ($Q_F > 0$), the table becomes much more complex:

⁹¹ See in particular C.F. MANSKI, 2000. "Economic Analysis of Social Interactions", *Journal of Economic Perspectives*, vol. 14(3), pages 115-136, Summer; E.L. GLAESER, B.I. SACERDOTE & J.A. SCHEINKMAN, 2003. "The Social Multiplier", *Journal of the European Economic Association*, vol. 1(2-3), 4 May 2003, pp. 345-353.

Figure 4- Interactions between the sports betting market and the match-fixing market



Caption

In the match-fixing market

S (P_F): Supply of fixed matches by athletes (in the sporting community), according to the price P_F .

D (P_F): demand for fixed matches by fixers and criminals, according to the price P_F .

The definition of this price P_F remains unclear (see below).

Q_F: number of fixed matches.

In the sports betting market

Supply of sporting bets by bookmakers and operators (the supply does not appear as such on the chart, therefore one can assume that it is not influenced by fixes and that bookmakers are not involved in match-fixing).

M_f: placing of sporting bets by fixers - the bets may include multiple betting formulas; if **Q_f** = 0, **M_f** = 0.

M_{p,g} = **M_p** + **M_g**: bets of bettors who are not aware of the fix, a distinction is made between losing bets **M_p** and winning bets **M_g**.

M_{p,g} + **M_f**: total bets placed on fixed-matches.

Total demand determines market liquidity (the total volume of sporting bets committed) and, in interaction with the supply (conditions of bets, rate of return for bettors), it leads to determining the price (and the odds).

W_f: gains of fixers made from sports betting on fixed matches.

W_g: gains made by bettors who are unaware of the fix.

W_p = 0: zero gains for losers in sporting bets.

In the case of *pool betting*, fraudsters gain at the expense of other bettors.

Since operators keep a share of the bets, therefore **M_{p,g}** + **M_f** > **W_g** + **W_f**.

Manipulation by fixers is intended to earn money so much that the following is obtained:

W_f > **M_f**, thus it is necessary to have **W_g** < **M_{p,g}** this means that "uninformed" winners do not recuperate their bets.⁹²

In the case of fixed odds betting, operators lose **W_g** + **W_f** and win **M_{p,g}** + **M_f**.

However, **W_g** > **M_g** and **W_f** > **M_f** are unavoidable because nobody would have betted for < 1 odds, therefore operators keep less than **MI** and it is not improbable that they lose money.⁹³

⁹² It may be objected here that gains from pool betting are not known in advance and depend on the number of winners: for this reason, the fixers might not recover their down payment if the number of winners is too high. The case of pool betting is therefore a special one: unlike fixed odds bets where tricksters distribute their gain to different formulas of betting, in the case of pool betting they must force an improbable result which becomes visible as a result or they may not be able to cover their costs. Therefore pool betting is a natural antidote against fraud. Moreover, the scandal of *Totonero* in Italy was based on the exploitation of illegal fixed odds bets in fixed matches.

⁹³ See *supra* Part 2, Title 1, Chapter 1, Section 2.

Match-fixing affects the functioning of the sports betting market for the benefit of fixers. The success of their fraud encourages criminals or fixers to demand more fixed matches in an upstream level on the match-fixing market and it can drive athletes (and referees, coaches, managers, etc.) to vary the supply in this market. These changes in the supply and demand of fixed matches create yet again non-zero amounts of fixed matches Q_f that affect the distribution of the gains of normal bettors W_g and those of fixers W_f on the downstream market, and so forth. In other words, the interaction between the two markets (sports betting and match fixing) is complex since it induces feedback effects in terms of the cybernetic theory (feedback loop).

Such a representation considers athletes as factors of production or suppliers of match-fixing in the upstream market, and also regards match-fixing as an input of sporting bets⁹⁴ initiated on this market by fixers in the downstream market. The influx of this input in some sporting bets clearly changes their volume, which will most likely change prices (and odds), and subsequently varies asymmetrically the probability of gains of different bettors. In general, the fix increases the probability of gains for betting fixers⁹⁵ and decreases that of bettors who were not involved in the fixing. It is followed by an effect on the distribution of gains in favour of the fixers and at the expense of normal bettors, which is exactly the sought effect by betting fixers: all those who did not predict the fixed sporting results are losers, the fixers sweep the bets of losers and even, in the case of fixed odds betting, the funds of betting operators. Their goal is to ensure the inequality $W_f > M_t$.

The cases of fraud that are not related to criminal organisations are special: the supply (the suppliers) and demand (requesters) in the match-fixing market are created by the same individuals, both corrupt and manipulators. The remuneration of the corrupt is no longer derived from bribes offered by the manipulators (criminals), rather the gain W_f is obtained directly by fixers in the sports betting market. The distinction becomes blurry between corrupt and manipulator as that between supplier and requester of a fixed-match. In general this case does not vary significantly the liquidity of the overall sports betting market (even if the fixed sporting event is experiencing unusually high volumes of bets): Organised fraud will not be focused on in the first analysis.

⁹⁴ On this issue, D. FORREST, "Sport and Gambling", in W. ANDREFF, S. SZYMANSKI, (eds.), *Handbook on the Economics of Sport*, Cheltenham: Edward Elgar, 2006, pp. 40-48 and H. DIETL, C. WEIGÄRTNER, "Betting Scandals and Attenuated Property Rights - How Betting Related Match fixing Can Be Prevented in Future", *Working Papers*, University of Zurich, Institute for Strategy and Business Economics (ISU) 0154, University of Zurich, Institute for Strategy and Business Economics (ISU), 2012, specify, in the general case without match-fixing, that the result of the sporting event is an input for suppliers of sporting bets. The fixed sports result is also an input, even though it may be an undesired input for suppliers (bookmakers, operators).

⁹⁵ It should be reminded that fixers make profit from fixing by placing bets in different betting formulas. Even if the *fix* does not change the probability of some of these formulas (for example the probability of winning the favorite), it influences for example the score or the timing of certain actions in the match that allow betting on very diverse formulas, thus, the probability that bettors uninformed about the *fix* decreases on average in all formulas.

Betting operators are in a situation of information asymmetry as they serve interchangeably normal bettors and fixers, without being able to discern in advance the bets placed on fixed sporting results (in the current state of monitoring systems and 'radars' overseeing this global-world market).

§ 2. Determinants of Supply and Demand in Both Markets

It is now necessary to analyse for each market (match fixing and sports betting), the determinants of supply and demand, taking into account their interaction. This means taking the following measurements:

- The volume of fixed matches that "penetrate" the sports betting market ;
- The volume of bets placed by betting fixers in this market ;
- The reaction of the demand for fixes in the match-fixing market to the gains of fixers in the sports betting market.

To this end, one must consider the offer and demand of fixed matches (**A**), the market of sporting bets (**B**) and the feedback on the market of fixed matches (**C**).

A. Supply and Demand for Match-Fixing

It shall be argued here, based on the idea that a criminal corrupts a sporting participant (including coaches, referees, players' agents, directors, *etc.*). In fact, economists have used to consider representative agents. However, the analysis could also be repeated, with a criminal network on the one hand and with a team of players and coaching staff on the other hand. The key is to identify the relevant variables in an organised fraud to achieve gains through fixed bets.

As noted in the previous paragraph, the match-fixing offer depends on the decision of athletes, described in the following inequality:⁹⁶

$$\begin{aligned}
 E\{U\} &= (1-p)[qU_s(Y_s + B + W_s - M_s + NPB - POC - NOC)] \\
 &+ \\
 &(1-p)[(1-q)U_s(Y_s - M_s)] + p[U_s(Y_s - M_s + NPB - POC - NOC - F_s - LR)] - \\
 &U_s(Y_s) > 0 \\
 &\text{(1)}
 \end{aligned}$$

It is therefore based on the net gain that match-fixing will bring the athlete who is the author (participant). The revenues that the athlete makes from match-fixing are from bribes **B**, understood as a generic form of various benefits, monetary or otherwise. They are especially shown in detail in the work of Declan Hill. Adding W_s the gains from bets in the case in which the bettor places a bet, (M_s).

⁹⁶ We identify the notation in the preceding paragraph in particular: where p is the probability that fraud is detected and punished; q : the probability of successful fraud; Y_s : The current level of wealth of the athlete.

However, the athlete who fixes a game incurs a set of costs positive or not (therefore an expected value of these costs is considered) that may hinder or limit his match-fixing offer, including:

- *NPB*: non-pecuniary benefit (e.g. prestige of victory and prerogatives attached to it);
- *POC*: pecuniary opportunity cost of fraud (if successful), that is to say, in particular, the decline in 'sporting value' of one who commits a successful fraud (and compromises his record);
- *NOC*: non-pecuniary opportunity cost; in particular, the psychological discomfort related to his conscience or colleagues, as a result of having cheated;
- *F_s*: financial loss resulting from detection (fines, loss of income due to suspension, termination of contracts, sponsorship, etc.).

The matches are fixed (Q_f is incremented by one) whenever the net gain of the athlete involved in fixing is positive and whenever its value exceeds the moral disutility due to the ethics of the athlete (*NOC*). Consequently, the supply function of match-fixing is written as such:

$$\text{Supply} = S(p, q, Y_s, B, W_s, M_s, NPB, POC, NOC, F_s)$$

(2)

The demand for match-fixing (corruption offer) is formulated through this inequality:

$$E\{U\} = (1-p)[qU_c(Y_c + W_c - M_c - B - CF)] + (1-p)[(1-q)U_c(Y_c - M_c - CF)] + p[U_c(Y_c - M_c - CF - F_c)] - U_c(Y_c) > 0$$

(3)

Indexed values by *c* denote the characteristics of the criminal. The Demand for match-fixing by betting fixers (manipulators, criminals) is primarily a function of the gain ***W_c*** they receive from placing sporting bets *M_c* in fixed matches. It is even the main reason for the rise of this demand. The fixer (his network of criminals, etc.) also incurs costs for carrying out the match-fixing, which might hinder or limit the demand (for match-fixing): *CF* is the amortisation of betting networks (or even laundering the gains) which constitutes the "fixed cost" to the criminal organisation of match-fixing. In this case, the demand is:

$$\text{Demand} = D(p, q, Y_c, B, CF, W_c, M_c, F_c)$$

(4)

Therefore it seems interesting to express these two quantities based on the price of match-fixing, P_F , in order to find equilibrium between supply and demand. Only three variables appear in both equations, they are: p , q and B : the match-fixing offer depends positively on $(1 - p)qB$ (which could be expressed as the expected bribe) while demand for match-fixing depends negatively.

Therefore this can be written out:

$$P_F = (1 - p)qB$$

and:

$$S(P_F) = S(P_F, Y_s, W_s, M_s, NPB, POC, NOC, F_s)$$

$$D(P_F) = D(P_F, Y_c, CF, W_c, M_c, F_c)$$

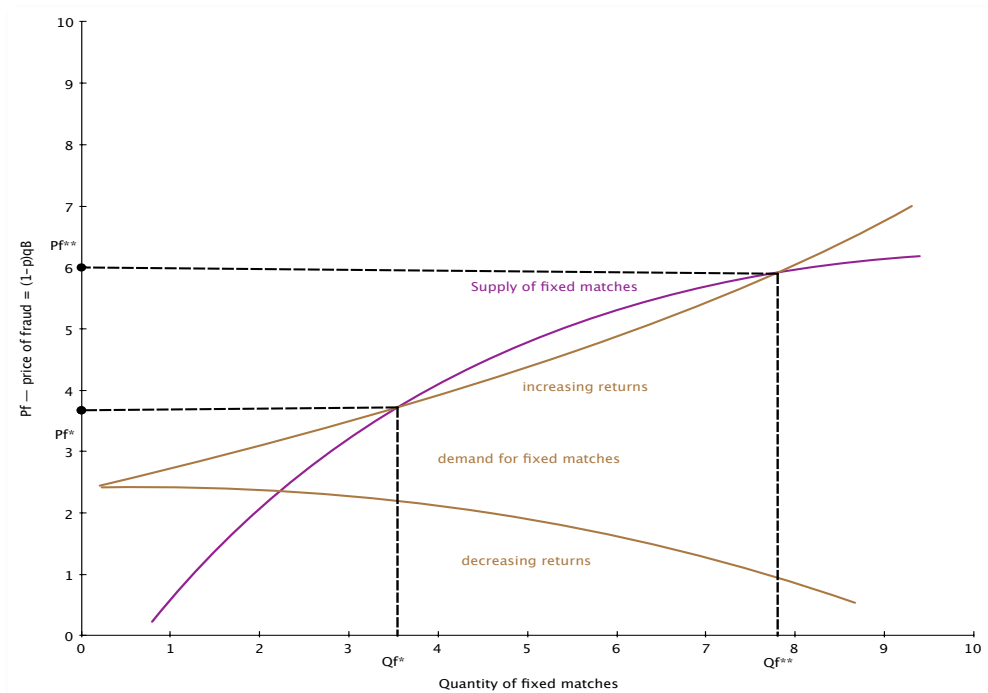
Market equilibrium is therefore achieved as such

$$S(P_F) = D(P_F)$$

(5)

At a price P_F^* that equilibrates demand, the equation becomes $S(P_F^*) = D(P_F^*)$, which determines the equilibrium quantity Q_F^* of fixed matches. Henceforth, it is a matter of analysing the functioning of a sports betting market while taking into account the volume of fixed matches (created in an upstream level in the match-fixing market, the functioning of which has just been described).

Figure 5 – The fixed match market



This figure describes the formation of equilibrium in the match-fixing market. The natural shape of the curves of supply and demand would correspond *a priori* to a decreasing demand. However, it is possible that, given the existence of the fixed costs of the criminal network, the demand curve increases based on the price of fraud, that is to say that an increasing number of fixed matches make it possible to pay bigger bribes. In this case, there could be "multiple equilibria", which would explain the sudden rise of fraud, for example, in interaction with the sports betting market.

B. The Sports Betting Market

For the analysis of the sports betting market, one must distinguish two situations⁹⁷; whether $Q_f > 0$ or $Q_f = 0$, *i.e.* if the games are fixed or not. When there is no match fixing or $Q_f = 0$, there is a supply function of sporting bets that is unrelated to fixes (in the match-fixing market) and a demand function which does not include demand (bets) from fixers. Based on the presented information pertaining to the cost of bets⁹⁸ and bettors⁹⁹, it appears that the *demand* for sporting bets depends on:

R_B = Budget (part of the revenues) that "passionate" bettors set aside for sporting bets

P_B = Price of bet, where t is the rate of return for the bettor, that defines the prospects of gain for bettors and ultimately determines the interest of opportunistic bettors.

When there is no match-fixing¹⁰⁰, the determinants of the supply of sporting bets in the match-fixing market are:

P_B = price of a sports bet

C_B = variable cost of the supply of sporting bets (low once the investment is made on an online betting platform the value of which has dropped dramatically in recent years, according to Dietl-Weingärtner);

I_B = « institutional cost » of bets (when there is a regulation, such as limiting the amount of placed bets);

r = a risk premium

In a sports betting market, a supply S_B and a demand D_B meet. At a first approximation, the demand is equal to the amount of placed bets by future winners and losers. In the case where matches are not fixed the functions of supply and demand are as such:

⁹⁷ Not strictly distinguished in H. DIELT, C. WEIGÄRTNER (*op. cit.*, 2012) and P.-C. PRADIER (*op. cit.*, 2013).

⁹⁸ See *infra* Part 1, Title 1, Chapter 2, Section 1 § 1, C.

⁹⁹ See *infra* Part 2, Title 1, Chapter 1, Section 1, § 2.

¹⁰⁰ Bookmakers-operators ignore *ex-ante* (and usually also *ex post*), in the current state of monitoring, if a game is fixed in the upstream market, unless they are themselves involved in the fixing, which is a hypothesis that is excluded for the time with reservations.

$$Mp,g = D_B [R_B, P_B]$$

(6)

Under the constraint: $P_B > 1$

(7)

$$S_B = S_B(C_B, I_B, r)$$

(8)

Under the constraint: $Mp,g = Op,g$

(9)

(In the case of market equilibrium, used here for simplicity)

However, if the matches are fixed in the upstream market, $Qf > 0$, several other variables must be taken into account, namely **Qf**, the volume of match fixing, **Mf** the bets placed by bettors-fixers and **Wf** their gains.

In order to simplify the case, one can suppose that in the event of match-fixing, only betting fixers bet on the result achieved by athletes, since all other bettors do not know the fixed future result. In this case, **E(Wg)** (= 0) disappears and all "normal" bettors (*i.e.* non fixers) are losers, with $W_p = 0$.¹⁰¹

For betting fixers, the demand function of sporting bets related to match-fixing (demand is approximated by the bets of fixers) becomes:

$$Mf = Dt [Rt, Qf, P_B, E(Sf), E(B/Wf)] \quad (10)$$

Under the constraints: $Wf > 0$ $Wg = Wp = 0$ and $p = 1$ (11)

With:

Rt: revenues that the betting fixer can mobilise (his own and / or those of a network) in order to assign them to sporting bets when he knows that a match is fixed; this is sort of a "potential bet",

E(Wf): gains of the betting fixer from fixed-matches

Qf: the volume of fixed-matches

PB= the price of a sporting bet = $1/t$ where **t** is the rate of return for bettors

E(Sf): the expected cost of sanctions if the match-fixing is "unmasked" (according to the theory of Dietl Weingärtner-and of course to the guidelines of the post Beckerian economics of crime),

¹⁰¹ This hypothesis is not strictly necessary; however, it helps simplify the writing. In fact it would not be complicated to rewrite this model without this hypothesis (in keeping $E(Ww) > 0$, but with introducing a hypothesis for the distribution of total gains between **Wf** and **Ww**).

B/Wf: is the ratio of gain from the fixed bet Wf and the bribe B , which improves with the increasing amount of sporting bets (if there is no limitation on the amount of bets or in cases where there are none), according to Dietl-Weingärtner. The increase in this ratio increases the interest and therefore the volume of match-fixing **Qf** in the upstream market.

Meanwhile, the supply function suffers fewer changes once one makes the assumption that there is no collusion (even if tacit) between bookmakers-operators and betting fixers, that bookmakers do not try to manipulate the odds in their favour when they suspect a fix, and that they are not able to detect ex-ante the existence of a fixed match¹⁰². It is possible, however, to introduce a cost of detection **Cd** (e.g. trying to spot by monitoring techniques, what could reveal the existence of a fix¹⁰³). It's worth noting that without the cost of detection, the expected costs of sanctions **E (St)** in the demand function (13) would automatically drop to zero: without detection, there is no risk of sanction.

$$S_B = S_B(P_B, C_B, I_B, C_d, r) \quad (12)$$

The overall sports betting market includes both demands so that it is possible to represent the functions of demand and supply as follows.

The supply of all sporting bets, whether the matches are fixed or not, is $\Sigma p, g, t$:

$$\Sigma p, g, t = S_B(P_B, C_d, I_p, C_d, r) \quad (13)$$

This supply is no different from that defined by (12). In fact, sporting bets suppliers do not know the distribution between bets, whether or not linked to match-fixing and they do not know ex-ante whether to offer bets on fixed matches or not. They therefore cannot account for this distribution in the formulation of their supply. They only seek to protect themselves as much as possible against match-fixing through taking measures of prevention, detection, etc. Therefore, the cost **Cd** is extended to all sport bets.

Demand for all sporting bets, whether or not backed by match-fixing, is $\Delta p, g, t$:

$$\Delta p, g, t = Mp, g + Mf = D_B [R_B, P_B] + Dt [Rt, Qf, P_B, E(St), E(B/Wf)] \quad (12)$$

and:

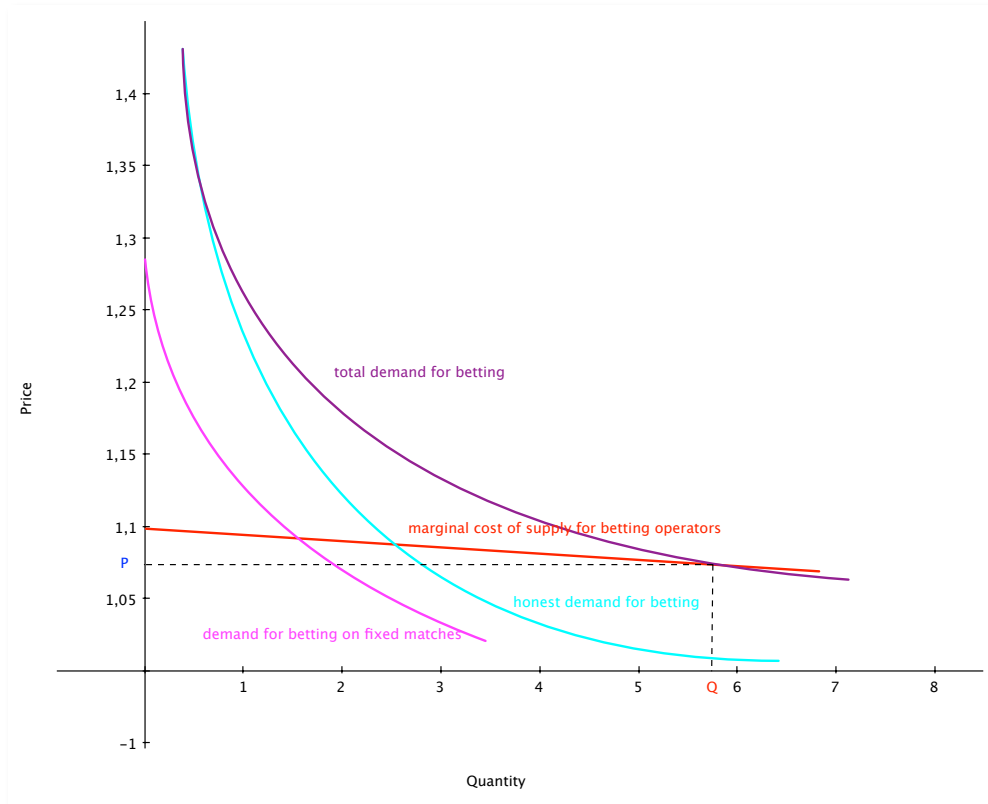
¹⁰² These are the hypotheses of the model. In fact the betting operators react to suspected fraud by modifying their odds or by suspending the betting. The case of operators who are accomplices in the fraud from which they profit by modifying the odds accordingly, could be considered: though some observers doubt this possibility, it has never been updated.

¹⁰³ It is worth recalling the idea (presented in Part 1, Title 1, Chapter 2, Section 1, § 4, according to which this detection cost grows with the increase in the volume of bets. Economists will notice that this complicates the hypotheses to demonstrate the existence of a solution, but without any substantial changes.

$$\Sigma p, g, t = \Delta p, g, t$$

(13)

Figure 6 – Operation of the sports betting market in light of the fraud production market



The above model is used to describe the functioning of the sports betting market while taking into account the status of a fraud production market: it is possible to use it in particular to reflect on public policy concerning bets in order to ensure the integrity of sports and the well-being of the population. However, the analysis would not be complete unless one considers a feedback loop from the sports betting market towards the match-fixing market.

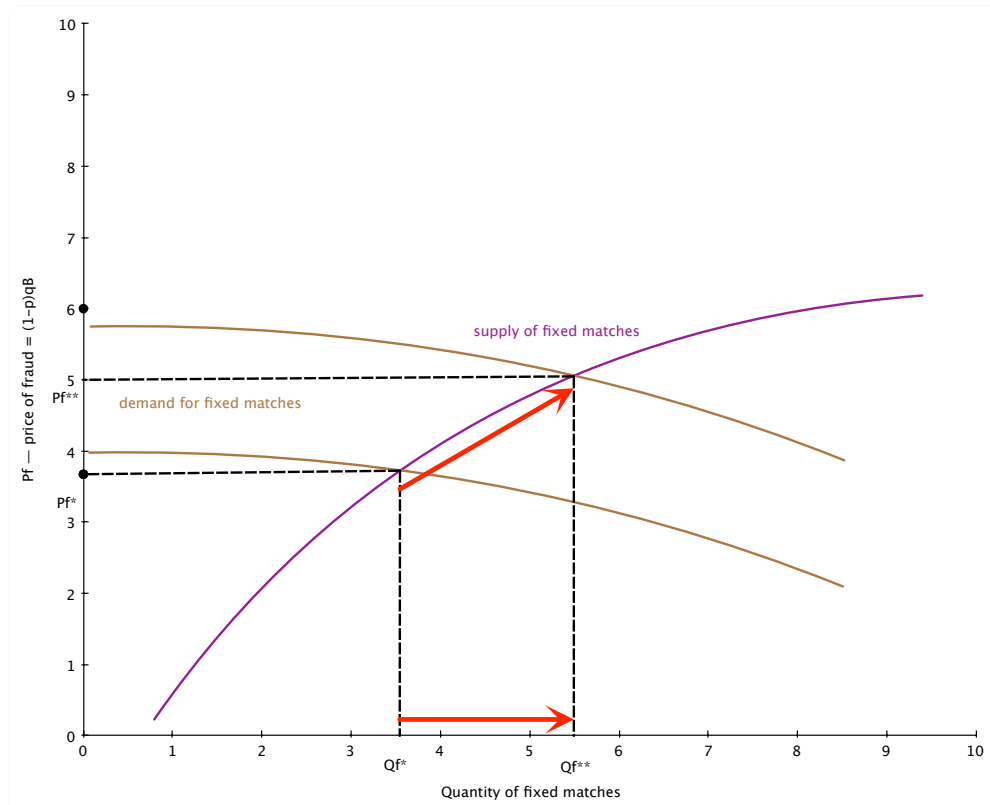
C. Effect on the Match-Fixing Market

In fact, since demand for match-fixing is susceptible to gain prospects; it is therefore linked to the volume of transactions in the sports betting market. It was mentioned earlier¹⁰⁴ the idea that liquidity (*i.e.*, the total volume of bets on different formulas related to a sporting event) increases the gain prospects of bettors, and therefore of fixers, while decreasing the probability of fraud detection.

¹⁰⁴ See *supra* Part 2, Title 1, Chapter 2, Section 1, § 3.

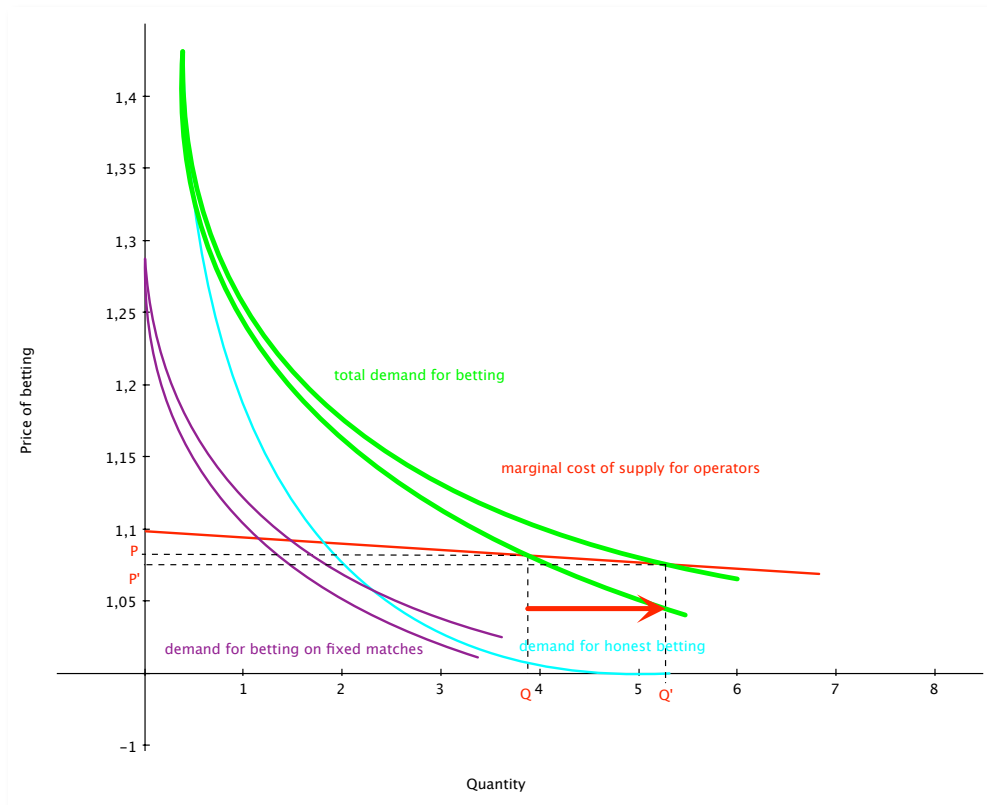
Thus it can be assumed that the increase in the volume of transactions will increase the gain prospects of the stakeholders involved in the fraud W_s and W_c while decreasing the probability of detection p . The shape of the curves of the match-fixing market is therefore modified accordingly: the equilibrium quantity of fixed matches increases and results in an increase in volumes in the sports betting market that will consequently nourish fraud, etc.

Figure 7 – Effects of the growth of transactional volumes on the fixed bets market: feedback effect (1)



The increase in transaction volumes shifts the demand curve for match fixing as well as the demand curve for bets related to match fixing, which also increases, as a result, the demand for bets.

Figure 8 – Effects of the growth of transactional volumes on the fixed bets market: feedback effect (2)



This model is certainly more complex than the classical representation of the economics of crime. However, it helps understand the history of sporting fraud and the contemporary issues it raises.

§ 3. Interpretive Model

Some examples help understand the relevance of the model of two-sided markets

A. The Rupture in the 1960s in Great Britain

Declan Hill [2010]¹⁰⁵ presents a striking ellipsis: “*If the year 1961 set off the legalisation of sporting bets, previously highly developed but illegal in the UK, it also triggered the beginning of a significant controversy for English football, the indirect effect of which was to reduce match-fixing*”. In fact, bets were authorised on 1 May 1961, but the case *Eastham v Newcastle United* was not decided until 1964; the same year a case of match-fixing was revealed which was initiated by Jimmy Gauld in 1962.

¹⁰⁵ D. HILL, “A Critical Mass of corruption: Why Some Football Leagues Have More Match Fixing than Others”, *International Journal of Sports Marketing and Sponsorship*, Volume 11, No. 3, 2010, p. 227.

Hill's conclusion is as follows: along with the authorisation of sporting bets, previously illegal, and the liberation of the players'¹⁰⁶ remunerations, demand and supply were affected simultaneously, which led to the disappearance of endemic fraud in the 50s.

More precisely, one could consider that the case *Eastham v. Newcastle United* has helped improve the salaries of players whose employment contracts were previously "slavery contracts": with the players getting paid more, it became more difficult to buy them. Therefore, the curve of match-fixing offers moved downward. Demand for match-fixing was also affected, but this time as a result of authorising sporting bets: bookmakers and bettors were no longer condemned to marginalisation and since it became possible to legally bet, this economic activity was brought to light and it developed. In a market where the odds are now public and accounting is subject to the common law, it is more difficult for bookmakers to extract from the betting market the necessary means to corrupt players. Therefore, the demand curve also collapses, to the extent that the equilibrium of the match-fixing market leads to its near extinction.

The neutralisation of criminals in the betting market has limited their access to the match-fixing market where they create demand. So it's helpful to understand the interaction between the two related markets to account for the eradication of fraud through the authorisation of bets and the liberation of the players' remunerations, in England in the 1960s. This historic example helps understand the pointlessness of prohibition attempts which shift the problem to the neighbours or prompt, when the authorities are not fighting illegal betting, the development of a criminal economy ready to intensify the difficulties that we once hoped to eradicate.

If the model of two-sided markets takes into account this historical example, it will also provide insights into the current situation.

B. Contemporary Economy of Fixed Bets

One might consider that the traditional microeconomic model of the economics of crime, appropriately adapted by David Forrest and his heirs, is sufficient enough to explain the current criminal phenomenon. However, such a model presents the athlete's decision to cheat as an isolated individual calculation; if the prevalence of crime increases, it must be interpreted as a sign of the evolution of one of the model parameters: if authorities can influence the probability of detection and sanctions, it suggests that they do not really have control over the amount of bribes. Instead, the extended model allows understanding the reason for the increase in bribes: once a criminal organisation has managed to corrupt some players and achieve its first winnings, fraud can develop very quickly. In fact, one can consider that an infrastructure for fraud has been established (corrupt players and selection methods of formulas and placement of bets) which enables it to benefit from increasing returns.

¹⁰⁶ English football was limited by a "salary cap" from the early twentieth century until 1960, hence the "liberation" of remuneration on that date.

Hence, fraud is increasingly profitable, which allows the extraction of more profits which also enable the corruption of more players.

Understanding this feedback loop is necessary to explain the speed with which corruption can spread: even if the decision of a player to participate in fraud is always an individual decision, the ability of organised crime to corrupt increases exponentially as soon as the first winnings are achieved. Therefore combating must be extremely quick and hard from the moment the first cases appear because they indicate the existence of an infrastructure which produces both increasing returns and the ability to extract from the betting market new ways to operate.

This feedback loop is even more worrying than the resilience of athletes is based primarily on the strength of their moral convictions, their dedication to the sport and to their teammates. From the time the crime becomes visible, there is a good chance that these convictions could be shaken for two reasons: First, the impunity of cheaters is never a good thing, because it gives the impression that there is no such thing as being at fault, that is to say that even honest players will deduce that not only is the probability of getting caught low, but also that the moral cost of fraud is negligible. Furthermore, this atmosphere of relaxation obviously invites fraudsters to flaunt their gains, which constitutes a new temptation. The value of the example and the related non-commercial social interactions are not represented at all by the traditional model of the economics of crime because they were made after the seminal work of Gary Becker. They have been developing since the early 2000s¹⁰⁷, and have found remarkable ground in sports.

From a purely scientific point of view, there is insufficient data to establish the predictive value of the developments proposed to be added to the model of David Forrest: the problem with fraud is that the data provided are both scarce and biased (it is never certain if the discovery of a case of fraud means that a league is corrupt or that the police units are more efficient than average). Then again, it should be noted that recent cases of corruption highlight the existence of *corrupt structures*: individuals such as *Ante Sapina* or *Wilson Raj Perumal* organised the interface between the sporting community (players, coaches, referees, officials), and a crime network (with a system for placing bets that mobilises financial and human resources). In the case of *calcioscommesse*, the fraud has a quasi-institutional dimension. Therefore, fixing sporting events cannot be regarded as a craft: Pending conclusive empirical testing, it seems that economists must account for the macroscopic dimension of the phenomenon that the microeconomic model does not explain.

Conclusion of Chapter 2

This chapter enables a precise understanding of the economic rationality behind the actions of fixers, by clearly distinguishing whether or not fraud is led by gains in bets, and whether or not organised crime was involved. Gary Becker's model, economics of crime, adapted to the analysis of sporting fraud by David

¹⁰⁷ See in particular C. F. MANSKI, "Economic Analysis of Social Interactions", *Journal of Economic Perspectives*, vol. 14(3), 2000, pp. 115-136; E.L. GLAESER & B.I. SACERDOTE & J.A. SCHEINKMAN, 2003. "The Social Multiplier", *Journal of the European Economic Association*, vol. 1(2-3), pp. 345-353.

Forrest, makes it possible to adequately comprehend all cases of fraud, and highlights the essential parameters of the decisions made by athletes, to partake in a fraud: likelihood of success of the operation, detection probability, magnitude of the gain, the importance of sanctions and opportunity costs. This description of the decision certainly helps devise the adequate policies.

However a purely microeconomic point of view does not explain the alarming specificity of match-fixing carried out by criminal organisations in order to win bets. Recent cases show that fraud goes well beyond the calculations and individual initiatives. In order to account for the magnitude of these examples, the recent developments in economic theory have been mobilised to show how social interactions can explain the explosive growth of fraud: on the one hand, the interaction between a "match-fixing market" and the betting market helps understand the existence of increasing returns in the business of organised match-fixing; on the other hand, the social interactions between athletes explain the erosion of moral values among athletes.

The renewal of the analysis made here can give a new impetus and a greater efficiency to policies to combat crime, presented in the following chapter.

Chapter 3. Recommendations Based on the Analysis of the Economic Rationality of Stakeholders

Four types of sporting fraud¹⁰⁸ have been identified, some of which are more complex to understand than the others. The analysis and economic modeling of individual frauds sends us back to the methodology and recommendations developed by the School of the Economics of Crime¹⁰⁹ (see *infra*) which essentially represent the decision to defraud: this very partial point of view should be of interest for the risk management¹¹⁰ policies of sports organisations and betting operators, but it is insufficient for designing public policies with respect to all stakeholders. Some authors recently applied the methods of public economy to the regulation of bets irrespective, however, of the conditions of production of match-fixing and of the interests of other stakeholders. However, their approach (**Section 1**) allows determining the tools available to the public authority. Our model allows integrating the market of match-fixing and the market of bets (**Section 2**), and taking into consideration the welfare of all stakeholders in order to consider the optimum of a sports community where bets would be subordinated to the public interest (**Section 3**).

¹⁰⁸ See *supra* Part 2, Title 1, Chapter 2, A, "Classification Depending on the Nature of the Perpetrators of the Fraud".

¹⁰⁹ See Section 1 of this Chapter.

¹¹⁰ It should be noted that in the North American Context, "risk management" refers to a series of clearly identified professional associations and their highly codified practices; in particular, one can think of the obligations established by the Sarbanes-Oxley Act. Section 404 requires listed companies, since 2002, to establish an internal control framework that includes a risk analysis, and in particular the risk of fraud. Because of their often associative status, sports entities generally escape this obligation.

Section 1. The "Economics of Crime" Point of View

The previous analyses can provide a number of lessons and some recommendations. Economists generally like to use microeconomic representation to create public policies (§ 1). However, the unilateral point of view leads to believe that this analysis targets the risk managers who work for betting operators (§ 2) rather than the public authorities.

§ 1. The "Economics of Crime" Theory: a Microeconomic Perspective on the Offer of Match-Fixing

In general, Gary Becker has allowed the formalisation of certain conditions for the appearance (and growth) of organised crime. One can infer from this work that any public policy that aims at reducing the gross profits of manipulators of sports bets or at increasing the cost of sanctions would likely reduce the level (and growth) of MFFB.

The interpretation of these results in the context of sporting fraud remains delicate: sanctions seem ineffective,¹¹¹ whether for athletes (individual fraud not related to organised crime) or even for criminals (organised fraud). This lack of effectiveness of sanctions is explained primarily by the fact that it is usually difficult to prove that a sports competition has been fixed, even though Gary Becker's analysis is based on the idea that sanctions are likely to be imposed. Next, there are athletes who are nearing retirement, who become targets for criminals, since they generally cannot avoid the exclusion that awaits them. Finally, for criminals who choose sporting fraud as a field of complementary activity, the criminal sanctions are compared with those aimed at drug trafficking, procurement and other traditional activities of the underworld. Some national regulations, through the offence of criminal conspiracy, allow all organised frauds to be subject to the same regime as other criminal activities. Their application is certainly desirable in the case of organised sporting fraud, but it does not solve the fundamental problem of low detection rates that limit the deterrent effect of the sanction.

Based on the work of Gary Becker, Maennig refines the analysis and offers several types of possible interventions in the economics of sports in order to reduce corruption. However, his analysis remains cautious: in fact, when the expected cost of corruption increases, it could cause, on the one hand, the formation of defence mechanisms (in particular the increase of the obscurity and secrecy surrounding match-fixing) and, on the other hand, it creates a demand linked to the prospect of even higher gains derived from match-fixing.¹¹² According to Maennig, one should avoid the regulation of sports betting which would directly increase the number of fixed matches. Also he focuses more on measures that would:

¹¹¹ W. MAENNIG, "On the Economics of Doping and Corruption in International Sports", *Journal of Sports Economics*, 3-1, 2002, pp. 61-89.

¹¹² By analogy with the analysis of corruption of V. TANZI, "Corruption around the World: Causes, Consequences, Scope, and Cures", *IMF working paper*, No. 63, International Monetary Fund, Washington, DC, 1998.

- increase the probability of detecting, catching and punishing fixers (increase in the expected ex-post cost of match-fixing, when detected);
- increase the weight of sanctions (not just economic: F, LR) imposed on fixers, so as to produce the worst effect on their reputation (LR) - increase in ex-post non-pecuniary costs;
- expand control over sports betting markets and lead to greater accountability of bettors; monitoring systems mentioned above are clearly being considered here;
- reduce the net utility expected from match-fixing by ensuring an increase in the direct cost (DC) of preparation and execution, including costs incurred to avoid being detected and sanctioned;
- increase gain prospects in legal sports betting, without match-fixing (according to Ehrlich) a measure which may be unrealistic at the moment due to online betting and globalisation (Moreover, such a measure would create a growing interest among organised crime, considering the possibilities of money laundering);
- however, he does not believe in the effectiveness of measures that would increase the non-pecuniary opportunity costs of match-fixing (NOC), although he remains convinced that reinforcing an attitude of systematic hostility towards match-fixing and fraud is fundamental.

In fact, these proposals correspond to the decision variables of fixing athletes as outlined in the previous paragraph.¹¹³ However, Maennig does not indicate what would be the operational measures to reduce MFFB (his main subject of analysis is the corruption of members in sports organisations. However, such elements are discussed, for example, by Forrest (2008),¹¹⁴ which also aims at reducing the probability of success of match-fixing (*q*).

A point of debate among economists regarding the RRB: Following Ehrlich, who considers that crime is reduced by reducing the compensation differential between the honest conduct and crime, some advocate the idea of increasing gains of non-fixing bettors to reduce match-fixing incentives. However, one can easily prove that gains from fraud benefit more from an increase in the RRB than gains in fair betting (see box). Moreover, such a measure would increase the liquidity in the sports betting markets, which is also a source of potential match-fixing.

¹¹³ The variables of the decision function of sporting tricksters presented in the previous paragraph are recalled:

	P.	Q	Y	W (RRB)	NPB	DC	POC	NOC	F	LR
Sign of effect	-	+	?	+	+	-	-	-	-	-

¹¹⁴ D. FORREST, I. MCHALE, K. MCAULEY, "Risks to the Integrity of Sport from Betting Corruption", *op. cit.*

Therefore, logically, there is no need to increase the RRB, although operators tend to do so under the pressure of competition from Internet offers. *One can even consider that measures to limit RRB (like their cap at 85% in France) are well-justified, in part due to the risk of addiction and money laundering they seek to restrict.*

If the results of the analysis of economics of crime seem uncertain, it is primarily due to the fact that the perspective used here is incomplete: it concerns only the production of match fixing. However, in reality, the phenomenon is much more complex and other stakeholders should be considered in order to devise efficient policies. Still, knowing the motives of the stakeholders of the fraud may interest the other stakeholders who seek to prevent it.

Box – fraudsters have more interest in the increase of the GGR than honest bettors

It is more usual to reason directly on the basis of the declared odds of bookmakers but one can also consider these “net” odds as the product of a net odd by the RRB. However, in order to change the rate of return of *ex-ante* bettor, bookmakers can only change their odds.

If an honest bettor bets m_i and gets a "net odd" c_i (net odd is $t.c_i$ where t is the RRB) and the bettor-trickster bets m_f with a "net odd" c_f (net odd is $t.c_f$), then the honest bettor can expect to win $m_i.c_i.t$ whereas the dishonest bettor can aim at $m_f.c_f.t$. The fact that the net odds of honest bettors and cheaters are different can be explained in two ways.

On the one hand honest bettors bet on several possible outcomes and, based on this reasoning, the average odd is retained, whereas cheaters bet only on the formulas they know the results of in advance. On the other hand, there are several betting formulas on the same sporting event, but we retain the average odds.

In so much as the dishonest strategy puts at stake important costs, the following can be conceived:

$$m_f.c_f.t > m_i.c_i.t$$

Therefore $m_f.c_f.t = \lambda.m_i.c_i.t$ with $\lambda > 1$

Thus, by increasing t , the gains of dishonest bettors greatly increase more than the gains of honest bettors, and as a result the **net gain of fraud** increases, in fact:

$$\text{Gains from fraud} - \text{gains of honest bettors} = m_f.c_f.t - m_i.c_i.t = (\lambda-1). m_i.c_i.t > 0$$

So $d\text{Gain}/dt > 0$ this is why the **returns of bettors should not be increased** since it increases the differential gain of fraudsters and therefore the tendency to commit fraud.

§ 2. Elements for the Risk Management of Sports Bets

All matches are not considered equal before attempts of match fixing: it seems necessary to warn the stakeholders – betting operators, sports federations, and public authorities – of the relative danger of different betting platforms. After presenting some definitions, the risk factors related to the matches linked to betting formulas will be distinguished. It's worth recalling that the phenomenon of match-fixing can take many forms:

- Initial Motivation to manipulate the sporting event related to the sporting stakes of the latter. **Collusion**, Non-MFFB (match-fixing that is not motivated by sports bets); (**A**);
- Manipulation of the sporting event motivated by the prospect of profit through fraudulent sporting bets (placed with privileged information). **MFFB** (match-fixing motivated by sporting bets) (**B**).

A. Risks Related to the Nature of Matches

Determining the more or less risky nature of sporting events is important to enable sports entities to design competitions in order to minimise the risk of fraud. The role of *contest* design (organisation of incentives in competitions) has been highlighted by recent works of economists¹¹⁵ the foundations of which are recalled here.

1. Collusion – Risk Factors and Contest Design

*When the reward associated with victory is highly asymmetric, the risk of occurrence of sports manipulation qualified as "collusive" increases.*¹¹⁶ Consequently, it will be possible, depending on the structure of the sports competition, to identify for each match a level of risk of collusion.

The average risk of collusion in a given championship is inversely proportional to the number of remaining points left to distribute. Therefore it would be more significant in the last quarter of the competition than in the first. In fact, from a certain point in a competition¹¹⁷, the fate of several sports teams is sealed. For open European leagues, they are in the "soft underbelly" of the championship (American closed leagues (Major Leagues like the NBA, MLB, NFL, NHL and the MLSoccer avoided relegation and let go of dreams of winning first place¹¹⁸), the same phenomenon of "the threshold of sports stake loss"¹¹⁹ is aggravated by the

¹¹⁵ See for example S. SZYMANSKI, "The Economic Design of Sporting Contests", *Journal of Economic Literature*, 2003, Vol. 41:4, pp. 1137-1187; R. CARUSO, "The Basic Economics of Match Fixing in Sport Tournaments", *Economic Analysis and Policy* (EAP), Queensland University of Technology (QUT), vol. 39:3 (2009), pp. 355-377

¹¹⁶ M. DUGGAN, S. LEVITT, "Winning Isn't Everything: Corruption in Sumo Wrestling", *American Economic Review*, 92-5, 2002, pp. 1594-1605. S. SZYMANSKI, I. PRESTON, "Cheating in Contests", *Oxford Journ. Econ. Policy*, 19-4, 2003, pp. 612-624. See also R. CARUSO, "The Basic Economics of Match Fixing in Sport Tournaments", *Economic Analysis and Policy* EAP, Queensland Univ. of Technology QUT, School of Economics and Finance, vol. 39:3, December 2009, pp. 355-377.

¹¹⁷ More advanced when the level is homogenous.

¹¹⁸ In addition to the title of champion, the first places in open leagues often allow qualifying for regional competitions.

¹¹⁹ This happens earlier in the season due to the absence of relegation in American closed leagues.

risk of voluntary loss (*tanking*) at the end of the regular season, to benefit from an advantageous position in the draft of the year $n + 1$ ¹²⁰, which allows lower-ranked teams after the regular season to recruit the best young players¹²¹. These differences were noted and rationalised by sports economists, in particular by Wladimir Andreff¹²².

Many different cases can be used to illustrate the potential risks:

Case n° 1: A qualifying match for the last day of the championship, at the end of which the loser will be relegated to a lower division, the absolute stake for both teams is at its maximum, the differential stake is zero, and the risk of collusion is very low.

Case n° 2: A qualifying match for the last day of the championship, at the end of which the leader will meet a team from mid-table. Victory is necessary to ensure the leader the title of champion, the opponent therefore has nothing to gain or lose, so the risk of collusion is very high.

This example suggests that the risk of collusion increases with the asymmetry of the stake among participants.

Insofar as it brings about unexpected results (and thereby creates an asymmetry of information between the participants and the rest of the world), collusion can be monetised in the betting market. This often leads operators not to offer bets on sporting events where the absence of stakes for one of the participants raises doubts. Also, to make gains, fixers often have to do things differently by choosing the events that elicit a high volume of transaction.

The available economic literature attributes to sports participants a classic utility-maximising behaviour, for which the risk of manipulation of sports competitions appears when the structure of a competition allows situations in which victory is not the optimal strategy. Thus, the existence of gaps in a given structure "encourage" participants who need to win relatively more than their opponents to pay bribes, in order to force the outcome of the sporting event in their favour.

Therefore it seems that the structures of competitions strongly determine the appearance of *windows of opportunities for bending the rules* for sporting participants, and therefore all sporting events in which at least one of parties has no incentive (sporting or financial) to win the match carry a risk of collusion.

¹²⁰ Indeed, awarding new players boosts the lowest ranked teams of the past season. In order to reduce the incentive to lose intentionally, the top three new players are allocated via draws among teams that have not played finals (playoffs).in/

¹²¹ The NBA has 30 teams, divided into two divisions of 15 teams (East vs. West): 8 teams in each division earn their ticket to the finals. The non-qualified 14 teams will have more incentive to finish closer to last place, synonymous with a great advantage in the upcoming draft.

¹²² W. ANDREFF, "Contemporary Issues in Sports Economics ", *Edward Elgar* (ed.), 2011. *adde*, W. ANDREFF, *Mondialisation économique du sport*, De Boeck, Brussels, 2012.

Among the recommendations that would contribute to reducing the asymmetry of sporting stake (and matches without stakes) and improve incentives for participants, the following are included:

- Benefits must promote performance bonuses (match by match) rather than a final distribution, in order for a financial incentive to exist even if there is no more sporting stake.¹²³
- The reorganisation of the order of play of matches in a championship for the benefit of the weaker teams in order to limit as much as possible the number of matches without stakes¹²⁴.

References cited at the beginning of this paragraph clearly detail the possibilities, either theoretically (SZYMANSKI) or by a case study (two football competitions in CARUSO). For example, during the last World Cup in Brazil, the last two matches in each group were held simultaneously to avoid both the collusion of the "game of shame" type, and fixed bets. However, there is still a margin of progress, even for football which deserves specific recommendation (see *infra* recommendation 6 in the "recommendations to sports entities," p. 99). If this phenomenon interests all sports organisations because it risks undermining the spirit of sports, then it is not being exploited by malicious bettors. The case of frauds carried out for the sole purpose of making profit through bets will now be examined: this case primarily concerns betting operators.

2. MFFB – Risk Factors

Unlike collusion, the risk of occurrence of a MFFB will be even more important than the stake (and the differential stake) will be low. It is not a matter of allowing a team to accomplish a sporting goal related to the structure of a competition, but to maximise the return on investment of the criminal operation, while keeping under control the risk of detection. The latter includes at once a "classic risk", inherent in the sports world, and a risk of detection related to the existence of monitoring tools in the sports betting market, starting with betting operators themselves.

As explained above, it is for the "head of criminal plan" to select matches in which:

¹²³ R. CARUSO, "The Basic Economics of Match Fixing in Sport Tournaments", *Economic Analysis and Policy EAP*, Queensland Univ. of Technology QUT, School of Economics and Finance, vol. 393, December 2009, pp. 355-377.

The distribution of profits in the UEFA Champions League (match bonuses for each team plus finalist bonus) is cited as an example. It is shown that the UEFA is more robust to manipulation than the FIFA World Cup scheme (with payment only to finalists.) UEFA Champions League 32 teams, 8 groups of 4, CHF 500,000 for one victory, 250,000 for a draw; teams qualified for the finals (2 per group, 16 in total), each receive CHF 2.5M. FIFA World Cup, 32 teams, 8 groups of 4, teams qualified for the finals (2 groups, 16 in total) each receive CHF 8.5m

¹²⁴ Caruso gives as an example of "reorganisation for the benefit of the weaker teams" the choice by UEFA to play in 2nd leg matches the best teams: thus, the weakest teams would still have a chance to be the best teams, an opportunity which they would have gotten if the matches had been played in reverse order (or on neutral ground, like in the World Cup).

1. The cost associated with the corruption of participants (producers of fix) is low;¹²⁵

2. The markets of corresponding bets are sufficiently liquid so that the extracted sums can allow to profit from the operation

	Absolute stake	Asymmetry of the stake
Collusion	-	-
MFFB in the absence of <i>risk management</i> by operators	-	-
MFFB with operators susceptible to risk of manipulation	+	+

Consideration by fraudsters of the betting operators' Security Policy leads to counter-intuitive results: This example illustrates the difficulty of fighting against manipulation.

B. Risks Related to the Nature of the Betting Formulas

Here, the specific risk for each of the different types and formulas of betting are evaluated.

First, the level of risk is strongly linked to the possibilities of match-fixing inherent in the type or in the formula in question (handling a fact of the game, such as causing a corner is obviously easier to arrange than to fix the result of the match). However, it also depends on the difficulty of fraud detection and on the liquidity of the formula, even on the possibility of money laundering.

The tables below attempt to assess the main risks associated with each type and formula of bets.

¹²⁵ The less is at stake, the more the "ethical locks" of sports participants would be easy to break.

Risks Proper to Certain Types of Bets

Types of bets	Cost of fraud	Difficulty of detection	Online liquidity ¹²⁶	Cash liquidity ¹²⁷	Ease of money laundering	Probability of individual fraud	Probability of organised fraud	Severity	Sports danger index
Pool betting	1	1	1	3	1	1	1	1	1
Bets with <i>ex-ante</i> odds	4	4	5	5	3	5	5	4	20
Bets with live odds	5	5	5	2	4	5	5	5	25
Betting exchanges	3	3	3	1	5	2	3	3	8
Spread betting	2	2	2	1	2	2	2	2	4

Thus an average risk is put forth on the basis of the following considerations:

- the *cost of fraud* is related to the number of stakeholders there is to corrupt (5: one athlete only, 1: an organisation);
- the *difficulty of detection* was assessed by a panel of experts (1: the easiest to detect, 5: the hardest to detect
- *liquidity* is measured by the log of transaction volumes / number of available formulas of bets;
- *Ease of laundering* is taken from Kalb-Verschuuren (2013);¹²⁸
- *Probability* indexes are calculated as follows:
 - probability of individual fraud = 50% (cost of fraud) + 25% (detection difficulty) + 25% (ease of money laundering)
 - Probability of organised fraud = 12.5% (cost of fraud) + 75% (maximum liquidity) + 12.5% (ease of money laundering)

Finally the danger index =

(Maximum liquidity) + (severity) ×

$$\frac{(Probability\ of\ Individual\ Fraud + 2(Probabilty\ of\ Organised\ Fraud))}{3}$$

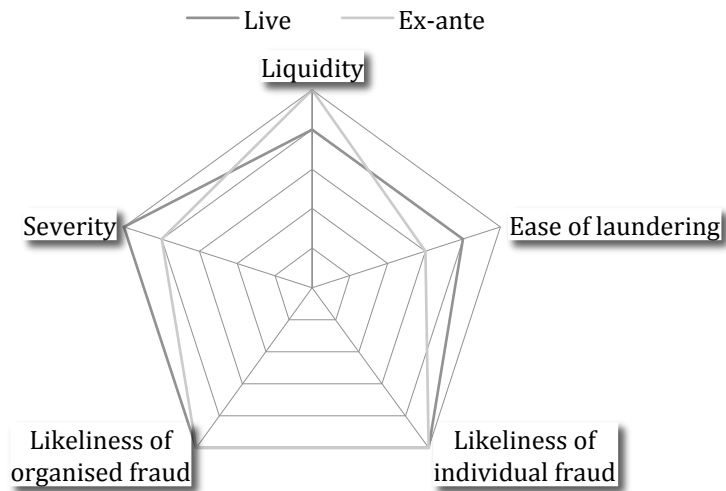
One can also use the table of data to characterise more precisely each betting formula and compare them by pairs.

¹²⁶ European Lotteries (does not necessarily represent the aggregate world liquidity).

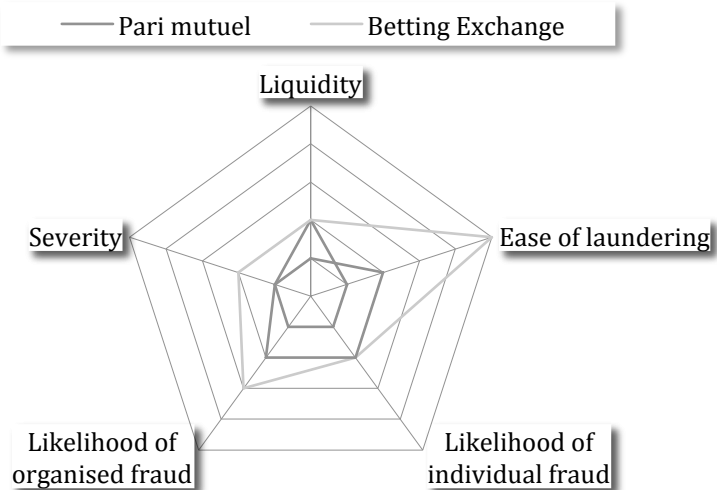
¹²⁷ European Lotteries (does not necessarily represent the aggregate world liquidity).

¹²⁸ *Op. cit.*

Odds bets: ex-ante v. live



Pari mutuel - Betting exchange - Spread betting

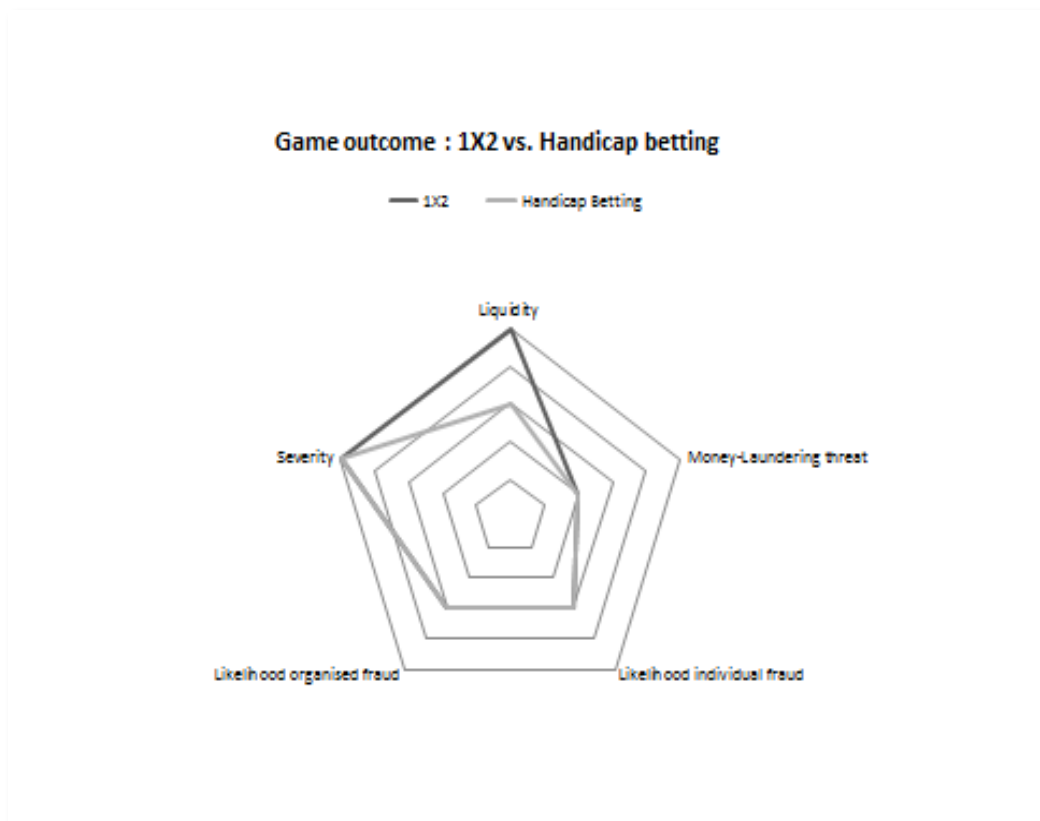


Reading: Different types of bets involve different levels of risk. These risks are higher than the betted/exchanged volumes are high, as well as higher than the volume of live bets.

Risks Specific to Each Betting Formula

Betting formulas	Cost of fraud	Difficulty of detection	Online liquidity ¹²⁹	Cash liquidity ¹³⁰	Ease of money laundering	Probability of individual fraud	Probability of organised fraud	Severity	Danger Index of sports
Match (1-X-2)	2	2	4	5	3	2	4	5	17
Handicap Match (1-2)	3	3	3	3	2	3	5	5	20
Derivative bet (exact) ¹³¹	4	3	2	2	2	3	2	2	5
Derivative bet (over/under)	4	4	3	2	2	3	3	3	9
Bets on facts of the game ¹³²	5	4	1	1	1	5	2	1	3

The table data can also be used to characterise more accurately each betting formula and compare them by pairs.



¹²⁹ European lotteries (does not necessarily represent the aggregate world liquidity).

¹³⁰ European lotteries (does not necessarily represent the aggregate world liquidity).

¹³¹ Bets strongly related to the outcome of the match (e.g. halftime winner, margin of victory for the favourite, etc).

¹³² Bets weakly related to the outcome of the match (example: 1st corner, number of yellow cards received, etc).

Reading: For a given bet medium, betting formulas established according to the “handicap” system (bets on the result of the match) and “over/under” (for derivative bets and to a lesser extent bets on the facts of the game), present a higher risk of manipulation of the underlying sporting event: this is explained by the possibility of severance of the sporting result from the outcome of the bet. In other words, it is now possible to “sell the loss of a bet” without “selling the match”.

On the one hand, this fundamental difference is well understood by criminals, who will find it easier to convince a fragile participant to take part in the manipulation.

On the other hand, market entry (now globalised) by Asian and American consumers who have a preference for handicap and over/under bets, will generate sufficient levels of liquidity in order to make the operation profitable, thus contributing to the increase in the level of relative risk of these betting formulas.

The difference in the danger levels (of “manipulability”) that may exist between different betting types and formulas makes it important to appropriately take into account each type of bet, rather than to consider “bets” in general. In particular, and in an effort to protect public policy, it would be desirable to adapt any potential restriction according to the danger specific to each betting type and formula. This notion will be clarified later, once the tools of regulation and self-regulation aiming at limiting fraud are presented.

Section 2. Renewal of the Economic Analysis

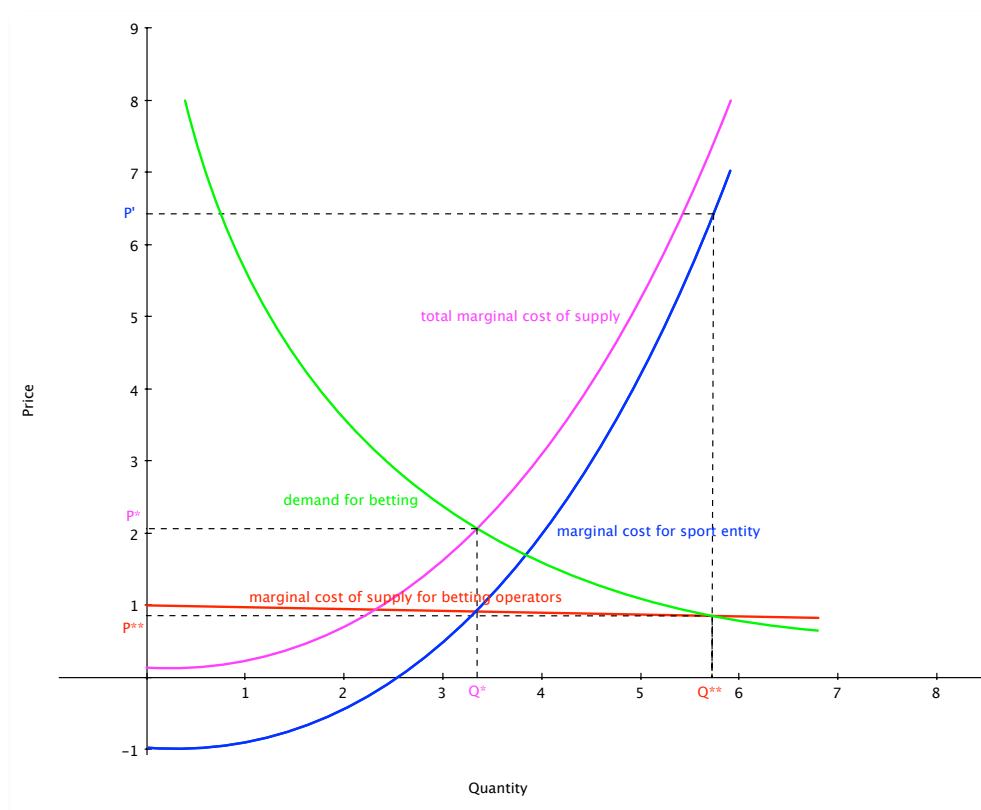
The economic analysis of fraud was recently enhanced by the use of tools provided by the public economy. After outlining the facts of the problem (§ 1), the tools available to solve it are presented (§ 2), particularly at the international level (§ 3).

§ 1. Statement of the issues: Conflicting Interests

The organisation of the sports betting market is presented below:¹³³

¹³³ See *supra* p. 44 of this Chapter.

Figure 9 - Competitive Equilibrium and Optimum of Betting Stakeholders

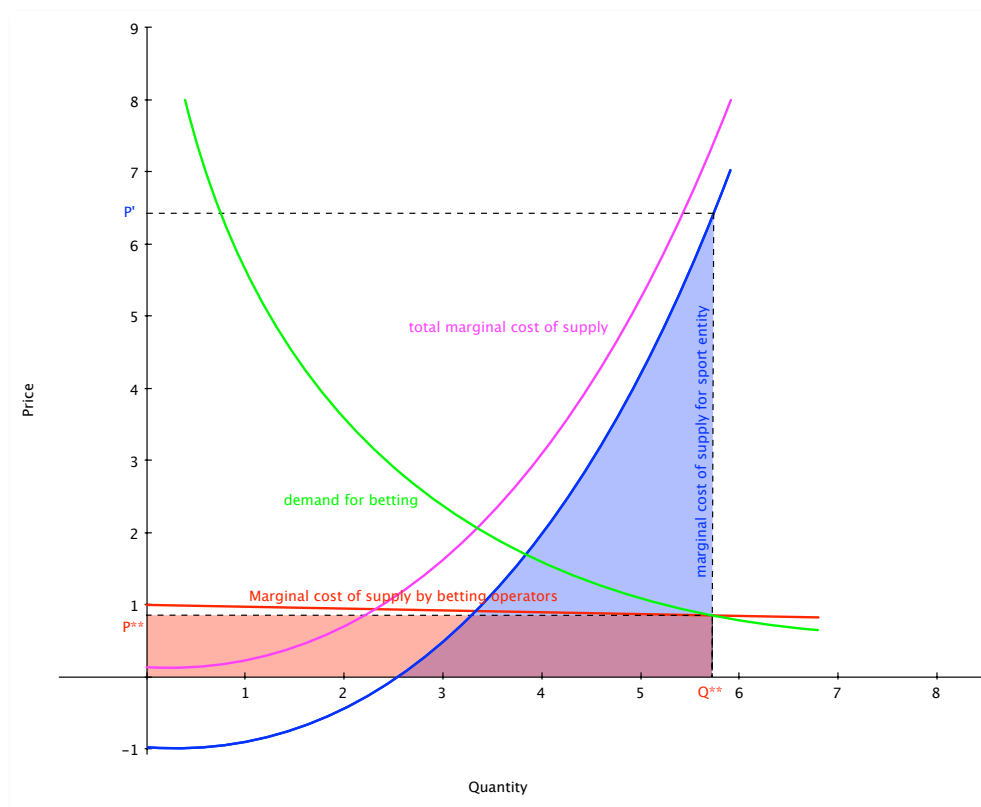


The demand for bets (from several categories of bettors) increases when the price drops: demand is therefore inversely proportional to the cost. From the supply side, the increasing returns of operators result in a supply curve that is also inversely proportional to the price. If we consider now the expectations of sports organisations, the costs (mainly related to the prevention of fraud¹³⁴) increase with the volume of bets. The aggregate supply curve is calculated by adding up the costs of operators and sports entities.

The intersection of demand and aggregate supply determines an optimum of stakeholders (P^* , Q^*). However, if the operators do not take into account the needs of sports entities, the optimum will be (P^{**} , Q^{**}): a very low price and high volume of bets (*i.e.* a very large turnover for operators, but with a small margin). For this quantity Q^{**} , sports organisations require a price P^* that is much higher, in order to properly fight against fraud (by educating athletes and by implementing monitoring measures on the sports betting market as well as disciplinary enforcement, all of which are expensive). The potential loss of the sports entity corresponds to the blue area in the figure below: according to the parameters of the model, the loss may exceed the gains of betting operators (as seen in red in the graph).

¹³⁴ However, some sports federations claim the right related to the exploitation of their competition by betting operators, which could lower the costs.

Figure 10 – Competitive Equilibrium: Losses of Sports Entities and Gains of Betting Operators



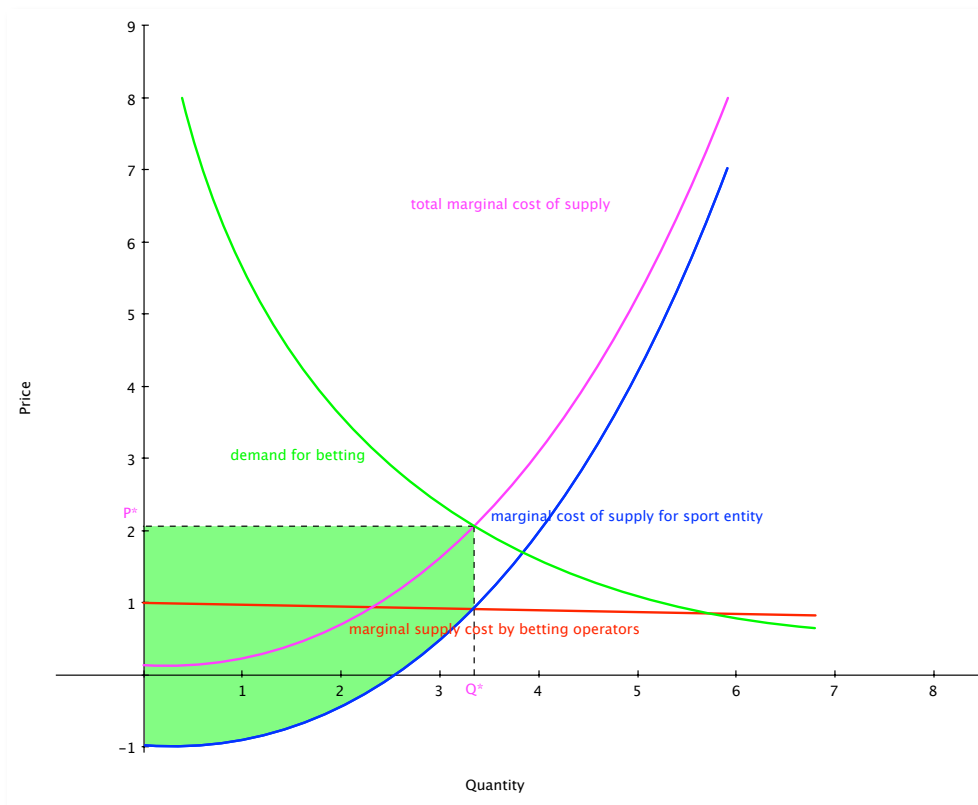
Faced with this conflicting equilibrium, the optimum of stakeholders corresponds to (P^*, Q^*) , *i.e.*, a lower volume of bets corresponding to a higher cost, which would cover the management expenses of operators and security investments of sports organisations. Dietl [2012]¹³⁵ considers that a sharing of interests among the parties involved corresponds to the notion of general interest. For the author, the optimum for the public interest is that of soccer, (*in view of the social optimum, but also with regard to the optimum outcome for the game of football and its institutions*¹³⁶) provided that social welfare loss is null in other categories.

Such a situation corresponds to Pareto optimality, but it shall be characterised more precisely as a local or sectoral optimum, when referring to the relationship between a sports federation and betting operators. Obtaining local optimum does not guarantee achieving social optimum, in the sense of an optimum for all social activities and markets.

¹³⁵ H. DIETL, C. WEINGÄRTNER, "Betting Scandals and Attenuated Property Rights - How Betting Related Match Fixing can be Prevented in the Future", *Institute for Strategy and Business Economics*, Univ. of Zurich, Working Paper No. 154, 2012.

¹³⁶ H. DIETL, C. WEINGÄRTNER, "Betting Scandals and Attenuated Property Rights - How Betting Related Match Fixing can be Prevented in the Future", *op. cit.*, p. 10.

Figure 11 – Cooperative Solution: Division of Gains Between Sports Entities and Betting Operators



In the case at hand, the sectoral optimum occurs when sports entities and operators share an amount equal to the surface in green on the graph above (which is a maximum for the pair (P^*, Q^*)). This optimum is rarely achieved, because there is no reason for betting operators to agree with sports organisations on a cooperative solution: today, mediums for bets (on the result of competitions but also on various game facts) are public; operators do not need the endorsement of sports organisations to form their offer. One could argue that the Asian betting operators help finance the English Premier League, or that little leagues benefit from streaming broadcasts.¹³⁷ This cooperation is undeniable but limited: *it is not enough that some operators are directly financing the Premier League and other European clubs, all operators should be required to be appropriately involved in financing the safety of all the events on which they offer bets, which is far from being the case. One may think conversely that many national equilibriums of the twentieth century were cooperative, either because operators got along with sports organisations on a national basis, or because the State was able to uphold the public interest. By destroying these harmonies, globalisation poses a serious problem: it is estimated for example that the majority of bets placed on European football now originate from Asian betting markets, often via illegal bookmakers.*

¹³⁷ On this point, see *supra* Part 2, Title 1, Chapter 1, Section 1, § 3.

It could also be considered, and the facts seem to agree with this theory, that the combination of clandestine and large volumes of bets is the perfect breeding ground for the development of large-scale manipulations. Without proper regulation, the market functions to the detriment of sports organisations. Therefore, it is possible that public authorities would intervene in order to draw the current situation closer to the social optimum as they perceive it.

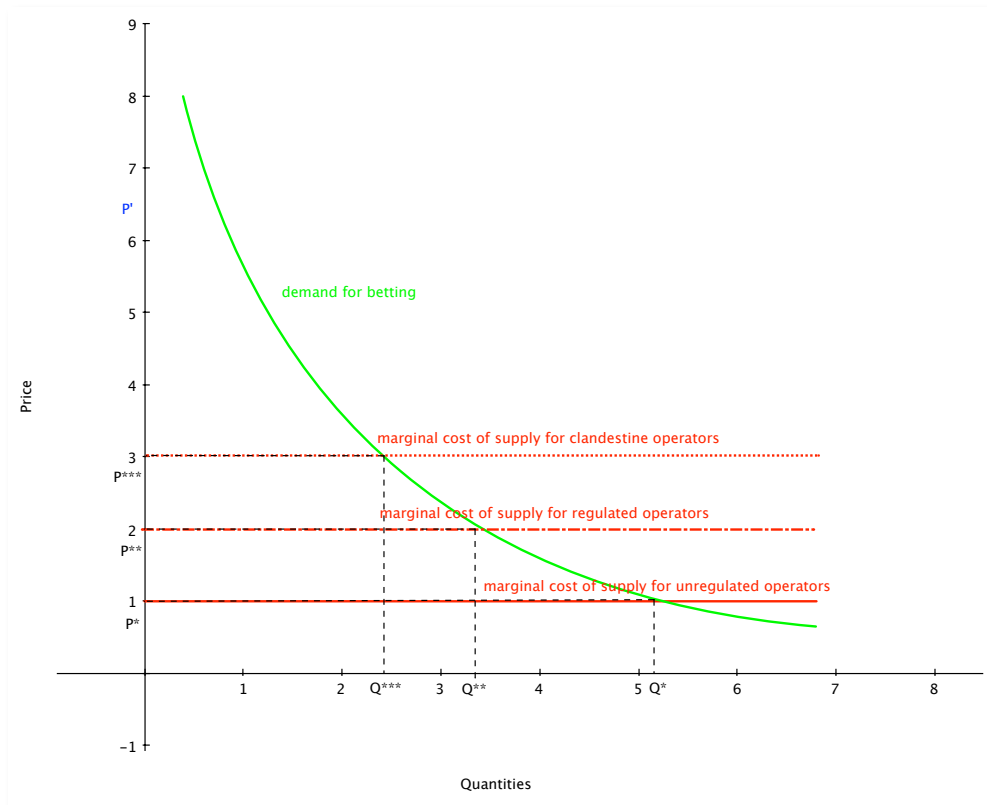
§ 2. The traditional Instruments of Regulation and Optimum

In order to protect public policy (against corruption, money laundering, and transnational organised crime) and social policy (against addiction phenomena), public authorities often seek to restrict the supply of bets, either by completely prohibiting them or by regulating their supply. For example, they have long limited horse racing bets in racetracks: This obviously increases the opportunity cost for the bettor who must move in order to place his bets.¹³⁸ Under these conditions, the demand for bets decreases (from Q^* that represents the optimum in the market to Q^{**} in Figure 1). If the authorities completely prohibit bets, the cost would increase further for bettors: bookmakers have to hide, potential sanctions worry some bettors who would rather back out, etc. In the end, a volume of bets will be set $Q^{***} < Q^{**} < Q^*$ with a price $P^{***} > P^{**} > P^*$ (at least if the State combats illegal betting efficiently; if prohibition is purely formal as in some Asian countries, the price of illegal bets can be very low. In general, the more limited the supply, the greater the price and the more the volume of effective bets decreases. However, all the known examples demonstrate that prohibition is never total¹³⁹. In the United States, where bets are only allowed in 3 out of 50 States (Nevada, Delaware and most recently New Jersey), it was estimated a few years ago that the volume of illegal bets was 99 times bigger than the volume of legal bets (statistics from the American Gaming Association [2012] incorporate all bets, not only sporting bets). Obviously, the level of illegal activity depends (all else being equal) on the effort of authorities to enforce prohibition (for example, by using specialised police units). In recent years, American police seems to have taken this subject, in connection with the rise of organised crime, much more seriously, and as a result a gradual disappearance of many illegal bookmakers can be observed.

¹³⁸ See Part 1, Title 1, Chapter 2, Section 1, § 1, A, 2, C.

¹³⁹ IEA [2008].

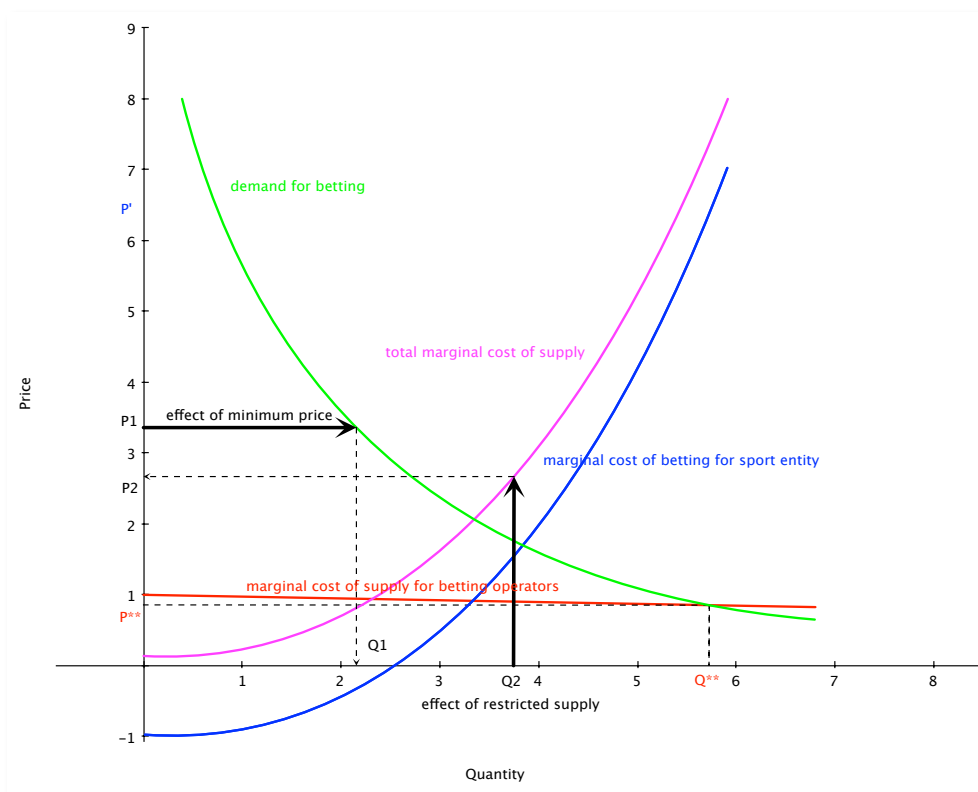
Figure 12 – Effects of Regulation and Prohibition



By increasing the price of supply, regulation constitutes a dilemma because the price competitiveness of regulated operators deteriorates compared to non-regulated operators. Such a phenomenon is already present in the financial sector where the prudential banking regulations force banks to take out of their balance sheets compromising assets via operations of securitisation which constitute the shadow banking system, practically not regulated. In the case of sporting bets, the regulation of national operators encourages the development of illegal operators (or foreign operators in the UK, where the concept of an illegal operator does not exist to this day), and they are often poorly regulated and the price of bets is lower. This dilemma concerning regulation should lead to taking into account the effect of regulation on other countries.¹⁴⁰

¹⁴⁰ See *infra* § 4 of this section.

Figure 13 – Regulation through Prices and Quantities



As it has been observed, regulation provides instruments to control prices and quantities. Figure 5 presents these possibilities: if a minimum price P_1 is fixed (for example by limiting the RRB, by imposing specific taxes on bets, or constraints that increase prices), the volume is therefore limited to Q_1 . Q_2 can also be fixed below Q^{**} in the market (for example by prohibiting certain distribution channels) as well as imposing the inclusion of costs of sports entities. Is it possible so far to achieve the social optimum (P^* , Q^*) in figure 6 and to require betting operators to pay a “compensatory allowance” of the costs to sports entities?

This socially optimal solution is fraught with practical difficulties: on the one hand, the curves are not known to public authorities and it is difficult to convince the stakeholders to genuinely reveal them in the sharing of the green zone in figure 5 (in this case, betting operators and sports entities share the interest of increasing the costs in order to receive a higher compensation). On the other hand, there is no reason to think that all sports entities face the same difficulties. However, it is difficult for the political authority to impose a specific solution for each sport. In addition, betting operators may well prefer the market solution, if the share accruing to them is inferior to the one resulting from the market solution. The probable nature of this assumption leads to anticipate natural “resistance” on the part of betting operators. A fourth problem is the lack of a clear connection between regulatory measures and the ensuing volume of bets: it is known that if operators are required to take bets on three matches at once instead of one (as was traditionally the case in England before the 2000s, or in France before 2005), the demand will decrease (probably in favour of foreign operators), but it is unclear to what extent: there are no recent and reliable studies on the subject.

Therefore, regulation allows adjusting volumes and prices, but not necessarily to the point of reaching a *sectoral optimum*.

§ 3. Taxation and Property Rights

The contribution of public economy can account for the effects of certain, more targeted policies, which resort to a tax incentive (**A**), or are based on a clear assignment of property rights (**B**).

A. Taxation

The analysis, according to which it is unclear how to achieve the optimal solution, is certainly a reason why some sports organisations prefer total prohibition, as is true for example in the United States.¹⁴¹ However, some states, New Jersey in particular, sought to allow bets in order to benefit from additional tax revenues. For its part, the Court of Justice of the European Union did not fail to make it clear that Member States sometimes overly protect public monopolies,¹⁴² which pay specific taxes related to gambling. Also, regulators do not always act according to the general interest of the stakeholders, but sometimes according to their own interest. This is why it is essential that all stakeholders be aware of the range of opportunities available to them, as well as their effects. In particular, advances in the economic theory have led to a better understanding of the indirect effects of regulation, through the introduction of a specific tax or the protection of property rights of sports entities that organise competitions. We will now consider these possibilities in more detail.

A specific tax could be imposed on betting operators to include in their costs those related to the integrity of sport which are currently undertaken by sports organisations. Specifically, there are three different ways to create a "tax" on bets:

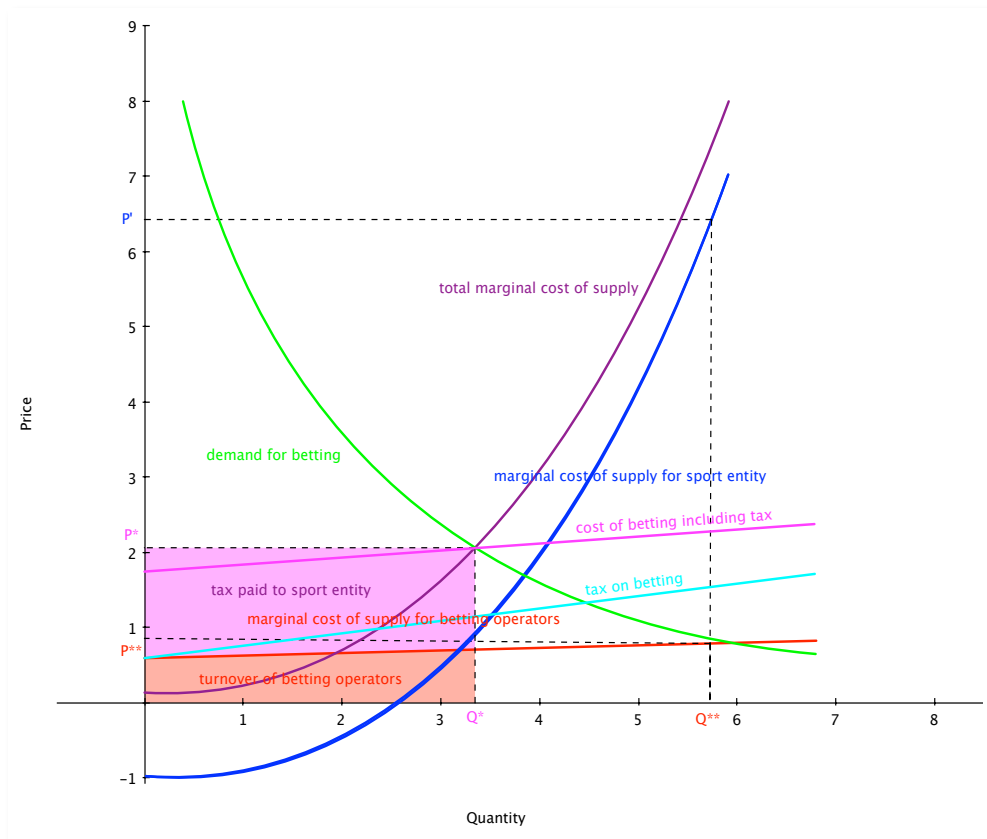
- The first consists in taxing all bets in the same way
- The second allows the State to increase its tax revenues by taxing more the bets that are less price elastic;
- The last one seeks to *predict potential problems by particularly imposing taxes when the risk of manipulation is higher, so as to discourage fraudsters (because the bettor's returns are reduced) and by helping sports entities that are the most susceptible to fixing.* A heavier taxation of risky betting formulas would reduce their attractiveness to criminals, and thus the risk of manipulation of sporting events that are a medium for bets. Thus for example, it seems appropriate to impose a higher tax on bets on one event rather than bets on a multitude of events (which are obviously more difficult to manipulate at the same time.)

¹⁴¹ D. REICHE, "The Prohibition of Online Sports Betting: A Comparative Analysis of Germany and the United States", *op. cit.*

¹⁴² R. SIEKMANN, "Sports Betting in the Jurisprudence of the European Court of Justice: A Study into the Application of the Stare Decisis Principle, or: The Application of the 'Reversal Method' of Content Analysis and the Essence of the ECJ Case Law on Sports Betting", P.M. ANDERSON *et al.* (eds.), *Sports Betting: Law and Policy*, ASSER International Sports Law Series, 2012, DOI: 10.1007/978-90-6704-799-9_6.

The first method is obviously easier to implement: such taxation can be done through flat rate taxes (as is the case for operating licences) or proportional taxes (to the activity). The second is qualified as the *second best optimum* (the problem of Ramsey-Boiteux).¹⁴³ It is the most interesting to States experiencing a need for financing. The third is obviously preferable to all points of view, although it is not easy to implement because of the information problems discussed earlier with regard to regulation. Figure 6 gives an idea of how the tax would be divided among operators and sports organisations: to the extent that its revenue is allocated to combat fraud¹⁴⁴, taxation aims to achieve social optimum. Despite the practical difficulties of achieving this optimum, it is the principle of Pigovian taxation that matters, which means *charging operations with higher risks with higher taxes*. For example, *it seems desirable to impose more taxes on certain anonymous bets (e.g. when the bets are paid in cash, regardless of the amount) rather than bets which can actually be traced back to the participants (which gives a chance to find the manipulators)*.

Figure 14 – Optimal Taxation (Pigovian)



Another way to proceed is to assign property rights to sporting events in a clearer manner.

¹⁴³ See F.P. RAMSEY, "A Contribution to the Theory of Taxation", *The Economic Journal*, 37, no. 145 (March 1927), pp. 47-61; *adde*, M. BOITEUX, "Sur la gestion des Monopoles Publics astreints à l'équilibre budgétaire", *Econometrica*, Vol 24(1), 1956, pp. 22-40.

¹⁴⁴ Autorité de régulation des jeux en Ligne, "report by ARJEL on the right to bet", *op. cit.*, p. 50 gives an example of a responsible management of the French Tennis Federation tax; it may be advisable in order to guarantee the result to make sure that the amounts collected from the taxation of bets, serve their purpose.

B. The Property Rights Approach

The principle of property rights on sporting events organised by sports entities is derived from the application of Ronald Coase's theorem:¹⁴⁵ *sports entities may charge betting rights to offset the costs of combating fraud arising from these bets*. This attractive idea is defended by Dietl (2012):¹⁴⁶ it would eliminate some of the problems of State regulation, particularly the information asymmetry and the political difficulty of individualising taxes/rules for each sport (clear blue line in Figure 8). The graphical representation of such a solution is consistent with the idea of sports entities directly charging the betting operator a sum representing the costs shown on the curve in dark blue (Figure 8). However, one of the conditions of application of Coase's Theorem is the absence of transactional costs. This theory means that sports entities could, without any cost, deprive operators who do not want to pay betting rights of the possibility of organising bets.

The whole problem is that information concerning the facts of the game is accessible to all viewers: therefore, the *information* necessary for the organisation of bets is included in TV rights. Certainly, one can legally separate transmission rights from betting rights, as does France, but that does not prevent operators from organising bets in other jurisdictions that do not recognise this feature of the French law.

Moreover, betting rights as described by Dietl are not the ideal solution if applied on one country for at least two reasons:

- A legal reason, first, since some States such as the United Kingdom do not recognise sporting events as falling within the code of intellectual property; they do not permit entities to charge for 'betting rights' as is possible in France and as intended in Germany¹⁴⁷
- The second reason is technical: if France wants to enforce betting rights on its territory, this would have the effect of increasing the costs of operators subject to ARJEL's authority, the French regulating agency for online gambling; illegal operators, not recognising betting rights, will therefore be more competitive, and thus, may capture a part of the demand, unless of course France manages to efficiently combat these illegal operators.

As it can be observed, no solution is entirely satisfactory:

- prohibition is never fully complied with;

¹⁴⁵ R.H. COASE, "The Problem of Social Cost", *J. Law & Econ.* 3, 1960, p. 1.

¹⁴⁶ H. DIETL, C. WEIGÄRTNER, 2012. "Betting Scandals and Attenuated Property Rights - How Betting Related Match-fixing Can Be Prevented in Future", *Working Papers, University of Zurich, Institute for Strategy and Business Economics (ISU) 0154*, University of Zurich, Institute for Strategy and Business Economics (ISU).

¹⁴⁷ H. DIETL, C. WEIGÄRTNER, "Betting Scandals and Attenuated Property Rights - How Betting Related Match Fixing can be Prevented in the Future", *op. cit.*, G. LENTZE, "DFL's Licensing System for Fixture Lists: Analysis", *World Sports Law Report*, October 2011.

- regulation, practiced everywhere, does not always have a clear goal (a regulator may favour either party, including himself, rather than the general interest);
- in particular, the State tends to tax activities in which eviction levels are low, while a healthy principle requires taxing activities that pose a risk to sport¹⁴⁸, in order to increase the budgets of risk prevention of sports entities;
- “Betting rights” is an interesting idea but it is difficult to implement beyond national borders; evidenced by the refusal of some operators to pay for the right to bet for a competition organised by the UEFA which partly took place in a territory other than the French territory, thus invoking the limitations attached to the principle of territoriality under French law.

No solution being satisfactory alone, States typically use several instruments at once. Thus the United States prohibit bets across much of its territory except in Nevada and Delaware (and very recently New Jersey): in Delaware, the offer for bets is also more selective than in Nevada. Great Britain imposes very few regulations: for example, it accepts the operators approved by lowest bidding countries, but it nevertheless implements a licensing system which is similar to a flat tax for operators in its territory. France deploys a full arsenal: prohibition of certain types of bets (spread betting), regulation of prices (RRB up to 85%), and Pigovian taxation paid to sports entities and betting rights (the amount is now between 1 and 2.5% of wagers¹⁴⁹). Therefore, as was the case before the advent of globalisation, regulation must be assessed with the coherence and effectiveness of a legal and economic framework, and not by separate consideration of partial measures. But compared to the period before globalisation, it is not possible to do so without considering the international dimension of bets. Indeed, as previously mentioned, sporting events, the catchment area of online betting operators and manipulations that sporting events could suffer from are of global amplitude. Furthermore, regulation tends to shift demand towards operators and the least regulated jurisdictions: it is therefore necessary to consider the dilemma of regulation.

§ 4. The Internationalisation of Sport Integrity

Organised fraud in view of betting is often transnational, as shown in the example of the European scandal in 2009 (Bochum Case), which affected at least 9 countries as well as international competitions. The personality of Wilson Raj Perumal, Singaporean bookmaker convicted in Finland, Hungary and several African countries, symbolises the globalisation of sports betting and organised fraud. The answer should be organised on international level. Faced with this problem, there are at least three types of responses:

¹⁴⁸ Part 2, Title 1, Chapter 3, Section 1, § 2, “Elements for the Risk Management of Sporting Bets”.

¹⁴⁹ ARJEL, “Rapport de l’ARJEL sur le droit au pari”, *op. cit.*

- a unifying model; either through an international agreement or by an American-style projection of the national law; in this country, in fact, the law is deemed to have universal jurisdiction as soon as a trade is carried out with a US person¹⁵⁰;
- a cooperative model in which States sign agreements;
- The search for the most suitable system by each country concerned

A. A Unifying Model

Regardless of application constraints, the existence of a single global regulation would have the advantage of solving both the dilemma of regulation (fraudsters could no longer hide in jurisdictions constituting havens), and the problem of internationalisation. The remaining question is what and how to regulate: following the example of James Tobin (1978)¹⁵¹, who showed how a global tax could theoretically eliminate speculation, taxation can be sought to eliminate the distorting effects of the commodification of sport. It should be noted that the models of universal tax are approved by economists. Piketty,¹⁵² for example, suggests a global tax on capital to reduce inequality and boost growth. Wladimir Andreff (2001, 2004, 2008, 2010a, b)¹⁵³ suggested, in the field of sports, to regulate international transfers of athletes, especially those under the age of 18 (whose transfer is prohibited in football according to FIFA rules¹⁵⁴), via a progressive tax (decreasing) depending on the age of the athlete ("Coubertobin Tax").

Closer to our subject, Andreff now suggests¹⁵⁵ that such a device could be used to reduce sporting bets with outsized or exorbitant gains that motivate criminal networks. In order to be efficient, the tax must avoid *smurfing*: the use of a global aggregator that calculates individual revenue linked to sporting bets is being contemplated, for the purpose of imposing progressive taxation. The general idea is that a person can still derive from a bet, gains that may change his life but that are not enough to sustain a criminal organisation.

¹⁵⁰ Federal law and executive order define a U.S. Person as: "a citizen of the United States; an alien lawfully admitted for permanent residence; an unincorporated association with a substantial number of members who are citizens of the U.S. or are aliens lawfully admitted for permanent residence; or a corporation that is incorporated in the U.S." [<http://www.nsa.gov/sigint/faqs.shtml#sigint4>].

¹⁵¹ J. TOBIN, "A Proposal for International Monetary Reform", *Eastern Economic Journal*, 4, 1978.

¹⁵² T. PIKETTY, *Le capital au XXI^e siècle*, Éd. du Seuil, Paris, 2013.

¹⁵³ W. ANDREFF, "The Correlation between Economic Underdevelopment and Sport", *European Sport Management Quarterly*, Vol. 1, No. 4, December 2001, pp. 251-279. From the same author, see W. ANDREFF, "The Taxation of Player Moves from Developing Countries" in: R. FORT, J. FIZEL, (eds.), *International Sports Economics Comparisons*, Praeger, Westport 2004, pp. 87-103; "The Economic Effects of the "Muscle Drain"" in: G. WALTERS, G. ROSSI, (eds.), *Labour Market Migration in European Football: Key Issues and Challenges*, Conference Proceedings from the Feet-Drain Conference hosted by the Birbeck Sport Business Centre in May 2008, *Birbeck Sport Business Centre Research Paper Series*, vol. 2, No. 2, August, pp. 9-31. See also, W. ANDREFF, "Why Tax International Athlete Migration? The 'Coubertobin' Tax in a Context of Financial Crisis" in: J. MAGUIRE, M. FALCOUS, (eds.), *Handbook on Sport and Migration*, Routledge, Abingdon, 2010a, pp. 31-45; W. ANDREFF, "Une taxe contre la misère du football africain?", *Afrique contemporaine*, No. 233, 2010, pp. 89-98.

¹⁵⁴ Prohibition (specified in 2001) that has not stopped since then the growth of transfers of players under the age of 18 on what is a global black market of transfers.

¹⁵⁵ W. ANDREFF, "Corruption", in: T. BYERS, S. GORSE, (eds.), *Contemporary Issues in Sport: An Introduction*, Sage, London, 2014 (forthcoming).

In this perspective, it is important to define the amount of gains from a sporting bet which represents the threshold triggering the tax at a low rate, say 1% like the Tobin tax. Here, there is room for thought / discussion, as this low tax has more of a "moralising" aspect with regard to significant gains in sporting bets, but in no way a deterrent for bettors. At most it would (slightly) slow down the flow of bets. Should this tax be considered for a threshold of 50,000, 100,000, 500,000 or 1 million €? The debate is open.

The principle of a variable rate of taxation when the gain of a sporting bet exceeds the threshold for taxation at 1% is also interesting. The "moralising" aspect is then increasingly replaced by a disincentive - or eviction – effect for a number of bettors and, at very high rates, taxation becomes almost prohibitive. It scares off sports bettors towards other more lucrative gambling and placement activities and / or forces them to abandon match-fixing which makes sporting bets profitable, but now overtaxed. It is assumed here that a sporting bet linked to a fixed-match is far more lucrative when it is not, and even more lucrative than the amount of bets placed on a fixed-match are financially substantial. Therefore, the more profitable a fixed-match is, the more the fixer is exposed to higher taxation rates, or even prohibitive ones.

A very simple model of Coubertobin Tax can be adapted to the problem of sporting bets as follows:

$$T_{ps} = G_{ps} \cdot [t + sx \cdot Gx]$$

with:

T_{ps} as the tax revenue derived from the implementation of the tax on a sporting bet;

G_{ps} representing the gains of a bettor from a sporting bet; this gain depends on the amount wagered and the rate of return for the bettor;

t is the base rate of the tax when the gain of the bettor exceeds the taxation threshold, for example 1% like the Tobin tax

$sx > 1$ (where x is variable) defined by increases in the tax rate on sporting bets for increasing levels of gains for bettors (thresholds); sx is in a way a surcharge of variable rate by tax brackets;

Gx are levels (thresholds) of gains that bring the taxpayer (bettor) in a tax bracket to a higher rate.

To clarify the mechanism of global tax on sporting bets, a numerical example is presented (the numerical values are arbitrary, but should be topics of discussion during the implementation of the tax).

Suppose that the threshold for taxation is a gain of $G_a = € 50.000$; the 1% tax applies, therefore $T_{ps} = € 500$ (for a gain of € 60,000, the tax would be € 600, etc.).

If the gain exceeds the threshold $G_b = € 100 000$, the bettor must begin to pay the surcharge s_x , say at 5% rate starting from € 100,000. A bettor who won € 200,000 pays a total tax of $500 + 1\% (100.000-50.000) + 5\% (200.000-100.000) = € 6,000$.

If the gains are above $G_c = € 1,000,000$, the surcharge rate increases to 30%. A bettor who won € 2,000,000 pays a total amount of tax of $500 + 0,01 \times 150.000 + 0,05 \times 800.000 + 0,30 \times 1.000.000 = € 342,000$ (over 17% of his gains).

Suppose that the surcharge becomes prohibitive (definitely a deterrent for bettors) and reaches a rate of 90% beyond $G_d = € 10$ million. A bettor who won € 20 million will be taxed an amount equal to $500 + 0,01 \times 150.000 + 0,05 \times 800.000 + 0,30 \times 8.000.000 + 0,90 \times 10.000.000 = 11,242,000$ - a levy exceeding 55% of his gains. At a gain of € 100 million, the tax paid (€ 92,242,000) is widely confiscatory.

The developed model of the tax on sports bets corresponding to this example is:

$$T_{ps} = G_{ps} \cdot t, \text{ si } G_a \leq G_{ps} \quad (2)$$

$$T_{ps} = G_{ps} \cdot [(t + s_1 (G_{ps} - G_b))] \text{ si } G_b \leq G_{ps} < G_c \quad (3)$$

$$T_{ps} = G_{ps} \cdot [(t + s_1 (G_{ps} - G_b) + s_2 (G_{ps} - G_c))] \text{ si } G_c \leq G_{ps} < G_d \quad (4)$$

$$T_{ps} = G_{ps} \cdot [(t + s_1 (G_{ps} - G_b) + s_2 (G_{ps} - G_c) + s_3 ((G_{ps} - G_d))] \text{ si } G_{ps} > G_d \quad (5)$$

There are a few other conceivable options for such a tax. It is worth noting that this is an *ex post* tax on gains. An *ex ante* tax on bets could have been chosen. It would have been less effective (with equal amounts and rates of taxation) than the *ex post* tax both in terms of the "moralisation" of sporting bets and in terms of "making bettors pay on fixed matches". Taxing a bettor that placed a wager of € 20 million *ex ante* up to 90% (making him pay € 11,748,000) without winning his bet would be non-sustainable and resembles *de facto* prohibition of large wagers. The same argument applies to some extent to losing bettors with lower bets. The *ex ante* taxation would resemble a regulation aiming to prohibit or punish sporting bets (which the profession of bookmakers and others can never accept).

In contrast, the *ex post* taxation targets important gains on sporting bets, which is not questionable in terms of ethics, let alone that of tracking sporting bets related to fixed matches (realistically assuming that they generate much higher gains than those obtained without cheating on non-fixed matches).

From a theoretical point of view, universal taxation seems to be able to counter the adverse effects of development of bets, by preventing the creation of criminal networks. Still, its implementation does not seem to be guaranteed: either a state has the power to impose it on the rest of the world, which does not seem to be the case (although the United States proceed in this manner regarding financial matters), or it can be done through the conclusion of an international convention. Such a possibility seems compromised by the dilemma of regulation.

B. The Dilemma of Regulation

It is important to note, the existence, on the one hand, of regulators whose operators face high operating costs, and on the other hand, weakly regulated opportunistic States whose operators incur low operating costs and who capture a part of the demand of regulating States. One may also consider that the more States regulate individually, the more significant the incentive not to accept the regulation (since there is more to gain by being a free rider). Therefore, many betting operators chose not to apply for a license in Spain, France or Italy: there is nothing to gain for them in these markets. This situation is not unlike that between States in tax matters, with non-cooperative jurisdictions and tax havens¹⁵⁶. It cannot always be ruled out that the policy implemented by their authorities is the expression of the will of their citizens, so it must be assumed that, like all States, they are pursuing their general interest.

Insofar as countries are not receiving the same coalitions of interests, national interests may diverge unless there is a general interest of humanity. Remains, however, that all the institutional arrangements cannot have the same claim to universality: the choice of reducing taxes to attract betting operators from other countries is unlike any other choice. In fact, it triggers a competition to reduce taxes whose equilibrium point is the cancellation of any withdrawal, not only from the part of the States but also from sports entities. The free rider, travelling at the expense of others is recognised. His position is not morally and economically sustainable as it cannot be generalised to all countries without causing the disappearance of its medium, *i.e.* sporting activities.

Such option cannot be recommended. Instead, the conditions for the harmonious development of the practice, sportsmanship and their appreciation by the widest audience possible are presented. This is called the *optimum of a sporting community*.

¹⁵⁶ On this point, see Part 1, Chapter 1, Chapter 2, Section 1, § 6.

Section 3: The Optimum of a Sporting Community

Given the variety of national regulatory equilibriums and stakeholders in these compromises, economists *proposed a sectoral optimum model that reduces the number of stakeholders in order to achieve a unique solution*. If developing customised solutions is sought, the sensitivity of the parties to the options must be considered with a little more precision. Therefore, it is proposed, as a first step, to convene all stakeholders to provide information on possible regulatory regimes (§ 1): this particularly leads to understanding who plays a decisive role in choosing a solution. Then a theory of regulation can be proposed (§ 2), and finally, based on identifying the interests and preferences of the stakeholders we propose a policy mix suitable for that environment (§ 3).

§ 1 The Stakeholders and the Options

This study dedicated to the economic analysis of sporting bets was opened with a presentation of the major legal systems. A deeper analysis will now allow us to understand how these plans are the result of choices made by the stakeholders.

For this reason, the categories of the said parties will be recalled:

- the State itself, which is interested in tax revenues collected from betting activities, as well as benefits (economic activity) from sports and bets. However, the State must consider these revenues while taking into account the costs of combating gambling addiction, fraud, *etc.* This suggests that the State has a rational preference for the development of bets; especially if other stakeholders require expenditure of public policy in exchange for tax revenues;
- spectators and recreational bettors; Included in this category are those whose sociability and enjoyment revolve around one (or more) sporting discipline; the issue of the cost of bets is secondary to this category of participants who are bothered by fraud, whether as a sports enthusiast or as a bettor;
- Criminals-manipulators, like opportunistic bettors, have an interest in lowering the cost of bets and increasing the volumes, because they can earn more as a result, but the gain of one is at the expense of the gain of others;
- betting operators have an interest in increasing volumes as to be indifferent to the fraud; like casino operators, they want to capture the big bettors (the "whales"), provided that they do not win to their detriment: their position vis-à-vis opportunistic bettors is then antagonistic;

- the position of the sports movement is the most complex: if one thinks in terms of leagues, it seems that not all of them share the same opinion regarding bets; American closed leagues support prohibition and the intensification of combating illegal betting; on the contrary, open European leagues are often in favour of betting, so much so that one can sometimes wonder if, by doing so they are jeopardising the medium-term welfare of their economic model;¹⁵⁷ leagues that oppose bets are labelled as peridophobes and leagues that support bets are labelled as peridophiles (from the Greek *περιδοσ*, the challenge);
- the analysis is completed by taking into account the rest of the world, which can be affected in at least two ways based on the choices of a country:
 - whether or not the country participates in combating fraud;
 - The consequences related to the national sports betting market on international competition (in particular the potential development of illegal supply).

Before giving a more detailed explanation, the choices of the stakeholders are represented in the following table:

¹⁵⁷ See in this regard, M. AGLIETTA, W. ANDREFF, B. DRUT, "Bourse et football", CXVIII, 2, 2008. and H. DIETL, E. FRANCK, "Governance Failure and Financial Crisis in German Football", *Journal of Sports Economics*, 8-6, 2007.

Stakeholders	Exception	Weak regulation	Stringent regulation	Prohibition
State: tax	-	+	+	-
State: Economic activity	0/-	+	+/-	-
State: Public expenditures	0	-	-	-
State: Expenditures to combat addiction	0	-	-	0
Spectators	+/-	±	±	0
Recreational bettors	+	±	±	-
Opportunistic bettors	+	±	-	-
Betting operators	-	±	+/- ¹⁵⁸	0
Fixers	+	-0/+ ¹⁵⁹	- 0	0
Sports federations- peridophobes	-	-	-	±
Sports federations- peridophiles	-	±	-	-
Rest of the world: revenues	-	0 (-)	0 (+)	+
Rest of the world: Combating fraud	-	+ (-)	0	-
Decision	Spectators manipulators, event managers	State, operators, bettors (international bettors without a local client base)	All except operators and opportunistic bettors	Peridophobes

Key: + positive effect; - Negative effect; 0 no effect or not taken into account.

Let us first consider the exception system:¹⁶⁰

- The State draws no revenues, but assumes no obligation in return. Such a conception of the State now seems closely related to the ancient world, where economic activity related to bets was not taken into account (0). A more contemporary point of view would clearly be that exception leads to the development of an informal sector that is not to the liking of contemporary policymakers.

¹⁵⁸ This system benefits monopolistic (or oligopolistic) operators and is unfavourable to other operators, particularly to foreign operators who cannot access the domestic market.

¹⁵⁹ Reading: the comfort of fixers depend on the quality of the legal system and efficiency of combating fraud; both seem weak in non-cooperative jurisdictions

¹⁶⁰ See *supra* Part 2, Chapter 1, Section 2.

- Spectators and recreational bettors: although they are certainly happy to be able to bet, the situation of spectators is more debatable; In fact, *with the system of exception, everything contributes to fuelling fraud at all levels (notably money laundering), and the model of the underlying society seems to be where authorities, not necessarily free of corruption, offer citizens, not necessarily very concerned about the conditions of production of these events, entertainment, which is not necessarily at the forefront of sportsmanship. As such, fraud and corruption allow those who organise the sporting events to fund them but with no regard to the desires often expressed by sports fans, that sports maintain ethical and moral values. It should be noted that in the contemporary world, the exception system for bets and match-fixing are not automatically linked, simply because one can bet from any point in the world on competitions in any given country. The characteristics of the exception system are therefore mainly found in countries that do not combat fraud, fixing, or illegal bets.*
- Betting operators cannot create any economic model based on exception; therefore federations do not derive any income and ultimately the only ones who truly profit are spectators, organisers and fixers.
- Finally, it is worth mentioning the rest of the world: it is subject to competition from marginal betting operators and the disorder caused by a lack of prosecution of cheaters at the same time. The exception system therefore contains a hotbed of illegality; it is the pending antique of modern non-cooperative jurisdictions.

The exception system seems closely related to the ancient world, where elites organised events to buy the sympathy of the people. Criminals lived on the margins of this spectacular Evergetism which included bettors. Can a modern State suspend the right and let the powerful decide, in short, stop the organisation of public life without being discredited? The system of exception can only be a counter-model for contemporary societies.

The exception system is similar in its permissiveness to the ***universal authorisation***, as organised in the UK. However, the country has been able to set up, since the 1960s a legal framework for the economic activity of betting operators. Moreover, the low tax revenue is offset by the creation of bet-related jobs directly (operators) or indirectly (sponsoring clubs, increased awareness). This last point is also relevant to sports leagues which are self-proclaimed peridophiles. *Compared to the situation of exception, the only losers are the fixers as the universal authorisation does not mean the resignation of the authorities: it can be accompanied with (and this is the case for Great Britain) firmness in the application of the principles of fair competition.*

However, the particular nature of this solution must be highlighted. On the one hand, the excellence of British institutions, accentuated by all studies on the legal origin¹⁶¹, does not lend itself to easy replication. On the other hand, the 2005 Gambling Act was based on a wager: combined with institutional excellence, lowering taxes would keep betting operators at home and even attract new ones, making London the centre of online betting as it was already the centre of market finance. It is now clear that this wager failed¹⁶². This suggests that the British system is simply a variant of the competitive regulation system. It is for this reason that the UK is trying to reform the general system of authorisation of online gambling still in force in the country in March 2014.

Different variations of this **competitive regulatory system** exist; they differ mainly in the degree of combating fraud and intensity of international cooperation. The example of Antigua was mentioned earlier, to indicate how the State favoured online betting operators over sports entities to the point of supporting the operators in a dispute with the United States before the WTO (WTO DS285)¹⁶³. A slightly different example seems to be provided by the Cagayan province in the Philippines which operates a minimal regulation of the betting market, which could be subject to manipulation: although the authorities prohibit bets within their territory, they are only making a minimal effort to suppress fraud and international cooperation. *Variations of competitive regulations are thus distinguished by the quality of the regulation, the intensity of its implementation and international cooperation.*

One may wonder how stakeholders are identified within these variants. If competitive regulation seems to generally benefit peridophile leagues, betting operators and bettors in general, particularly opportunists who take advantage of lower prices, the Antigua variant denotes a priority given to betting operators operating abroad but employing a national workforce (and therefore to the primary economic activity of this small country) as is the case in Cagayan and Nicaragua. A recent report prepared by IRIS (2013)¹⁶⁴ *shows that these countries are as little zealous in applying the FATF Recommendations and in the observance of the rules of competition (since the operators they host only target foreign customers). Therefore, non-cooperative jurisdictions can be rightly used to designate certain territorial entities that follow this strategy.*

In contrast to this lowest-bidding regulatory strategy, one can opt for **stringent regulation** characterised by:

- efficiently combating illegality (fixing, fraud, illegal betting);
- effectively participating in international mutual legal assistance ;
- financing such operations through appropriate taxation (\geq 15% of GGR).

¹⁶¹ R. LA PORTA, F. LOPEZ-DE-SILANES, A. SHLEIFER, "The Economic Consequences of Legal Origins", *Journal of Economic Literature*, November 2007, available at: [<http://ssrn.com/abstract=1028081>].

¹⁶² House of Commons Culture, Media and Sport Committee, *The Gambling Act 2005: A bet worth Taking?*, HC 421, 2012, particularly p. 74 § 22.

¹⁶³ See Part 1, Title 1, Chapter 2, Section 2, § 1, B.

¹⁶⁴ C. KALB, P. VERSCHUUREN, *Money laundering, a new scourge for sporting bets*, Iris eds, 2013.

In this system of stringent regulation, authorities may also intervene to restrict supply, sometimes opting for a monopolistic system. In general, the fiscal resources extracted by the State are inversely proportional to the degree of openness to market competition, although the development of online betting has dried up this source of profit. In return, the State accepts missions to combat fraud and addiction that are increasingly difficult to finance. Presumably *this situation corresponds to the defence of the State's interests and the monopoly it has authorised, or operators to whom the State has granted an authorisation. Recreational bettors and spectators are generally pleased with the opportunity to bet in a context where fraud is seemingly limited. However, peridophile leagues and betting operators are frustrated by a well-defended market, while opportunistic bettors use the Internet to bet at the best price with foreign operators (unless of course combating illegal gambling is effective).*

The last case is the **prohibition**: if it is acted upon, the authorities must incur expenses to maintain the ban despite the absence of corresponding fiscal resources. If the audience can be indifferent, bettors are obviously frustrated and, in fact, no one wins in this situation, except peridophobe leagues (inside) and operators around the world. However, the rest of the world could be negatively affected by the postponement of the prohibition effects. This requires the peridophobes to be singularly powerful to be heard: this is the case, for example, in countries where Islamic law prevails in the United States.

This review of systems and interests of stakeholders leads to believe that each autonomous jurisdiction chooses the most appropriate system to the groups it contains. This is an embryonic regulation theory.

§ 2. Regulation Theory

It has been seen with Dietl (2012)¹⁶⁵ how economists could sometimes consider the social optimum as one that satisfies a particular class of citizens, provided that social welfare loss is inexistent for others. This author therefore equated the optimum of the society with that of football (*"in view of the social optimum, but also with regard to the optimum outcome for the game of football and its institutions."*)¹⁶⁶ This may actually correspond to a Pareto optimum, but it seems highly unsatisfactory to the extent that it really only suits a category of agents, so it is primarily a local or sectoral optimum. Obtaining a local optimum does not guarantee achieving the social optimum, in the sense of optimum for all social activities and markets.

To reach a social optimum, stakeholders must be heard and a decision-making rule must be agreed on: if this rule takes into account all categories of agents, the local optimum proposed by Dietl should obviously be deteriorated, in order to improve the fate of others (by substitution) to find the overall optimal solution.

¹⁶⁵ H. DIETL, C. WEINGÄRTNER, "Betting Scandals and Attenuated Property Rights - How Betting Related Match Fixing can be Prevented in the Future", *op. cit.*

¹⁶⁶ H. DIETL, C. WEINGÄRTNER, "Betting Scandals and Attenuated Property Rights - How Betting Related Match Fixing can be Prevented in the Future", *op. cit.*, p. 10

It could easily be imagined that a world without sporting bets (or very few) would be optimal for society, while being perceived as "less than optimal" by pathological sporting bets consumers and match-fixers. There are many arguments that show the danger of sporting bets in terms of education, ethics, gambling addiction, health (mental), unjust enrichment and crime, *etc.*

It is not a matter of deciding whether or not bets are desirable, but rather letting parties weigh in: it is the role of the authorities to consult and to uphold a decision in accordance with the principles underpinning them. In a democratic society, it is the citizens who choose the priorities of public policy and appoint politicians accordingly. It can then be assumed that the respective share of different categories leads to the regulatory balance that was presented. For example, prohibition in countries of Koranic law is explained by the weight of the *ulama*¹⁶⁷ in public opinion, while the gap between competitive regulation and strict regulation is probably owes something to the potential number of opportunistic bettors in the population and especially lobbying betting operators. Different choices on regulation may therefore be simply explained by a different composition of categories of stakeholders in the society.

Regardless of the choices made in civil society, *the adaptation of means to ends expressed in the choices must be questioned.* The British House of Commons did not hesitate to do so in 2012 by assessing the 2005 Legal Reform: the report shows that the expected virtuous dynamic (lower taxes would have to attract customers and operators) was not produced. The reason is that competitors have lowered prices even more, to the point of attracting online betting operators who left the British fiscal space for peripheral tax havens (and mainly Gibraltar, Alderney and the Isle of Man). This development seems to indicate that excessive competition is the reason behind the dilemma of regulation: when a State regulates, others are encouraged not to do so; the more States regulate, the greater the incentive to free ride is strong because the cost differential of bets between regulated jurisdictions and unregulated ones depends on the intensity of the regulation, as it has been observed. It is obvious that the States that allow domestic firms to take bets exclusively outside of their territory are free riders who profit from events organised and secured events by others in order to organise without their consent lucrative and potentially destabilising activities.

The failure of British betting suggests that carryover effects on other countries cannot be ignored (nationals of prohibiting countries will gamble in other countries, deregulating countries promote the organisation of fraud to the detriment of those who seek to regulate, *etc.*). It seems that international cooperation is rather the responsibility of the government, especially when it comes to representing parties whose conflicting interests or internal contradictions can only be resolved through compromises. The authorities need to organise the internal compromise before convening with foreign countries among which a certain number is not likely to ever cooperate.

¹⁶⁷ Muslim theologian exercising religious and judicial authority; in countries of Islamic law, they represent a conservative religious lobby opposed to gambling.

Therefore the choices available are relatively simple:

- *either public opinion, particularly sports leagues opposing bets: this only leaves financing the fight against illegal bets from the general budget of the State;*
- *or public opinion, especially leagues, opting in favour of bets: it is then necessary for the public authorities to determine how to approach the social optimum through domestic regulation and international cooperation.*

We will now describe the content of this policy mix.

§ 3. The Optimal Use of Instruments

Between the interests of sports leagues, those of betting operators, those of opportunistic bettors and protecting the integrity of sports and consumers, where should the cursor be set exactly? One might think that the answer depends on the proportion of opportunistic bettors and league managers: the bettors wanted the least expensive bets possible; the managers sought to impose their league's position. Without a very detailed policy analysis, it is likely that the invitation by opportunistic bettors, betting operators and some leagues to lower the price of bets (*i.e.* taxes and regulation) reflects short-term logic. Conversely, other sports leagues are wary due to the medium-term consequences of development of bets. Moreover, it should be noted that betting operators, such as casinos, try to attract big bettors who lose a lot (the "whales"). However, among the big bettors are fraudsters and algorithmic traders that worry fixed odds betting operators; only betting markets can profit without facing the risks related to the volume of activities of these categories.¹⁶⁸ Therefore, it seems beneficial to seek a middle ground that can always be adjusted according to local political balances.

A. Recommendations for Public Authorities

Recommendation no. 1

Entrust to public authorities:

- revealing the preferences of stakeholders, (the parties could seek to conceal their interests¹⁶⁹); this involves, in particular the explicit publication of Division 92 of the national accounts "Gambling and betting activities";
- overcoming conflicts of interest (between the parties but also within the parties as the tension between the logic of short-term returns and preserving the integrity of sport in the long term);
- the continued fight against money laundering, illegal gambling, sporting fraud, and addiction

¹⁶⁸ In fact, fixed odds operators would lose to those who are better informed (cheaters) or more efficient at processing information (traders). In contrast, betting markets only take a commission to link supply and demand; they do not care about the outcome of this exchange.

¹⁶⁹ In particular, the manipulations operated by the reports ordered by the stakeholders. For an example, see *supra*.

- financing these missions through Pigovian "taxation" (*i.e.* proportional to the risk inherent in each type of bet): 25% of the GGR for odds betting, and a significantly lower rate for pool betting;
- the implementation, due to revenues obtained from this taxation, of an *integrity policy* aimed at bettors, sports entities, betting operators and foreign States.

B. Recommendations for Bettors

Bettors should certainly benefit from the benevolence of the State that organises the protection of consumers and mobilises betting operators to contribute to combating addiction in accordance with international best practices.

Recommendation no. 2

To the extent that the cost of bets is secondary in the eyes of recreational bettors, it seems appropriate to limit the rate of return for bettors to: 1. prevent addiction among players, 2. prevent money laundering, 3. prevent incentives for the organisation of sporting fraud, and 4. ensure the margins of operators and the ability to tax them. The rate of 85% is a wise choice; it should in any case remain below 90%.

Recommendation no. 3

This limitation of the RRB should not be aimed at professionals (not prone to addiction) when they hedge their bets; its aim is to combat fraud. It may therefore not be imposed on bettors meeting the most stringent obligations of transparency for financial intermediaries of the FATF. Opportunistic bettors who desire it may thus be subject to supervision by an *ad hoc* national authority.¹⁷⁰

A recent report by the FATF showed that gambling operators (particularly casinos) were generally not subject to requirements concerning financial intermediaries¹⁷¹ in Latin America and Asia. In proposing to impose these requirements on all bettors who want to benefit from an RRB higher than 85%, two steps are being forced as a result since betting operators are also required to be in conformity vis-à-vis the FATF. Christian Kalb and Pim Verschuuren showed that monitoring by this organisation was enough to take note that some countries do not keep their commitments, but not in order to force them.¹⁷² In any case, this solution has the advantage of mobilising an international organisation that has proven effective and will certainly be willing to share its expertise.

¹⁷⁰ In this case, we would certainly observe two categories of betting offers. However, we can consider that sports bets should not be aimed at professionals and that if this was indeed the case, these professionals would undoubtedly be subject to very different tax regime, the revenues made from bets thus being considered as professional income.

¹⁷¹ FATF, *Vulnerabilities of Casinos and Gaming Sector*, March 2009, available at: [<http://www.fatf-gafi.org/documents/documents/vulnerabilitiesofcasinosandgamingsector.html>].

¹⁷² *Op. cit.*

Setting a maximum RRB for “common” bettors will certainly create issues concerning the "wholesale market" (which will presumably prevail in the betting market) but it would also retain the margins of operators, and therefore lead to establishing a tax as well as the betting right which will be addressed later.

C. Recommendation for Sports Entities

The main recommendation for sports entities is the generalisation of betting rights according to the German-French¹⁷³ model.

Recommendation no. 4

A betting tax would finance the security policy of leagues, federations and other sports organisations against sports manipulation. It also seems necessary to control the use of funds raised through this law, since, regardless of the arrangement used to collect it (in France, for example, the law allows the owners of sporting events to market the right to organise bets), ultimately, this levy can be considered as a decentralisation of the revenues made by entities that organise competitions and sporting events to a mission of general interest (not without interest for the recipient). Thus, the regulatory authority should monitor the use of these revenues and their allocation to operations of various kinds, taken by the owners of sporting competitions and events in the fight against fraud. In addition, leagues, federations and other sports entities should be able to decide to negotiate the level of betting taxes and the procedures for determining their amounts. For example, if such a league or federation decides to encourage parimutuel betting to limit fraud, it should not be considered absurd to impose a tax on parimutuel bets that is smaller compared to the tax on odds betting: leagues and federations would therefore use pigovian management of their selling price of the betting tax. The price would be decided in relation to the risk managers of federations, and would be a visible and significant element of the risk management policy.

However, no one should be convinced, like Dietl, that assigning property rights will solve all problems: in particular, a windfall effect is expected on popular sports. However, it seems impossible for now to levy betting rights in non-cooperative jurisdictions, or even in the UK. Therefore, a considerable educational and diplomatic effort seems necessary: perhaps the following recommendation could in this respect facilitate the adhesion of States...

Recommendation no. 5

Sports entities must only sell their rights (broadcasting, bets, and image) on a sporting event to legal operators in the jurisdiction in which the event is taking place.

¹⁷³ H. DIETL, C. WEINGÄRTNER, “Betting Scandals and Attenuated Property Rights - How Betting Related Match Fixing Can Be Prevented in the Future”, *op. cit.*, G. LENTZE, “DFL’s Licensing System for Fixture Lists: Analysis”, *op. cit.*

Recommendation no. 6

The structures of sports competitions (contest design) should be amended to allow the reduction of the occurrence of sporting events with high asymmetry of stake between two teams. In particular by exploiting financial incentives, through redistribution of performance rewards, but also by optimising the schedule of matches, to raise the threshold in the course of a competition where the matches have a strong asymmetry of stake.¹⁷⁴

D. Recommendation for Operators

The regulation of operators is based on two essential elements: monitoring cash flows and odds.

Recommendation no. 3 bis (this is recommendation no. 3 as it applies particularly to operators)

In the wake of the 2012 FATF report, we recommend extending the provisions applicable to financial institutions to betting operators (and, as was seen earlier, to the bettors desiring a RRB above 85%).

Reporting by operators must not only be financial, as operators have access to critical information regarding changes in the odds on the sports betting market (volumes of bets, variations in odds, RRB, geographical distribution of bettors, etc.): they can thus feed fraud detection systems (FDS). In general, sports entities appoint a company to monitor the evolution of odds on the sports betting market, despite the lack of information concerning the volumes of bets (and their geographical distribution, or even the identities of main bettors).¹⁷⁵ It is clear that the number of officially reported cases of sports manipulation is "exceptionally low" and that the majority of cases are now motivated by profits made fraudulently on the betting markets. An effort is being made to understand why this channel of information only contributes marginally¹⁷⁶ to reporting these cases.

§ 4. The Agency Theory and the Principal-Agent Relationship¹⁷⁷

The issue of the revelation of fraud by sports entities has been mentioned several times in this report: sports entities certainly have an interest in combating fraud, but none in revealing its existence. Also, they could be tempted to "wash their dirty laundry internally" without reporting it to justice when necessary.

¹⁷⁴ R. CARUSO, "The Basic Economics of Match Fixing in Sport Tournaments", *Economic Analysis and Policy* (EAP), Queensland University of Technology (QUT), School of Economics and Finance, vol. 39(3), 2009, pp. 355-377, December, *adde*, S. SZYMANSKI, I. PRESTON "Cheating in Contests", *Oxford Rev. Econ. Policy*, 19-4, 2003, pp. 612-624.

¹⁷⁵ In particular: Sportradar FDS [<https://security.sportradar.com/fraud-detection-system>] UEFA FDS [<http://www.uefa.org/disciplinary/match-fixing-prevention/betting-fraud-detection-system/index.html>].

¹⁷⁶ Declan HILL gives the following figures: Police (45%), media (18%), Participant-Outsider (17% and 12%), Betting-patterns (5%), spectators (2%), Federations (1%).

¹⁷⁷ S.A. ROSS, "The Economic Theory of Agency: the Principal's Problem", *The American Economic Review*, vol. 63, No. 2, Papers and Proceedings of the Eighty-fifth Annual Meeting of the American Economic Association, March, pp. 134-139; B. MITNICK, *The Political Economy of Regulation: Creating, Designing and Removing Regulatory Forms*. New York: Columbia University Press. 1980; P. MILGROM, "Employment contracts, influence activities, and efficient organization design", *Journal of political economy*, vol. 96, No. 1, 1988.

Economists have studied this problem in the context of the *agency theory*: agency here refers to the *agency relationship* between a *principal* (delegating decision-making powers) and his *agent*. Due to differences in the hidden interests between principals and agents and information asymmetry, these relationships generate social costs and can disrupt the proper realisation of the principal's objectives. The situation is such that the agent undertakes to perform an action on behalf of the principal, whereas the result of that action depends on a parameter known only by the agent. In a "principal-agent" type, relationship a moral hazard can occur when the agent has the opportunity to make "non-observable" decisions that affect the interests (and decision making) of the principal.

By applying this analysis tool to our present situation, the principal (regulating State) lacks the resources necessary to verify the actual quality of the information provided by the agent (sports betting operator¹⁷⁸). The selection and interpretation of the relevant information to be transmitted are at the discretion of the betting operator. It must be added that its negotiating power (regulatory issues) along with its supervisory authority depend in part on its "performance" in terms of public security. The betting operator is evaluated according to what it declares on the subject, it also improves its situation by reporting a small number of cases, which is often interpreted as showing the existence an efficient and deterrent detection system.

Detection in Numbers

ELMS (founded in 1999 - monitoring system involving 19 lotteries). 93 warnings reported between January and April 2011 (IRIS, 2012, p. 72). 50 alerts generated over the last 18 months.

ESSA (founded in 2005 - monitoring system involving 16 private betting operators): 6 alerts in 2012 which were enough to require reporting to the regulating State and sports entities. 8 alerts generated during 2011, 4 in 2010, 1 in 2009 (KEA European affairs (2012)). Members of ESSA reported monitoring more than 10,000 events per week.

Sportradar: "300 suspected matches per year" (BBC News 2010).

Study commissioned by the RGA: "Prevalence of corruption in international sport" (2011). Around 2089 cases of sporting corruption, 2.73% of cases are related to match-fixing, and 1.63% are "betting-related" (Gorse, S., and S. Chadwick. 2011).

"The Prevalence of Corruption in International Sport Report". *Centre for the International Business of Sport, Coventry University Business School*: the objective of the study was to highlight the low prevalence of cases of fraud motivated by sporting bets.

Inefficiencies (agency costs) of the principal-agent relationship will be more important than:

- i. The information asymmetry (to the detriment of the principal) will be high;

¹⁷⁸ Contractually committed to meet the standards in terms of public safety (including combating fraud).

ii. The interests of both parties will be divergent. In fact, in this case, the principal cannot guarantee that the actions of the agent will help realise his objectives of public security. Given that minimising the number of reported fraud improves the relative position of the agent (in terms of future regulatory decisions), it seems necessary in the public interest to make changes in this unbalanced relationship that also generates wrong incentives.

A. Loss of Information, the Four Scenarios

S 1: Total detection ability (all attempts are identified), full reporting of the cases detected. No loss of information whatsoever. Insofar as it is possible to bet in non-cooperative jurisdictions, it is impossible to say with absolute certainty that no bet has been placed by a bettor in possession of inside information on a given betting medium (sporting event). This risk can be reduced but can never be completely eliminated.¹⁷⁹ From the reporting side, the majority of internal monitoring systems are based on thresholds of deviation from rules, the most dangerous being (theoretically) reported to the sports entities and to regulating States.

S 2: Strong detection ability (most attempts are identified), partial reporting of the cases detected. Minimal loss of information. This is the current situation for the majority of betting operators (legal), who only report (on a voluntary basis) cases deemed of sufficient concern. Detection criteria as well as criteria for reporting remain opaque. The regulating State often does not have the means to verify the information transmitted.

S 3: Partial detection ability, full reporting. Although the heterogeneity of the quality of internal monitoring systems of operators cannot be predicted (and thus a proportion of cases detected vary according to the operator), it is known that only information deemed relevant is reported (100% for ELMS, 5.5% for the ESSA in 2012¹⁸⁰). The judgment is now totally at the discretion of the operators.

S 4: partial detection ability, partial reporting. By taking into consideration, on the one hand, structural limitations, and on the other hand, the reports made by betting operators, it can safely be said that this scenario is the most probable. The degree of loss of information must be estimated on the basis of the parties involved in the contract (influence and power of the regulator over the national lottery or the private betting operator).

¹⁷⁹ Which makes this scenario highly unlikely, but useful for demonstration.

¹⁸⁰ 2009 [45 alerts, 1 reported], 2010 [58 alerts, 4 reported], 2011 [69 alerts, 8 reported], 2012 [109 alerts, 6 reported].

For technical reasons related to the structure of online¹⁸¹ sports betting markets (first and foremost the non-disclosure of the volume and distribution of bets made by betting operators), the regulating State does not normally¹⁸² have the ability to verify the figures announced despite the Memorandum of Understanding (MoU) signed for this purpose.¹⁸³ It should be noted that regulating States and sports federations can use this information delivered by betting operators (already heavily filtered as was explained earlier) as they see fit. By considering regulating States in the Whitelist, it can be conceived, without much difficulty, that their interests are aligned with those of operators¹⁸⁴ within their territory, which often represent a major industry (8% of GDP in the Isle of Man in 2012,¹⁸⁵ 20% of the GDP of Gibraltar over the same period¹⁸⁶).

Faced with new forms of fraud, betting operators were forced to adjust their defence mechanisms. The burst in the progress reported in this area, combined with the identified potential conflicts of interest, and the relative opacity of the criteria for evaluating results (*supra*), raises some questions (*infra*) about the logic of events that occurred.

B. Questions about the Observed Timing

T₀: criminal innovation, frauds carried out on all betting platforms. [Criminal edge]. Detection systems were more or less non-existent, betting operators blamed a lag in relation to the sophistication of fraudulent practices.

Poor reporting due to the inability to detect fraud.

T₂: European legal betting operators address the problem and implement detection systems that guarantee the security of their platform. These systems become efficient so quickly that the power shifts in favour of betting operators, and criminals decide to commit fraud by placing bets with illegal betting operators from whom it would never be possible to obtain quality information (bookmakers edge).

Poor *reporting* due to the shift of fraud towards other betting platforms.

The common denominator between the two periods is the small number of cases reported. It seems that a period T₁ should have been observed, during which the improvement of monitoring systems, by demonstrating their effectiveness, should have been able to identify a large number of fraud attempts.

¹⁸¹ See *Fraud Detection* (Part 1, Title 1, Chapter 2, Section 1, § 4, B, 2).

¹⁸² France thus represents a special case because ARJEL has direct access to the data of bettors and licensed operators.

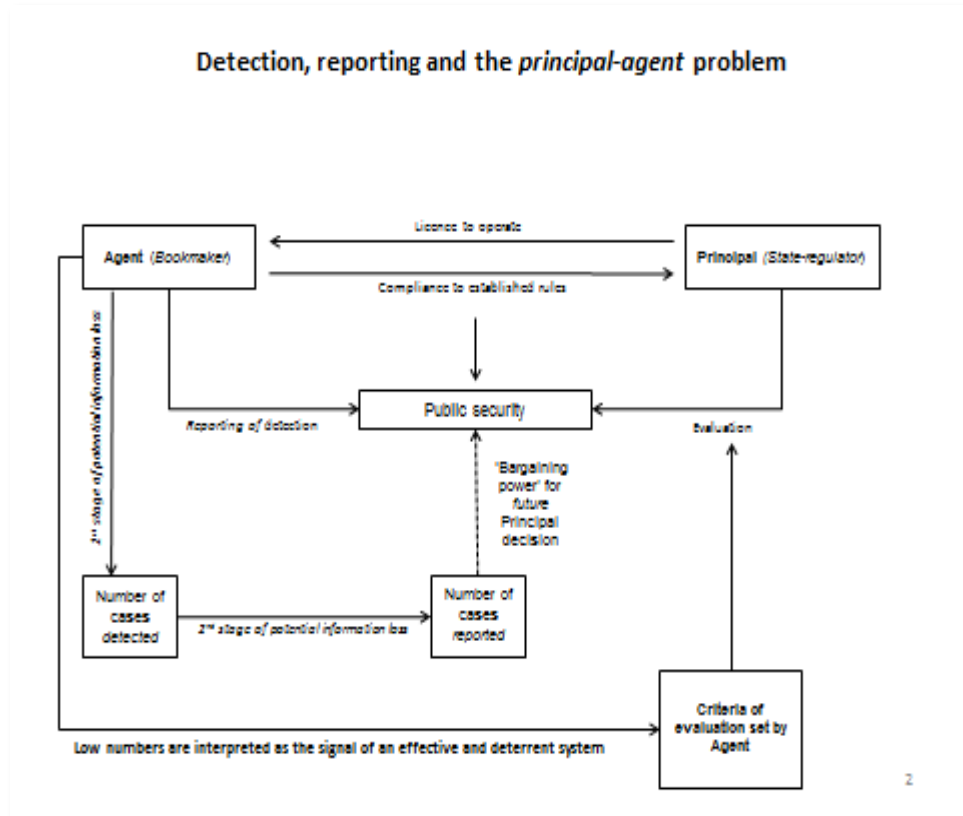
¹⁸³ ESSA has signed MoUs with more than 20 sports federations and regulators, including: FIFA, IOC, Tennis Integrity Unit, UK Gambling Commission, Alderney Gambling Control Commission, Malta Lotteries and Gaming Authority, Gibraltar Gambling Commissioner.

¹⁸⁴ This is shown by the presence of the Gibraltar Betting and Gaming Association (GBGA) in the European Gaming & Betting Association (EGBA) representing the interests of private betting operators in Gibraltar.

¹⁸⁵ BBC News, "E-gaming to boost Isle of Man employment", 15 January 2013, available at: [<http://www.bbc.co.uk/news/world-europe-isle-of-man-21029198>].

¹⁸⁶ Recruit Gibraltar, "E-Gaming in Gibraltar in numbers", available at: [<http://recruitgibraltar.wordpress.com/2013/01/25/egaming-in-gibraltar-in-numbers/>].

The absence of this transitional period indicates that criminals immediately recognised the quality of the detection systems of all the legal betting operators. Therefore, they adjusted their criminal targeting policy, probably heading more towards illegal operators (particularly in Asia).



Recommendations no. 6, 6bis, 6ter

In our scenario, the principal does not seem particularly concerned about the possibility of the agent transmitting a partially incomplete signal (information), resulting in a less than optimal situation. Achieving his mandate to protect the integrity of sports competitions (used as betting platforms) is disturbed.

In this context, we can discuss some potential economic solutions to the principal-agent problem:

a. Limit the access of the agent to the principal, notably by not allowing him to influence the evaluation criteria of his own performance. The regulating State should be able to adjust its regulatory leverage based on information coming from parties who are not subject to conflict of relatively clear and inevitable interests.

b. Change the evaluation criteria of the public security mandate, in particular through amending the rules of the game in order to induce greater convergence of the objectives of the agent (rational) towards those of the principal (uninformed). One possibility is that implemented in France, where the principal (ARJEL) has direct access to all transactions performed by licensed operators.

c. Create a certification for the purpose of finding other standards to measure performance. This mechanism would allow the agent to acquire (for example, by accepting an audit process) a visible and verifiable characteristic, which would help reveal the private information held by him (the non-disclosure of which is detrimental to the principal). A side benefit would be to improve the level of expertise and experience of both parties involved.

In general, it seems necessary to define a research agenda according to the risk management practices of operators, which are perfectly legitimate, but can neutralise (via hedging techniques) risks associated with fixing. Operators would then be indifferent to fixing and opposed to its revelation, which would not be the best start to the cooperation with authorities. These doubts should naturally be dispelled through conclusive investigations on the subject, which would allow good practices between regulators and operators to spread.

§ 5. International Cooperation

The proposed action includes three directions:

- Support for the process of negotiating a convention on combating the manipulation of sports competitions as part of the Enlarged Partial Agreement on Sport (EPAS) of the Council of Europe, which is an essential place to promote the safety and ethics of sports;
- Coordinating with the FATF's work: on the one hand, this would subject betting operators and big bettors to the AML/CFT obligations of financial institutions; on the other hand, it would contribute to regulating them;
- Extending the right to bet (and the criminalisation of events that are a medium for bets): it is necessary to identify the best way to promote this important mechanism to mobilise the sports movement.
- One must be aware that the last two options will please neither the competitive betting operators nor the countries that are now aligning their policy with the interests of the latter. It would be unrealistic to assume that the general interest of a sporting society will triumph by the market forces alone: decisive action needs to be taken by the countries representing the long-term interests of sport to combat the corruption that bets can generate. Indeed, the FATF, while it provides high-level methodology and analyses, does not have any repressive potential: it can only reveal problems. It is then the countries representing the long-term interest of the sport that must act against countries that are not involved in combating corruption. In this regard, the example of the fight against tax havens is enlightening; especially since the subject has new and exciting developments in the writings of Gabriel Zucman.¹⁸⁷

¹⁸⁷ See for example G. ZUCMAN, *La richesse cachée des nations. Enquête sur les paradis fiscaux*, Paris, Le Seuil, 2013. The author shows in particular how simple sanctions can act on non-cooperative jurisdictions.

Conclusion of Title 1

The developments above have allowed us to clearly define the involvement of stakeholders in sporting fraud: what they could lose if an inadequate regulation is implemented, and what they could win – one should be careful to put into place efficient methods for fighting fraud.

The adverse consequences of fraud are now becoming known: a single fraud results in net losses for those with whom the information was not shared, bettors and operators alike; the discovery of more serious frauds would outrage the public opinion and carry risks to the financial stability of operators; a major scandal that reveals the complicity of sports authorities could completely distract the audience from a league, as was the case in the Asian sports. This risk of collapse (league collapse) represents the ultimate risk of destabilisation of a sport following a scandal related to match-fixing: it signals the collapse of an economic model, along with dramatic social consequences for league employees and discomfort for the fans and for enthusiastic bettors, and therefore it directly threatens the commercial appeal of the sport to the point of jeopardising the position of the private sector as well as nation-States.

Faced with these grim prospects, one might think that it is enough to hit hard, by prohibiting fraud itself or its trade that could be used as its medium, as well as heavy penalties on violators. History has shown how prohibition often proves ineffective, to the point where the Romans preferred to leave out gambling from the law for fear of exhausting the authority of the State. Ten years ago, the United States led a relentless fight, the effectiveness of which was certain but not absolute. In general, to regulate effectively, the motivations of fraudsters and their mode of action must be understood: it is the role of the *economic analysis of crime*.

The economic analysis of crime represents the decision of athletes who choose the dark side: the parameters of their decision are the gains related to fraud, the probability of success, the probability of getting caught and the severity of the sanction. It would be sufficient to act according to these parameters in order to contain bet fixing, but it is precisely the conception of methods of action that is not easy to do: the tournament design for example (the hierarchy of rewards and rules of getting through to the next round) can play an important role because one must be careful not to make competitors for whom the stakes are zero face competitors for whom the stakes are vital, as they may conspire.

Beyond the microeconomic analysis of matches and bettors, the existence of conflicts of interest among betting operators and the sports world has been observed: although the parties have a common interest in a certain volume of bets, operators can, under certain conditions, consider that the increase in volumes is still profitable. Yet there is good reason to think that higher volumes of bets allow criminals and fraudsters to earn more money with a lower probability of detection: therefore, the interests of betting operators are sometimes aligned with those of criminals, in contrast to those of sport entities. These conclusions are obtained through an innovative representation of sports corruption as a good produced and

for which there is demand in a market: this analysis goes to show *that sports fraud can develop very quickly from the first manipulations by a combination of social interaction (peer effects) and accumulation of capital by fixers. It is therefore imperative to act quickly and decisively to prevent the collapse of a league when the first signs of corruption appear.*

Our recommendations stem from this analysis: first, we think that *States must assume the responsibility given to them, given the existence of potential conflicts of interest among stakeholders*; they must also ruthlessly pursue fraud and crime because firmness is a condition for success. The importance of the role the State plays does not lead to disempower stakeholders; instead we encourage the management by sports entities of betting tax in order to combat fraud. To facilitate the perception of this tax, and to combat money laundering, the RRB should be limited to reasonable levels, with the exception of a wholesale market in which stakeholders must be subject to the rules of the FATF. Succinctly, these proposals can be summarised as *a responsibility to the stakeholders under the supervision of the State*¹⁸⁸.

¹⁸⁸ See in this regard, Title 3, Chapter 3 "The Distribution of Responsibilities between Sports Organisations and Public Authorities to Test the Manipulation of Sports Competitions".

Title 2. Understanding the Ethical Challenges of the Manipulation of Sports Competitions by the World Public Opinion

In order to allow the public opinion to understand the ethical challenges of the manipulation of sports competitions, it is imperative to present the reader with ethical considerations (**Chapter 1**). It is also important to study the sociological aspects of the sports ethics discourses (**Chapter 2**) as well as the very meaning of the words used, which requires a semiotic analysis (**Chapter 3**). The description and analysis of the ethical aspects of the manipulation of sports competitions would not be complete without recalling that all ethical reflection on sports has to go through a reflection on the degree of independence of the organisms producing knowledge on sport vis-à-vis the various sports authorities, both financial and political (**Chapter 4**).

Chapter 1. Identifying Ethical Issues

Introduction: Sports, the Subject of Ethical Reflection

For a humanistic perspective on Sport. Despite the great diversity of its historical forms and the problems of delimitation of its field, sport can be approached as a physical activity with a playful dimension that focuses on the improvement and maintenance of health, skills or performance. Sports are both an opportunity to exercise and a chance to complete and fulfil certain human potentialities. Therefore, it seems possible to take an interest in sports by seeing it as a finalised activity, or more specifically, a type of activity that enables achieving individual goals (at least partially) in shared purposes. These goals and their relationship to the practice of sports can be examined and that's when we develop regarding the problems of sports - as we try in this section - a perspective within ethics. At first, we are looking to clarify how sports is linked to ethics and how can specificity be explained from an ethical point of view.

With this in mind, we wish to recall that the game and human development give meaning to sports, and that because of this essential illumination by secondary values, sport is part of a humanist perspective. It is only natural that it forms an outlet to ethical questions, because it is inseparable from expectations or requirements under which it makes sense and is of some importance in social life. These expectations or requirements are found in the definition proposed by the Council of Europe, which refers to goals:

"The term "sports" refers to all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical and mental fitness, the development of social relationships or obtaining results in all levels of competition."¹⁸⁹

¹⁸⁹ Council of Europe, Committee of Ministers, Recommendation R(92) 13 REV to Member States on the revised European Charter for Sport (adopted by the Committee of Ministers on 24 September 1992 at the 480th meeting of the Deputy Ministers).

Under this definition, sport is associated with ancillary activities such as betting, training or specialised journalism. It is not independent from rules that appear constitutive of what it is in itself in all its manifestations. Among these rules, some are granted ethical status. Thus, the European Sports Charter adopted in 1992 (and following the principles of the European Charter on Sport for All in 1976) is complemented by a Code of Sports Ethics explaining that ethical considerations related to sportsmanship are an integral part of all sporting activities as well as activities under the policy and management related to sports.

Sports are part of human culture and its development. They are thus related to the contemporary era, with representations of what constitutes human dignity, with the respect owed to humanity and fundamental rights that express this respect. At a more detailed level, sports obviously raise many practical questions (how to proceed? how to organise?) that are inherently scalable, insofar as sports are part of a society with norms affecting them. For example, in the history of sports in North America, beyond the traditional problems related to access to the practice of sports and competitions, questions have been raised regarding major social issues – and sometimes political ones – at the national level: participation of women, equality in sports regardless of ethnic origin, affirming the eminent value of sports in the context of disability, *etc.*¹⁹⁰

The Ethical Point of View. Whether in sports or in other fields of human practices, ethics examine the aims and values which are related to the action and to the organisation. It is therefore the disciplinary field in which the values that shed light on practices are examined: what are they? How are they linked to each other? For example, what about their mutual compatibility? Ethics also study the conditions of implementation of these values (their adoption in some formulation, their translation into actions, their consequences on the collective organisation or on the reform of institutions, issues of interpretation and adaptation to contexts). It also studies methods of evaluation or formation of a normative or prescriptive judgment (a judgment on "what should be") about practices or social forms involved.

For example, in the case of sports, some of the relevant values are: selflessness, loyalty towards the rules and the refereeing, promotion and preservation of health. These values inspire social activities and various institutional ambitions, whose adequacy can be judged on the basis of arguments. Despite the arbitrariness that can be found in the choice of reference values, and despite the weight of the historical heritage in this area, the conditions of the transposition or implementation of these values into the practices and institutions are open to rational examination on the basis of good reasons. Moreover, some values prevailing at a time in history can give rise, among social workers, to a critical examination ultimately leading to giving less importance to these values compared to others.

¹⁹⁰ See in particular: S.A. RIESS, (eds.), *Major Problems in American Sport History*, Boston, Wadsworth, 1997. See also, for comparison and for a detailed analysis of the questions of the second group, some of the articles collected by B. ANDRIEU (with the editorial coordination of F. FELIX) in: *Éthique du sport* (Lausanne, L'Age d'Homme, 2013), notably. F. SABATIER and J.-F. BRUNEAUD, "L'ethnicité du sport"; A. SAOUTER, "Corps sexués et genres du sport", Catherine Louveau, "Les femmes dans le sport: inégalités et discrimination", A. MARCELLINI, "Un sport de haut niveau accessible? Jeux séparés, jeux parallèles et jeux à handicap"; O.J. SCHANTZ, "Le mouvement paralympique : une contribution à l'empowerment des personnes en situation de handicap ?".

Sporting activity falls within the context of a human culture, respectful of humanity and its achievements and results (in some forms of practice at least) in competitions between representatives of the same discipline. How can humanistic values that give meaning to sports (human development, health, gambling, *etc.*) be aligned with the social, geostrategic and economic realities induced by competition? This is the central issue of the ethical question on sports today.

According to historical sources, ethics, provided that they do not remain confined to the study of manners or customs as they are, coincide with the study of moral judgment, and therefore with moral philosophy. Judgments on good or bad, correct or inappropriate behaviours, just and just, virtue and vice, are at the heart of a critical and rational examination. In this examination, attention is focused not on the facts or actions as they are, but on the required or sought after orientation of the action and organisation.

However, in modern times, it is common to distinguish ethics from morality, mainly because "ethics" denotes an examination of values and their concretisation which must lead to meaningful conclusions for people who have potentially important moral disagreements (of good and evil, virtue and vice, just and unjust...). Morality can coincide with "one" moral: a moral adopted by a person, possibly coinciding with that adopted by another person, synthesizing a conception of a good life, of right actions or virtues. Disagreements about what to do or how to organise actions are partly rooted in this area.

Even in the presence of fundamental disagreements involving the morality of all of different persons, a common rational examination of values and their implementation is often required by the joint work by shared practices, through membership in common institutions and by the joint submission to laws. In fact, a fundamental disagreement about good or evil, for example, does not suspend the need of collective practical guidance which can be relied on (*e.g.* standards of good professional practice, laws for the State) and which, failing to express the moral ideal of each person, reflects a collective process of discussion and decision-making in which the good reasons of each taken seriously.

Therefore, the ethical approach (as understood today), while supporting the reality of conflict between moral values, does not remain at this level. It leads to an examination the inclusion of the reference to the judgment of values in the practices, rules and institutions. However, although not specifically oriented towards consensus, it allows searching for agreements or reasoned compromises in areas marked by moral division. It enables promoting and structuring a constructive dialogue. The practical component of this type of business is often associated today with a corresponding field of study; although it is possible today as it was yesterday, to examine ethical issues without trying to give advice about their resolution. Ethics, while maintaining close ties with the general moral philosophy, are differentiated in part because of the inclusion of institutional and professional contextual issues that are related to the organisation of practices and social interaction.

Sports and the Values Attached to it. In the case of sports, the ethical approach has to take into account the diversity of contexts and periods. However, doesn't this dissolve the generality of the values invoked concerning sports? Relatively stable values are recurrently associated to sporting activities; however, one must be cautious about assuming that certain values are invariably and per se "sports values". Given the variety of sports and social forms associated to them, proceeding as such, by postulation, would be inappropriate. On this point, we would first like to draw attention to the following facts: Sports are neither the manifestation of predefined "values" that are exclusively reserved to sports, nor the mere receptacle of the "values of society", they are rather a space of confrontation of values and reflection on norms that are important to society.

Sports ethics have a long history reflecting the questions raised by the practice of sports from the point of view of the purposes of men, of fairness and respect for rules and, in addition, contribution to society. These are very practical aspects of values associated with sports which are also very scalable through history. Promoting health, educational virtues (for example, learning the value effort and respect of the rules,), entertainment and enjoyment of the game, economic effects (for example on employment and local development) are part of the relationships that are usually considered important between sports and humans. In general, the pursuit of excellence in the fulfilment of human potentialities should be added and it is a fact that sports practices include requirements and learning of considerable importance in terms of physical achievements, the quality of interactions (in team sports), concentration, control of its own efforts, discipline in the chosen lifestyle, etc.

The variety of sports practices leads to thinking that these are certainly different forms of excellence that are related to the practice of sports, according to the weight given to different virtues or qualities, discipline by discipline and over time. The search for human good through sports would most likely branch out into different human "goods." these goods cannot be reduced to pure entertainment as was done in the post-War western "consumer-society".

In addition, sports have been, for a very long time, supporting the examination of competition and education, fairness and norms, and thus in general of ethics and politics (as can be seen in the sections of this report covering aspects related to history and sociology). Thus, sports are an element of the collective considerations on judgment, norms and values. In the articulation between the individual and the collective, sports ethics are also an opportunity to examine how sports can be part of the search for the good life or a successful life in a way that leaves room for critical thinking and questioning of "values" which are too often treated as mere obvious data.

Sports, the Good Life and Value Judgments. Therefore thinking about sports, is reflecting on one aspect of human life that is involved, for many, in the quality of life as a whole. This issue must be taken as a starting point, which leads to questions about obligations, rules, norms and values in sports. As explained by Bernard Williams,¹⁹¹ the use of "on" (indeterminate pronoun in French), assumes that something useful for everyone can emerge. In other words, at first, this starting point gets our attention on ways of living, and what concerns us in this paper, the ways to live sports and play sports, but especially and very generally, to do so in the sense of a fulfilled life.

The last term is rather delicate. What does it refer to exactly? What is "good" or a "good" character that could bear witness of the life of an accomplished human being? And what could it refer to more specifically in the world of sports? A high level athlete asking the question of what to do in order to win a sports competition - or if he should, for example, be willing to take illegal substances that enhance performance - launches a discussion exceeding his personal interest in that it may also be that of any other athlete in the same position. Thus, based on the question "How should I live?" another question arises "How should each person live?" In this sense, the debate on sports ethics is indeed linked to the vision of a good life.

For these reasons, even when the ethical approach is implemented in a pluralistic world (in the presence of a plurality of judgments about the good or the good life), it still retains the strong reasons that people have about aiming for a certain form of life over another. The search by each person for a life that is "good" is essential to understanding the role of sports in this life, so that judgement of values concerning sports are inseparable from an interrogation of the right way to live one's life.

But the general themes of ethical questioning (such as the questioning on the right way to live) took particular forms in the field of sports, in relation with values especially associated with this field. Thus, the contribution of sports to the human good is often highlighted by health issues, or by seeking in sports a figure of the quest for *human excellence*. Sporting activities have a special affinity with the search for a healthy life with full enjoyment of the natural faculties, in the sense that expectations in this direction are made. Sports await validated or endorsed purposes by man, able to provide a compass for his efforts; as a result, the matter of the type of excellence to look for (and values or reasons that help identify it in a non-arbitrary manner) arises.

Fairness and respect for the rules are particularly embodied in the respect for competitors. Inversely and complementarily, one can readily admit that the figure of fair competition between athletes has been and remains an extremely important and frequent medium for ethical issues in general, especially in relation to questions about (for ethics) equal opportunities at the outset, respect shown to both the rules and coexistence between disparate interests and signs of mutual consideration.

¹⁹¹ B. WILLIAMS, *L'éthique et les limites de la philosophie*, Paris, Gallimard - NRF Essays, 1990 (1985), pp. 7-28.

Familiar discussions about what is just or unjust borrow heavily from the kind of metaphor made up of athletes, their competitions and rules recognised as valid on a multilateral basis.

The Stakes of the Fight against the Manipulation of Sports Competitions. It is now possible to discern the stakes – although each can seem unclear and secondary (though they all form a substantial corpus) – related to the fight against "excesses in sport"; and most importantly, the manipulation of sports competitions. Beyond the threat they pose to the sport itself as an economic activity and as a social practice, they also, by substantially modifying the image of sports, challenge the vital role played by sports, because they are backed by certain social values, as a shared experience with ethical stakes - a useful form of shared experience for the sports practices themselves, and beyond, in search for a "good life" for individuals in the entire society. It is to this aspect of sports as a subject of ethics, that are devoted the following three sections.

The first section deals with some methodological aspects of applied ethics in sports. The second section will address practical and ethical issues, particularly the question of the compatibility of values. Finally, the issue of liability will be addressed in the third section which will lead us to the suggestion of some solutions.

Section 1: Sports Ethics, from General Principles to the Call for Rules: Methodological Aspects

Sports are an essential part of the educational concerns in our contemporary societies. They offer a practical field where there are general ethical issues, thereby constituting a favourable learning field for social life (§ 1). Sports practices seem to bear references to socially desirable values to the point that the question of whether or not there are "values of sport" arises (§ 2). If the concept of "values of sport" is considered with distance, then the critical reflection on the values that should be associated with sport becomes necessary. The ethics of sport cannot prescribe these values (when practiced on the critical mode), but it can host this debate to draw the reasons that can constitute their basis and that are intended to structure the discussion (§ 3).

§ 1. Sport, Faced with Ethical Questions

Below are some general questions that ethics can give rise to about sports which seem interesting to remember. By addressing them, we take measure of the particularity of this object, sport, from an ethical perspective:

- Why organise sports activities? This leads back to questions about the relationship, in terms of ethics, between sporting life and social life. We must also question the integration of sports as a social and educational activity. The relationships between the rules of the various disciplines and the more general norms of society deserve our attention;

- In which norms is sports ethics interested? Here, one must question the importance of culture and tradition in sport, in reference to the game (is it essential?), the relationship between competition and cooperation (how to lead an athlete to a cooperative compliance with rules when individual rationality leads him to breaching them?). More generally, it is often the relationship between the rationality of ends and the rationality of means that is in question;
- How to understand the problem of the responsibility of individuals and sporting institutions? Are sports ethics individual ethics?

A. Establishing Sports Institutions for Everyone, a Shared Responsibility

It should be admitted that, through its expected contribution to social life, sport is subject to collective responsibility in education, in the culture of typical attitudes, regular practices and personal aspirations viewed favourably. We see this as a fact: sport is the subject of expectations and criticism, of calls for reform or change. To understand this, consider how one connects sports to standards or principles. This is why there are "matters of principle" in sports. The understanding that one is entitled to expect sprawls over several levels:

- the study of the social processes involved (subject of empirical social sciences);
- clarification of stakes ;
- And finally, the critical contribution to the orientation in the collective action or (in the form of reasoned proposals).

Expectations based on norms or principles accompany sports and lead to choices. The Forms of resulting moral responsibility concern first and foremost the discursive exchange, dialogue. When expectations appear well founded, they can take consistency, even when the State or legal devices are not put to use, in the form of a set of moral duties recognised and accepted in the community and for each and every one of us. This is often the case for issues of collective effects such as the contribution to the education of children, the contribution to public health and the creation of enough opportunities for everybody in reference to the sports culture. Even in the absence of legal constraints, expectations of this kind, find correlates in the life and evolution of institutions. We understand that this may be possible in view of the importance of the vocabulary of *duty* (individual or shared) in the deliberations concerning the organisation of sports activities, integrating them into education and the follow-up to be operated for legitimate requests aimed at the collective effort and active political support the sport.

The collective establishment of institutions providing tangibility to the provisions recognised as desirable (for health, the interest of competitions or some educational tasks in particular) should not only be seen as an emergent phenomenon, reflecting a spontaneous vitality of men, their living environment and their social relationships. There is also a kind of injunction for organisation so that the glimpsed ideals are actually implemented. Although tradition is certainly important - and protean - in this field, it does not stagnate over time like social practices, whose purpose is out of sight (like what often happens to inherited customs or etiquette rules). What is at stake is always an ethical injunction: the call for dialogue and deliberation on the values, principles and norms that give meaning to sports, and on desirable forms of implementation

B. Differentiating Ethical Norms from Legal Norms

The norms of life in society are, on the one hand, the legal norms (binding on everyone with the possibility of recourse to the collectively organised constraint system), and on the other hand, norms freely endorsed by individuals or groups to organise their own lives and their relationships with each other. Moral standards are of the second kind: these rules indicate an "ought to be" (what should be done in such circumstances, the proper way to act, what should be the case...), but this "ought to be" has no necessary relation to the collective organisation of violence, nor to the "objectivity" guaranteed by independence in relation to the will of any person.

As is the case with norms relating to integrity and ethics in sports, a norm whose status remains simply moral, may well be adopted and acted upon in practice. It can be considered as correct and be endorsed without being relayed by organised coercion. However, in the case of legal regulations, the typical case would be the inclusion in a normative order generally able to mobilise an organised form of coercion against offences. The endorsement of a moral norm can be left to the discretion of each person: this is an issue for personal discernment rather than creating an objectively valid normative order (imposed on all). Indeed, this important difference does not prohibit morality from having legal effects, through the preference for certain decisions in the courts (when proper legal norms allow latitude) or through changes in treaties, laws and regulations. It is often on moral grounds - or at least in response to the expectations created by legal norms endorsed by citizens or promoted by institutions – that the law is changed.

Ethics are primarily concerned with norms that do not have legal recognition and that, mould (often deeply) social life. They link these norms to expectations about the activities and forms of collective organisation. Ethics also examine their relationship with the broader moral values inherited from the *philosophia perennis* (e.g. rejection of deception and lies, search for benevolence, avoiding harming others, respect for well justified rules, participation in the development of abilities useful for humanity, or respect for fundamental rights attached to persons).

Furthermore, ethics is traditionally interested in how the non-legal norms it studies may find an expression or an extension in devices that are binding (in the example of the justification of the coercive institutions of the State in Spinoza's *Ethics*), particularly in cases where substantial "goods", constituting the expectations of ethical norms, can only be realised in the absence of mutual restraint. This last condition obviously requires further arguments in cases to which this should be applied.

C. The Sporting Culture and Tradition

The transmission of the sporting culture is also the tradition of a certain type of aspiration to be cultivated in common. The relevant model here is certainly one of our handovers in terms of political principles and public ethics. In the culture of the justice ideals, freedom and fraternity (in particular), we admit that the dead can govern the living, but not under a false inheritance, which would be imposed without the consent of the living. On the contrary, it is extremely important that the reasons associated with the principles – these reasons which allow one to be convinced of their validity and rationally decide to defend them – not be lost over time. Not only must the reasons remain in sight, but it may be added that it is important that their progressive refinement (or their adaption to changing contextual conditions) be strictly correlated with the modulation which, in practice, inevitably affects the choice of rules. These, within the management of practices, concretely express commitment to the principles of reference.

We can use the comparison with political principles: this is not to say that the principles of sports can, at a time and in a given place, derive general moral principles recognised on the scale of the political organisation of the city (such as those we read on the pediment of our public monuments) but to argue that, in both cases, the progressive interpretation and contextual adaptation are directly related to the implementation of moral principles through norms and institutions.

This similarity may be specified by saying that interpretation and adaptation, in both cases, are intended to be regulated by invariable reasons, transmitted through education or tradition, and possibly strengthened when passed along from one generation to another, in terms of their motivational virtue. In other words, we do not notice any conflict between the recognition of the contextual variation of the uses and the transmission of principles or values that can show some consistency. As is evident also for general political principles such as human rights and the independence of the judiciary, the major ethical principles associated with sport (such as learning, the culture of equal compliance with the rules, the contribution to learning self-control in education, and promoting physical fitness) remain invariable through considerable changes of contexts, cultures and times in history.

These mutations are accompanied by dramatic changes in the social forms of framing and sports. Some requirements, however, are transmitted and spread through different contexts while retaining most of their scope and significance, even if the degree of fixity should not be exaggerated. This is why we can take interest, at a moment in history like ours (with all its features), in principles that are capable of preserving the meaning of sporting activities

D. Sports, a Miniature Social Life?

Sports ethics involve rules or duties that are similar to reduced models of more general norms of social life. This can be understood first by thinking, as some philosophical exercises with pedagogical scope encourage, how it is possible, from the sporting rules, to learn to weigh the reasons for living within a society. Therefore, the question is to *what extent and how does sport contribute to learning to deliberate on one's own account, taking into consideration social life.*¹⁹²

In fact, sports rules have multiple relationships with the norms of social life. The inclusion of sport in a comprehensive education is not simply a practical matter, since it engages one in the discernment and reflection in the first place, and in the most immediate way, on mastering by every physical movement, according to volition, effort and rules (by including the norms of social life). This has been the case since Antiquity. Violaine Vanoyeke wrote about the methods of the Paidotribes of the Greek world in the Hellenistic period:

"Gymnastics is not only learned through exercise and practice. The athlete must be aware of his movements and must analyse them in turn. Paidotribe pedagogy goes as far as the development of a theory."¹⁹³

It is certainly not easy to take account of the rich educational and doctrinal network harboured by this type of analysis, which is found at the heart of the practice and training. It profoundly engages the conceptions of the soul, the body and their relationship (or their unity). It is also, of course, the nature of stress and the physiological expression of the will which is questioned. Indeed, sport is often understood as a school of life, or a meeting point which can promote awareness of the shared requirements we need to connect to the human nature. Occasional attacks against a particular restrictive form of sports ethics (e.g. attacks on a "spirit of solidarity" that is compatible with chauvinism in sport) never rendered these general goals irrelevant.

Sport ethics also prominently relate to *the link between mere individual action (always covering individual effort) and the search for justice within the institutional environment*. An activity which is somewhat offset from the provision of basic needs, eminently collective even in its closest forms to the purely individual effort, sport has been for a long time a kind of social experiment.

¹⁹² See the pedagogical explanations of D. DELEULE, *Football. Que nous apprend-il de notre vie sociale?*, Paris, Gallimard, 2008; and, R. DAMIEN, "Two or Three Things I Know about Rugby" (December 2005), available at: [<http://www.mezetulle.net/article-1413423.html>].

¹⁹³ See V. VANOYEKE, *La Naissance des Jeux olympiques et le sport dans l'Antiquité*, Paris, Les Belles Lettres, 2nd Ed., 2004 [1st Ed. 1992], p. 53.

This calls for questions that require collective and institutional responses, in a way that is not strictly necessary, however, in appearance, to the continuity of social life.

E. The Essential Reference to Play

Sport is rooted in "play", in other words, free activities practiced with no purpose other than their very practice and the wellbeing that the latter provides. But once sports activities take place within social, political and economic transactions which constitute the fabric of community life, the stakes become larger issues for society with a multitude of stakeholders, a fact that is impossible to ignore without falling into a naive representation of such activities. The major historical transitions of certain sporting activities to school sport, on the one hand, and to professional competition on the other, clearly lead to considering sport as something other than a game.

Meanwhile, when of the real issue is "sport" and not something else, it is always possible to identify, at the heart of the considered social interactions, a game of no consequence other than the stakes set by the game itself. The reference to play and the ability to keep in mind that, at the end of the day, "it is only a game" is essential. At some level of description, it is also possible to ignore the needs of life and the social functions that meet those needs; despite the magnitude of the problems that build up around the considered "game" itself, this type of reference contributes to what can be called, using the vague expressions that are common in the current discussion, the "meaning" or "purpose" of the activity.

F. The Integration of Sport into the City and into Education

Integration into the City cannot be compared *prima facie* to a distortion or impairment of sport. Regardless of the reference to a core said to be indifferent and strange to basic social functions, sports practices take place in social, economic and political conditions; they are based on social interdependence and social decisions. The institutions of the sporting world can illustrate what Paul Ricoeur called, in his book *Oneself as Another*, following Hannah Arendt, a "public space of appearance" that is, *a framework of practical peace and order, undoubtedly conducive to social life in general and, first of all, one that fosters the development of the sports activities themselves*.¹⁹⁴ This space eminently proves what Ricoeur established in a broader sense for social institutions: the indissoluble alliance of the distinction of assigned units (here, obligations, rewards, rights of entry into the competition, economic rights related to professions and competitions...) and the participation in the society in question (membership in the sports universe, disciplinary recognition, inclusion in the competition, membership in teams...).

¹⁹⁴ P.RICOEUR, *Soi-même comme un autre*, Paris, Seuil, 1990. See The commentary of Alain LOUTE in: *La Création sociale des normes*, Hildesheim, Georg Olms Verlag, 2008, Chapter 5.

On this backdrop, the fact remains that the tensions between the search for distinction and fair participation are particularly visible in the sports universe, given the highly competitive nature of the business, and of course the external association of sports competitions with economic interests and with local or national attachments. *Sports ethics are in fact part of the field of business ethics, at least with regard to professional sports.*¹⁹⁵

Because of the imperfect coordination between the various regulatory bodies, it is impossible to also ignore the inter-institutional and inter-organisational dimension, which gives rise to the issue of insurance mechanisms among policy makers to counter opportunism that takes advantage of compliance with rules by others by exempting oneself.¹⁹⁶

The significance of this issue is particularly sensitive in an environment of imperfect implementation of standards and relative efficiency of coercive instruments; with the latter always having to be relayed to a certain level by ethics, trust, redefining and expanding the interests to be defended, as well as by credible signs of commitment.¹⁹⁷

Sports ethics may also be very usefully coupled with a reflection on the integration of sports activities into education, beyond the quite frequent reduction of sport to physical training.¹⁹⁸ It should be recalled in this regard that the Universal Declaration of Human Rights states that education shall be “directed to the full development of the human personality”, which should lead to specific attention in education, on the different dimensions of a person, especially those involved in sports. The relationship between personal independence and integration into regulated practices deserve maintained levels of attention,¹⁹⁹ such as the educational value of sport beyond mere scores, by the values illustrated and supported by sports and competitions.

G. Sports Ethics against Opportunism

In many situations of community life, the implementation by everyone (or by a large number of people) of certain standards is desirable for everybody (compared to a situation in which these standards would remain unheeded). Individually though, no one has any interest in implementing the standards in question.

¹⁹⁵ See the texts compiled by A. ANQUETIL, *Éthique des affaires. Marché, règle et responsabilité* Paris, Vrin, 2011.

¹⁹⁶ See on this issue: “Mécanismes de garantie et types d’opportunisme: le cas d’un réseau d’innovation”, Chapter 17 in: *L’Opportunisme. Une approche pluridisciplinaire*, A. BANOUN, L. DUFOUR (dir.), Paris, Hermès-Lavoisier, 2011.

¹⁹⁷ On the underlying problems of the social theory of coercion against the power of interests, see notably: M. CHERKAOUI, *Le Paradoxe des conséquences*, Geneva, Droz, Chapter 6, Sec. C; and also: B. FRYDMAN, G. HAARSCHER, *Philosophie du droit*, Paris, Dalloz, 2002 (2nd Ed.), Chapter 2, Section 2.

¹⁹⁸ V.D. MOREAU, P. TARANTO (dir.), *Activités physiques et exercices spirituels, essais sur la philosophie du sport*, Paris, Vrin, 2008; and the review of this book by I. QUEVAL (*La Vie des idées*, July 2009), available at: [http://www.laviedesidees.fr/IMG/pdf/20090709_queval.pdf].

¹⁹⁹ See notably, in the compilation coordinated by G.FERREOLI, *Autonomie et dépendance*, Brussels, EME-Intercommunications, 2011, the articles by J.-F. HURAUT (“Interruption de la pratique compétitive et autonomie des adolescents”, Chapter 12) and by F. GRAPPE (“L’autonomie dans l’entraînement sportif. Quelle relation avec la performance ?”, Chapter 18).

The problem does not always arise in such an extreme form; however, it is undeniable that many situations are marked by a strong tension between the general approval of a wider implementation of certain conduct norms, on the one hand, and the personal tendency to avoid them, on the other.

When such problems of "free riders" arise around the multilateral respect of norms, with which collective compliance is desirable (compared to a situation of generalised negligence to some degree, or complete negligence), the reasoning part in determining the norms of conduct can intervene and play a role in social processes of learning in the face of challenges of strategic reasoning. Thus, in doping issues, competition between athletes of similar level often takes the shape of a "prisoner's dilemma", with doping as a dominant strategy (*i.e.* the best strategy regardless of the assumption about the future conduct of others), since everyone has little regard for one's own health in relation to stakes of sports performance.

Faced with this challenge, and whatever the specific difficulties of individual motivation are, the multilateral reasoning of agents (close to the Kantian universality test of moral maxims) plays a role in identifying defensible strategies like "the best", assuming a parity of reasons for stakeholders placed in similar positions, in a symmetrical game.²⁰⁰

Confronted with such problems, *the search for motivation in the respect of the standards of good practice is complex*. It calls into question the ability of agents to adopt an integrated conduct that is susceptible to praise or blame as such, in other words, as a conduct truly expressing the intentions and motives of these agents (one of the recurring problems of reprimands addressed to athletes being the external pressure of motivation systems that are possibly little or poorly connected with essential personal aspirations).²⁰¹

Motivation also falls partly into the category of morals or social habits, which can be clearly differentiated from morality in the strict sense, always articulated to a critical issue that goes beyond the scope of social automation and conformity.

In this matter, there is no point in opposing the norm to the custom. There may be a moral obligation to help create (and reinforce in time) social routines or institutional practices to guide the common life in desirable directions, so as to allow people to collect the legitimate results of their practices while avoiding risks or dangers. This guidance can go towards the general terms of a "good" common life in which one often sees the mark of an ethic positively accompanying human creativity as manifested in society.

²⁰⁰ The analysis was developed in: N.GRAVEL, E. PICAVET, "Une théorie cognitiviste de la rationalité axiologique", *L'année sociologique*, 50 (1), 2000, pp. 85-118

²⁰¹ See in particular: N. ARPALY, T. SCHROEDER, "Éloge, blâme et moi intégral", in: *Psychologie morale*, (dir.) M. JOUAN, Paris, Vrin, 2008, pp. 248-282 (original English text, "Praise, Blame and the Whole Self", *Philosophical Studies*, 93(2), 1999, pp. 161-188). See also, on the present state of relationships between the theory of motivation and the theory of institutions: C. MANTZAVINOS, *Individus, institutions et marchés*, Paris, PUF, 2008, Chapter 2, Section 2.

To many, this would be the opportunity to correlatively get away from the model of exclusively deontological ethics (a model consisting in banned or proper commands). But this bias does not happen by itself and the ethics of sport inherit such hesitations about the nature of ethics: do they consist in rules imposed on conduct, or do they indicate for us the benefits or purposes leaving us free to develop our rules of conduct in a creative and progressive way? In the case of sport ethics, this classic hesitation is reinforced by the plurality of the types of rules involved in the sports activities themselves. We now turn to this aspect of things, which requires attention since we seek to specify the stakes related to standards.

H. Several Kinds of Rules in Sport

Sports examples are sometimes given, in philosophy, to illustrate the difference that must be made between regulatory rules (allowing for arbitration) and constitutive rules (the latter having no essential function to resolve conflicts, but to select a series of coordinated activities between them). Constitutive rules offer coordination structures.

Both types of rules can be combined however, when a regulatory rule affects the structure of the game, as remarkably shown by the thorough discussion of Pierre Livet in *Les normes*.²⁰² This distinction and this alliance should be considered with more depth for better *understanding how the violation of the rules is, as appropriate, rather a breach of civility and standards of living together (in a way that goes far beyond the sports book) or, rather, a way of playing badly.*

The implementation of the rules of good practice in the sports world involves considering the complexity of the implementation of rules in general.²⁰³ Work remains to be done to explore how to study the way trust is established in the social operations concerning the implementation of norms whose validity may be generally and rationally recognised. Research on the issue unsurprisingly highlights the dependence of the process of building trust on representations and beliefs.

Some of the beliefs involved are normative in nature, particularly those relating to the legitimacy of cheating given the low chances of compliance with the relevant norms by other parties.²⁰⁴ Clearly, the relationship between norms and strategy raises the question of the dual nature of rationality, "relatively to the means and relatively to values or ends."²⁰⁵ The choice of appropriate means can never replace the critical reflection on the adequacy (or even just the arguability) of the purposes intended. This is an important reason to think that the issues of rationality concerning purposes cannot be reduced to mere compliance verifications, but concerns the selection of purposes themselves. It is not enough to notice that one is faithful to values: it is necessary that these values be appropriate, or at least defensible.

²⁰² P. LIVET, *Les normes*, Paris, A.Colin, 2006, pp. 68-69.

²⁰³ P. LIVET, *op. cit.*, 2nd part, 1st study of the text (Wittgenstein); also: B.REYNAUD, *Operating Rules in Organizations*, London, Palgrave, 2002.

²⁰⁴ P. DEMEULANAERE, *Les Normes sociales. Entre accords et désaccords*, Paris, PUF, 2003 ; Chapitre 6, Section 3.

²⁰⁵ B. SAINT-SEMIN, *Précis de l'action*, Paris, Cerf, 2012, p. 187

I. The Individual, the Institution, and Responsibility

One of the questions that are often asked about the compliance with best practices in sports is that of the nature of *commitment* to principles, usually considered as a source of trust within sports circles as well as in the relationships between athletes involved in competitions and the public. Trust is sometimes identified with an expectation of the other party's behaviour²⁰⁶ (consistent with a norm or a principle), leading to the study of social forms of commitment concerning the respect of norms or principles. The general philosophical question arises here, related to rationality, on the one hand, and the commitment to respect the norms of conduct on the other. In fact, one may wonder if "committing" does not mean to avoid associating to one's actions the best direction while taking into account the circumstances.

This theme was recently particularly illustrated by the controversy involving Amrtya Sen and Philip Petit concerning intentional action and commitment.²⁰⁷ Should commitment constantly be renewed through argumentation (or supported by the calculation of the included interest)? Or does it have to be understood, as may a competitive representation of social life can lead to, in the manner of the internalisation of guidelines for action that are specific to a social system?

This second perspective runs the risk of driving us away from the simplest models of individual rationality, especially the one that leads us to identify rationality with the optimal pursuit, by the agent, of his own ends. However, the additional complexity resulting from the consideration of the commitment can prove necessary to approach the reality of trust or distrust relationships exposed to the hazards related to conduct norms. This particularly seems to be the case, when these norms are perceived by persons as norms that should be personally endorsed, therefore a form of commitment.

This endorsement logic can, from within the "social system" in question (even if it lacks the complete coherence that is traditionally associated to the system's idea), give meaning or purpose to the action and provide action-levers for the implementation of changes.²⁰⁸ By "social system", we mean a number of interconnected values and norms that offer familiar references to the justification or critique of situations, actions and institutions.

The determination of the boundary between institutional responsibility and individual responsibility gives rise to some problems, sometimes urgent, about sport. In his *Theory of Justice* (1971), and then in *Political Liberalism* (1993), John Rawls clearly laid down the principle of association between freedom, responsibility regarding the ends that one personally pursues, and equitable structure of the background, under the assumption that individuals are able to adjust their goals

²⁰⁶ B.REYNAUD, *op. cit.*, p. 11

²⁰⁷ See more: F. PETER, H.-P. SCHMIDT (dir.), *Rationality and Commitment*, Oxford, Oxford University Press, 2007; E. PICAVET, "Engagement, principes et institutions", session of 21 March 2009, *Bulletin de la Société Française de Philosophie*, 103 (1), 2009

²⁰⁸ On the methodological stakes of this opposition, see: J.-M. BERTHELOT, "L'acteur en sciences humaines, entre théories et programmes", in: T.ANDREANI, M.ROSEN (dir.), *Structure, système, champ et théorie du sujet*, Paris, L'Harmattan, 1997, 1997, pp. 311-323.

and aspirations in terms of what they can reasonably expect, given the basic structure of society. In sports, the poor adjustment of personal (or collective) purposes to reasonable expectations is problematic, and this is an opportunity to make good use of (while putting them to the test) contemporary approaches of accountability.²⁰⁹

One of the fundamental insights accredited by recent contributions is the fact that in the presence of complex rights involving many people, and given the structures of complex actions required for the concretisation of such rights, the consideration of responsibility requires taking into account institutions and their evolution (their "dynamic" if one wishes). The institutional division of powers can be examined from this perspective. One can even wonder if it is likely to ensure the correlation between rights and duties and if it proves capable, to safeguard the rights of stakeholders in their integrity.²¹⁰

J. The Institutional Dimension of Sports Ethics

Does sport preserve its characteristics, once it interacts with the institutional system? Does it not become distorted? How to perpetuate the values promoted or at least represented by sport, when its practice is deeply marked by the challenges inherent in complex institutional relationships, such as those that are always included in professionalisation? The reference to competition here is the beginning of a dialectic that can certainly be virtuous. Sport requires, on the part of the athlete, a discipline marked with the seal of transcendence, and respect for health and loyalty. The absence of significant stakes or emulation can hamper progress. Everything here is not a matter of emulation linked to comparisons (thus to pride), nor of simple social pressure. The same goes for regular and effective support of the action moved on grounds that are truly motivating and belonging to the development of human abilities which are legitimately attributed value. What is at stake is never just pure comparison or a hypothetical situation ("to win" or to "have the upper hand"), but always the accomplishment of processes that find their meaning in a collectivity of reference and within an institutional framework.

Competition and institution go together, going back to what gives meaning to the individual of the action taken: to win, it is neither to "get rid" of an opponent (which would only be a pure metaphor in sport) nor to prove, in a supernatural manner, any superiority over him - as if the competition was an ordeal, being reduced to the pure manifestation of a pre-existing reality. It is rather and simply, to impose upon everyone, the recognition of a certain value associated with the action in the framework of rules and institutions.

²⁰⁹ See notably: H. IGERSGEIM, "A.K. Sen et J.E. Roemer : une même approche de la responsabilité ?", *Revue de philosophie économique*, 2006 (2), pp. 31-52.

²¹⁰ See in particular: O. O'NEILLI, *Towards Justice and Virtue*, Cambridge, Cambridge University Press, 1996; T. POGGE, *World Poverty and Human Rights*, Oxford, Polity Press, 2002; M. STEPANIANS, "Perfect Imperfect Duties via Institutionalization", Chapter 47, in: J.-C. MERLE, (ed.), *Spheres of Global Justice*, vol. 2, Dordrecht, Springer, 2013, pp. 587-594.

Conclusion of § 1

Sport, as a social activity, is conducive to learning social life because, always linked to play, it offers a field for learning social rules in the absence of vital stakes. This does not mean that this activity is guided solely by the desire to win. It is a field in which practices are crossed and driven by ethical concerns, to the point where the question of whether there are intrinsic values in sport arises.

§ 2. The Debate on the “Values of Sport”

Indeed, beyond the personal values sought by those who practice them, sports promote desirable social values (e.g. respecting the rules, others or the referee) or others whose moral significance can be more ambiguous: reference values implemented by sports institutions. Not all values are morally equivalent, hence the necessity to consider the axiological rationality in a strong sense (finding the reasons to follow certain values more than others) beside taking into account the instrumental rationality (victory, glory) and rationality as fulfilling personal preferences.

Corruption can be seen as a deviation from the “values of sport” that are best recognised and best connected to society as a whole (A). Are there, however, sports values on which it is possible to hold a descriptive and objective discourse (by saying “this is what they are”)? (B) To answer this question, we will mention three cases where the “values of sport” were evoked (C). We will then see that the criticisms of contemporary sport focus on the values it promotes in the name of other values that sport “should” promote (D). We will conclude that the “values of sport” are values that are contingent and subjective “associated to sports” (E).

A. Values in Sport

What are the fundamental values of sport, in the sense of values (which are not necessarily specific to sport) upon which sports ethics should be based? This issue was already tackled when discussing some aspects of the definition (or characterisation) of “sport” as work, that we thought we could choose in the first place. We will now discuss some other aspects. Even if the “values of sport” may occasionally be used as a screen for practices guided only by interests (including some very questionable practices), they deserve to be debated. As with other prestigious activities (socially valued), one can easily notice the occasional concealment, behind the “values of sport”, of personal options that do not stem from ethics, but rather from financial segregation or other forms of exclusion, the pursuit of economic efficiency, the concern for “victory at all costs”, etc. Despite everything, the strictly ethical content of certain personal options or options specific to groups, in sports contexts, cannot be ignored.

A question remains: that of the specificity or lack of specificity of the so-called "values of sport". Given what we learn from history and sociology in the subject of the extraordinary historical variability of forms of sport and discourses related to the reference values, *it would certainly be unrealistic to associate with "sport", immutable values of which it would be the custodian. In fact, the supposed "values of sport" are largely adaptations, in the case of sports practices, of values that have a more general meaning or significance in social life.*

That said, reflecting on the values in sport must also seriously take into account the possibility that certain social values with ethical status are particularly promoted in sport, or especially important for sports practices (in the same way that the values of truthfulness and rational understanding, important to social life as a whole, may appear especially important for science). In this regard, one may mention values such as respect for opposing teams or rivals, as well as respect for refereeing embodied by a third party, or the limitation of the competition or rivalry by submission to rules accepted in advance.

Other "values" sometimes mentioned as if they were values particularly involved or embodied in sports practices, such as the value of "team spirit", have a less determined moral significance. Team spirit, of course, can be used for better or worse according to the situations and societies in question. This also goes, basically, for the respect of common rules, which can be close in certain contexts to the absence of manifest challenge of unjust rules.

Insofar as it is now practically impossible to separate sport from institutions that support it and promote it, we cannot address the fundamental reference values and forget the issues of institutional implementation. However, we believe that there is a meaning to treating such values as they are themselves because at some level, institutional functions are based on values treated as references that can be recognised as a restricting value, without merely settling for the intensification of existing uses. Thus, the correlation between commitment and action of public authorities in the field of sport on the one hand, and the values whose validity they recognise on the other, is a vector for argumentation and criticism. If it were just a matter of intensifying already established social practices, this would not be conceivable.

Sport itself ensures the promotion of values one would be tempted to establish by inductive inference, through current discourses and cultural creations. It could be courage, effort, loyalty, selflessness, solidarity (dramatic implementation particularly in team sports), humility, deliberate (in common) culture of respect for others and empathy, not to mention the specific values especially highlighted in the various disciplines (e.g. patient endurance in cycling, self-control in athletics²¹¹ or serenity in many Asian martial arts).

²¹¹ On self-control in its relation to knowledge, quite important in the philosophy of education and sport since the time of Plato at least (as we see in *la République* ou *Les lois*), see notably the analyses of S. LEMAIRE in relation to emotions, in: *Les désirs et les raisons. De la délibération à l'action*, Paris, Vrin, 2008.

As we see, some of these values - and among the most important - concern the inextricably psychological and physical harmony, as well as the joyous mastering of moves and one's own strength. Sport retains in this respect all its value as a "spiritual exercise".²¹² Through its status as a widely practiced and comparatively easily accessible activity (although subject to local differences in the cost of practice), sport has a considerable significance in this regard. Of course, one must recognise the impact of medical, educational and economic contingencies on sports practices - an impact that can justify specific government efforts to promote equal access.

Each sporting discipline comprises a set of rules allowing on the one hand, to structure the game or the effort, and on the other, establish benchmarks for success and performance for the purpose of continuous improvement and comparability between athletes of the same discipline (with some borderline cases in which competition is not involved per se, as Aikido). When competition can take shape, it becomes necessary for any discipline to individually and collectively unfold in an institutional system, to evolve and allow the evolution of practitioners, and to regulate and organise competitive sport. *The rules of acceptable competition can only fit into a normative social system that gives visibility for all (the status of common knowledge and therefore shared reference), effectiveness in resolving disputes and conflicts, as well as a certain efficiency (minimum standard) in determining conducts or strategies.*

B. Rationality of Values, Instrumental Rationality and Questioning of Values

The practical problems with seeking a "victory at all costs" in competitive sports lead to the distinction between norms and values: the pursuit of victory can fit into the values of the stakeholders, but all the values involved are not equally morally prominent and cannot establish themselves as standards. The respect for certain ethical principles and the signs of respect for others - including other competitors - must be given a more fundamental status, not limited to a particular activity (sports for example) but to human dignity. Because of the ability to argue for the primacy of some values over others, or only for their pre-eminence in certain circumstances, the examinations of values leads to considering the rationality of values (or "axiological" rationality) as a complement to the purely instrumental rationality (the quest for victory and glory), or rationality which is simply conditioned to the satisfaction of personal preferences.

It is in this spirit that can be effectively addressed, in particular, the problems of the "sense of effort" (or "award of merit"²¹³) and the reference to the competition as "fair" in terms of efforts of all participants. In fact, sport is to be considered in connection with familiarisation in practice, with values such as those relating to teamwork, loyalty to a group and its efforts, renunciation (based on multilateral concerns) of direct and exclusive promotion of self-interest.

²¹² We refer in this regard to: X. PAVIE, "Pratiques du sport et exercices spirituels, des anciens à l'espace contemporain", in: *L'expérience corporelle, V^e Biennial of the AFRAPS*, 28-29 June 2012, (dir.) B. ANDRIEU, J. MORLOT, G. RICHARD (dir.), 2013, pp. 201-210. See also in this spirit, in the same volume, what is said about the nature of the "geste parfait" developed at the same time in martial arts and relational exchanges, in the Japanese culture: "Harmonie, fluidité, souplesse, adaptabilité sont les valeurs fortes recherchées tant pour le mouvement du corps que celui de l'esprit" - E. MAÎTRE DE PEMBROKE, "L'impact des contextes culturels sur la conscience corporelle", pp. 191-189, p. 185.

²¹³ See notably on this subject: J.-P. DUPUY, *Éthique et philosophie de l'action*, Paris, Ellipses, 1999, pp. 191 *et seq.*

The drifts in sports, illustrated by numerous cases of corruption may seem to evidently justify a reminder of the fundamental values of sport, a return to "real" sport (this is also the idea the term "drift" contains). Nevertheless, one wonders first if the "values of sport" really exist as such beyond the ends pursued (in the registry of merely instrumental rationality) by the stakeholders. In fact, one should question the significance and relevance of the reference - usual but perhaps complacent - to the "values of sport", especially because of the following: (1) the notion of "values of sport" has often been exploited for purposes other than sports, (2) it is difficult to pretend objectivity in the description of real values at play in sport and (3) sport seems to be crossed by disparate and even mutually contradictory values.

We intend to show here that the most common critiques concerning the idea of intrinsic values of sport highlight the tensions between the descriptive *register* and the normative *register* - tensions that are unique to the formulation of values. When one talks about "values of sport", one can attempt to either pretend to describe what are, in reality, the values associated with sport, or *prescribe* the adoption of values that *have to be* those of sport

We will see that evoking the fact that sports values have often been exploited implies that their use is often *normative*, even *performative*, and not descriptive. We are also interested in a second set of arguments against the evocation of "the values of sport": these are the arguments of authors developing a critical approach to sport and diagnosing the influence of values deemed dangerous in some respects in contemporary sport. But this type of denunciation is based on the belief in other sports values, including promotion, which will lead us to understanding the sporting field from the intersection of competing values. In addition to this analysis, we will consider whether the idea of "intrinsic values of sport" remains relevant.

C. Some Examples of Persisting Evocation of Sports Values

Speaking about the "values of sport" can arouse scepticism. One can think of the criticisms aimed at "facade values", possibly far from the values actually at work in decision making. When one does not simply deny the existence of the values of sport, there is a form of understanding related to the recollection of historical moments where the "the values of sport" were quoted to serve political purposes. At first glance, it seems that certain periods of the history of sport justify such scepticism. Let us mention three examples: the project of Pierre de Coubertin, sport in totalitarian countries, the Smith-Carlos affair in Mexico City.

1. The Educational Project of Pierre de Coubertin

A very different example of promulgation of "sporting values" is established by the doctrine created by Pierre de Coubertin;²¹⁴ Olympism. The whole concept of Olympism is based precisely on the idea that there are "sport values" that should be defended. Today, the International Olympic Committee is based on this disputed and iconic symbolic heritage. It should be noted in this regard that Olympism is indeed a part of the largest educational project nurtured by Pierre de Coubertin in the late nineteenth century and early twentieth. Although the Baron de Coubertin is in fact perceived mostly as a humanist who sought to pacify people through sports, his legacy still raises questions because of convictions in his time in relation to gender, race and colonisation.

The educational project of Pierre de Coubertin may be understood from two axes drawn by his anthropological and political normative vision. On the one hand, Coubertin used the example of a "healthy culture", which was then embodied in England, to cure France of the ills that were eating at it (alcohol, drugs, smoking, libertarianism, etc.)²¹⁵ This project aimed to transform the French citizen through a new way of life, inspired by the English sportsmen: "in the manner of the handsome French man, always proud, chauvinistic and rather selfish, Pierre de Coubertin meant, by an education through sport, instilling the notions of patriotism, resourcefulness, courage and ingenuity."²¹⁶ Manly, brave, strong, the new citizen would embody the values of discipline and perseverance, which would be taught from an early age: therefore, school responds to the deep desire of the father who wants his son to "become a valiant Englishman, active, helpful, sincere, a gentleman and a Christian."²¹⁷

This anthropological normative vision must be understood in light of the republican and nationalist²¹⁸ political ideal that feeds Pierre de Coubertin. The tenuous links between sports and political ideals are at the heart of the criticism of Coubertin's educational project. Several authors were quick to point out that the enhancement of conviviality in sports according to Coubertin indeed coexisted with a meritocratic promotion of inequality and militancy, which is not unrelated to the Baron's colonial ideas.²¹⁹ Moreover, he said that hierarchy was "natural": in a lecture at the French National Society of London in 1887 (entitled "A Programme"), he declared:

²¹⁴ "L'olympisme est un état d'esprit issu d'un double culte : celui de l'effort et celui de l'eurythmie", P. C., *La Gazette de Lausanne*, 22 Nov. 1918, p. 1, in: Pierre de Coubertin. *Selected texts*, (dir.) N. MÜLLER, Ed. CIO (ed.), Zürich, Hildesheim, New York, 1986 T.II, p. 385.

²¹⁵ J. SAINT-MARTIN, 2004, *op. cit.*, p. 30.

²¹⁶ J. SAINT-MARTIN, 2004, *op. cit.*, p. 28.

²¹⁷ P.-A. LEBECQ, *Paschal Grousset et la ligue nationale de l'éducation physique.*, Paris, L'Harmattan, 1997) (quoted in J. Saint-Martin, 2004, p. 29).

²¹⁸ As Jean Saint-Martin said: "Pierre de Coubertin's supranational work uses nationalism and fights it at the same time. Denied, maintained and exceeded at the same time, the sports nationalism sought by Coubertin should be, due proportion being observed, celebrated and transcended by the cosmopolitanism of the Olympic Games which gives its back its meaning". (J. SAINT-MARTIN, 2004, *op. cit.* p. 37).

²¹⁹ "The values of rivalry and competition are thus at the heart of Pierre de Coubertin's project, on which he was counting to create an unequal society showing a social hierarchy" (M. ATTALI, 2004). One can also refer to the article by F. AUGER: "L'idée coloniale chez Pierre de Coubertin", in: C. POCIELLO, *À l'école de l'aventure. Pratiques sportives de plein air et idéologie de la conquête du monde (1890-1940)*, PUS, Voiron, 2000, pp. 55-69.

"Social relations, for having assumed a more democratic form, are nonetheless based on ancient and immutable principles; inequality is more than a law, it is a fact."²²⁰

The misconception about the saying "the important thing is to participate", wrongly attributed to him, would be indicative of a distorted image we have of the Baron. In fact, during a thank you toast in 1908 in London, Pierre de Coubertin referred to the sermon of the Bishop of Pennsylvania during the Mass of the first Olympic Games in London ("the important thing in these Olympiads it's not so much winning as taking part") and he added: "[...] the important thing in life is not the triumph but the struggle. The essential thing is not to have conquered but to have fought well."²²¹ The recurring valuation of combat according to Coubertin, together with that of effort and risk can advocate "influences of colonial thinking" in his educational work. And among examples that support this thesis, for example, it could be noted that in his "Sports colonisation Project" (1930), Coubertin said that sports can be a tool for "disciplining natives"²²² despite these not very "humanistic" aspects of the Coubertin Olympic thought, reference to his work is constant in the world of sport. "The legacy of Pierre de Coubertin is the cornerstone of the organisation of the modern Games, both a cultural background and a guideline."²²³

2. Sports in Totalitarian Countries

First and foremost, the proclamation of sporting values in totalitarian countries is examined. This example is often used to show that sporting values such as courage, obedience, righteousness and excellence cannot be ends in themselves but means to serve political causes. Thus, Mussolini's Fascist Italy and Hitler's Nazi Germany are textbook cases when it must be remembered that sport can be an instrument of social control and a tool of international propaganda. One can think of many examples of exploitation of "sporting values" for political²²⁴ purposes. In recent years, the presidents of various international and national federations, and more generally political and sports officials relentlessly remind traditional sporting values: fairness, respect, equality, justice, fair play, *etc.*, in a way that may also raise suspicions of exploitation of these values for purposes of communication.

3. The Raised Fist of Smith and Carlos

When, following the incident of 16 October 1968, IOC President Avery Brundage excluded Tommie Smith and John Carlos from the Olympic Village and from the American delegation of Olympic Games; it was as a result of "a deliberate and violent breach of the principles of the Olympic spirit".²²⁵

²²⁰ Quoted in J. SAINT-MARTIN, 2004, *op. cit.*, p. 35.

²²¹ Quoted in J. SAINT-MARTIN, 2004, *op. cit.*, p. 32.

²²² See P. BONIFACE, *JO politiques*, Jean-Claude Gawsewitch publishers, 2012.

²²³ I. QUEVAL, 2004, *op. cit.*, p. 30.

²²⁴ For example, it is clear in the work of Paul DIETSCHY and Patrick CLASTRES, *Sport, société et culture en France du XIX^e siècle à nos jours* (Paris, Hachette, coll. "Carré Histoire", 2006) that in France's history, sporting values were evoked for purposes other than sports: recruitment of youth and workers, militarisation, hygienism, nationalism, republicanism, patriotism, strengthening the race, moral improvement, fighting against "intellectualism".

²²⁵ Quoted in B. ANDRIEU, *op. cit.* 2013.

However, they had only been promoting an important value of Olympism: equality between races. Indeed, during the medal ceremony for the 200 meters athletics, and when the American national anthem began, Tommie Smith, who beat the world record, and bronze medallist John Carlos raised a black²²⁶-gloved fist and kept them raised, turning their eyes away from their national flag. Both athletes wanted to send a strong message to the entire world by expressing their hostility to racial segregation prevalent in the United States at that time. They were disqualified in the name of the "principles of the Olympic spirit."

Yet, as previously indicated, these principles are not "intrinsic" to sports: they are chosen by its stakeholders - in this case the IOC. Like the "sport values", the "Olympic Spirit" is a malleable term that changes with the inflections of the stakeholders in sports. So when the IOC's President Avery Brundage said that this act was "contrary to the Olympic spirit," it must be understood that this act is "contrary to the Olympic spirit" as advocated at the time by the IOC, which claims political neutrality in sports. Are "sporting values" simply motivational slogans? Can it be said that certain acts or sporting events are indicative of values having substantial involvement in sports and are indeed capable of some form of description?

These few examples suggest that sport only represents the values that one intends for it to represent. In the abovementioned cases, it was less important for stakeholders to describe the values inevitably linked to sport than to describe the values which, in their judgment, should be promoted through sport. A shift is witnessed from the descriptive function to a normative function of the discourse on "sport values".

D. Criticism of Sports and Questioning its Values

Since the 1970s, the *sports criticism movement* sought to expose the gap between the declared values and the values actually at work in sports. It is indeed at that time that a professor of Physical Education and Sports, Jean-Marie Brohm along with other professors, engaged in a Freudian-Marxist critique of sports (particularly through the newspaper *Quel Corps?*, That later became *Quel Sport?*). This movement of radical criticism sought to build a "revolutionary criticism" of sport by denouncing sport, which was invested by the commercial logic of domination of the current capitalist societies.²²⁷

Today, this "*ideological criticism of sport*" has become, according to Bernard Andrieu, "an ideology of criticism of sport."²²⁸ Some books, by critically analysing the role of values in the world of sport²²⁹ seem to echo this movement: they call for the recognition of the so-called "abuses" of sport as merely the ransom

²²⁶ This act has become a strong symbol of Black Power. Note that Tommie Smith was not affiliated with the Black Panther Party, but he was the cofounder of the Olympic Project for Human Rights.

²²⁷ See lastly *L'idéologie sportive, Quel Sport ?*, Coll. "Pour en finir avec", Paris, L'échappée Publishers, Montreuil, 2014.

²²⁸ B. ANDRIEU, 2013, *op. cit.* p. 27.

²²⁹ M. ATTALI, 2004; M. ATTALI (dir.), J. SAINT-MARTIN, S. LEVEQUE, L. BRUNETTI, J. BIZET, *Les valeurs de l'Olympisme. Un modèle éducatif en débat* : Paris: L'Harmattan, coll. Espaces et Temps du Sport, 2009.

of capitalism. In fact, these "excesses" would only be the mode of existence of contemporary sport overrun by market logic and individualism, and operating for the benefit of the reproduction of the existing social and economic order.

This critique of sport makes three important arguments about the values of sport. First, the values currently advocated by sports bodies are merely a smokescreen to hide the unequal and capitalist reality of sport. Then, modern and contemporary sport is carried by particular values, which should be denounced. Finally, other sporting values should be promoted in order to reconcile ethics and sport.

*The values mentioned by sporting bodies would seek to obscure the "principle of sporting reality". The values promoted by sports officials, athletes and the media, are the result of the success of the invisible²³⁰ imposition of an ideology that masks the realities of today's sport, and that stakeholders refuse to see, even if they are sometimes its victims, as is the case with doping (see P. Liotard "L'éthique du sport: une morale de la soumission", in M. ATTALI, ed., *Le sport et ses valeurs*, Paris, La dispute, 2004, pp. 150 et seq.). Thus, sport is subject to a sort of a "sports myth".²³¹*

These ancient conceptions are erected as absolute principles, references to

"the sporting ideal or [to] the Olympic idea [...] massively contribute to obscuring the real conditions of competition in sport."²³²

Some developments in modern sport as well as cases of scandal continue to challenge the idea that sporting competition is based on a democratic ideal. As a result the logic and abuses at work could be considered as being indicative of particular values (or inverted values): inequality²³³, competitiveness, individualism, greed. Thus the values displayed contradict with those followed by athletes²³⁴ and officials.

²³⁰ "Sport is an integral part of modern capitalist societies and it works according to the same model. It gives itself the principles of justice and equity as proof of its morality while creating inequality. It thus works to build an ideology based, like the capitalist ideology, on a system of representations and values that structure imaginary concepts and participate in their spread." (T. CHAPRON, 2004, *op. cit.* p. 114).

²³¹ "Sportsmanship is undoubtedly a myth, like all myths, it has value for explaining the world – here the sporting world - and is a base for human actions, without being able to check the validity of the discourse" (I. QUEVAL, 2004, p. 35). It would be interesting to conduct research on this "mythical" dimension of sport.

²³² J.-M. BROHM, P. PERELMAN, P. VASSORT, "Les héros mythifiés de l'olympisme", *Le Monde diplomatique*, June 2004) (quoted in: T. CHAPRON, 2004, *op. cit.*, p. 69).

²³³ In the chapter entitled "Sport: an imaginary world facing realities" (in: M. ATTALI, 2004, *op. cit.*, pp 67-116), Tony CHAPRON seeks to denounce inequality at work in current sports: inequality related to the decrease of uncertainty in matches (which are reduced due to the elimination of certain strategic handicaps), importance of the "financing" factor to the success of teams, physical inequality (doping cases, Etc.), corruption, etc.

²³⁴ One can also refer to E. DUNNING who refers in *Sport et civilisation. La violence maîtrisée*, to the analysis of Bero RIGAUER, according to which the athlete disappears in favour of the 'productivity' logic of a capitalist society, which reintroduced the "division of labour" to sport. (E. DUNNING, 1994, *op. cit.* p. 290).

In *Le sport et ses valeurs*, Michaël Attali refers to the book by Jean-Marie Brohm and Michel Caillat, *The Bottom of the Olympics*, and says that the IOC

"promotes values of which it is not always a true reflection. For example, by annexing women's sports in 1928 and later the workers' sports in 1952, the IOC openly reveals its desire to take over for all forms of sports practices, even if this means violating its own values."²³⁵

According to this criticism movement, other values should have been promoted. If these stakeholders are criticising sports today, it is in the name of particular and alternative "values" that should be found:

"To say that sport causes abuses, violence, rejection of difference or strengthening individualism and immorality of certain sporting behaviours, does not mean that sport has no value, but rather that sport carries values that should be noted in order to bring clarity to this phenomenon and give it the importance it deserves."²³⁶

These values eventually return to the world of "amateur" sport and are found most commonly associated with 'leisure' sports rather than competitive sport: solidarity, friendliness, tolerance, respect, enjoyment, *etc.*

Two conclusions can be drawn from this treatment of the concept of "value" in the field of criticism of sport. First, it is clear that criticising "sport values" may call on certain "values" by adopting a normative, evaluative or prescriptive point of view. In fact, if these criticisms seek to deliver us from 'sports myth' to confront preconceptions about the existence of "sporting values" with the practices and material conditions of sport, they refer to alternative ethical values. Indeed, it seems difficult to describe sports values without a certain normative posture: describing "sports values" necessarily amounts to considering them as either good or bad, desirable or undesirable, since they are described as worthy of interest or criticism, and not merely as a miscellany of psychological phenomena.

E. Challenging the "Intrinsic Values" of Sport

Instead of thinking that values fit into the "nature" of sports (universal and timeless), it may be assumed that there is no intrinsic values in sports: the stakeholders merely attribute some values to it. This would be consistent with the thesis according to which sport is "a social event bearing moral principles defined by a given society at a given time."²³⁷ The selection and prioritisation of sport values in the range of options fall under a "subjective ranking directed not by a natural pseudo-order of sport, but by multiple issues (political, cultural, economic, moral, *etc.*)".²³⁸ Therefore this design, which can be described as constructivist, aims to "denaturalise" the idea of "sporting values". From this perspective, "sporting values" are concepts that were thought to reflect an objective reality but which proved to be prone to deconstruction. Therefore, in order to keep talking "sporting values", it is strictly in the sense of "sports-related values", and not in the sense of "values intrinsic to sports".

²³⁵ J. SAINT-MARTIN, 2004, *op. cit.*, p. 42.

²³⁶ M. ATTALI, *op. cit.*, 2004.

²³⁷ T. CHAPRON, 2004, *op. cit.*, p. 116.

²³⁸ M. ATTALI, 2004, pp. 15-16. "Everything that can be called a value can be attached to sport", note 19.

If there are no more intrinsic values in sports, "sporting values" are dependent on individuals capable of giving them their consistency through subjective representations. Therefore, knowing "sporting values" is primarily engaging in an interpretive exercise that combines descriptive and normative positions, which in any case cannot claim objectivity. Furthermore, sport would not be a space unified by stakeholders with similar ethical views: sport stakeholders are likely to defend contingent conceptions of "sporting values".

Conclusion of § 2

While it is difficult to deny that sport is particularly conducive to learning and to the pursuit of socially desirable values, it cannot be concluded that there are intrinsic values in sport. This raises the question of how it is desirable that some values be "associated" with sport. This is a question for Ethics in its advisory role.

§ 3 Ethics, Between Criticism and Advice

Faced with "abuses" in sport or all side-line activities (manipulation of sports competitions, illegal betting, *etc.*) the public expresses a feeling of outrage. Beyond feelings, ethics seeks the right reasons for doing or not doing something, which cannot be made into an "immutable" dogma or code. Ethical research must be critical. It must be independent, including from sporting bodies. If it is looking for "final judgments" to make sense of actions, it cannot ignore the historical context and social issues. The fact that it can impede individual action does not exempt it from taking individual interests into account.

A. Research in Sport Ethics, Critical Research

Sport is open to criticism because of the transgressions it contains: transgressions in view of what makes it legitimate in the eyes of the public, or compared to widely recognised general values. Transgressions or shortcomings in terms of values and important principles may relate to the sports practices themselves, but equally, to derived or secondary activities that surround the heart of sport: training (which can turn into "overtraining"), bets, journalism, institutional management, political interference, industrial or commercial interests related to sport, *etc.* Transgressions of this second group became increasingly important in recent decades due to the rise of material stakes of competition (in addition to symbolic or political stakes that have been very important for a long time,²³⁹ the tragic example of the 1936 Berlin games comes to mind).

This is also due to the constantly increasing interpenetration of sport, and many other social activities that involve physical or financial stakes. The role of sponsors, team owners and industrial corporations is crucial here, in a way that threatens industrial and commercial ethics in general.

²³⁹ See § 2. C. above.

Thus, the question of fixed bets is intimately linked to the existence of circuits of money laundering of suspicious origin, which refers to the serious or lack of seriousness of industrial and commercial rules, as well as the conditions of their institutional implementation. The lack of transparency in financial transactions (banking secrecy that still widely prevails, essentially) obviously creates long chains of ethical problems that affect different levels of responsibility in the world of sport.

In response to perceived transgressions, indignation and defiance are the sanction of a lost sense of integrity. However, it is not possible to stick to the immediacy of feelings. The research dimension is inseparable from criticism, provided that ethics is cultivated with a view to finding the best available reasons rather than in the area of feelings only, or in the spirit of a particular tradition or even in line with the adoption of dogmas withdrawn from debate (although traditions and religions certainly include, in most cases, elements of reflection, questioning and gradual understanding).

For this reason, ethics that are being improved in a rational perspective should not be limited to the search for a correct and immutable "code". Its conclusions must remain open to criticism and its formulations (as well as its arguments and argumentation processes) are likely to progress. This proximity is a critical source of uncertainty, in that it prohibits dogmatism. However, it is also an asset in the context of public debates that concern respect for pluralism and neutrality of public institutions in relation to particular thought currents. In this context, the results of ethical reflection must remain open to debate, giving them a temporary status. In legal terms, this provisional characteristic is in no way inconsistent with the status of "final judgment" that is recognised as to moral judgment (provided only that one succeeds in forming such judgment) - a judgment that cannot be endorsed unless it is considered critical for practice, without it being necessary to examine the elements beyond those that have already been taken into account in the formation of the judgment.

The final order of judgment is intended, but with the lack of immediate and compelling intuitions, the possibility of making such judgments with confidence and in context is questioned. However, argumentation and ethical deliberation do not go well with the abandonment of any reference to the search for a better judgment on the basis of understandable reasons that are likely to be pitted against each other, prioritised, etc. Although it is very credible in particular cases (for example, our moral condemnation of slavery or apartheid), the model of "final judgment" can be seen as an ideal and somewhat inaccessible model in many cases of moral perplexity. However, even in these cases, it remains relevant as a term or aim of the efforts of discernment in forming judgments.

Ethical problems take different forms according to the spheres in which they act and it is important to note the difficulty of proposing fixed and unquestionable ethical principles in a constantly and rapidly changing world.

Yet, the need for a justified and extra-legal arbitration between conflicting desires or objectives is reinforced by the growing intensity of the relationship between different human groups, a phenomenon that involves the context of changes taking place which is designated commonly by the term "globalisation".²⁴⁰ New ethical issues arise at the crossroads of different cultures, more and more difficult to solve because of the in depth variety of ways to structure problems, describe the options and select the relevant norms.

One of the problems here is that of cultural diversity, which also creates a chance to invent strategies or alternatives when difficult problems and complexities specific to consultation processes occur. Changing circumstances and the perpetual creativity of the natural sciences and the humanities also impose qualitative changes that are difficult to predict in the accepted ways of formulating issues. Indeed, there must be a regular adjustment of the formulation of the ethical principles that govern particular practices; however, it is not possible to produce such principles using the same process as that of writing laws, on the basis of a purely constructive approach to the formation of a collective will in the framework resulting from a logic of representation. In ethics, the strength of reasons is important in itself, beyond the democratic consultation procedures.

B. The Ethics Board in its Institutional Dimension

In particular, institutions may rely on ethical advice or on findings of ethics committees in view of searching for a better understanding, without taking away the relevance of opening up to the most diverse arguments and to categories of considerations that might have been left out at some stage of the collective reflection. With this in mind, we develop "ethical advice" (or ethical expertise) that is exercised in the interest of security and integrity in sport for the benefit of national institutions, international organisations and civil society structures (companies, associations, *etc.*).

The regulation exercised by international organisations now poses a problem to the effectiveness of efforts to counter abuses in sport; failing to directly influence institutional changes (which can remain a horizon), ethical advice may provide tools for criticism and for structuring institutional and public debates. Ethical questioning may also lead to trying to define the legitimate missions of institutions. Some of them, like the International Olympic Committee or FIFA, have functions and responsibilities that may seem multifaceted and as a result, the question of a better structuring arises.

On the one hand, the search for references for the development of codes is a legitimate purpose of individual and collective efforts in ethics. Some ethics committees develop codes or charters, or formulate recommendations in an advisory capacity that may be relayed (or not) by the Legislator. On the other hand, the provisional result of the effort is not intended to end the debate or the search for better founded solutions.

²⁴⁰ Read on this subject the article of H. POLTIER and J.-M. BIGLER, "L'éthique en entreprise : une nécessaire instrumentalisation?", *Revue économique et sociale*, March 2003.

Indeed, Sport is one of the fields one looks into for ethical research. Issues related to ethics (political, economic and social) are significant enough for it to be seen as an absolute necessity: one only refers to "abuses" for the things that matter. However, this should not lead to assuming, somehow by postulation, that there is a strong unity of practices that, in fact, are deeply diversified (as evidenced by the historical and sociological research). This diversity is not simply about the rules of the game or social customs surrounding sports, but also the cultivated values or virtues. Therefore, the notion of "sports ethics" is as problematic as that of the unity of "sport" itself. It is never difficult to propose general definitions for activities or forms of inquiry that were previously identified in ordinary language. Simply relying on pre-existing connections that shape our usual manipulation of language would suffice.

However, the essential matter is not to assume a unity that in fact does not exist. The factors of unity between different sports or different times of practice of a sport can be recognised without being forced to ignore the real ramifications which are noticed in the real world. In order for ethical questioning to be relevant and for it to carry a profitable development for institutions and practices, it should reflect the real diversity that exists among sports practices and the associated social and economic uses (sometimes political).

This is the beginning of a dialectic that can be quite complex, insofar as international aspirations taking shape in sports, favour a unification movement according to several dimensions: shared recognition of "sports" activities as such, seeking common landmarks for the practice of sports according to ethical principles that can be shared by everyone, searching for common institutions and legal references expressing mutually acceptable values. Such is the case when the convergence of concerns and sports cultures seen as a profitable integration factor of States in the cooperation between nations.

C. Ethical Bearings and Historical Evolution

Ethics is a branch of philosophy; in this capacity, it is marked by concerns of consistency, systematicity, explanatory depth and demonstration. The development of an analysis cannot, through its critical and rational dimension, escape the social and political determinations that direct the opinion in given directions in every age and in every social circle. This must be borne in mind if one wishes to assess the possible or already completed contribution of this quasi-discipline (ethics) to the determination of what to do in historically dated situations, marked by determined social and economic configurations. The practice of sports fixes the stakes of ethical questions that arise in relation to the sport, but it is a fact that one often turns to ethics to discuss practical guidelines, the validity or justification of which precisely escapes socio-economic and politico-institutional contingencies.

One seeks to get rid of these determinations in part, hoping to restore or strengthen the rule of the beautiful game, the endorsement of shared values and respect for the rules. Provided, of course, that the importance of the considered historical moment must never be forgotten, along with the social and cultural determinations that concretise sports at that moment. In order for criticism, authentic justification and normative arguments to be possible, it is necessary that the analysis avoid the pitfall of confusing what is (the result of history) with what should be. Moreover, thinking about what needs to be cannot ignore the expectations and frustrations that result from historical evolution, because the stakes are fixed in this way.

To firmly dispel the most common and most important confusion, one must remember that if it actually were up to ethical reasoning to substantiate judgments that can be presented and be reasonably accepted as last resort judgments (i.e. it is one of the most classic identifying criteria for the moral judgment), it does not mean that morality can (and less so, should) decide to disregard empirical facts or social circumstances. In the exercises of applied ethics, it is a matter of implementing moral reasoning regarding practical choices (in individual action or social organisation). This inevitably requires adequate consideration of knowledge of the situation of an agent and the social issues attached to his conduct.

Of course, ethical elaborations that accord higher moral importance than Kantism in terms of looking for better results in the action, are likely to lead to a wider collection of empirical information as a prerequisite to rational action and morality. In the so-called "consequentialist" approaches (e.g. Classic French or English "utilitarianism" generally), balanced consideration of all relevant facts that affect human happiness, as well as taking into account known facts about their connection with our possible alternative actions in each case, are required and fundamental elements of the ethical approach.

Confusion is always possible between inherited or proposed ethics (proposed by an authority) on the one hand, and ethics derived from personal judgment about actions and their conditions on the other hand. Nowadays, this frequent confusion seems to still have an impact on the situation of ethics, both in how they are seen and in the way they are put into practice. For example, think about the common fear of degeneration of ethics that leads to "ticking boxes" (to check item by item and in a somewhat bureaucratic manner that "all is well" or that there is "compliance"). The authentic ethical approach presupposes the maintenance of a critical questioning of the action and its purpose. *When a social environment deliberately adopts ethical guidelines (e.g. in the form of a registered aimed at social stakeholders), the dimension of rational criticism can be maintained through mechanisms for on-going dialogue, consultation concerning implementation and periodic collective review.*

Even though ethical development constitutes a source of advice for political or administrative action, and equally to legislation, ethics does not necessarily have a legal vocation (in terms of setting up norms, the effective implementation of which is entrusted to institutions) or even a coercive one. It may be limited to the search for that on which one can rely in the search for rules bearing sense and progress; it can provide a "compass". However, ethics, by nature thwarts the achievement of certain results, possibly very valuable to some social stakeholders. Not everything can be reconciled with everything and ethics can indeed rein in the action.

Therefore, we should not lose sight of the fact that the concern of ethics is likely to come between the actor and the goal he has set for himself. There are many ways in human endeavours that may not be deployed although they would help to achieve certain goals, and this, because of ethical considerations. However, it is not possible to act *against* all forms of interest (to the extent that any action requires motives) and, even though the action is carried out on the sole basis of interest does not comply with all the ethical expectations concerning the action, it is however possible to deal with the notion of interest without leaving the field of ethics, despite the frequent presumption of the existence of a break between the interest perspective and that of ethics in theoretical developments (including economics).²⁴¹

Ethical choice is not only about the choice of purposes or goals, but also about assuming responsibility (to consider oneself as an agent in a certain type of enterprise) and the correct selection of means (or strategies or shares) among the admissible and available options. The agent must be able to obtain the expected outcome while taking into account the assessment criteria (or grading options) derived from ethics. Insofar as the endorsement of ethical criteria considered as such can only be voluntary (and possibly constitute an activity in which one voluntarily chooses to engage, as is the case in sport), this effort is not disadvantageous as long as it is not in competition with another, which would decide not to consider the ethical dimension of his action. In order to characterise the moral hazards that institutionalised practices such as sports practices are exposed to, conditions of social interaction, and especially those of competition, must be taken into account.

D. The Interests of individuals and the Development of an Ethical Framework

While it is difficult to make ethics and the application of the principles whose importance it stresses attractive - since it is perceived as a barrier by those whose primary concerns are of another level (profit, competition) -, it is possible to highlight ethical concerns via several social mechanisms. This is suggested by the fact that ethical issues sparked a renewed interest on the part of economic stakeholders with different motivations.

²⁴¹ See on this subject the very interesting remarks by Amartya SEN in: conferences at Berkeley, published in the book *On Ethics and Economics*, Oxford, Blackwell.

Ethics can thus be the backbone for structuring communication with the public, for engaging with the government on the backdrop of the on-going debates in society, for a better control over collaboration circuits with other socio-economic agents (and prevent scandals) for providing benchmarks for collaborators to obtain coherent collective initiatives, and for gradually developing a corporate culture to improve the identification of problems, *etc.* Powerful contemporary developments such as social responsibility (or "societal" according to the expression that was favoured by the French authorities), environmental responsibility, or even financial responsibility, illustrate this logic and demonstrate its effectiveness from the perspective of the establishment of norms and institutions capable of relaying ethical concerns in an operative manner²⁴².

It may actually be advantageous to point out, during the implementation phase of the projects, a willingness to abide by a set of standards defining ethical practices. Such a conduct, although not motivated by the desire to comply with the principles of ethics, is nevertheless an interesting behaviour, in practice, regarding the progressive development and the recognition of improved practices in the world as it is. Thus, there is a need for collective ethical research, leaving an important role for possibly radical critical perspectives.

From the perspective of public deliberation and communication, showing an agent the interests he may reap from abiding by an ethical principle may help him comply with it, regardless of the strength of his conviction concerning the principle itself, from the agent's point of view. Approaching ethics in a manner radically divorced from any consideration of interest to agents of a certain category, that is, with lack of all reference to special incentives, would make the task more difficult. It is worth noting that this problem may cover – other than material interests in its narrowest sense – elements that affect the practical prudence, consistency in action, and improvement of the structure of problems as well as of communication and public image.

Conclusion of § 3

Values "associated" with sports should be addressed through public debate. The stakes linked to educating and experimenting with social values justify the involvement of governments in the debate, which affects sports, sports institutions, and virtually all citizens in one way or another (practitioners, spectators, bettors, parents, *etc.*). These issues are, naturally, subject to debate, where there is room for ethical discernment. Such a debate should not be expected to always lead to the enactment of rules; it is also important to evaluate the arguments, to ensure the taking into account of elements from relevant historical and cultural contexts, to support defended positions with arguments. The value of advice given in some cases is based particularly on the independence of the point of view and takes into consideration the state of research.

²⁴² See especially: F.-G. TREBULTE, O. UZAN, dir, *Corporate Social Responsibility*, Paris, Economica, 2011; N. BARTHE, J.J. ROSE, (eds.), *CSR. Between globalization and sustainable development*, Brussels, De Boeck, 2011.

Conclusion of Section 1

The fact that sport does not, by nature, carry inherent values, does not diminish its ability to promote values, hence its importance in educational programs and social practices of modern societies. However, we can deduce that the implicit choice of promoting values comes from a certain contingency, as proven in historical evolution and cultural diversity. Consequently, there is a need for vigilance by public authorities, sports organisation, citizens, and the athletes themselves. The ethics board aims to support the necessarily collective reflection.

Section 2. Sport Ethics: Practical Problems and Conflicts of Values

The issues concerning sports ethics come from sport itself, especially because sport is, in most cases, competitive (§ 1). Such issues may arise from peripheral activities (bets, sponsorship, entertainment, etc.) (§ 2). Finally, they may also result from the development of desirable social values on the basis of which are created values specifically formulated and mobilized in the context of sport (§ 3).

§ 1. Problems Caused by Competition

The tensions resulting from the competition between participants, channelled by rules, can make committing a transgression very tempting, particularly when athletic and non-athletic stakes are high (A). However, is everything allowed to secure a victory (B)? When the athlete obtains a victory, he is not the only person affected. (C). Moreover, it is important to question the consistency of ethical standards of behaviour (D). First, how should the issue of respect for the rules be approached (E)? Is there an identifiable limit for determining the transgression? (F) What of fair play? (G) Is it of secondary importance compared to victory? Here are some questions from the practical side of the competition.

A. Sports, Rules and Social Recognition

The issue of ethical stakes in sports practice and its derivatives arises especially when there is competition between two or more persons. Competition is largely the cause behind the need for ethics in sports, since competition involves recognition and rewards (financial as well as political) that are associated with opportunities for rule transgression and possibly insufficient integration of reference values that are considered important (for the practice itself or for its insertion into social life more generally).

It sometimes happens that the law takes over after certain ethical questions are debated. This is the case in France, for the Law of February 1, 2012 (Official Journal, February, 2, 2012), strengthening the legal tools in the fight against any abuses committed in sports related to trends such as professionalization and increased financial stakes.

A law establishing corruption in sports as a criminal offense and formalising obligations for clubs and training centres illustrates the lack of confidence in the self-organisation of the sports movement. However, it is generally accepted that, in the fight against what is perceived as "abuses" (practices undermining the integrity and the even interest of sports), one must also (and perhaps especially) encourage favourable personal fulfilment conditions in the world of sport. Education and training, internal and external communication, and transparent practices capable of restoring or maintaining confidence are at the heart of the changing environment of sports which carries with it progress, regardless of the regulations and sanctions. It is also at this level - and not only in the law and other legal references - that ethical questioning unfolds in order to identify the desirable evolution and the means to achieve change.

Such questioning is distinguished by its subject - sport - but this is the deployment, in this field, of moral experience in general: the search for a point of view and maxims of action based on relevant reasons (and only these reasons), with an impartial perspective that determines the endorsement as a priority (or "last resort" as the saying goes). However, this is not necessarily the case (everyone is free to live as a selfish or immoral person eager to avoid all ethical perspectives in his dealings), and this experience is open to humanity and has been proven to be important to society and history. This experience usually proceeds from the consideration of concepts involved in judgments that are impartial, universal and that act as references of last resort for deliberation and action (or collective organisation) - especially the concepts of good and bad, right and wrong, dignity, honesty, usefulness... It extends to the search for a correct discernment regarding actions or decisions, terms of deliberation and dialogue, selection of collective choices, and finally collective organisation.

Competition is considered in the danger zone of transgression because it is, firstly, a place of various forms of recognition. But what is recognition? Recognition for effort? Natural gifts? A certain context with aspects related to education and technology (and sometimes truly related to technology - for example in regattas or motorsport), as well as group support? Or is it to "recognize" the contingent encounter of these things? These issues deal especially the anthropology of sports activities because they involve our dominant representations of sense of effort, with success in competitions, and our dominant representations of the respective parts of individual initiative and the environment (or social media).

For our purposes, we can admit that despite the diversity of alternative forms of social recognition that are sparked by sports victories in competitions, or even by individual exploits, all forms of recognition that are involved are correlated with both individual psychological expectations (often shared) regarding success or victory, on the one hand, and with specific expectations that arise from the belief that only certain actions (but not all actions) are adapted to the pursuit of athletic victory, on the other hand. It is in the essence of a game that winning is not everything.

B. "Anything Goes"

It can be considered, on the contrary, in cases where, precisely, one would be tempted to use the familiar phrase "anything goes", for example about Florentine *pallio* or wrestling. When everything is really allowed, the practice in question is not a sport; in retrospect, we would not consider that circus games in Roman times fell within the category of "sports", even if they did require discipline and exercise and even if there is a historical continuity (as some would say) between gladiator training in Roman times and, for example, *pallio*.

Saying that "anything goes" is only an expression, since the general laws of the country, with their guarantees against physical aggression, obviously apply and are complemented by ethics of fair play. The latter, in cases of absence of formal rules, may help decide when you leave the field of "play", as no good faith player, would be able to recognise the situation as the game as it should be played. Even in cases where policy options are broader and appear withdrawn from the influence of formal rules, they still correspond to defined modes of action; they still define limits of play and things that "are frowned upon" (not only for formal reasons relating to decorum, but because of the human culture in which the game takes on meaning and interest).

For example, the "game" of gladiators no longer qualifies in retrospect as a "sport" because some of the practices involved are part of a type of human culture that is compatible with total exploitation (in life and death) of a person: complacency to inhuman suffering, lowering the public by exposing it to degrading performances, killing. If the annihilation of the human person can be a stake, in other words, a stake set by the arbitrary satisfaction of others, we are at the extremes of violating human dignity. Through this logic, all forms of human culture that modern sports are associated with are radically disregarded.

Reference to rules that are not foreign to human nature seems to be essential to the definition of sports. It reminds us that a diagnosis in the form of denunciation of a failure, fault, or misconduct can go beyond the mechanisms of attribution and the adoption of disciplinary sanctions (for example, the exclusion from certain events for with a violation of explicit disciplinary rules), and beyond sanctions that may be applicable to the judicial mode of accusation and sentencing. Some forms of play and certain game rules may be considered as invalid, since they violate the pursuit of values or important purposes of humanity, while it is believed that they should be honoured by sports practices.

The same diagnosis may be made in connection with derivative activities due to their relationship, specifically, with the underlying activities. Thus, malfeasance in sports bets and occasional doubts about the origin of "sports money" pose many problems for the sport itself, whether we like it or not. In fact, sports, despite the relative autonomy it is given by the existence of rules and social transactions of its own, is not an island lost in the middle of nowhere: it is linked to society from all sides, for better or for worse.

The logic used here is the same as the one suggesting that financial abuses affecting a university or church affect education and research, or the reputation of a religious family, even if the persons accused because of their institutional operations, are not the least motivated by scientific or educational concerns in the first example, or religious concerns in the second, and even if their functions do not involve activities that are specific to these areas. The areas of activity concerned suffer significant damage, especially in terms of damage to reputation or credibility, and sometimes financial or material damage. It is also in the spirit of the current search for new social responsibility and responsible governance requirements, to take concern in such indirect damages and chains that connect the centres of power or decision-making. Social actors must be sufficiently aware and informed.

C. Individual Values and Collective Rules

The dichotomy between the individual and the collective spheres covers various aspects. A first aspect inherent to the logic of sport (some are practiced individually, others are practiced in a team), is salient.

A second aspect, related to the institutional character of sport, complicates the athlete's relationship with his practice, insofar as one who participates in a sport at a high level is part of a group that burdens him with even more responsibilities, thereby generating expectations that sometimes exceed his own and, therefore, limiting his independence or constituting hurdles for him.

But beyond this issue, it is important to discuss the distribution of the responsibility for actions among a range of parties, *i.e.* the establishment of a chain of responsibility, thus creating an institutional framework for the sporting activity. It is in this more inclusive perspective that institutions should focus on the structure of responsibilities and incentives addressed to social actors; this perspective should determine the inter-institutional relations within the "sporting world". This is the background of general search conditions in which elite athletes can focus on their discipline in the best conditions for themselves and, secondarily, for others.

Rules are an essential element of the social structure of a sport. Any sport or any game has rules for its comprehension, its organisation, and learning, but also for the necessity of maintaining the interests of the discipline, both for athletes and their supporters. But the rules are also needed in order to create a framework for conflict solving through specific arbitrations (non-judicial). In this way, and also simply by virtue of their role as a reference for good practice, rules help set the expectations of social actors in their dealings with each other and hence, they are a part of the organisation and the development of the discipline in which they are present.

The rules allow the organisation of sporting events, theoretically void of any form of violence and conflict, even if the sport can be accompanied by violence as any type of human relationship²⁴³. In some ways, it could be considered that the sport and its organisation are an ideal example to be followed for the entire human society: not as a self-organisation in a strict sense, but as an organised system based on rules that are largely appropriated by individuals and usually considered as justified, despite their partly arbitrary character and contingencies related to the history of the development of sports.

According to these perspectives, *the concept of educational value of sports* can be given a broad meaning, insofar as sport is still the vector of values useful for the good functioning of society. In addition, sport constitutes an example of arbitration procedures and disciplinary progress combining respect for the rules, fairness in the assessment of special circumstances, usually a very broad support for the rules themselves, and consultations with stakeholders. *The values conveyed through sport should be implemented in the same organisation in which the sport is included.* This thesis seems necessary not only because this organisation is an opportunity, among others, to achieve values that are otherwise abided by – such as the spirit of solidarity, promotion of physical culture and health - but in addition, and more specifically to sports, because some of the core values embodied by sports are partly "procedural" and related to institutional operations and the implementation of the rules (such as respect for arbitration, abstention from violence in the pursuit of one's own advantage, or respect for the voluntary commitment to abide by certain rules).

The relationship between the values conveyed through sports and its rules deserves to be highlighted, since a number of virtues that are usually applauded, such as courage, can be exploited in different domains. Voltaire wrote: "An indomitable courage, in the heart of mortals, creates either great heroes or famous criminals."²⁴⁴ If courage in sports is valued in society, it is partly because the rules of sports orient society in a general direction where the personal interest of an athlete is confounded with what we sometimes call "the beauty of sport" or with values that plays a role in society in general. This duplication of substantial values served by sports and associated (or derived) procedural values makes it particularly useful to try to establish some sort of consistency between sports and usages or rules of society, considered more widely.

In a way, the search for coherence is present in the use and sometimes the exploitation of sports by politics. The world of sports sometimes appears as a symbol as well as a reflection of solutions and ways that should serve as an example for society on a global scale. Such was the case in 1998 when the French team won in the World Cup: the French team, nicknamed "team black-white-brown" seemed to illustrate acceptance without discrimination, successful integration (and beyond...) and promotion by merit, to be in perfect consonance with the French republican heritage that had been lost from sight, on a daily basis, in the multiple fractures of the famous "social cohesion", especially in economically

²⁴³ See in particular I. JOING, "Définir des postures éthiques pour prévenir la violence dans le sport", in: B. ANDRIEU (dir.), *Éthique du sport, op. cit.*, pp. 220-226.

²⁴⁴ VOLTAIRE, *Œuvres complètes*, vol. 5, Paris, Garnier Freres, 1877.

less favoured areas of the country and in immigration stories that seem more like paths marked by misunderstanding and various forms of failure rather than success stories. Thus, sport offers a kind of model in the face of society's widely spread problems. The reflection on the rules of sports and especially on the relationship between institutions and rules in sports has been ever since a teaching tool and an aid to reflection.

D. Problematic Coherence and Contradictory Objectives: the Paths of Transgression

In the dominant conceptual apparatus that structures the world of sports and its public image, one may fear an increase in problems related to lack of consistency. Like law, sports ethics and the practices of sporting disciplines are not immune to inconsistencies. For example, is it possible to reconcile the principle highlighted by Pierre de Coubertin that states that "the important thing is to participate" and secondary stakes such as benefits and sports financing? These secondary objectives often lead to giving priority to victory and they may occasionally be considered as primary stakes. Similarly, is it possible to reconcile the ideal image of a physical and sports culture reflecting the voluntary efforts of each athlete, on the one hand, and the obligation to employ maximum efforts looming in the background of the "witch hunt" that may be launched against athletes suspected of encouraging, through a certain nonchalance, the manipulation of competitions?

As moral philosophy attempts to demonstrate it by various means, *acceptable norms* are not necessarily compatible with one another; there is no pre-established harmony in the matter. Perfect harmony would certainly require extraordinary cognitive precautions capable of preventing risks of inconsistency, but these norms are significantly far from the usual conditions of acceptance or appropriation of rules or norms. The same applies to general principles (for ethical or political content) or even to promote numerous values also considered as legitimate and important.

The media coverage of sports, as seen in our society, beyond the need to gather around unifying events, is also a symptom of the existence of marginal stakes that use sport as a lever, but whose main interests are unrelated to sports. Tensions over compliance with rules are magnified and can lead to the transgression of the most important rules, or to the violation of values that should occupy a more central position than others in the "sky of values" that gives meaning in one way or another, with credibility, to sports activities. In order to observe the rules and comply with the norms, when ethical stakes are involved, one must either have consented to these in advance, or be in a frame of mind where, rationally, one should consent on the basis of good reasons. In fact, *applying for a sports license expresses the acceptance of the rules structuring hierarchal competitions, in a sort of "contract" based on consent.*

In sports, one finds the logic of presumption of acceptance, which is, in politics, the breeding ground of traditional and contemporary “contractualism” (all approaches that justify, from rational consent, the authority of officials, the authority of norms and - when applicable - the fundamental arrangement of society). In fact, obedience to the rules of a sport is only imperative for those who want to play this sport: the acceptance of the rules seems to be derived (under the auxiliary hypothesis of searching for a certain consistency) from the desire to practice a sport. Would following this desire make sense in the absence of a stable disposition to respect the rules of the discipline? In the absence, then, of the virtue of honesty that one strives to cultivate? We believe that the answer is no.

It is worth noting that there are no logical stakes here. Opposing the applicability of the rules and subsequently violating them can coexist. The stakes here are about a certain practical consistency. To practice a discipline is to enter in the network of a set of rules and practices that give meaning to the whole practice and to the details of the contribution. This is what allows one to count the actions "as" ways of "playing" and not simply as acts which are carried out and that, given certain uncertainties, have different possible outcomes (more or less favourable to the stakeholder). Therefore, the presence of the desire to practices sports is of special importance for the establishment of a good relationship with rules. The intention present in the athlete's mind (the desire to play or participate, the desire to enter in a competition, anticipating an encounter with a high level opponent, worrying about playing well, etc.) determines a sort of hypothetical imperative: try to win, to satisfy a desire to win in a given sport. This is why we believe that the inclusion of sports in education is an opportunity to promote *the desire to participate via a commitment to rules*.

The imperative commitment that we describe should not be confused with a corollary of Kant's categorical imperative. If I do not have any particular desires concerning sports, then sports will expect nothing of me. But on the other hand, in the search for victory in sports, not everything is about the quest to establish a causal link by choosing an appropriate strategy between events over which one has influence, on the one hand, and the results sought (which can be described independently from the process), on the other hand. What is desired is an internal goal, defined as obtaining a result that is qualified as such in the game, that is , by the application of the rules, procedures, or practices of the this game.

If even the pursuit of victory concerns an individual who is only in it for the money (or some combination of money and celebrity), the fact that his actions will be attributed to him as an athlete and participant in a competition involves the compulsory mention of the goals that must be attributed to him, not only outside the game but also within the game. The possibility of an unfair victory comes at such a price and sports ethics should take into consideration this sort of immanent finalisation that the intentional aim of victory in the game gives (and not just through the game and according to a repository of risks and rewards linked to other aspects of personal and social life).

The part of contingency introduced by the particular desire of the athlete does not distance us from the stakes of ethical duty. It serves to show that the stakes are directly personal to each athlete. According to the usual philosophical terminology, we would say that these are values "attached to the stakeholder," by which we know they are linked to their situation and to the stakes of their personal choice, rather than their judgment on the general order of things.

E. Compliance with the Rules, Deviance and Responsibility

How should the notion of responsibility be defined, in the case of abuses in connection with established rules? How should the individual or collective character of responsibility for norms be established? These are currently important issues for sports ethics. One can consider that the violation of effectively mandatory sports rules can be of two kinds. The first is related to the sporting rules themselves within the framework of the game, while the second is related to rules established by the institutions (integrity, honesty and everything linked to legality in general).

Ethical problems usually combine the elements of personal situations and certain aspects of the environment in which athletes evolve. The potential "fall" factors are numerous and are sometimes intertwined. The athlete most definitely faces pressure due to the peculiarities of his vocation and the temptation to overlook the recognized set of rules and values to gain an advantage over opponents. The deviation from complying with rules is there for a personal temptation that creates responsibility: the responsibility to stay on course and act in compliance with the rules.

This problem illustrates the tension that can develop between, on the one hand, the correct intentional aim of the internal goal of the game or practice (with possible secondary benefits such as wealth or fame), and, on the other hand, different possible reasoning paths that involve applying all efforts to obtain the benefits, possibly at the expense of honesty. In this second perspective, rules only help to structure the perception of the stakes by others (but *only* by others...); the stakeholder wants others to believe that he won fairly.

This is a conflict between the two possible orientations of practical rationality. For a stakeholder solely concerned with wealth and celebrity, cheating is obviously a rational option when monitoring procedures are ineffective or unlikely, and when sanctions are moderate. However, only an improperly restrictive conception of practical reasoning could constitute a barrier. It would certainly be unfair to judge as irrational every form of attachment to the fact that the goal is reached "according to the rules".

Sports practices are based on contingent facts: the abilities of each participant, the desire to play and win, personal motivations, and the very nature of disciplinary rules (which may have taken other forms). However, when the sport is based on a free and voluntary commitment, the endorsement of rules becomes a matter of consistency and integrity of conduct. We can interpret it as the "expectation of compliance" created in others as a duty.

F. Margins of Transgression

The most characteristic example of the occasional ambiguity of the relationship between sporting concerns (at the forefront of which is loyalty - or fair play- and the desire to win) is opportunism, which, depending on the case, may constitute a strength or a dishonest behaviour. For example, one may mention a cyclist's strategy who curbs his efforts in a stage in order to overtake his exhausted opponents in the final sprint, or the strategy of a football player who takes advantage of the confusion resulting from the fall of a player from the adverse team in order to attempt to score.

However, it may be appropriate to clarify what can be described as "compliant" with game ethics or conversely, "non-compliant", insofar as these cases remain fully associated to the exercise of discipline, and within the limits established to remain within its perimeter. What appears in the game itself is a "generally" visible effect (there are no hidden goals); even in the case where the observation is unclear, it is usually clear that the standards of assessment in the game, the refereeing, or determination of results are implemented on the basis of observations with the level of accuracy, and the capacity of distinguishing possible alternative situations, which exist in fact. The establishment of behavioural norms ensures a certain exemplary which is necessary to maintain the full publicity of the athletic competition, given the values and standards that are associated to it.

The issue of setting a moral example must also be addressed in relation to the athlete's behaviour outside of the competition. When stigma is cast on athletes, in relation to actions that take place within the framework of their private life, one can legitimately wonder whether the anger is focused on the person or on the athlete. In this sense, is it appropriate to punish the "offender" on a sporting level in such a case? Or, should the behaviour of an athlete in all the aspects of his life be regulated and institutionalised through legal means, as long as he is contractually bound to an institution that he represents in a loose and symbolic manner, considering his role as a public figure?

Such matters related to the conduct of athletes in relation to the institution he belongs to and his responsibilities towards the public that considers him a role model, can probably receive different detailed reactions, acceptable in practice, all the while taking into account the socio-economic circumstances and cultural data of the societies concerned. But that which facilitates the quest for acceptable solutions at a national level may also - which is not surprising - compromise the conclusion of an international agreement, given the reality of cultural diversity, and particularly given the contrasting representations of sports and their stakes.

The type of monitoring, that guarantees the true publicity of sports, easily interferes with the right to privacy. This limit must be examined, while taking into account the elements that the public and institutional context requires unveiling, on the basis of the requirements associated with the ideas of transparency and fairness. This must be the case if the requirements of ethical credibility of sports should not remain merely formal or purely linguistic. On the other hand, it is clear that respect of personal rights must be a constant concern so that the desire to promote ethics in sports does not come at the expense of the athlete himself (the law is made for the athlete and not *vice versa*...). For the collective option in favour of ethics to be authentic, we must strive to respect the moral integrity of the athlete and in particular, commit to treat him as a free person who takes responsibility for his choices.

G. Fair Play and Supererogatory Actions in Competitions

The Larousse dictionary defines fair play as: "Playing sports in accordance with the rules, in the spirit of the game, and with respect to the opponent." However, one can get the impression that fair play is closer to the concept of the game's beauty, originally an aristocratic part of sports. It is not only limited to "following the rules", *but also to honour justice in the concept of athletic competitions.*

In 2012, during a cross-country race (from Buralada to Navarra), while Kenyan Abel Mutai, 24, bronze medallist in the 3000m steeplechase at the Olympic Games in London, was about to win and, fully confident about his victory, slowed down, which allowed the Spaniard, Ivan Fernandez Anaya, to get close to Mutai. But rather than take advantage of Mutai's inattention, Fernandez showed him the finish line and stayed behind to allow him take the victory.

Commenting on these events, Fernandez discussed the importance of fair play (or sportsmanship²⁴⁵) and said:

"I did not deserve to win. I did what I had to do. He was the true winner. I would not have been able to make up my delay had he not made that mistake. As soon as I saw him begin to stop, I knew that I was not going to overtake him."²⁴⁶

²⁴⁵ Quoted in "Spanish Athlete Sets Example of Kindness, Sportsmanship", available at [<http://www.catholicnewsagency.com/news/spanish-athlete-sets-example-of-kindness-sportsmanship/>].

²⁴⁶ Quoted in [http://elpais.com/elpais/2012/12/19/inenglish/1355928581_856388.html]. It is interesting to note that Fernandez also confesses that if the stakes were different, he would probably not have made the same decision: "Of course, it would have been a different matter if a European or world medal was at stake. I think I would have taken advantage of it [the careless mistakes] to win [...]. But I also think I made more of a name for myself for having acted as I did. It is as if I had won. This is very important because a gesture of fair play is particularly welcome, given the way things are in all settings: in football, in society or in politics", quoted in: Carlos ARRIBAS, *El País*, Madrid, 19 December 2012..

This gesture of fair play can be seen as an example of a “supererogatory” act in sports. In *Au-delà du devoir, L'acte surérogatoire*,²⁴⁷ Joël Janiaud uses the analysis of J.O. Urmson²⁴⁸ in his classification of moral actions. Three cases of moral actions should be distinguished:

- Mandatory actions that involve a duty to perform them,
- Morally permissible actions that are indifferent to morals,
- Morally reprehensible actions requiring blame.

Supererogatory actions require a fourth category: they are non-mandatory moral actions that are closer to the notion of “gift”. If supererogatory acts clearly exceed the mere acceptance of the rules of the game, they also constitute acts “beyond the duties” for each athlete. For example, it would not have been morally reprehensible if Fernandez had accelerated and won instead of Mutai. However, Fernandez let him win. The constitutive rules of sports do not prohibit helping opponents. However, one may wonder how the recurrence of supererogatory actions in sports competitions may risk going against the very principle of the competition.

More specifically, it is evident that *supererogatory actions, by challenging the concept of “winning at all costs”, are challenging the presumed equivalence between the rules of the game and the basic concept of the justice of victory: through their actions, athletes draw attention to the fact that a “fair” victory sometimes comes at the cost of not respecting the unwritten rules of the game, such as rules that attribute “meaning” to the competition according to common representations.*

This type of problem dealing with the definition of “fair competition” is also found in the case of double medals, which involves the individualism that sometimes appears in sports. In 1991, Soviet athletes Aleksandr Potashov and Andrey Perlov were both in the lead of the 50km race walk world championship. They agreed at the stadium’s entrance to finish together and to cross the finish line “arm in arm”. The judges, with the help of the photo taken at the finish line, finally decided to award the gold medal to Aleksandr Potashov who was ahead of his compatriot Andrey Perlov by a hundredth of a second. Why didn’t the judges award them a double gold medal, as is done in other federations²⁴⁹? Some commentators did not fail to see this as a resurgence of the “sacralisation of difference”: sports are based on competition due to a fascination with classification, even when it is absurd.

²⁴⁷ J. JANIAUD, *Au-delà du devoir, L'acte surérogatoire*, Presses Universitaire de Rennes, 2007.

²⁴⁸ J.O. URMSON, “Saints and Heroes”; in: I. MELDEN, (ed.), *Essay in Moral Philosophy*, University of Washington Press, 1958.

²⁴⁹ The International Swimming Federation has decided, for example, in the regulations not to seek to choose one winner based on difference in a thousandth of a split second. In 2011, the French Jérémy Stravius and Camille Lacourt who swam the 100-meter backstroke in 52”76, each won the gold medal and the title of world champion of this specialty.

Conclusion of § 1

The decisions that a competitor must make, often instantly, are particularly complex. Behavioural norms are sometimes contradictory and involve a whole chain of interests and responsibilities. "Only victory is beautiful," they say, since attached to it, and to it alone, are financial, symbolic, and media stakes which are sometimes very important. However – and this is readily admitted - "not everything is permitted." Ethics must allow beautiful play, fair play, and the spirit that drives the athlete to resist breaking the internal and external rules of the game because without it, sports ethics would no longer exist.

§ 2. Problems of Integrating Sports in Social Life

Peripheral activities are themselves the place of "abuses" that affect the image of sports (**A**). They alter one of the fundamental anthropological virtues of sports which is to pacify relations between social groups and peoples (**B**). In the practice of sports itself, violence seems "euphemised" (**C**). Tensions in and around sports are channelled through an evolutionary social process of enactment of rules and standards (**D**). Transgressions of ethical standards such as honesty and uncertainty of outcome can drain the game of its interest and thus, promote disaffection for the sport itself (**E**).

A. Problems with Peripheral Activities

The "aberrations of sports" that lead to serious questions regarding morality in a strict sense, unfortunately do not only concern the athlete's position in the institution, in relation to the performance that is expected of him and given the behaviour that his position requires (and the media sphere does not fail to remember this). Problems concerning sports grow more and more around financial interests of the sports community and around parallel financial opportunities identified by some actors.

Sports bets are in the bull's eye and appear as a threat to the public image of sports. Although the practice of bets is old, and although they are still practiced today in a formal framework, they still constitute a problem for sports ethics, as they are associated with a set of abuses.

It is known that sports bets are one of the preferred methods of money laundering for the mafia. For various reasons, including pressure from their social environment, athletes may find themselves complicit in fraudulent bets. Due to the complexity of the institutional system of sports (or the lack of clarity and readability) the issue of liability also arises at a level other than a personal one. The athlete cannot carry all the responsibility in matters concerning conflicts of interest that lead to illegal bets, insofar as control and regulation flaws are also very important and usually are of a structural nature rather than a personal one. Besides the issue of the violation of legal rules, there are also the ethical issues of the inadequacy of the rules in force (insufficiently specified regulations, inadequately harmonised across countries, and insufficiently clear and for the athletes and various parties concerned, *etc.*).

It is therefore necessary, when defining the contours and the relationship between major modes of organisation of sports competitions, to seek to develop standards allowing their regulations, particularly regarding bets. This is an application of what is now called the "institutional design".

However, this requires having some clarity in the interactions and relationships between various local, national, and international sports organisation. An understanding of individual and group motivation is necessary, on the basis of psycho-social and economic knowledge in order to determine the actions that should be proposed and applied. This will provide more pertinence in the future, since the development of a proper understanding of the ethical and moral stakes will take place for all concerned parties, thanks to a gradual clarification of the reasonable expectations that can be formed while taking into account data parties to the different contexts of the implementation of the principles.

B. Sports, Collective Tension, and Violence Control

To address the relationship between the rules, practice and the changes concerning responsibilities let us first make a few reflections suggested by the classic book written by Norbert Elias, *Sport et civilization*, whose teachings are still considered today as significant. We refer to this book because of the link it establishes between the tensions of human life, social conflict, and rules of practices such as sports activities which are often credited with significant potential in terms of progress in peaceful encounters and the mutual understanding between men. A reading of this book will allow us, along with a perspective drawing on the remarks of George Vigarello in *Du jeu ancien au show sportif*, to address issues concerning the evolution of responsibilities in accordance with the expectations formulated in the first part.

One of the fundamental virtues of sports, according to these authors, is the euphemisation of violence. The survival of a society depends on the ability of its members to control their impulses and emotions. Norbert Elias notes that "leisure activities, including sports, precisely serve this function." Indeed, sports help create within the framework of an "imaginary" and secure environment, some form of excitement, while avoiding the risks or hazards that could result from it if they were allowed and unregulated in everyday life. However, the mimetic mechanism of sports and leisure activities can sometimes cause confusion, to the extent of producing real stress and a true desire for revenge - in the case of a team that we support, for example (as anyone can see from the facts of hooliganism).

The relationship between concrete phenomena in sports in relation to society is compared with political stakes in human society, according to Norbert Elias²⁵⁰. Feelings - in sports as in art - are discharged within a symbolic context and "relieve individuals of the constraints that are imposed during their non-leisure life²⁵¹". In general, Elias admits that constraints that humans impose on their emotions and impulses are acquired, due to the sustainability of social life.

²⁵⁰ N. ELIAS, *Sport and Civilization*, p. 56, "In performance sports, tensions specific to recreational sports, which are light and playful mimetic pressures, are dominated and shaped by tensions and rivalries between states. Sport, in this context has nothing to do with recreational sports. "

²⁵¹ *Ibid.*, p. 57.

It is also interesting to note the understanding that Georges Vigarello suggests of the observed reality in the practice of sports encounters. Sports become, rather than a place for secure confrontations, a location for the transfer of the pure and simple pursuit of ordinary social confrontations. The author wrote it in his book *Du jeu ancien au show sportif*:

"Sport [may] not be a world void of any social pressure and mercantile influence as the founding fathers conceived it, it [can] not, with its extremely simple logic that opposes "strong" and "weak " adversaries, remain far from large collective fractures (nationalists and others) and from passionate encounters."²⁵²

This brings the issue of the relationship between social norms and sports norms. Although sports create a framework in which some "excitement", according to the vocabulary of Elias, is allowed (which would not be accepted in other areas of societal life), the rules that govern this framework must echo what is generally accepted in society. The classic analogy between regulated sports and parliamentary governments, in terms of restraining violence via rules, is dealt with by Norbert Elias in such a way that highlights the fact that self-regulation in politics involves a much greater sensitivity to violence and reinforces this sensitivity, by implicating regulation in other domains of society, particularly in sports. The regulation of recreational sport is assumed to be correlated with the self-pacification of social classes.

Modern input in the area of sports rules (compared to the "Games of the Ancient Regime") is also highlighted by Georges Vigarello. He sees in this transition the weakening of risks of "obscure or ritualised vengeance, [of] talions, [or] excesses"²⁵³. By accepting this approach, one can see the importance of the issue of the possible collapse of the ability of sports to channel, through enjoyable and interesting tensions (regarding the outcome of competitions in particular), the forms of rivalry that exist in human society, due to the alteration of sports through violations of sports ethics. Sports may no longer play its cathartic role in social life, and there is a risk of the return of violence to everyday reality.

From this point of view, we notice that anthropological hypotheses such as those of Norbert Elias lead to the belief that the cleansing of sports practices and related practices (for instance bets) is very useful to producing peaceful relations in a society.

C. Collective Tensions and the Dynamics of Rules in Games

Norbert Elias approaches the issue of violence in the practice of sports in light of the changing cultural and political stakes, to which it refers. He points out the fundamental and essential differences between games in Antiquity and games in the nineteenth and twentieth centuries (such as the modern Olympic Games). In ancient times, the level of violence was much higher than what is permitted in modern times and especially in contemporary times, under the influence of detailed and different rules in sports. These rules –and this is important - are not mere customs, but are explicit, written rules²⁵⁴.

²⁵² G. VIGARELLO, *Du jeu ancien au show sportif*, éd. Seuil, 2002, p. 163.

²⁵³ *Ibid.*, p. 164.

²⁵⁴ N. ELIAS, *op. cit.*, p. 180.

In line with this idea, Georges Vigarello asserts that "modern sports were born exactly from a euphemisation of violence."²⁵⁵

But wasn't violence simply transferred, as a result of regulation, to another level of the sporting sphere, such as the activity of the viewer, as if it has to exist in one form or another? The example of the comparison between modern wrestling and pankration allows Norbert Elias to highlight the sporting rules concerning violence. The evolution of sports rules must be considered in light of the customs and culture of the society in which the sports takes place. Greek "boxing", considered as warfare training as well as a competitive game, can be explained in retrospect (although nothing morally justifies or excuses it) by the tolerance of violence, and the fact that force, endurance, strength, and even death, were honoured and appreciated as a sign of strength of the army of the city. In this sense, such an activity could be seen as useful for the city and have a political value. On the contrary, today, there is a great gap between the techniques of sports combat and fighting techniques with war purposes in democratic Nation-States²⁵⁶.

Other than in remaining totalitarian or authoritarian regimes, nobody today can claim to develop or refine our ideas about the purpose of sports (considered as such and not as a mere training) from war considerations. If in ancient times fighting until exhaustion was important in order to honour the city and show the strength of its warriors, in modern England, with the rise of competition games, the pleasure (too short) found in the outcome of the sporting event is extended "by the equal pleasure and the sensations that can be extracted from what was originally a prelude, this participation or assistance to the needs of the game itself"²⁵⁷.

With the evolution of the practices and their purposes, the criteria for assessment change as well. For example, the taking into account of the pleasure in betting played a significant role in the transformation of the ugliest forms of the competition into "sports" as well as in the development of the ethic of loyalty in sport. In short, the transformation of the social forms of competition in and around sports is obtained through a social evolutionary process of establishing rules and norms.

In this regard, it should be noted that *the current problems of manipulation of sports bets prove a kind of inversion in the relationship between bets and sporting behaviours*. In order to develop interesting bets, the chances of winning must be equitable; hence the need to establish a set of rules. In addition, the rules and penalties for offenses have become more stringent since monitoring has also become stricter. This phenomenon of self-discipline involves both a high level tension in the game and the avoidance of physical injury.

²⁵⁵ G. VIGARELLO, *op. cit.* p. 164.

²⁵⁶ N. ELIAS, *op. cit.*, p.188

²⁵⁷ *Ibidem*, pp. 188-189.

The interpretation suggested by Georges Vigarello for this "euphemisation of violence" in modern sports compared to what was observed in previous periods, which, far from contradicting Norbert Elias's interpretation, actually completes it. Georges Vigarello proposes the idea that a rupture took place in contemporary society, between the individual and his peers. This rupture manifested itself in the form of the promotion of "the intimate sphere and attention to oneself". The presence of increasingly stricter rules aims at curbing dangerous behaviour, but these rules otherwise satisfy the tendency of individualism and self-protection.

D. On Sport and Violence

Residual violence in modern sports activities is not accepted by consensus. It is systematically subject to critical questioning (including violence between humans and animals as is the case of bullfights, when considered as a sport and not just as a show). Yet, as we have seen, in terms of violence between men, it seems, *a priori*, much lower, without any comparison in truth, to that which was found in physical activities for entertainment and that would lead to competitions in ancient times.

The issue of violence better helps us to understand the relationship between sports and social norms. Rules and norms, as Norbert Elias says, are established by men and serve the function of:

"Addressing specific forms of malfunctions, which in turn lead to other changes in the norms and regulations that govern the conduct of people collectively."

Sports fulfil, by the regulatory structure that is given to them, specific functions for participants, spectators, and nations. The need for change once rules no longer serve these functions²⁵⁸ is the cause of their evolution. In terms of contemporary human sciences, one could say that some types of dynamics of the emergence of norms, namely those falling under the coordinated development of rules, leave room for the instrumental reasoning of the stakeholders on the basis of increased awareness to certain issues²⁵⁹. The evolution of sports is a social process that includes cognitive aspects that play an important role in the mechanisms at work.

The "ideal" form of the rules of sports games is rarely found through the first attempt and the establishment of rules is usually done through a process of trial and error, and more specifically by observing the effects of the rules once they are established. There is an overwhelming tendency to abuse the rules, once they are established, as is the case within the legal framework concerning society as a whole. However, rules are absolutely necessary, as Norbert Elias indicates, in that they are the guarantee for tension equilibrium (allowing, at the same time, the production of tensions as well as the regulation of undesirable tensions²⁶⁰).

²⁵⁸ *Ibid.* p. 212

²⁵⁹ See in particular: K.-D OPP, "How do Norms Emerge? An Outline of a Theory", in: R. BOUDON, P. DEMEULANAERE, R. VIALE, (dir.), *L'explication des normes sociales*, Paris, Presses Universitaires de France, 2001, pp. 11-43.

²⁶⁰ See in this respect the role of venting social tensions, played successively by ball games (football ancestors) in the Middle Ages, in order to "settle accounts" mentioned in Chapter V, pp. 245-249.

Although the rules are indeed the bulwark erected against recurring violence, the show offered by a sporting event and the emotion it arouses generate their share of violence around stadiums. One cannot help but think, upon mentioning this issue, about the occasional clashes between football fans. Although there is a form of "culture of hooliganism" present in Britain, we cannot ignore that this phenomenon is manifested by numerous supporters of other origins.

However, football is not, in itself, in its application and rules a violent sport. These phenomena of violence led to the proposal of prevention systems (instead of *bona fide* rules), as described in the article by Manuel Comeron, *Violence in football stadiums: fans as the actors of prevention?*²⁶¹, which involves educational awareness initiatives for youths, especially in Britain. Through hooliganism, the system of rules and ethical norms that was established to channel violence was violated, thus threatening football itself (rejection of public opinion, uncomfortableness of players in the game, *etc.*). Educational stakes are therefore quite significant here.

E. Ethics and the Interest of the Game

The issue of the excitement inherent in the interest of the game is treated by Norbert Elias²⁶². According to his approach, changing the rules is according to the "tone" of the game, which depends on the way on the game is played on the basis of pre-existing rules. He further writes:

"The changing configuration of the players dictates, at any point in time, the decisions and movements of each of them, individually" (p. 273).

Norbert Elias and Eric Dunning point out that "the rules or norms that regulate the tensions do not exist outside of social processes, as is sometimes suggested²⁶³". Rules are always determined by the context and by particular individuals. Therefore, rule changes (as shown in football), depend on the general evolution of what these rules govern.

Moreover, "internal ethics" of the game are determined by the need to preserve the interest of the game, possibly as a "team game" (as opposed to individualistic behaviour). With regard to sports rules, some forms of transgression fall within the limits of the game in that they are simple violations and represent stakes anticipated and sanctioned within sporting events (in the form of point deductions, penalties, *etc.*). The interest of the game can also, however, be seriously affected by the transgression of general ethical standards (honesty, absence of violence, uncertainty of outcome, *etc.*) that represents a threat to the purpose of the sport. This is the case of manipulations of sports competitions.

²⁶¹ M. COMERON, "Violence dans les stades de football : les supporters acteurs de la prévention ?", *Cahiers de la Sécurité* no.11, *Sport, risques et menaces*, 2010.

²⁶² N. ELIAS, *op. cit.* p. 271.

²⁶³ *Ibid.* p. 274.

From the perspective of game ethics, *the effective enforcement of rules is part of the purpose of the game*. For example, compliance with a certain equity in the access to competitions is crucial for activities that benefit from uncertainty of results even in the presence of large differences in strength or relative skill of the competitors and that are particular in that they require the effective encounter between the competitors, thus creating a form of cooperation in the broadest sense (unlike for the situation of economic competition among producers²⁶⁴).

According to the thesis of Pierre Livet in his book *Les Normes: "une règle qui serait purement constitutive ne serait pas une norme"* (Norms: "A rule that is purely constituent is not a norm"). Contrary to this view, it is true that one can imagine rules that are established, and which, once established, constitute a basis for activities which need neither regulation, nor sanction, and not even requiring a tone of command. Such rules are purely constituent (they would be limited to the imposition of a structure to interaction). But it is true that this model does apply to what can be qualified as a rule or a set of norms in a sport.

Like all rules, ethical rules help give form and interest to games and competitions. They even play a crucial role in this regard: if honesty can no longer be presumed, the public may turn away from the show. Certain rules - among which are ethical rules - may seem almost purely constituent with regard to sports activities because they undergo a process of "naturalisation": once the norms are established, they create a form of life that seems natural and dictated by the nature of things in the chosen framework of interaction. The fact that norms usually add artificial motivations also participates in the interest of the game. In fact, different sports disciplines propose disciplines that channel the work or efforts in specific directions (just like intellectual and artistic disciplines), while achieving performances or achievements. This is an aspect of the educational value of sports activities, both in terms of commitment and culture of motivation, and in terms of awareness of the diversity of disciplines.

Conclusion of § 2

Rules and norms form a system of ethics by which the tensions experienced in and around the game are regulated, while maintaining interest. The transgression of the ethical principles of this system constitutes a threat to the interest of the game, the game itself and its virtues. Such is the case of hooliganism and the ethical principle of controlling violence. The same goes for the manipulation of sports competitions and the "glorious uncertainty of sports."

²⁶⁴ On issues and organizational stakes arising from the standpoint of preserving the interests of the game, see the comparison of British tradition and North American tradition developed by P.J. SLOANE, "Restriction of Competition in Professional Team Sports," *Bulletin of Economic Research*, 1976, pp. 3-22.

§ 3. Sports and Evolving Societal Values

In this section, we will examine how sport is regularly associated with social values such as health, performance, exemplarity, leisure, and equality (A to G). These social values are constantly changing and their predominant interpretation varies in relation to time and place (H). However, is it possible to discern the main lines, in terms of what is expected for sports and the ways to respond (I and J)?

A. Ethical Problems linked to the Performance Culture

The tensions inherent in sports may affect the health of athletes because of doping problems, in a way that is perhaps facilitated by the dissemination, outside and around sports, of an ideology of competition and performance that may increase exposure to unjustified risk taking. It is often observed that individuals have less influence on the surrounding culture compared to the influence of the culture of their society on them. However, research on the dynamics of creation and enforcement of norms highlights the explanatory power of individual behaviour.²⁶⁵ One can also note, as Howard Margolis and Raymond Boudon did, that with time, the evolution of "norms" is not independent on plausible judgments which can be achieved by individual reflection.²⁶⁶ Ideas on performance and competition illustrate this complementarity.

Behavioural norms often evolve on an individual basis along with the acquisition of knowledge. In this case, the relationship between sports and health is quite relevant. For example, at the time of writing, it seems clear that the wide dissemination of the results of biomedical research on the relationship between sports and brain health may have an impact. Current experiments on the medical prescription of sports activities (such as the system set up in Strasbourg, France through a cooperation between the city council and insurance companies) already illustrate, if one observes the patients' interesting reactions to these prescriptions, the echo of available results on the benefits of these practices in the prevention and treatment of cardiovascular disease.

Exposure to incentives from the cultural environment is also, in relation with sports practices, a source of justified problems and fears. It resulted in the work of the National Consultative Ethics Committee for Life Sciences and Health (CCNE) in the development of the preventive and protective functions of medicine against the risks involved, in opinion No. 35 concerning athletes:

"The role of physicians is, in general, to protect health. The role of occupational physicians, especially practitioners of sports medicine, should be to protect athletes from the possible pathological consequences of their practice, whether they are professionals or amateurs."²⁶⁷

²⁶⁵ See in particular: K-D. OPP, "How do norms emerge? An outline of a theory ", in: R. BOUDON, P. DEMEULENAERE, R. VIALE, *L'explication des normes sociales*, Paris, PUF, 2001.

²⁶⁶ H. MARGOLIS, *Selfishness, Altruism and Rationality, Chicago and London*, The University of Chicago Press, 1982, p. 51; R. BOUDON, *Le juste et le vrai*, Paris, Fayard, 1995.

²⁶⁷ CCNE, "Opinion on clearing hormonal deficits in athletes", opinion no. 35, report 1993-0518, 1993.

After looking into opinion No. 81 ("Performance and Health", 2003), the CCNE developed a critique of performance (and largely of individualism), highlighting the problematic concepts of "social pressure" and "cultural and social incentive". This is certainly to be compared with the difference in information, expertise, or competence against messages from the scientific community, discussed in opinion No. 109. However, the sociology of medicine reminds us of the importance of imperfect information and possibly low valuation of health in the development of realistic and useful models of "health behaviour".²⁶⁸ This is quite important, for example, when it comes to understanding the particular vulnerability of athletes to certain health risks (doping, consent to excessive fatigue, risk taking, etc.).

The reminder of the collective aspect of social life led the CCNE to propose a simultaneous critique of several cultural data deemed correlated with each other: a utilitarian relationship to life, a priority given for technical reasoning, and individualism. This was a way to rebuild the elements of a harmful incentivising structure of society as a whole, to explain some of the dangers to which people are exposed.

The validity of this type of explanatory diagram must be questioned. If the structure mentioned above is adequate, one must admit that it applies with particular relevance to abuses such as doping. Other factors are certainly involved in some cases, for example the association between competition, pleasure, and danger, which was noted by some moralists.²⁶⁹

B. Sports, Education, and Setting an Example

Since antiquity, sport (or all of the activities that we associate to it) is linked to the education of young people, who should have, from an early age, useful habits for self-preservation and collective preservation. Indeed, physical training is of the utmost importance to train good warriors. Furthermore, this is not unrelated to the concepts of equality or fairness, which, among men sharing a destiny or common civic stakes, should be embodied in the conditions of sporting events or competitions.²⁷⁰

This traditional breeding ground for sports may now seem distant from values that can be associated to sports in an acceptable manner. Sports provide an alternative to hostile confrontations between groups (although it should be noted that this alternative role tends to lose its importance in the modern era, since the most considerable tensions are disappearing between countries or between blocks, while international conflicts are taking other forms). Through its amusing character, it can destroy some forms of violence while embodying violent confrontations in the form of a competition (even though athletic competitions lead to other forms of competition, especially between nations).

²⁶⁸ P. ADAM C. HERZLICH, *Sociologie de la maladie et de la médecine*, Paris, A. Colin, 2007 (1st ed. 1994 Nathan), pp. 71-73.

²⁶⁹ See notably J.-M. GUYAU *Esquisse d'une morale sans obligation ni sanction*, 1885, II, ii.

²⁷⁰ See on this subject: F. FELIX, E. HONORÉ, "Égalité ou équité ? Les déclinaisons du juste" in: *Éthique du sport*, (dir.) B. ANDRIEU, *op. cit.*, pp. 128-145.

Sport is still one of the best ways to pursue excellence in response to the expectations of a group. As noted by Chantal Jaquet, the body seems to have "its own ethical power" because "it can curb the bad habits and diminish the harmful power of the mind."²⁷¹ However, the human body - the body that is exactly represented like the human body and not as an object - with its forces and powers, occupies a special place in sports. If we wanted to apply the pattern of emergence of morality as Henri Bergson suggested in *The Two Sources Of Morality And Religion*, one could say that sports activities are one way to pay attention (or be made aware) to duty in general - even if only in the form of widespread authority in a group, taking form in the expectations of this group, and which is enough for the "closed society". It is in the general sense of duty that freedom and universal (specific to the open society) morality may be carved.

Sports provide examples of the quest for excellence in groups. This quest is fuelled by pressure (sometimes extremely strong, perhaps too strong) imposed by reference groups (such as fans, the public, politicians...). Thus, our societies are in a sort of continuity - an interesting notion for anthropologists - with societies using physical performance as initiation or integration rituals. The quest for excellence may lead to health hazards when fascination with performance is exaggerated. Thus, in France, as mentioned earlier, the National Ethics Advisory Committee for Biomedical Sciences expressed its concern over sports medicine serving performance, when it should care for the athlete in view of his personal health.

In the contemporary world, excellence cannot be assessed in the immediate reference to practices, verbal formulas, and accepted attitudes that are unique to a particular group. One cannot avoid the reference to universally valid values or principles (in other words, principles that can be used in each case on the basis of identical good reasons). This is inevitable because open and free criticism, so that it can be given free rein (and such is the case), can always be placed in this register to contest rules or practices.

It is in the light of principles and values laid and endorsed in a universal perspective that sports exemplarity is conceivable. Apart from these references, performances are not exemplary achievement: they can even be brought down to the level of mere unworthy forms of exploitation (for instance, hormonal manipulations practiced in the former GDR) . Also is it not possible to think of exemplarity in sports - in search of its integrity and suitable means for it to grow in line with correct ideals - outside the framework of universal values or expectations?

C. The Unexpected and Professionalisation

Among the social changes significant to sports, one must surely identify changes in the drawing of borders between what is "professional" and what is not. However, this distinction that was so important in the discussion of values in sports throughout history (and even today, on a given date, through space and disciplines), obviously refers to broad cultural and institutional configurations that

²⁷¹ C. JACQUET, *Le Corps*, Paris, Presses Universitaires de France, 2001.

exceed the field of sports, yet finds a place for sports activities. Whatever the variations may be from one society to another, sports are different when compared to ordinary or utilitarian activities, which also allows it to bring a change in social routines.

While routine may tend to settle in everyday social life, sports and recreational activities, according to Norbert Elias, remain a way to let people express their passions, and this is "generally approved."²⁷² In a way, these activities inherit certain traits of carnival times and other paradoxical activities of past societies. As G. Vigarello indicates, sports, although considered a catalyst for aggression and violence, "replays" or mimics this behaviour, but in an almost symbolic fashion, as organised by rules. In this sense, the rule seems to render the relationships between individuals gathered in a sports game "virtual", without excluding any connection with potentially dangerous physical encounters, which may occur as a fantasy²⁷³.

One of the risks of the professionalisation and institutionalisation of sports is that routine settles in this part of the human activity, especially because sports become a centre of interest for reasons exceeding the sports register in a narrow sense. Thus, some of the secondary activities linked to sports are subject to various controversies (competition between teams to attract players, financial strategies, bets, *etc.*) and provide opportunities to generate interest in a sporting world in which operations are similar to those that can be found in other areas of society.

One must wonder today, as did Norbert Elias, about "the relationship between the structure of leisure needs characteristic of our society, and the structure of events designed to meet those needs."²⁷⁴ When sports merely respond to requests that lead to a kind of consumption (subject to the slavish response given as a correlate prepared in advance), it is not surprising that it lost its shine for the discerning public and for the uninitiated, even for athletes themselves. "The game configuration that gives optimum pleasure," notes Norbert Elias²⁷⁵ "is generally a prolonged fight between two teams of equal strength and skill." The excitement, that is to say, the fun of the game, does not come without a surprise: in these conditions, deliberate manipulations of sports events and rigged bets pose a serious threat to sports, since sports is an activity that attracts widespread interest.

The time allotment of work and leisure activities depends on the reference society, with its cultural and philosophical traditions. When financial issues are involved, are we still, strictly speaking, in the area leisure activities in the sense that contemporary social life attributes to this expression? Economic determinism (through the excessive weight of the financial aspects in sports and sporting results) and even simply standardising sporting behaviour to narrowly defined or codified professional expectations, may limit the excitement and surprise, the unpredictability required in sports, or even the whole point of sports.

²⁷² N. ELIAS, *ibid.*, p. 86.

²⁷³ G. VIGARELLO, *op. cit.* p. 166

²⁷⁴ N. ELIAS, *op. cit.* p. 99.

²⁷⁵ N. ELIAS, *op. cit.* p. 116.

Therefore, as part of the "routinisation" of leisure activities, there is a risk of losing the social role of sports along with its own characteristics²⁷⁶.

In an analysis similar to that of Norbert Elias, the distinction between activities falling within or outside leisure activities plays an important role in identifying the interests involved, the type to which they belong; the author writes the following:

"[...] the subjective function according to the individual is dependent on the function according to others for non-leisure activities, while in leisure activities, the function according to others is dependent on the function as defined by the individual" (p. 153).

If we agree to adhere to this perspective, it is important to raise the question concerning the preservation of recreational activities by the non-interference of "serious" affairs in these activities. The stake may be the preservation of the social functions that only amateur sports, considered as being a leisure activity, can achieve. It is clear, however, that in a pluralistic society, the vocabulary of the "functions" must be handled with care. Not everyone pursues the same purpose, even by performing the same discipline under similar modalities. The variability, through time, of personal goals, can be significant and, therefore, it is primordial to avoid presenting what the sport accomplishes as a pure and simple manifestation of finalized social transactions, whose meaning would be the same for everyone. This is what leads us to develop a critical perspective on the sometimes too easy determination of what is exemplary.

D. The Ambiguity of the Exemplarity in the Era of Media

The uncertainty that surrounds the exemplarity of athletes is another aspect of the tensions between competing values battling one another on the sporting field. Although exemplarity is sometimes claimed by the athletes themselves, one wonders if it is reasonable to assume exemplarity generally, given the much stronger and much more destabilising pressure (psychologically) than in other activities. Exemplarity takes its true meaning when the stakes are high, as in the competitions that garner the highest levels of attention. These are also the times when the temptation to cheat is correlated with significant expected benefits, which could confirm the importance of personal exemplarity (for oneself and for others).

The extreme media pressure that accompanies these events may have destabilising effects on individuals and their decision-making, which limits the expectation of "exemplarity."

²⁷⁶ *Ibid.* p. 146.

Since the modern Olympics, sports seem to be endowed with exemplarity. Georges Vigarello does not fail to mention in this respect the educational ambition of Pierre de Coubertin, through the staging of sporting event around symbols. And Pierre de Coubertin asserts that "The first essential characteristic of modern Olympics is to be a religion."²⁷⁷ Does not the correlated research on exemplarity set a difficult responsibility to be endorsed by athletes?

One must first *ask to whom the objective or requirement of "exemplarity" is attributed*. It is not the first duty of institutions and organisations "recruiting" and accompanying athletes to guarantee the respect of the social moral principles that should frame and comfort their activities, by implementing efficient means for securing the sporting movement and imposing a responsibility on the stakeholders, starting with the athletes?

E. The Relationship to Changes in Society

Sports are directly linked, from their origins, to the needs of the show. In this sense, sports are not just about athletes, but also (and equally so) about the spectators. Their relations with military activities also date back to old times. Over time, numerous social functions have enriched the list of typical interactions between sports and the rest of human activities. When the game becomes institutionalised and therefore ceases to be a mere "hobby" (becomes a recognised social stake), its sustainability requires the adoption of commonly endorsed norms, and thus this requirement corresponds to the evolution of societies. Norbert Elias establishes a link between the rise of the parliamentary system – a system that allows non-violent political and ideological confrontations, within the framework of rules - and the status of sports as a game.²⁷⁸ Georges Vigarello also helps to clarify this last point, by comparing the above-mentioned exemplarity concepts of excellence and the extraordinary.²⁷⁹ Thus, through the myth of the sporting hero, a form of perfection of democracy and equality of opportunities is introduced into society where technological performance and progress (inseparable from the notion of "progress" of society) are reintegrated.

Can we imagine that the regulated and international sports we know today, with their stakes and the involvement of States, could suffer from a relaxation of its norms and rules, without causing risks to society? Our analysis leads to a negative answer, while drawing attention to the limits of the hackneyed notion of "exemplarity", whose use is so often unrelated to particular personal and collective situations whose consideration is, however, necessary. We also find it necessary not to conceal the potentially destabilising character, for athletes, of unreasonably set exemplarity expectations.

²⁷⁷ Quoted by G. VIGARELLO in: *From ancient games to sports shows*, p. 162, P. DE COUBERTIN, radio broadcast from Berlin, August 4, 1935.

²⁷⁸ See p. 39 of the pacification of so-called "higher" classes in England with the introduction of sports.

²⁷⁹ G. VIGARELLO, *op. cit.* pp. 190-196.

F. Sports Norms and Parity

In today's world, one of the motivators of sports ethics, as it is renewed in front of our eyes, is the surge in demands of parity through the facilitation of the conditions for practicing sports (and accessing competitions) for different population groups. What is at stake is *the achievement of equality or fairness in a practical sense, and also progress regarding the recognition of the condition and needs of specific groups of the population*. In this sense, we can say that these developments indicate an eminent degree of the depth of the relationship between the dynamics of the values espoused in society, and those of the values enshrined in the institutions and the regulated practice of sports, be it amateur or professional sports.

One rightly wonders today if a "discriminating" ethic, distinguishing positions under community affiliations or otherwise, is not likely to be a problem in terms of a universal ethics. One can even go further and wonder whether we may be risking losing sight, along the way, of the ethical dimension itself. However, the ethics of adapted sports carry very considerable changes in social life as it is organised around sports and in sports: separate games, parallel games, games for people with disabilities, site development and training conditions, etc.

One might be concerned of the appearance, on the horizon, of two separate ethics (for disabled and able-bodied people). However, concerns of this nature can only divert attention from issues related to access to sports activities, which lead to considering the materialistic dispositions and, in some cases, adapted forms of games or competitions. The agreement can be achieved on sports ethics principles that are common, while admitting the differences in the conditions of exercise, training and inclusion in competitions.

The field of Adapted Physical Activity entails specific institutional problems that have an ethical component. This may be observed through heightened risks for athletes (taking into account their personal, physical, or mental problems), the role of coaches, the adaptations required in the premises, etc. There is room for many social changes and an occasional renewal of ethical references in institutions (especially for determining priorities for action), when the collective structures do not seem completely adequate.

The spectre of communitarianism sometimes comes up when the issue of participation in competitions clearly overlaps with identity concerns. Thus, in the book coordinated by Bernard Andrieu, *Sports Ethics*, cited above, Philippe Liotard and Sylvain Ferez write about sports as a "school of heterosexuality" or homophobia.²⁸⁰ In response, an initiative such as the Gay games (with a charter explaining that there are special ethics related to sexual identities...) claims to correct inequalities or paternalistic attitudes showing uneven consideration towards different identities or life forms.

²⁸⁰ "Le sport comme école cachée de l'hétérosexualité... ou les fonctions éducatives de l'homophobie", pp. 753-763.

This type of initiative obviously leads to questions about the aptitude of sports to convincingly transmit the ideals of equal treatment of persons. From a certain point, when the correction of inequalities is no longer based on functional or technical grounds, but on concerns regarding the symbolic manifestation of the value of identities, one may fear the risk of using sports as a mere instrumentalisation of sports in the context of community or sectorial demands within society. It is, however, only a vague horizon and we must certainly stay away from making fast negative judgments about such developments. Their harm for sports values is just as hypothetical as the assumptions identifying classic sports as a school of heterosexual domination.

The issue of discrimination also leads one to wonder, more transversely, about the problem of the role of athletes and media opportunities given to them, in direct mention of ethical and social issues. When it comes to social discrimination in sports, one thinks immediately of the unequal treatment of individuals based on illegitimate and illegal criteria. The media has regularly referred to the insults suffered by some professional footballers (soccer) because of the colour of their skin and of their origin.

An athlete's performance is not a factor relevant for determining whether or not he will participate in a competition with able-bodied people or with people with disabilities (Para-sports). The existence of a disability distinguishes between these two types of competitions. Oscar Pistorius, a South African sprinter, is a double amputee (tibias) athlete that runs with prostheses made of carbon. As of 2007, the level of his athletic performance attracted significant media coverage. He was so close to the minimum requirements for international competitions for the able-bodied, that the question as to whether he should be allowed to participate as long as he met the minimum requirements came up, as he had always wished. However, the carbon prostheses caused doubt, for while the calf muscles of able-bodied athletes tire during a race, the prostheses of Oscar Pistorius do not suffer this physical effect. In other words, and in a certainly paradoxical fashion, the disability of the athlete became an advantage over able-bodied athletes. Studies were then conducted to clarify this point. Oscar Pistorius won the case and was able to compete in the able-bodied London Olympics in 2012.

The issues surrounding this case raise the question of conditions of access to competitions. In fact, one might be tempted to view this as an issue of discrimination. But at the same time one must understand that if an athlete uses technical means to compensate for his disability, the organs monitoring fairness in sporting competitions must look into the situation. Thus, the latest study on the prostheses of Oscar Pistorius (2009) emphasised the benefits of prostheses. Such controversies involve the principles of sport universalism.

G. Equal Access: Economic Aspect

Are there any sports that would be so costly that their practice would not be open to everyone? According to Lara Muller, editor of the Bulletin of the Statistics Mission of the Ministry of Youth, Sports and Associative Life,²⁸¹ a number of sports and physical activities in France depend on the standard of living, as these activities involve special equipment and travel. This is the case, for example, of skiing, golf, sailing, windsurfing, canoeing, rowing, and water skiing. Lara Muller finds that these sports are three times or even five times more widespread in high-income households. This suggests that conditions of access may be restrictive in practice.

But one must be very careful because it does not seem warranted to evoke discrimination in this case. Certainly, it is regrettable that a number of sports require equipment and expensive investment that render access to them more difficult for low-income households. The place of residence is also a factor of inequality. But to conclude that this is discrimination, as if the desire was to restrict access, is a step that should not be taken lightly. The diversity that can be found in sports is not necessarily caused by discrimination: inequality is not always discriminatory. However, some empirical data - for example, wage differences between white and black professional athletes (documented by Jenkins in his study of professional basketball in the United States in 1996)²⁸² - may bring to mind questions of discrimination.

H. Towards a Conflict of Values?

Debates about the role of sports can lead us to consider sports as a complex world, built around many opposing ideologies. This representation goes back to the philosophical and sociological problem of the plurality of values, symbolised by the "War of the Gods" as defined by Max Weber; in fact, social agents sometimes defend irreconcilable values. Several differences may be used to defend this thesis.

1. Values of Amateur Sport and Professional Sport

This opposition (whose relevance today has significantly declined compared to the differences that can be drawn between widely broadcasted sports and more confidential sports practices) was highlighted in the critical theory of sports and is the central opposition between two "value systems" in contemporary sports, as Isabelle Queval.²⁸³

²⁸¹ L. MULLER, "Age, diploma, standard of living: the main socio-demographic factors and selected sports activities", *Stat Info*, Paris, Ministry of Youth, Sports and Associative Life, No. 05 -05 November 2005.

²⁸² J. JENKINS, 1996. "A Reexamination of Salary Discrimination in Professional Basketball", *Social Science Quarterly*, Vol. 77, No. 3, September 1996, pp. 594-608.

²⁸³ I. QUEVAL, *S'accomplir ou se dépasser, essai sur le sport contemporain*, Gallimard, coll. Bibliothèque des sciences humaines, 2004.

2. Values of Common Sports and Aristocratic Sports

In the aftermath of the Great War, the Olympic system decided to integrate women's sports and labour sports, but "in terms of values, this assimilation of formerly autonomous federations somewhat destabilises the Olympic ideology which often does its best to salvage what it can on a symbolic level. Without causing shock, the values of common sport are now parallel to those of aristocratic sports."²⁸⁴ Similarly, the expansion of the IOC in the 30s caused a confusion concerning values of reference.²⁸⁵

3. Catholic Values and Certain Sporting Values

We can illustrate this quite intuitive thesis through an article that specifically refers to this conflict. In the 15 September 1933 issue of *La revue des Jeunes* (a Catholic magazine), Marguerite Basselier makes a distinction between sports that can "serve" Christian values and those that do not serve them, or are contrary to these values. Hostile to individual sports, and in particular cycling, since they are marked by individualism and self-interest, she defends the values attached to team sports, deemed as "Catholic" by excellence: "self-forgetfulness, collaboration and [...] the joy of sacrifice that lifts our spirits higher by forcing us to go beyond our interests."²⁸⁶

4. Original Values and Modern Values of Physical Education

Concerning the specialisation of sports, Pierre de Coubertin had anticipated the rise of two "almost irreconcilable" pedagogical trends, "one heading towards moderation, unification, collective interest, and pure physiology - the other towards passionate efforts, individual culture, and individual records."²⁸⁷ In fact, Coubertin had anticipated the opposition between the professional values of sports, driven by performance, and the values of amateur sports, based on leisure and fun. Thus, sport is a field that evolves with tensions between what may be called as two "ideological poles."

These two poles of sports were highlighted in an interesting way in an article by Jacques Gleyse entitled "*The Moral oxymoron of physical education and sports, in twentieth-Century in France, in official documents*".²⁸⁸ This analysis of official documents concerning the teaching of physical education (from 1891 to 2000) shows how sports organisations can manage multiple value systems, which may sometimes be contradictory. The timeline prepared by the author of the values mentioned in the texts is quite striking.²⁸⁹ Between 1891 and the early twentieth century, the values mentioned in the official texts are harmony, balance of physiological functions, order, and discipline. But as of the beginning the early

²⁸⁴ J. SAINT-MARTIN, 2004, *op. cit.*, p. 41.

²⁸⁵ J. SAINT-MARTIN, 2004, *op. cit.*, p. 41.

²⁸⁶ P. ROCHER, "Valeurs du sport catholique, valeurs catholiques du sport. L'Église catholique et le vélo", *Le mouvement social*, July to September, 2000, No. 192, p. 79.

²⁸⁷ P. de Coubertin, *Between Battles: Olympism working at the University*, quoted in: I. QUEVAL, 2004, p. 30.

²⁸⁸ J. GLEYSE, 2013, *op. cit.*

²⁸⁹ J. GLEYSE, 2013, *op. cit.*, pp. 200-202.

twentieth century, new values started to be cited, including values related to "a model 'human being'".²⁹⁰ The values promoted by physical education must also be embodied by this new man: strong character, determination, good health, strength, energy, and socialisation (moral effect of sport). In fact, some traditional values of civil education (discipline, solidarity, promotion of good health) will always be mentioned in the texts, but their presence will be adjoined to values closer to trending sportsmanship values (autonomy, pursuit of excellence, improvement).

Summary table of the timeline in Jacques Gleyse 2013, pp. 200-202

	Between 1891 and the beginning of the 20th Century	20th Century
Values mentioned in official texts concerning the teaching of physical instruction	Discipline, order	Autonomy (the individual is not subjected to order)
	Solidarity, camaraderie	Creation of an elite (based on "self-esteem") Emblematic figure of "resourcefulness" (influence of P. de Coubertin)
	Harmony, health	Perfection of nature, transcendence

The author raises the question of whether the end of the twentieth Century brought an end to this dichotomy. Since 1996, the texts evidence a genuine desire to temper the sequence *Citius, Altius, Fortius*. But according to the author, this is not enough to confirm the end of the "oxymoron": Jacques Gleyse says that this dichotomy is present between two systems of antithetical values where the search for self-efficiency opposes personal balance.²⁹¹ Yet, the summary he gives through the timeline of the values mentioned in the texts destined for grades 6, 7, 8, and 9 of upper elementary school leads us to assume the opposite. One can indeed notice two things. First, the proposals referring to the importance of the sense of competition and performance very often include elements for preventing deviation (for instance "value success and render failure acceptable on the pathway of progress" (1997), "perform autonomously bold initiatives to the extent of limits of potential" (1998). Secondly, we notice the emergence of new terms that seem to go beyond the dichotomy between values before and after the turn of the beginning of the 20th century, "act safely for oneself and for others," "self-knowledge" "self-control", "civility", "take responsibility for decisions", "independent and responsible conduct responsible for health and safety", "open and critical attitude", and "respect for the opinions and behaviours of others".

Starting in 1996, there is no longer any mention of the notion of "self-transcendence" that was so popular in previous decades. However, "citizenship" emerged as a new value.²⁹² Moreover, one can notice that the value of "discipline" seems to have been "replaced" by responsibility, which is currently very present, alongside the value of "self-control".

²⁹⁰ J. GLEYSE, 2013, *op. cit.*, p. 203.

²⁹¹ He refers by this to first secondary classes in High Schools.

²⁹² However, this value is already present, without a doubt, in the idea of socialisation, which was already mentioned in earlier texts.

It is important to note here that a theory claiming that the axiological beliefs such as "the values of sport" do not constitute "objectives" - in the sense of entities that are independent from their subjects - does not require relativism. As the work of Raymond Boudon has highlighted, one could indeed interpret Weber's "War of the Gods" in such a way that, instead of considering values as absolute entities that are part of an inextricable conflict, the rationality of the stakeholders is viewed as the issue of the conflict.

Therein lies the interpretation of values proposed by Boudon against irrational conceptions²⁹³ of values. It shows that one can defend an anti-realistic position²⁹⁴ of values, all the while defending strong cognitivism²⁹⁵. His argument aims also to rehabilitate, from a certain point of view, Weber's concept of "axiological rationality"(or "value rationality"): the causes of moral certainties can be found in the *reasoning* capacity of individuals. According to Boudon, normative beliefs are incorporated by the agent on the basis of a strong system of reasoning: it could be said that the agent is a factor to his own beliefs because of his ability to reason. With reason rehabilitated, it can be assumed that values – sports values, in our case - can be discussed in the context of an ethical discussion, while sports leads to an endless confrontation among values that guide our lives.²⁹⁶ Thus, democracy, freedom of expression, and transparency should be the principles governing the operations of major sports organisations.²⁹⁷

Moreover, linking "sports values" to the reasoning of stakeholders is not incompatible with the recognition of "values related to sports." The issue of sports values is actually a part of a more general problem that can be summarized by a kind of adaptation of Euthyphro's dilemma as set in Plato's eponymous dialogue: Is something considered good because it is good, or is it considered good because it is thought of as good? This is an issue that has been food for thought for many philosophers, beginning from Plato to today's philosophers, the so-called "anti-anti-realists", while passing by the reasoning of Aristotle, Hume, Moore, and Ayer²⁹⁸. It should be recalled in this regard, as it can be done by adapting the triad described by Christine Tappolet in the beginning of her book *Emotions and Values* (2001), that there are three levels of reflection on the status of value judgment: ontological (what is the mode of existence of values?), epistemological (How can we access these values?), and semantic (What is the nature of the formulations on the subject of values?). The multiple representations of sports values only represent empirical data that prove nothing about the real or objective existence of values. The uncertainty that is often expressed at the epistemological level and the plurality of ideas defended in the semantic register do not automatically deprive the ontological reflection on values of relevance. Therefore, the uncertainty and conflicting tendencies that were discussed above prove nothing of the existence of the mobilisation of "values in sports."

²⁹³ In other words, fideist theories (values are caused by absolute principles), skeptics (who are either causalists (values are illusions created by emotional, socio-functional, biological, or social causes) and decisionists (values are the simple result of the decisions of the agent). See "Le trilemme de Münchhausen", in: R. BOUDON, *op. cit.*, 1999.

²⁹⁴ "[...] Values exist only by the value judgments to which social subjects adhere", in: R. BOUDON, 1999, p. 11.

²⁹⁵ Metaethical design of supporting that ethical statements are proposals capable of truth or falsity.

²⁹⁶ J.S. ANDERSEN, 2011, *op. cit.*

²⁹⁷ This is what J.S. ANDERSEN, director of the organisation "Play the Game", defends in his article "Sport: A Battlefield for Value Fighters" on playthegame.org, 2011.

²⁹⁸ For an overview of some of these metaethics references, see A.C. ZIELINSKA (eds.), *Key texts meta-ethics, moral knowledge, skepticism and realism*, éd. Vrin, "Key Documents", 2012.

I. Sports, the Answer to the Tensions Threatening Social Cohesion?

How can sports improve social cohesion? Do sports have an intrinsic and positive educational role? "Integrational sports" is both a hope and a political horizon.

For example, physical education has often been in the French political programs in order to instil the "values of the Republic" in youth and sometimes led to hygienist, nationalist, and militarist drifts. Thus, the idea that sport is important as a tool for physical and moral "redress" for the youth is an age-old, widely disseminated idea (in France, it is found in the "Sports Charter" of the 1940 Vichy plan and in the order issued on February 28, 1945 that resulted from the work National Council of Resistance...).

However, as of the 80s, although the idea of educating the youth through sport was still present, the issues that education was confronted with were very different from those present at the time of Rousseau (who considered that physical education was a fundamental condition for moral development), or from the issues in the time of De Gaulle in the 70s (sports should instil morality in youth who did not respect the authority of elders). In the particular case of France, the ideal form of "integrational sports" results from new social issues: the fight against unemployment, urban violence, school dropout, communitarianism, *etc.*

But the idea of social integration through sports does not only concern the education of young people that are on the side-lines of the educational model. It also concerns an ideal integration of cultural minorities and an understanding of immigration as a process of assimilation to the host society. The naturalisation of high-level athletes²⁹⁹ is the institutional form of this ideal. The effectiveness of sports as an agent of "integration" in society is very often mentioned (especially by politicians³⁰⁰). However, for some years, associating sports to integration - in particular, the integrative role of sport is presented as one of sport's integral components - has been highly questioned and nuanced by educators and researchers.

After a while, the disillusionment of political integration through sports led city officials, educators, and teachers to recognising the limitations of this model. In his book *Sociology of Sports*, Pascal Duret outlines three "obstacles" to socialisation through sports in youth clubs from neighbourhoods regarded as "sensitive". First, sports clubs faced the obstacle of "the desire to protect self-esteem": indeed, contrary to sports that do not take place within the framework of clubs, the young athlete must confront the demands of the coach, which may put

²⁹⁹ These are instances where a sports champion is naturalised on the basis of a "discretionary administrative decision", particularly on the basis of the person's "integration" and absence of criminal convictions.

³⁰⁰ It is interesting to note that this political desire will also have an influence on university research. As stated by Alfred WAHL, as from the 90s, the Ministries of Youth and Sports invest this particular factor of integration that that is sports. "From this stems the encouragement to organise seminars and study days to evaluate and thus legitimise the actions taken or to be taken. From 1991 to 1993 especially, sociologists are sought to validate the idea that "sport has the intrinsic virtues" to fight against violence and to promote integration" (A. WAHL, 2004, in: F. CARPENTIER (dir.), *Le sport est-il éducatif ?*, Presses Universitaires de Rouen, 2004, p. 42).

them again – after the school, society, and family environments - in a position of inferiority and may push him to question some of his abilities. This particularly occurs when it comes to rules regarding the selection of the players who will play on the field and those who will be sit on the replacement bench. This constitutes a new system of distinction (based on performance) and prioritisation for youths. This obstacle is closely related to the second limit facing integration through sports clubs: club coaches tend to devaluate street sports, which can harm the culture of young people who consider it an important practice, especially from a social point of view. Finally, the third obstacle to the socialisation of young people through sports clubs is related to the spatial delimitation of street sport practices: the club, representing a "cross-border" area, challenges the practice of sport dominated by "close-to-home" residential neighbourhoods.

Therefore, it can be seen, through the presentation of these three "obstacles", that the idea of successful "integration" via sports clubs faces predetermined social dynamics, which it challenges. It should be noted that the introduction of the new socialization network (clubs) may also conflict with a system of pre-existing networks (for example, when the instructions of the coach conflict with those the neighbourhood group or with those of the family). Therefore, this is an issue of shifting from a street sport to a club sport and from one form of socialisation to another, that is, from a set of norms valid in the streets to another set of standards imposed by institutions. That is why coaches of neighbourhood clubs often seek to work "with" families and peer groups to strengthen the link the youth have with the club³⁰¹ and to avoid potential conflicts.

It is also possible to use new teaching methods which take sports into account, thus promoting a ratio appropriate to the rules in the field of education. This question, which concerns the science of education, could lead to the revival of ethics considerations in the field of sports, where the rules would not be aimed only in one direction (imposing principles), but that would be done, instead, through discussion and debate between coaches and athletes. *Each person's reflection on the merits and the "meaning"*³⁰² *of sports principles is an important condition for the ready acceptance and subsequent defence of the respect of these principles* (especially for players who may not respect these principles). Values such as respect, fair play, competition, etc. could therefore be discussed. Bertrand Pendant refers to Boudon's assertion that nothing should prevent "competition between principles from being subject to rational selection mechanisms."³⁰³

However, once again, it is important to appreciate the effectiveness of such practices in terms of issues of socialisation. The contemplation by stakeholders (young people in this case) of norms dictating their sports practices is necessary, but its effectiveness largely depends on the general socialisation of these stakeholders. One can wonder if an adolescent would abandon a practice that he considered bad –such as the whistling of the loser, reflecting a lack of fair play - if it is a constitutive part of the rules of integration of his peer group. The risk of social alienation in relation to peer groups should certainly be taken into account in educational practices.

³⁰¹ A. WAHL, 2004, *op. cit.*

³⁰² As highlighted by N. PANTALEON and T. LONG (*in Andrieu, 2013, op. cit. p. 784*), the meaning that actors give to sports principles is at the heart of the process of socialisation through sport.

³⁰³ B. DURING, « Pédagogies corporelles et morales », *in B. ANDRIEU, 2013, op. cit., pp. 277 et 278.*

Overall, the effectiveness of integration through sport is still dependent on the efficiency of other integration factors, primarily the place of employment and school. It is unfortunate that the intense media coverage of integration policies through sport tends sometimes forget the sport itself.

J. Health Promotion: a Stable Point of Reference

Despite the great diversity of anthropological representations of a human good or cultural traits considered desirable in sports practices, the currently acceptable conceptions of sport, are, globally, those that agree with concepts of legitimate interactions between society and the individual at the most fundamental level. In the logic associated with modern politics (in terms of ideas, if not always the facts), the State and society cannot simply impose anything on the individual, however great the stakes may be. Justification and individual acceptability must be present at a certain level, and this requirement should be treated as essential to public deliberation, even though it is difficult to define in certain contexts. This results in some constraints, albeit very weak and thus considered "minimalistic", but real.

In particular, the reference to health is inseparable from the idea that we have of sports, the community - organising sports practices or providing the resources and rules necessary for their practice - cannot be the forum for deliberations not related to the objectives pursued that are affected by these practices. Health is an asset, and if sports activities *can* help, they *must* do so to some extent. Indeed, there is much debate on various issues that concern these activities, and in these deliberations, there is an opportunity to seek certain assets. The health of athletes - understood based on the definition of the World Health Organisation, in other words, in the triple sense of physical, mental and relational (or social) welfare - is closely related to the benefits of regular and controlled sports activities; as such, it is considered among the interests directly involved in decision-making in the context of sports, with an obvious connection to the good of the people. In terms of health, sport has tremendous potential that illustrates the very positive nature of ethics, beyond the system of prohibition. One can be convinced by looking at the egalitarian inclusion of persons in activities favoured for the well-being and self-esteem of a person or at the scope of benefits of these activities regarding disease prevention.

The notion of "the good of people" may seem overly broad, but it should be noted that sports practices have evident links with a number of classic dimensions of human "happiness" through progress in fitness, quality of life, achievements or contributions to individual happiness, avoidance of trauma and the use of dangerous drugs, the establishment of a healthy way of life, the development of social bonds and solidarity,³⁰⁴ and endorsement and respect of rules believed to be correct or just.

³⁰⁴ See P. DIETSCHY, "La notion de fraternité et le sport moderne", in: B. ANDRIEU, (dir.), *Éthique du sport, op. cit.*

Conclusion of § 3

In our contemporary society, sports are constantly linked to the public discourse in the collective pursuit of certain values, particularly certain forms of excellence in compliance with general social values. However, it is also considered *a priori* as a "neutral" activity in some respects (on a political, religious, cultural level, *etc.*). It is a domain over which there exists a requirement to implement values of that may seem universal. This can be explained as a result of permanent injunctions of *aggiornamento* in practical ethics of sport. These requirements are not always easy to pursue and the means of dealing with them depend on the taking into account of the evolutionary shaping of the values which serve as reference in public exchanges.

Conclusion of Section 2

Sport is a practice mainly characterised by its relationship with the rule and the norm. There is probably no sport that makes sense while being independent of any judgment of values that reflects or determines a norm. The group of ethical injunctions addressed to sports is complex. It consists of major general and universal ethical principles (respect for the opponent, uncertainty of outcome, equal chances, *etc.*) whose transgressions ultimately can have a devastating effect on the image of sports and on the sport itself. It is subject to continuous and progressive enlargement of the implementation of these principles (equality, parity...) as other social fields, but perhaps expectations in the field of sports are particularly strong. A reflection upon these responsibilities appears to be especially necessary in these conditions.

Section 3. Responsibility and Institutions: The Search for Remedies

To prevent transgressions related to rules and ethical norms (§ 2), the chain of responsibility concerning those involved in sports and its peripheral activities must be established. This applies to individuals (athletes, spectators, bettors, and educators) and the institutions or organisations (clubs, national or international bodies, betting operators, governments, legislators, police forces, and politicians) involved in the world of sports (§ 1).

§ 1 The Individual and the Collective Aspects of Sports

Although individuals are not immune to liability, it appears that they are caught in a group of institutions and organisations, whose ethical benchmarks or goals are more or less consistent, which makes it difficult to classify responsibilities as those only concerning athlete, those concerning the institutions, and those corresponding to intermediate cases (A & B). Should we expect progress in relations between agents of various institutions (C)? How do we ensure that those who perform a function in organisations will respect or promote ethics (D)? How can we ensure that the ethical goals of institutions are clearer and more consistent (E & F)? These are the major issues in the articulation between the individual and the group.

A. Dimensions of Responsibility

The problem with *responsibility* in sports ethics is polymorphic. Much attention today focuses on its relationship with the good governance of institutions³⁰⁵ and financial matters. We will consider the different goals of sports organisations in a widely simultaneous manner because it mostly concerns setting some guidelines for ways to address the various stakes. The aforementioned article by Barrie Houlihan *mentions three objectives sought by sports organisations*.

The first objective is the *promotion of the sports goals themselves*, namely success in sporting events. These meetings must convey the values associated with sports, which are beneficial to the public's education, by reflecting a positive image of human activity in general and of the efforts of famous individuals.

The second objective consists in *conveying a culture of trust, honesty and professionalism*, reflecting what is particularly expected from the athletes themselves.

The third typical objective is to *ensure that the structure itself resists and persists* (a goal that can in many ways be compared to major political concerns with regard to the permanence of the order of human activities³⁰⁶).

Although these three goals seem *a priori* to be convergent, they can actually lead to contradictions.

This is the case, for example, for the first two objectives. The sense of obligation to succeed may involve abuses in an attempt to comply with this requirement by taking the risk of not fully satisfying (or even failing to satisfy) the requirements of trust, honesty and professionalism. The issue of the reciprocity of the obligation of accountability is raised here³⁰⁷. If sports federations are accountable to international federations, the latter must also be held accountable. Indeed, in the presence of a hierarchy of organisations, the issue of the chain of responsibility comes up and relates in many ways to that of the distinction between collective and individual responsibility, since the establishment of individual responsibilities in an institutional context, inevitably gives importance to the links established between each individual, the power or advice centres to which it is connected.

³⁰⁵ Issue raised by B. HOULIHAN, "AGGIS: *Accountability and Good Governance*", published on the *Play the game* website, 11 January 2013.

³⁰⁶ See on that, considerations of doctrinal history, particularly relevant, X. PAPAIS in his article "La folie sacrée. Délire et pouvoir selon Hume", in: E. CATTIN, L. JAFFRO, A. PETIT, (dir.), *Figures du théologico-politique*, Paris, Vrin, 1999, pp. 175-227.

³⁰⁷ On the relationship between reciprocity and fair play - as heard in the ethics of sport - and the demand for justice, see "J. Rawls' *Justice as Reciprocity*" (1971), Chapter 10 in: *John Rawls. Collected Papers*, (ed.) S. Freeman, Cambridge, Mass. and London, 1999.

A principle is respected in the manner of a principle compatible with individual autonomy only when it was adopted by consent and agreement, as Rousseau's principle states in *The Social Contract*. The well-designed responsibility comes at such a price, but once the principle is established, the duty of individuals towards each other and the reciprocity in responsibility require detailed institutional reflections. Once individual interests (power or money) diverge, some interests may definitely be hidden and individual actions could put the institutional structure in a state of weakness or vulnerability, thus going against collective interests; this gives a continuous interest in the figure of the contract, since it refers to a shared interest that does not necessarily cover the spontaneous impulse of everyone to abide by its terms, and is therefore likely to require the inclusion of the threat of sanctions for non-compliance with its terms.

In each case, networks of interdependence between persons must be carefully established, in particular the consequences of the actions and possible alliances on the lives of others. This is necessary to be able to specify who should be held responsible for what, to whom, for whom, by what means and for what purpose.

In addition, in order to reconcile all the requirements of the various organisations and institutions, when there are several, there must be compromises on the inter-institutional level, and this causes specific problems as communication modalities and argumentation are generally very different from those that characterise "face to face" social relations between individuals. Understanding the relationship between the functioning of the system of accountability, the means by which transparency is determined, and the organisation of legal and moral subordination relations must be established. As such, one can look into the articulations and forces that are mechanically opposed to the original objective of clarity and honesty.

The harmonisation of values between various sports organisations involves, in practice, work that requires mutual understanding and agreement on the concepts as well as negotiation efforts. This may appear necessary when one wishes to establish a common basis for communication and argumentation.

B. Practical Aspects: Organisations and Issues of Responsibility

Is the establishment of responsibilities counter-productive in terms of relevance to the original purpose of the organisation, that is to say, the promotion of the sport itself? This concern often arises in connection with the proliferation of sanctions or supervision, which result in some cases, in diverting the attention of professionals and the general public to issues that should remain subordinate, as they are not directly related to the essential characteristics of sports practice (although these issues are also intrinsically important - in a perspective other than sports - and could grow in importance to become a major point of focus). How can we render a device for accountability sufficiently "attractive" to obtain the consent of the international federations, for example?

This practical question is also a stake for progress in the establishment of an acceptable sports world ("liveable" in other words). The dispersion and the occasional competition between decision centres complicate the task in the world as it is. Thus, the unification of various actors of the sports world system seems necessary for cleansing behaviours and defining norms useful for the functioning of the system at a collective level. With this in mind, it is important to seek to materialise responsibility concerns outside the scope of a purely coercive system. It is necessary to move towards an improvement of the conditions of practice or exercise, while ensuring beneficial consequences for the athletes themselves. The issue of inter-organisation arises here as well because if the general organisation of sports bodies was clearer, harmful practices to sports and its *ethos* would be more easily controllable.

The issue of individual responsibility relative to collective responsibility involves studying the individual motivations that push people to act. Identifying a set of anthropological and pragmatic motivations that may be caused by external pressure, thus pushing peoples to act in a certain way, might indeed reveal action motivators for groups. The complexity of social structures, whether political, public or private leads us to question the chain of responsibility.

It is important to define, in an organisational context, regarding a multitude of individuals occupying specific functions in a system, who is responsible (for what, to whom, for whom, by what means and for what purpose).³⁰⁸ It seems pertinent to study the motivations that each person has, thus risking not going in the direction of common goals or risking harming their pursuit. The division made by Norbert Elias and Eric Dunning on key groups seems relevant here: players-opponents, on one hand, control agents (referees and judges), on the other, and finally, spectators. But a sort of "meta-system" plays an equally important role in the group, which consists of clubs, organisers, administrative and legislative bodies, *etc.*³⁰⁹ The study of problems associated with this system thus appears necessary in order to understand the stakes between the individual level and the collective level.

One of the key issues for sports organisations, as with any organisation for that matter, is funding. Funding is often provided by "sponsoring" which has many and varied origins, and sometimes even opaque origins. The magnitude of economic and financial issues in contemporary sport makes these issues quite significant in terms of organisation and communication. Performance most definitely interferes with these issues, as most athletes and organisations know that performance is a *sine qua non* condition for obtaining certain grants. This leads to pursuing performance for reasons other than reaching a high level of performance, and in some cases it might lead to the use of sometimes occult systems to achieve the expected financial results. The issue of performance is linked, of course, to the problem of doping which is a banner for cheating and a major source of various health hazards.

³⁰⁸ B. HOULIHAN, "AGGIS: Accountability and Good Governance", 11 January 2013, "Play the Game" website.

³⁰⁹ See N.ELIAS, E. DUNNING, *Sport et civilization, la violence maîtrisée*, Fayard, 1986 (-1994), Chapter 7, p. 284

C. Recognition of Collective Breaches of Sports Ethics

Traditionally, in the ancient Olympic Games, all kinds of cheating and disloyalty were severely punished and reprimanded (whipping, paying of a fine, erecting statues of Zeus on which were written the names of cheaters, on the route taken by athletes to go to the stadium³¹⁰).

It is important to point out the following fact: if the athlete is punished because of the shame he inflicts on the city he represents, he, and he alone, is held responsible (the only one to answer for his actions) in case of established acts of cheating. But organisational systems developed by societies vary through time, due to historical, political, and social contexts. Therefore, one wonders nowadays about what makes the issue of responsibility more complex and more difficult to solve.

To do this, one should take for example the most significant organ in terms of organisation and possibly intrinsic complexity, namely the International Olympic Committee (IOC).³¹¹ It is quite interesting to note that this organ, founded in 1894, was only given its current legal status in 1981. Until then, the IOC had no legal status and could not respond to any action on behalf of the organisation, nor, conversely, to demand account from anyone, in its own name.³¹²

In this sense, the framework proposed by the IOC only had, until 1981, an organisational role. Since then, it has become a legal entity that can answer to its actions, but remains an independent association and an international non-governmental organisation.

Although the inherently international nature of its prerogatives and functions enables us to understand this last point, it is important to question the relevance of the political and financial independence of the structures, *vis-à-vis* governments. Regarding issues of corruption, as was the case with the 1996 Salt Lake City Games scandal, it might be beneficial to link the IOC to an organisation of governmental or intergovernmental type (such as the UN);³¹³ but on the other hand, its political, or at the least diplomatic neutrality, allows it to exert some pressure on the States that do not comply with the principles set out in its Charter. For example, one may mention the requirements of peace and respect for human rights set out in the Olympic Charter, even though they were not implemented at the Beijing Games in 2008, which then led to strong protests worldwide.

³¹⁰ See Y. ROUCAUTE, "Sport: Sens, menaces et châtements", *Cahiers de la Sécurité* No. 11, *Sport : risques et menaces*, INHESJ, January-March 2010.

³¹¹ Hereafter IOC.

³¹² P. MORATH, *The IOC in Lausanne 1939-1999*, The IOC seeking legal recognition: the role of Lausanne and Switzerland, (ed.) Cabédita 2000.

Assuming, therefore, that a criticism made to the IOC for the latter to answer for its actions, the applicant must send a request to each of the members of the committee individually. Similarly, if the IOC has a complaint to be filed, it was necessary that each of its members deposit a complaint individually in his own name.

³¹³ The UN is actively involved in the promotion of sports as a means for development and peace through the UN Office for Sports (*source*: European Olympic Committee), but there is no relationship of subordination between national or international sports bodies, and the UN.

But there is tension between universal principles claimed by a group and the concrete elements that allow this group to exist. The IOC, for example, is based, *a priori*, on the principle laid down by Robert Philips in his theory on stakeholders, in which he states that it is necessary for an organisation to have its own ethics, characterising of what distinguishes it from a nation-State or an individual.³¹⁴

The relationship of the individual with a group reflects the relationship between individuals in an organisation as parts of a whole, on the one hand, and the parties, acting outside the system, but in connection with the whole. If the question of responsibility arises, it is important, first, to define the scope within which these responsibilities fall. Sport, like any domain, is made up of a complex set of stakeholders, each with different personal and individual interests. Thus, the reason for which the athlete wants to "win" is not the same as those for which his coach wants him to win. The motivations of the club will also be different, as well as those of the community, the nation (in the case of international competitions), and those of the sponsors.

In this sense, one can, following the ideas of Michel Crozier and Erhard Friedberg, "put in question the very notion of "common objectives" whose existence we assume too easily" This idea, as the authors say, introduces the observation that in a given organisation, however cohesive it may be, each person pursues a goal of his own", according to their function."³¹⁵ The imperfect alignment of purposes is accompanied by a legitimate question about the idea of an explanation based on the reference to "function." Tasks performed by humans are almost never purely "functional" and less so in sport, because of the multiplicity of objectives and values at stake for each participant to competitions.

Moreover, one of the questions to be asked concerns the concrete limits between the different organisations, starting with those that result from the separation of different disciplines (which very often have nothing to do with each other).

Although scandals exploded in the late 90s concerning doping in road cycling, in reality this is partly due to globalisation, which also affected sports. Indeed, it is well known that doping was viewed, until the outbreak of the scandal, as a completely separate aspect of this discipline, for runners seeking to obtain results that would allow them to secure a professional contract.³¹⁶

Did these scandals increasingly shock the public opinion because of the health risks that the runners took or because cheating acts were established? Where exactly does the collective interest fall in these matters, can it be defined? What drives a person to act often seems in conflict with the interests of the group, the latter, being difficult to determine.

³¹⁴ R. PHILIPS, *Stakeholder Theory and Organizational Ethics*, Chapter 3, "Why Organizational Ethics?", "ReadHowYouWant.com" website, 2011, p. 85.

³¹⁵ M. CROZIER, E. FRIEDBERG, *L'acteur et le système*, Chapter 3, "L'organisation comme problème", p. 93, éd. Point Seuil, 1977.

³¹⁶ For a detailed analysis of this issue, see B. FINCOEUR, "La question du dopage à l'aune des étapes de la carrière cycliste", *Cahiers de la Sécurité*, No. 11, "Sport : risques et menaces", 2010.

A distribution of the different types of responsibilities may be made, to distinguish, for the clarity of our analysis, between ethical responsibilities and those unrelated to ethics.

Some goals presenting an ethical aspect, such as the promotion of health in (and possibly by) sports are consensual. However, the responsibility and the goal of an athlete to lead his team to victory, do not seem to be ethical, in a strict sense, but rather, relates to challenges inherent in the activity practiced. If considers that the player, as if he was contractually bound - and, in professional sports, this is indeed the case –has to do everything in his power to lead his team to victory, this can be considered as an obligation concerning the means, to achieve this victory, in the legal sense; the ethical question, will focus on the types of "means" that one is likely to use.

D. Ethics and Role Specificity

The responsibility of referees and judges seems, by definition, to be that of exercising fairness and accuracy in judgment. The responsibility and the goal of the organisers, clubs and other parties, such as sponsors, is to ensure the regularity of administrative and financial procedures for which they are in charge. By extension, all these stakeholders have a responsibility and aim to ensure the exemplary conduct of sports which is an element that has been present since ancient times.

The word "objective" is associated here with "responsibility", since the issue here maybe called "positive" responsibility. The other face of the latter is a kind of "negative" responsibility, for each player, to be careful not to act in a manner conflicting with a certain ethic. On the one hand, performance requirements, and, on the other hand, ethical requirements, which may conflict with each other, enter into account.

E. The Collective Goal of Remedying Deficiencies in Sports Ethics

Should collective responsibility rather than the aggregate of individual responsibilities be privileged for the determination of the responsibility of a group, insofar as this would harm the fundamental role of the individual in the organization? Conversely, should one pay attention to the thesis of Michel Crozier and Erhard Friedberg, according to which "an organisation exists, not because of, but rather, despite the efforts of its members³¹⁷"? The survival of the organisation is a purpose for its members, but it also constitutes, for the individuals who form it, the means of achieving their own individual goals, according to the same authors:

"The individual stakeholder is a free agent who preserves, in all his activities, and not only at the time of his initial commitment, his capacity of calculation and choice, that is, his ability to develop strategies that, from his point of view, are rational."³¹⁸

³¹⁷ M. CROZIER, E. FRIEDBERG, *op. cit.*, p. 94.

³¹⁸ *Ibid.* p. 96.

One of the difficulties in the sporting world resides in the complexity of its organisations, which intersect on an international level. International federations include the national federations but beyond the symbolic integration, the initial stake remains to secure a win on behalf of a country or a nation: in the contemporary world, it is possible to distinguish between "PanHellenic" goals and the specificity of each city of ancient Greece. In addition, individual strategy in terms of decisions or actions may differ depending on the scope of the event to which it belongs (national or international meeting, for example). An actor may find it advantageous, at a given time, to respect the constraints imposed formally or to condemn any behaviour that contravenes to these constraints, while, at another time, he may find it advantageous to circumvent the rule. Sport, as it is organised around the world, gives stakeholders leeway to act more or less in accordance with the rules.

Doping, for example, may be of interest to an athlete who is under pressure (non-coercive) to perform well in order to retain his status as a professional athlete. In addition, such conduct can also be of interest to a president of a club who wants his team to achieve good results at important sporting events in order to obtain funding from sponsors. In other words, individual interests independent of one another that have disparate reasons can lead to convergent acts that create problems for the "sporting world" or for a discipline. Here, the issue of the accountability for actions, and the issue of educating on the subject of responsibility come up.

F. Sports and Violence: a Collective Responsibility?

Sensitivity to violence in human society evolved over the centuries, owing to political, social, and historical reasons. Thus, by implication, disciplines and physical activities involving a certain degree of violence evolved and became sports activities governed by rules. For example, boxing in England became subject to rules such as abstaining from using the legs to hit, the use of gloves, and the introduction of weight classes, *etc.* This is done in order to ensure better protection for fighters, that is to say, greater security, and thus, to reduce the level of violence.

Norbert Elias looks into the "sportification" of hobbies, which he considers as a manifestation of a process of civilisation. The twentieth century is a century that witnessed the generalisation of sporting events (non-violent and non-military), resulting in peaceful competitions between States. However, as noted by Norbert Elias, the perverse effect of this phenomenon is that it may generate new forms of violence (endogenous from the athlete's point of view) in the form of overtraining and doping for example:

"The pressure and the escalation of athletic competitions among countries often lead athletes to injuring themselves by exceeding their limits or by taking anabolics [...]. Here, the pressure of society encouraging the athlete to control his actions and refrain from hurting his opponent leads to the athlete hurting himself by controlling himself." (*op. cit.*, p. 31)

As a catalyst for social tensions, sport helps provoke, in a reasonably secure environment, tensions that have various effects on society, thus avoiding the risks and dangers they could generate in everyday life. However, the mimetic mechanism of sports and leisure activities can sometimes cause confusion, to the extent of creating real stress and a real desire for revenge in the event of the defeat of one's team, for instance.³¹⁹

The need to protect individuals is more urgent than ever while violence in sports is still evident, even euphemised. Various incidents regularly provide alarming facts. In the football world, the Heysel Stadium tragedy (May 29, 1985) is still remembered. It is not an exaggeration to consider this a major failure to sports ethics and its teaching methods, which was, in this case, more serious than the failure of policing activities.

Conclusion of § 1

In an open society, individual adherence to a principle assumes the existence of a contractual agreement, which should be clarified. The multiplicity of institutions involved in sport makes it difficult to establish responsibilities. Progress in the organisation and the search for some inter-institutional convergence would render the system of ethical standards clearer. Finally, analysis of individual motivations allows us to search for good means of pressure and prevention.

§ 2. Sports and the Ethical Challenges of Organisation

The organisation of sport represents in itself an ethical challenge: knowing "how to organise" (collectively) is no less important than knowing "how to act" (individually). However, one should not underestimate the complexity of the relationship between the design of the organisation, its social uses, and the evolution of the surrounding society. We wish to emphasise the forms of such complexities in sports.

A. Dynamic Aspects: the Transformation of Sports Practices by Rules

The rules of different disciplines change over time. The same applies for conduct that accompanies their practical implementation. One must take into account here the consequences of the representations of the nature of the rules or norms. Considering that human deliberation is finalised to some degree (even when collective), the representation of what constitutes an appropriate set of rules has a very close relationship with the effective selection for the implementation of such rules.

Therefore, a descriptive approach to the evolution of ethical norms and rules of sports disciplines, while tracing their process of transformation, and highlighting recurring forms of rule selection across history, is not enough (even if it is valuable). The element of intentional change on the basis of the representation of problems along with an examination of possible solutions should be added.

³¹⁹ See N. ELIAS, *Sports and Civilization*, *op. cit.*, p. 56.

The identification of problems and solutions is, however, rather complicated. The tension (interesting) that is present in sporting competitions often involves a kind of game around the transgression that renders illusory any model of sporting ethics that claims to follow a mechanical identification of correct behaviour. In addition, the introduction of new rules in response to problems is often an alteration of the problem rather than a simple solution. For example, some rule modifications, such as those allowing referees to consult video recordings, solve some problems, but create others. In this sense, the great football player Michel Platini is right in saying that football would not be the same with the inclusion of video involved consultation. Let us consider also the example of the "penetrating maul" in rugby: this technique involves players who advance in group to protect the one holding the ball. Formerly, it was forbidden to take them down, but a few years ago, the rule was changed to allow this (the decision was taken to improve the game). However, due to the drawbacks to "beautiful play", and also for security reasons, the old rule was reinstated.

These phenomena confirm the complexity of the relationship between the system of rules and sports problems, with which rules are correlated. The intervention of ethical scruples (the desire to reform rules or related practices for ethical reasons) cannot escape this complexity. By wanting to improve, we could be making matters worse. The introduction of changes for ethical reasons may always have unintended effects which, although resulting from intentional actions with good justification, could only be deliberately chosen if we were able to predict them. Risk assessment for institutional changes is proven to be decisive. Of course, it is not possible to rely on the possibility of causing adverse effects to justify conservatism in all circumstances.

B. Challenges resulting from Sports-Related Activities

The problems of fixed matches and rigged bets indicate a shift of stakes in sport. The initial question of "who is the best?" was sometimes replaced by an issue of simple prediction, based on the calculation of chances that can be combined with the assessment of the profitability of the underlying investments: "Who will win?" Due to the effect of such a shift, the motivations for effort are not the same. *"Winning" involves less constancy and less of the culture of virtues, when compared to the desire to "be the best." It becomes dangerously tempting to divert certain rules to achieve a desired result,* as the means of obtaining them become more difficult to monitor. "Sponsorship", in this sense, may change the contours of sports stakes. How can norms be developed (by what means and for what kind of norms) to help overcome, or at least accompany in a beneficial manner, such situation changes?

Levers for actions should, in any case, be established by the sports medium itself. However, athletes should not be the only target-group. For example, one must also consider norms applied to sponsors as well as entry fees for advertisers. The principles that need to be mobilised (respect, equality, universality, fair reward for effort) present a close relationship with educational ideals and civic education.

Therefore, elementary and secondary education is a privileged context in which norms can be taught. This can be understood in an instrumental way (a good education prevents problems), but one must also recognise that education is likely to maintain the essence of criticism and self-reflection on norms, taking into account the empirical facts, contributions of biomedical sciences and the requirements of ethical argumentation. The involvement of education in ethics is much broader than the prevention of *offenses*.

C. The Plurality of Sports Institutions Producing Norms

In the event of a conflict, who should decide the outcome? Should the politics and levels of an international organisation (UN, for instance) be involved? This track appears convincing when normative expectations related to sports go beyond the framework of sports. Contemporary governance models, such as the contractualism of the stakeholders in the management or the "reflexive governance" in political philosophy, emphasise the importance of acceptance and appropriation of norms (or principles of action) by the individuals subject to the authority. It also typically involves the authority that materialises the standards (or principles) by giving them an objective validity and a certain degree of behavioural efficiency (a causal impact on the selection of conduct).

But the assessment of risk by several institutions brings back the issue of the mutual compatibility of norms and judgments of multiple origins. How can competition between various organisations around issues of ethics be avoided, knowing that they may have equal legitimacy in non-exclusive areas, but still protect principles that are incompatible with one another? The problem is especially visible when it comes to ethics because ethical principles often present a "transversal" aspect in many activities, in a way that they may be of interest to many institutions. The issue of governance models involves the knowledge of the evolution of real authority (and the inevitable migration of authority), taking account of the authority that gives institutional reference to ethical principles and the institutional efforts to put these principles in practice.

D. Diversity in Norms

There is, historically, a desire to preserve the amateur spirit of competitions and sports ethics remain, to a large extent, issued from amateur sport. However, the mobilisation of demand in moral resources that are fully and commonly recognised as affecting everyone unconditionally, although inherent in amateur sports in a form known to all, is not necessarily found in the same framework as that of professional sports. In particular, the themes present in business ethics only directly apply to this field. The establishment of ethical norms should be capable of being adapted to different contexts.

In general, it is desirable that this be done in accordance with publicity requirements and in a way that enables people to understand the relevant norms in the cases encountered. By differentiating between amateur and professional contexts, it may be possible to come to defend contrasting approaches, depending on the context, of rule acquirement. Limiting problems can also be encountered. For example, to what extent is it possible to institutionalise personalised emotional and psychological support that should be provided to athletes?

This task is definitely not easy, but the challenge is also clear: there is a desire to mitigate the potentially deleterious effects of high tension (even symbolic violence) experienced by the athlete, due to a construction, by the athlete, of an obligation to reach optimal competitiveness and victory. There is a desire to channel the negative effects related to the search of athletic performance. This goal is important, but the publicity of the associated operations is certainly a very delicate business.

E. Conflicts of Interest and Equity in Bets

If sport contains ethical issues inherent to its practices and its framework, marginal or peripheral stakes may in turn create ethical problems deemed crucial in the modern world: such is the case of fraudulent bets and control their monitoring. The staging and the widespread media coverage of sports are both causes and consequences of the significant financial stakes associated with sport and that constitute a perpetual source of distortion of the usages in sports practices. However, this issue cannot be summarised in terms of structural aspects. Beyond and below the economic and financial dimension of professional sports, arises the question of the *motivation of the athlete as a person*.

What is the *evaluation method of interests* that may underlie the decision to scuttle a sports performance on high levels of competition? Some cases of sports bets suspected or established as fraudulent make it necessary to ask questions related to "peri-sporting" interests. Sports bets are based on chance or, at least, on unpredictability; in other words, on the uncontrollable part of uncertainty of the outcome of a match or any sporting result, since the organisation of competitions puts competitors whose difference in level not massive enough to cancel out this uncertainty. The motives pushing bettors to make bets present the usual complexity of motives for gambling and the ratio of uncertainty is critical (it is rather the lack of game that is linked to the desire of rationalising life related to the removal of uncertainty).³²⁰ The uncertainty as to the result of the competition is normally accepted as a hypothesis –in other words, presupposed.

However, team sports as well as individual sports are subject to the risk of cheating, with, at the head of this dangerous ranking, for 2011, football and tennis, accounting for 80% of sports bets; basketball, rugby, and volleyball are the three other most represented sports in sports bets, with 6%, 4%, and 4% of bets respectively. Some cases were widely publicised in the world of sports. One of the most striking common characteristics of these cases is significant size, especially because of the reputation of the athletes in question and their level of excellence.

³²⁰ See the interesting typology advocated by Audrey VALIN, "Jeux de hasard et dépendance", Chapter 19 in: G. FERREOL, (dir.), *Autonomie et dépendance*, Brussels, Modulaires Européennes et InterCommunications Éditions, 2011.

The first question that comes to mind is that of the *degree of identification of high level athletes in their sports activities*: first, their subjective identification, but also their identification in sports by the public opinion. Indeed, when the objective of the athlete no longer resides in the internal success of the exercise of discipline, but rather in getting another kind benefits, would not the body and performance of athlete risk becoming, in mental representations, a kind of instrument serving this benefit, with the risks associated to the ethics of training? *Ipsa facto*, the athlete will leave the sports system, since he is no longer an athlete *per se* in his actual activities. He is not considered an athlete in the public eye and in this where the deception lies.

The question of means and ends comes up insistently. Athletic performance, which logically should be an end in itself, is here reduced to the status of a means to reaching another end that is external to the logic of sports. The issue of the capacity or power of the players, doubled by that of the ability to discern, is relatively sensitive in this case. To establish the fact of losing voluntarily, it is necessary to have a fairly accurate idea of the real capabilities of the players in a match like the one in question. This is not an easy task, especially since the relative strength of teams can be assessed with difficulty regardless of the circumstances and events that are specific to each match. The contingencies of a match between two teams on a particular occasion cannot lead to the establishment of a general rule.

The issue of an athlete's *attitude to money* emerges in line with that of the attitude to power. A football player –this example is chosen as the discipline where this issue is most obvious and most significant today –makes a contribution that "weighs" a certain amount of money, and thus becomes a bargaining commodity between clubs. By agreeing to voluntarily lose, he once again becomes master of the value of his game, by reinstating free will into his actions. Thus, the underlying motivations may paradoxically lie in a sense of assertion or autonomy. It is moreover a factor of relativism, in common perceptions, of the seriousness of such actions.

Indeed, losing voluntarily and applying one's abilities in the direction that is not expected may be a way of *marking the limits of the subjugation of the activity (which is "just a game" after all) to an economic logic*. But of course, in reality, this attitude can lead to unacceptable economic interests, and even money-laundering schemes.

In the philosophical background, it seems legitimate to articulate today, as was done by Stéphane Chauvier, a fairly general opposition between the traditional perspective of associating the game (as did Kant in his *Critique of the faculty of judgment*) to "the idea of an endless activity, of an activity driven by the simple pleasure of doing the activity or for what it provides",³²¹ and a more inclusive perspective, more suited to a number of important cases, according to which:

³²¹ S. CHAUVIER, *The Game*, Paris, Vrin, 2007, p. 15.

"The objective of a person who decides to play a game is to play this game, and while playing the game, the person's objectives become the goals that this game assigns. This person may also have personal goals that lie beyond the framework of the game, such as making a living, if he is a professional player, or to flaunt, with a little vanity, his intelligence if it is a "cerebral" game."³²²

In such cases, despite the diversity of highly detailed stakes that drive the athlete to adopting a behaviour contrary to sports ethics, cross-anthropological questions are emerging. They deal with violating the ethics principles inherent to an activity that the player has, in principle, voluntarily chosen, and often with passion or in response to a calling. *Anthropological issues* are not minor in this case since it is the value of human activities that is being put in question. This is what gives importance to the ethical reasons that may lead a person to repudiate the system that he has decided to embrace at the price of significant efforts, in a fashion that borders on denial of his own history. These difficulties, however, are not sufficient to justify the deployment of a system of threats, sanctions, and constraints that would force athletes to demonstrate a specific level of performance, which would be a violation of the autonomy of persons, as long as there is no physical risk to others.

Thomas Hobbes, in his book *Of Human Nature* (Chap. IX, § 21),³²³ in order to understand the passions of man, compares human life to a race, but invites us to assume that "in this race, there is no other purpose and no other reward than to get ahead of one's competitors." However, after reviewing the various postures and passions that may be encountered once one finds himself in a competition, he states that "to abandon the race is to die". How and why can an unsportsmanlike motivation be so strong as to push the athlete to accept dying, in a way, by abandoning the pursuit of victory without a struggle? Of course, one cannot neglect the issue of financial interest that may cause the athlete to be derailed. The pursuit of wealth is an important motivation in human behaviour, which can lead social stakeholders to commit inappropriate actions in light of the true purposes associated with the initial choices that give meaning to a vocation. This can result in a situation of effective dependence on secondary rewards, thus leading, *ipso facto*, to the loss of free choice associated with mastering an activity that is in itself standardised and finalised.

A 2008 report from the University of Salford, UK, (*Risks to the Integrity of Sports from Betting Corruption*), describes the trade-offs that come into play when an athlete is deciding whether or not to accept manipulating a match. The criteria taken into account are: the probability of detection, the current wealth of the athlete, the probability of success of the manipulation, financial gains if the manipulation is successful, the financial penalty that could be imposed in case of detection, the value of the loss of reputation if the infringement is discovered and proved (moral risk), and the pleasure of transgression or the tendency for guilt. These criteria allow us to understand the different motivations depending on the position of the athlete when deciding whether or not to participate in a fixed game in order to satisfy non-sporting interests.³²⁴

³²² S. CHAUVIER, *op. cit.*, pp. 15-16.

³²³ Babel Publishers, "Les Philosophiques" collection, 1997.

³²⁴ On these criteria, see *supra* Part 2, Title1, Chapter 2, Section 1, § 5 and Section 2.

It might be interesting to compare these pragmatic criteria of successful action to wider concerns which include intrinsic motivations. This should contribute to the general discussion on ethics in sports where problems render sports (as to its internal purposes) an accessory to a universe of financial interests around which everything else revolves. Professional sport is akin to a productive economic activity, but the interest we take in this "production" is not indifferent to honesty. Besides the maintenance of the feeling of guilt, the process of teaching correct norms of behaviour can be based on the culture of the interest in the game and respect for the game.

F. Renewing the Governance of Sports?

By bringing together some of the insights that we thought we could provide, we find it necessary to insist on the ethical limitations of the self-organisation of sports. These limitations are encountered in the presence of high pressure, significant interactions with politicians, spontaneous competition between the organisational or regulatory institutions, and the occasional collusion in the betting domain with criminals. We must also emphasize *limits, in terms of efficiency and sustainability, of a model of progress (in ethical direction) solely based on monitoring and repression. Education and a reflexive appropriation of principles are just as important, if not more so.*

According to a widespread pattern, monitoring and repression occur in response to shortcomings identified in spontaneous interaction: limits of surveillance and reliable communication of information, removing intrinsic motivations, (unwanted) shift of the public's attention from the sport itself to the "affairs" related to sports. But this model has to be supplemented by positive dynamics that give activities meaning thanks to the support of principles gradually recognised as constituting the interest of business and the media coverage for the public. *In drawing attention to the relationship between the enactment of norms, the reflection of agents on their own behaviour, and contextual conditions of social interaction, theories emerging from governance should certainly be examined in detail in this field as they were in recent years, for the regulation of information and communication technologies.*³²⁵

Conclusion of Chapter 1: Directions for the Search and Advice on Sports Ethics

To conclude, let us summarise the main points treated. We sought to understand the articulation of ethical issues in sport (with respect to the nature of the discipline, moral principles, and respect for rules) from an individual and collective point of view. It became necessary to consider the links between the practices inherent to the sport itself and the secondary practices (financial issues, bets).

³²⁵ See in particular, for a thorough summary of recent developments: J. LENOBLE, M. MAESCHALCK, *L'action des normes. Éléments pour une théorie de la gouvernance*, Université de Sherbrooke, Les Éditions Revue de Droit, 2009 (1st ed. Kluwer 2003).

We studied the relationship between the values which are assumed by sports and expected behaviours, with respect to these values. In this regard, we considered the athlete as an individual guarantor of sporting values and also the rules of the sport as motivators for the respect of the principles that sports is supposed to convey. Simultaneously, we had to take into account organisations because they define the institutional framework that ensures compliance with the rules (of the sport) and principles (ethical and legal), thus aspiring to safeguard the integrity of human practices in this field.

We sought to clarify the conditions regarding responsibility, on the individual, as well as the group levels. The athlete remains an individual, motivated by personal interests, but also burdened with a responsibility (which seems like a pair of shoes that are too big to fill...) linked to his role of representing a discipline of sports in general and the educational values associated with it. The fate of individuals is, however, closely related to the tasks of clarifying the rules inherent to sports and games ("the values of sport"), which must go through a fair assessment of their impact on behaviour and their resulting consequences (e.g., on health, education, or retraining). Dynamic sports ethics cannot be conceived, outside of the necessary tasks of analysis or research, without a contradictory practice of deliberation on these matters in related associative or professional domains, but also in political circles, in the press, and finally within nations in general.

The issue of the responsibility of organisations, in avoiding risks of fraud and abuses in relation to secondary rules (fraudulent bets), raises acute questions concerning collective responsibility, particularly regarding the imputation of acts of fraud and, in terms of ethics, to the assessment of remedies for a social organisation that lost its way (beyond the negligence of individuals with reference to the regulations or laws of the country). It is therefore necessary to try to preserve the spirit of sports through organisational changes, which stand as barriers against fraudulent bets and game-fixing.

These issues should lead one to address the possibility of rationalising the organisation of sports on a local, national, and international level, in a way that does not arbitrarily reduce the diversity of experiences and their expected extensions or the spirit of sport as understood from a variety of perspectives, reflecting the diversity of cultural heritage (often local). Ethics, as practiced in institutions, may have undesirable effects of standardisation, but this defect is not inevitable. The key is to take into account the individual (the athlete), the culture of his country of origin, and the cultural references of the organisation (local or national) in which he practices of his discipline.

In a complex multicultural environment, one cannot dream of perfect homogeneity in the organisation of sports. Arguably, however, the benefits expected from teaching ethics in a multicultural context, beyond initial education and with the view of achieving excellence in each national group. In addition, we would like to insist on the significance of educating athletes in general, and specifically training programmes that should take place (or be expanded if they already exists) for sports professionals.

Of course, the manifestation of an ethical concern and its institutional extensions do not take place in a vacuum: sport is essentially a regulated activity. The ordering is almost always, in some way, a reordering. The use of a historical and sociological understanding of evolution, with its steps and trends, seems essential when paving the way for meaningful change. Beyond "moralisation", one must consider the perils that always involve, in particular contexts, the questioning of the issues and motivations, as perceived by individuals (both from the point of view of the athlete and within the sports community in its broadest sense). Rule changes are sometimes necessary, but we must never lose sight of the fact that in a world like that of sports, their effects may even upset the meaning of the activity.

Sports development has shown, early in history, initiatives of spontaneous responsibility linked to a heightened awareness of traditions. However, regardless of the prestige of the purposes or traditions, the usual erosion of principles reached the constituent aspects of sports practices and compromised both their interest and exemplarity. We especially emphasised that it endangers interesting forms of close association (albeit socially constructed rather than being related to the intrinsic "nature" of sports) between sports activities and certain social values.

Sports institutions sometimes give the impression of a delimited closed society, while ethics are universal expectations. Like legitimate expectations that are formulated today about transparency in the finances of sports institutions and on the modalities of governance, the fight against the excesses observed, involves the disruption of ingrained practices or traditions. The risks of weakening the system should also be taken into consideration but must sometimes be assumed.

RECOMMENDATIONS

The ethical approach that we developed makes it impossible to be satisfied with a purely repressive approach to the manipulation of competitions. It draws attention, first and foremost, to the role of the endorsement of rules that appear as integral to sports activities, without contradicting certain creativity in the usage and evolution of rules. It is the respect of rules that allows sports practices to seriously articulate with more general social values. In the same context, it emphasises the role of education in the implementation of rules that guarantee the place and value of sports in the lives of men. It suggests that the complexity of the organisation of the world of sports, with the resulting uncertainties as to the allocation of responsibilities, does not only constitute a problem for the effectiveness of decision-making, but also an ethical problem that represents a threat to the integrity of sports.

It is not the direct purpose of this chapter to make recommendations. However, following the discussion above, we can emphasize the following three points:

Recommendation no. 1: Promoting “ethics of discussion”.

The sporting world’s (salutary) reaction to the development of the manipulation of sports competitions and other “excesses” consists in charging managers or executives with dealing with these issues. There are more and more *integrity officers* in federations, large clubs, ministries of sports... It can be expected that these officials are networking to communicate on the subject, to fuel the ethical debate, and to make it operational. One can discern and prepare to promote the following developments:

- Such a network, faced with the practical problems met by its members and with their questions, could stimulate research published by several specialised international journals. This research should fuel the debate by helping to refine and resolve difficult arguments that are hard to avoid; it must receive the support of university research;
- A major operational development would be that its members are involved in the education of young sportsmen and continuous education of all actors in the world of sports.

Recommendation no. 2: Promoting educational methods that incorporate debate.

The education and training programmes targetting stakeholders in the world of sports - which are currently growing rapidly – refer to legislations and rules, highlight the stakes involved in *offences*, provide information on the methods for approaching organised crime, *etc.* They should make as much room as possible for a phase of discussion among participants. When a case affects a particular sphere of the sporting world, the *integrity officer* must be able to organise meetings to discuss the problem and to promote cooperation in planning sessions of structured dialogue. We advise the use of current methodologies for structuring decisions through discussion and by taking into account different viewpoints. Spreading awareness in the world of sports regarding the procedural aspects of consultation seems to be primordial.

This is how stakeholders in the world of sport will acquire the values that will preserve and defend the “sport”, that is, their common good (that is threatened by abnormal individual behaviours) against collective excesses.

Recommendation no. 3: Promoting an inter-institutional exchange for the contribution to ethics.

The network that we discussed, by explaining the ethical issues and by encouraging the development of relationships between various sporting institutions, should contribute to the clarification of ethical issues and to promoting the exchange of experiences and good practices. Without expecting homogeneity which, in fact, might not be desirable, it is hoped that a better understanding of ethical rules and standards would lead stakeholders, in the sporting world, to better understand appropriate behaviour.

Thus, (flexible) charters or ethical guidelines may be proposed by the various bodies. Harmonised work, when possible, is likely to allow for a generalisation and extension of the scope of existing projects, which tend to concern the broader public (through the IOC, FIFA etc).

Chapter 2. Construction of Discourse on Sports Ethics

The sociological study of several ethical mobilisations that took place in the international sports field between 1945-1975 shows how actions recalling the principles of "good behaviour" are organised in the sporting world (this can guide current projects).

We conclude that resorting to the law and to rules for combating the manipulation of sports competitions, as advocated by *The International Centre for Sport Security* (ICSS), should be accompanied by a call for mobilisation on the subject of ethics in sports.

This type of ethical mobilisation cannot be engaged successfully except by taking into account the general rules for a call for values³²⁶ and by understanding the specific operating modes of the social sphere in question, in order to generate an ethical mobilisation adjusted to the values and the configuration of sport-specific relationships (sociologists can help to understand this aspect).

Stakeholders and Strategies of Ethical Mobilisation. The analysis proposed by humanities and social sciences that probed into the world of sports is intended to clarify decision-makers on this point.

Does strategy consulting on the mobilisation of a specific social environment, in this case sports, necessarily lead to a "strategic" use of the call for ethics in sports? Practically "yes", and it should be emphasised that taking an ethical stance is a moral attitude that does not support the "strategic" spirit, that is to say, calculated and interested ulterior motives: it presupposes, instead, sincerity and frankness, that is, a way of expression that is deeply rooted in personal and collective beliefs and great transparency, which does not stand well with the creation of a "reserve" below the "expressive face" that the counsellor helps to fabricate in order to mobilise others (here we conceptualise the situation of the carrier of mobilisational motives against the environment to be mobilised, based on the model of Goffman 1971).

The creation of "enunciator groups of ethical principles" (originally generated by the activity of the ICSS) and the operations that can confer to it moral credibility puts forth a number of practical problems that the study of past and present achievements can clarify. Given concrete past experiences, what are the moral and cultural resources required of the members of an ethics committee or of a collective movement for the revival of the values of sports? What competences must they have?

³²⁶ See *supra* Chapter 1 of the same title.

In addition, what positions can such a committee or social movement take in the face of already established sports authorities? Finally, in what context can it make judgments and recommendations perceived as "credible," "significant," "acceptable" or at least "worthy of discussion" (deserving to be debated, not censored at the source).

Relationships in sports change as the world changes, particularly the relationship of the sporting world with the bodies organising sports on the one hand, and with various social forces, on the other (the field of sports is not completely independent). So many changes accompanied so many critical situations in the international sports arena: at the end of the World War II (1945), during the "Cold War", during the decolonisation of Africa (around 1955-1960), outbreaks of nationalism movements in various parts of the world (Africa, Asia, Arab World, *etc.*), with the movements for racial and sexual equality, *etc.* This is why sports organisations must apply certain adaptations. The flames of critical debates and the production of ethical principles are sparked by tensions around the poles of power in sports. They develop on the initiative of stakeholders who are in the position of challengers to the management teams in place.

The analysis of "what is not working" in sports as well as the formulation of ethical principles that should ideally inspire the behaviour of managers, as well as athletes on the field, falls to various categories of stakeholders: first, there is the established authority itself that reviews its official code (code of amateurism for the IOC; principle of fair play for FIFA, fight against racism in sports stadiums); second, sometimes a few sports champions speak on their own behalf (for example, the "Decalogue" of the Williams sisters or the writings of the black footballer Lilian Thuram); third, and most importantly, it may include reform groups that aim to reformulate the main ethical principles of sports, so that they fit the "new ideal". These groups also try to exert pressure on the authority in place to restore a moral line in the institution that is perceived as "deviant", "corrupt", and "decadent". We will look at some examples of the latter type of mobilisation, through the examples of international committees, such as an internal committee in the IOC and other national initiatives.

The objective of sociologists is to detail the processes involved in this type of ethical crisis: identifying the stakeholders, rebuilding alliances between them, determining the phases of interactions, specifying the problem, legitimatising or delegitimising powers, the role of extra-sporting authorities regarding toppling hierarchies in sports, and *ultimately* come to the result of the extensive overhaul with the return to a "normal" operating condition.

This "sociological" text shows how companies preaching sustainable ethics emerge from groups that have a double feature: a challenger *position* vis-à-vis sports authorities and established institutions, which may result in some cases in power struggles in the sporting sphere and *dispositions* to inject ethics in sports. These dispositions are acquired through education, being part of a morally active community, or personal experience (such as for black athletes who suffer from the effects of a racist atmosphere during their sports career).

Relation to Power Struggles. We do not insinuate that the drive to produce ethical principles in this domain is only powered by tensions over the power to organise sports. In addition, we are not saying that all manifestations of ethical principles have a role in power struggles.

On the one hand, ethics are also issued from major sports organisations themselves, from the IOC, FIFA, and other international federations: federal groups support ethical rules in their statutes.³²⁷

However, some ambiguity still exists regarding the self-reformation of institutions: if deviation or corruption results from a certain institution, is it not able to provide corrective forces to redeem its own deviation? This is a question that applies to many other institutions, for instance schools. They are considered as a place for the production of social inequality, and schools would carry out operations to rectify the resulting effects by trying to compensate for the handicaps that they themselves have created. The sociology of organisations shows that a positive answer can be given to this question, provided that we consider the institution as a composite entity, which is stratified and includes elements of different types and specific social relations, where each may, in a way, act differently than others.³²⁸

Another case in point is the ethical production of groups or personalities that are distant from sports authorities and that are not contenders for governance in this domain. These stakeholders get involved when heated public debates about refereeing perceived as unfair, a doping case, an arbitrary selection process of a national team, *etc.* is involved. These groups or personalities express ethical viewpoints set up long ago, but they only have a brief opportunity to express them, that is in a framework of public debate. Some may sign a book, develop in-depth analyses and spread their views on a wider scale (the Williams sisters, African American tennis players, see below). Nevertheless, as long as these actors express their views in person, they establish landmarks of ethical, but they do not instil them in the foundations of institutions. Indeed, given that they are unrelated to power struggles and excluded from positions of sport governance, they have little control over the institutions that they criticise.

Thus, the groups that we analysed are characterised by a certain distance from sports authorities. This distance is "intermediate": neither "too close", as are the members who are responsible for running the institution nor "too far", as are athletes and personalities who speak on their own behalf but who are not involved in the institution. They can influence institutions without being directly involved in them, can develop a critical point of view, and propose ethical reform.

³²⁷ For instance, for FIFA: see P. DIETSCHY, in: B. ANDRIEU, 2013, *op. cit.*, p. 168). They develop these rules in response to problems that emerge with time (such as the IOC, with the Olympic Charter, developing updates on the principles of amateurism as economic pressures are being reinforced, since 1930-1950 until 1970-1980: see F. CARPENTIER).

³²⁸ P. BEZES, P. LE LIDEC, "Ordre institutionnel et genèse des réformes", Chapter 3, in: *Ce que les réformes font aux institutions*, éd. Belin, 2011.

Sociological Approach to the Social Dynamics that Produce Ethics in International Sports. Sociology considers sporting institutions as a form of organisation for activities and sporting behaviour, characterised by regulatory mechanisms.³²⁹ This means that activities can “normally” take place without having to constantly remind the stakeholders of the principles on which these activities are based. These principles are engraved in the stakeholders’ minds, through sports education. As a result, the stakeholders have established a fixed relationship with these principles. The application of these principles is carried out within defined frameworks that are practically and regularly renewed, even though random and unexpected incidents (including transgressions) can cause ripples in their application.

However, sociology raises certain questions: in what conditions, contexts, situations, and configurations of social relations can sports stakeholders explicitly formulate *sports ethics*? What factors necessitate the explanation of the principles of “good behaviour”, that is, their reminder, reinforcement, and formulation of additional rules (to give the sport more soul, a concept understood here as a symbolic addition – a touch of nobility, magnanimity, and indifference to victory - added by a gesture or action, and that gives a stakeholder, and even an institution, a form of moral excellence that goes beyond the practical and physical dimensions of the act)?

Hypotheses. We do not favour adopting a functionalist perspective that assumes that the renewed regulations and moral behaviour come as a reaction to the decline in morality of the stakeholders and to the “decadence” of sports institutions. We prefer to assume that the additional reflection in sports ethics is a result of the rising tensions within the ruling circles of sports. This tension is due in itself to competition to monopolise the power to organise sporting institutions. In the game of rivalry between current leaders and contenders to take hold of this administration, statements regarding “good principles” are often expressed. Principles – mostly tacit - that usually govern practices are no longer adequate, *offenses* are under the media spotlight and are interpreted as significant facts in the deviance of entire institutions (for example, the notion of “organised doping”). Calls for reform, along with messages indicating the incompetence of the authorities in place to carry out these reforms, are launched. Consequently, this leads up to messages calling for the destitution of the leaders.

At this point of the analysis, the contributions of philosophers to what constitutes ethics, compared to explicit moral rules or tacit regulations will be incorporated.³³⁰

Corpus. To clarify the situation between 2000 and 2010, we studied historical examples dating back to 1945-1970/80. It is worth noting that other crises in sports institutions took place either before or after this period. Our hypothesis is that the processes behind these crises are similar to processes of the older and of the more recent crises.

³²⁹ J.-C. BASSON (dir.), *Sport et ordre public*, La Documentation Française, Paris, 2001.

³³⁰ C. TAYLOR, *Multiculturalisme, différences et démocratie*, Flammarion, Paris, 2009 (1992), and E. PICAUVET Team.

Previously, historians identified a deep crisis in international sports institutions in the late 1920s and early 1930s.³³¹ Then, since the 1980s, organisational and economic changes affecting large international sports organisations compromised the ethics of leaders, more than those of sports practitioners. With the increasing power of sponsors (financiers), who are themselves very unevenly distributed across countries and disciplines, the risk that a private team or a national team supported by a sponsor will win increases. The corruption of committee members that determine which candidate city shall host the Olympics or a particular international competition, the pressures in the domain of the fight against doping by countries that have contributed the most to establish a policy against this practice, the controversies surrounding the adoption or non-adoption of principles of non-discrimination based on sexual or religious grounds, have shaken the foundation of all international sports organisations and the perceived integrity of their managers. In this context, the reminder of basic ethical principles has regularly been used in the plans to reform institutions and in attempts to destabilise the authorities in place. Similarly, in a perhaps more original fashion than that between 1945 and 1970, these challenges produce new ethical principles that cover new grounds, such as gender equality or protection against the artificial performance of human capabilities.

The Personal Ethics of Champions: Code of Conduct of the Life of the Williams Sisters

The explicitness of ethical principles by female and male champions in sporting affairs remains an exceptional form of expression.

It is based on general principles, drawn from the traditional sources of ethics, of which, first and foremost are religious ethics. The link between the source and the message sent in the sports world is complex when collective actions are developed (such as those being presented in the Pierre de Coubertin Committee, "*The International Committee for Sport and Physical Education*," etc.) because each party has a different desire in an association. However, it is more simple and straightforward in the case of an individual initiative like that of the Williams sisters, the worldwide renowned tennis players. In this configuration, the expression of principles that determine application becomes as clear as the product of the individual dispositions of the players and their position in the international tennis domain.

The message is expressed in two forms: a book and a "Decalogue", which are addressed to teens (the Decalogue is a format of moral instructions mentioned in the Bible. It was already used by Pierre de Coubertin in 1916 to address teenagers too). Women, who succeeded despite their being African American women in the United States, give everyday life tips to young people. Perhaps, they cater specifically to hopeful young tennis players; maybe they aim beyond, given their reputation. The angle of approach is large and advice is not limited to principles of good preparation for an athletic competition, but develops practical implications of all major ethical principles, such as the respect for the other person and of oneself, the significance of the struggle for social existence, the principles of loving one's neighbour, the pride of being black, etc.

³³¹ F. CARPENTIER (dir.), *Le sport est-il éducatif ?* Presses Universitaires Rouen, 2004. From the same author, "Le conflit entre le CIO et la FIFA dans l'Entre-deux-guerres. Les Jeux olympiques contre la Coupe du Monde de Football", *STAPS*, 2006, No. 70, pp. 25-39; Y. GROSSET, *Aux origines du mouvement sportif français. L'histoire d'une institutionnalisation du sport et de l'Olympisme (1887-1930)*, thesis, Grenoble University, 2010, Part IV, Chapter 3.

The sisters Serena and Venus Williams are distinguished from other champions by their education and their religious beliefs. They were raised, educated, introduced to tennis, and trained only by their father, without going to school, and had briefly attended a tennis academy. They received a dense moral education, on the basis of the doctrine of Jehovah's Witnesses. This religious faith, a sectarian branch issued from American Protestantism in the late nineteenth century, is based on a method of salvation that orients toward achieving planned control (or reduction) of body functions (sex, food, body care, etc.).

In this regard, Max Weber said: "The methods of salvation have become increasingly a combination of physical and psychological health, combined with an equally methodical regulation of thought and action. This results in a most acute voluntary control, characterised by its hostility to instincts. It involves physical and spiritual processes that guarantee the systematic regulation of a life governed by religious purposes. "Such a form of disciplinary action directly becomes a method of sports training (sporting purposes may be made compatible with the aspiration to salvation).

In addition, the isolation imposed by their father produced unifying effects and the coherence of educational principles. These principles are similar to those of boarding schools, which exist today in high level and private "sporting academies" (and imposed by monasteries in the formation of priests, some time ago). The Jehovah's Witnesses doctrine leads to "*the conscious possession of a sustainable unitary basis for conduct in life.*"

This ethical correctness sharply contrasts with the general content of the morally justified sports principles of conduct. It is all the more remarkable in its isolation and its role in forming champions.

Weber, Max. 1910-1920 (1996). "The ways of salvation, deliverance, and their influence on the conduct of life" in *Religionssoziologie*.

**VENUS AND SERENA:
SERVING FROM THE HIP**
by Venus and Serena Williams
with Hilary Beard

Below are their ten rules for living,
loving, and winning.

Sister Rules

Beware of Dreamstealers
I don't just daydream—I build a dream team.
And I don't let others steal my vision.

Why School Is Cool
Want to get ahead? Book smarts get you life
smarts.

Respect Yourself
Trophies don't tell whether I'm a winner. I win
by doing right by me.

Hang with an Incredible Crew
Friendship is like tennis—it's all about the
back and forth.

Be True—Do You
What others think of me is none of my busi-
ness. My life is my business—period.

Don't Rush a Crush
Boyfriends and girlfriends come and go, but
true friendships last forever.

Love the Skin You're In
Mirror, mirror, on the wall, beauty lives within
us all.

All About the Money, Honey
Bling-bling isn't everything. When it comes to
cash, it's better to stash than flash.

Step Back, Setbacks!
Challenges? Bring 'em on! I keep my eyes on
the ball and my head in the game of life.

It's Better to Give
You don't have to be rich or famous to share
your blessings.

Ages 12 and up • Grades 7 and up
0-618-57653-3 • \$14.00 paperback

Photo © Ben Shaul

Houghton Mifflin Books for Children
www.houghtonmifflinbooks.com

Regulating Behaviour: Practical Principles and Ethical Formalisation. Sociology describes a sports institution as a place for physical activity organised in accordance with ethical (or moral) principles that define what should be the normal behaviour and what sanctions - mainly "sports-related" - should be applied to any breach.³³² The institution's scope of action, its characteristic hierarchical structure, the physicality of relevant activities (sports is a universe of gestures, actions exerted on the body, physical contact, *etc.*), and the variety of disciplines create diversity and complexity in the *practical application* of major ethical principles.

However, these ethical principles have traditional forms.³³³ The ethical principles of sports are the principles on which ordinary social life is based: only their translation into "sports" practices is different. We find:

- The principle of **equality** is a universal goal. Modern sports, mostly represented by institutions as of the late nineteenth century, are established in a social world where status and rights are not equal for all, particularly women, colonised peoples, the poor without a permanent domicile, *etc.* In addition, sports institutions create categories of "qualified" persons for particular types or levels of competition, thus given unequal rights;
- The principle of **fairness** in competition. It is an issue that takes a 'technical' form and that results in lengthy research for the "normalisation of test conditions" so that everyone has an equal chance of winning.³³⁴ However, the means of ensuring fairness is subject to quasi-permanent disputes regarding ways to make or enforce rules;
- The principle of **"just" compensation for the efforts** one makes to produce a performance: rewards may be symbolic - particularly in amateur sports - or materialistic – money, prize, scholarship, benefits in kind, *etc.* There were numerous challenges in this domain, for the struggles for amateurism constituted a major pan in the history of sports. Moreover, claims for financial compensation made almost permanent headlines in the press;
- The principle of **respect for others** and **fraternity**. The application of this particular principle raises specific problems in the world of entertainment mostly because sports entertainment is based on excitement that results from physical activity. The problem is that this activity constantly grazes the border of violence.

³³² B. ANDRIEU (dir.), *Éthique du sport*. L'Âge d'Homme, Collection "Être et devenir", Lausanne, 2013; M. ATTALI, *Le sport et ses valeurs*, La Dispute, Paris, 2004; Y. GROSSET, M. ATTALI, "The International Institutionalization of Sport Ethics", *Society*, 48: pp. 517-525, 2011; R.L. SIMON, *Fair Play: The Ethics of Sport*. Boulder CO: Westview Press, 1985 (2010).

³³³ See Chapter 1 of this title.

³³⁴ G. SIMON, *Puissance sportive et Ordre juridique étatique. Contribution à l'étude des relations entre la puissance publique et les institutions privées*, LGDJ, Paris, 1990.

We could conceptualise the dimensions of ethics otherwise, but this designation³³⁵ seems adequate and sufficient to analyse the problem.

The principles mentioned identify the persons (equality), the "sports" situations (equity), the actions carried out (that deserve a reward), and relationships between stakeholders (brotherhood and respect). They are an expression of normalcy, of a willingness to conform to an ideal whose producers, recipients, and stakes can be identified through a sociological analysis. These principles are probably hierarchical. They are even hierarchal in different ways, based on the time period (giving privilege for respect in the early twentieth century, equity at the end of the century, just compensation for efforts provided since the professionalisation of various sports³³⁶).

A socio-historical study of sports presented in this report³³⁷ shows:

- First, routine ethical regulations allow the institution to operate legitimately. This allows it to stop and sanction any behaviour deemed 'incorrect' by the sporting world; the regulatory mechanism is triggered when the consciousness of the sports 'environment' is shocked by actions that break the conventions of the sporting rule: the still pending question is to know what kind of players exist in sports, and more specifically, what groups share a common conscience that might be offended by a wrongdoing (a moral community) (Durkheim, 1893);
- Second, despite this regulation, moments when an activity of *preaching ethics* grows and intensifies can be observed, in a "critical" context. Its growth is accompanied by campaigns to put forth rules that renew the expression of principles, reformulate their practical application, reaffirm the need for "fair" and "healthy" political leadership of sports, etc. We are now in such a critical situation, and the alarm are sounding: match fixing by various stakeholders, while some take advantage of the development of legal sports bets, but particularly illegal sports bets.

There are many alarming precedents as well as other perceived "threats", such as cheating (match fixing, like the scandal of the *Black Sox* in American baseball in 1919), the rise of "rough play" (for instance, in French rugby in the 1920s), too much stress on the importance of money in amateur sports, widespread doping practices, trafficking of (young) players, etc. It seems that in each of these alerts, a "public problem" is identified (within the meaning given to that concept by Gusfield 1981³³⁸): a difference emerges between players who are diligent in the respect of ethical principles and those that do not attribute any importance to these principles.

³³⁵ See Chapter 1 of this title.

³³⁶ See Chapter 1 of this title.

³³⁷ See *infra*, Title 3, Chapter 1, Section 1.

³³⁸ J.R. GUSFIELD, *The Culture of Public Problems. Drinking, Driving and the Symbolic Order*. Chicago, The University of Chicago Press, 1981.

Sporting institutions must protect these principles in order to preserve their qualification as the "serious game" that Norbert Elias (1971)³³⁹ speaks of: the targets of criticism have already been identified (federal sports authorities, or another category particularly, the referees, the calendar commission, coaches, technical directors, etc.). Indeed, this criticism reproaches the authorities (sports) for not keeping an eye over the respect of principles with *sufficient vigilance or energy*: finally, it seems that the power stakes (power to organise the sport) are constituted along with the waves of preaching ethics, while campaigns against the disintegration of the key principles of sports are expressed through protests and the redistribution of sporting powers.

Even though ethical principles are well known by everyone in sports and constitute the base for principles in the ordinary practices of street educators, with small level competitors, or with fans that love their preferred game, these ethics only find their verbal and practical application in the framework of rules. In addition, to ensure the respect of these principles, courts are designated to enforce them and are given authority to repress, based on the power of sports authorities. Given the development of sports organisations, the responsibility to formulate and apply ethical principles of sports has been attributed to the highest entities of the governing sports bodies, particularly the Olympic institution - the International Olympic Committee -, international and national federations, as well as organisation leagues in countries where sports are not nationally organised (as in the United States). Furthermore, since their development is being carried out at the highest organisational level, criticism against their work must be placed at the same level in order to be effective: we notice that companies that criticise the ethics of established companies are forced to "climb" to the international (or national) level in order to have a chance to reach the platforms from which one is heard, and to produce regulatory effects.

A socio-historical investigation. These points serve as a demonstration, an example, and an interpretation. In this respect, we suggest "case studies" based partly - but not exclusively - on secondary data. We have selected cases between 1945 and 1975.

Several historical incidents led the world of sports to realising that practices were not in conformity with the principles of sports. Thus, while a "new international order" was being established between the nations and their colonies after 1945, sport itself was far from respecting the principle of **equality** between all humans in a competition: the natives of the colonies had no civil rights and were not recognised by the sports authority,³⁴⁰ and sports were segregated, in the United States and other nations emerging from war, etc.³⁴¹ Sports and socio-political struggles took place in the sporting fields in the 1950s. These clashes intensified throughout the following decade.

³³⁹ In Eric DUNNING (ed.), *The Sociology of Sport: A Selection of Readings* (London: Frank Cass).

³⁴⁰ Multiple statuses, with unequally discriminating subcategories: N. BANCEL, T. JOBERT, S. FRENKIEL, "L'exception sportive : champions noirs et culture coloniale (1900-1939)", in: *Culture coloniale en France. De la révolution française à nos jours*, CNRS, Paris, 2008.

³⁴¹ H. EDWARDS, *The Revolt of the Black athlete*. NY: Free Press, 1969; R. LAPCHICK, *The Politics of Race and International Sport*. Westport CT, Greenwood Press, 1975.

Consequently, there came a redefinition of the ethical principles of sports, whether in colonising countries - such as France or England -³⁴², in social groups that take racial discrimination as a basis, and in the United States, South Africa, and even internationally.³⁴³

Another phenomenon deals with the effective respect of a second ethical principle, the principle of **fairness** in a competition: fairness with respect to technical and scientific advances that affect the possibilities of increasing athletic performance. However, these are advances that are unequally accessible to all competitors. The discovery of intimate physiological mechanisms that improve performance paved the way for more optimal physical preparation plans. In addition, the development of molecules acting on a particular link of these mechanisms has "artificially" optimised the level of performance (doping). Moreover, the management of periods to prepare for a performance helped go beyond what was typically available to other competitors, that is, through physical preparation strategies, by using chemical additives, or by offering superlative social and psychological conditions to competitors chosen at the expense of others. As for equity, it was frankly abandoned with the modern organisation of "high-level sports", to the chagrin of those who condemn the new situation and defend sports ethics.

Launching an ethical campaign has two possible explanations:

- Our first explanation is to take into account the increase in deviations with respect to behavioural norms that are usually respected. Consequently, the push in ethics is explained by the need to contain the outbreak of deviance (as a functionalist perspective, a natural social force, with a subjacent scheme of "stimulus" - "response"): *Les lettres de la Chair* suggests, for example, that corruption in sports through sporting bets is currently increasing throughout the world, jeopardising the credibility of the competitions and their organisers, thus requiring a political response and a demand for ethics.
- Our second explanation is to consider the potential intensification of the power struggle around key leadership positions for sports. The challengers for these roles adopt a critical "ethical" position vis-à-vis the methods of governing employed by the existing management and call for new leadership. These power struggles create a virtuous circle.

One might think that the two explanations are complementary. The first attributes the ethical campaign to a "social problem". This social problem is void of any personal interest and simply demands a solution. The second explanation is about tensions in the field of power in sports and overbidding in terms of moral rectitude: given the multiplicity of problems and the diversity of divisions within sports organisations, the combinations may take new forms that the investigation must identify.

³⁴² P. CHARITAS, *L'Afrique au Mouvement olympique : Enjeux, stratégies et influences de la France dans le processus d'internationalisation du sport africain (1944-1966)*, Université Paris Sud Orsay : Thèse STAPS, 2010; M. SCHOTTÉ, *La construction du « talent ». Sociologie de la domination des coureurs marocains*, Raisons d'Agir (Cours et Travaux), Paris, 2012.

³⁴³ 1950-1970: H. EDWARDS, *The Revolt of the Black athlete, op. cit.*; R. ARCHER, A. BOUILLON, *The South African Game. Sport and Racism*, Zed Press, London, 1982.

The perspective adopted in this case concerns how public problems are formed and also tackles the relationship between the fields, that is "the field of physical activity and sports" and "the political arena" (other fields may be included such as "the medical field", for example when it comes to cheating through doping).

For the first explanation, we refer to the sociology of Joseph Gusfield (1981) and for the second to that of Pierre Bourdieu (1978, 1992). In the approach of Gusfield, an analytical approach allows us to discern a number of issues and to break down each ethical question into a much simpler process. Namely: *Who defines the problem*, by indicating the presence of tensions, dysfunction, and negative development? *Who must redefine and manage this problem? International leaders? The players' unions? Doctors? How does the question emerge within the conceptual and institutional management of the public arena and how can critical players gain access to a platform where one can be heard?:* What is the structure of the public problem, in its cognitive and moral dimensions, in other words, on what knowledge and beliefs are the facts and events, whose disconcerting presence is noticed, based: the blindness, corruption, and mafia abuses? *How is the problem defined?* To whom must be attributed the strict responsibility, which refers to the manner in which the problem occurs? : To whom shall the restoration be entrusted? How legitimate are the opponents or those who want to reform the institution and "clean" the methods of the management of international sports?

The relationship between these processes involves stakeholders from various domains of society, not only from the world of sports. That is why we shall use modelisation in the studied fields and the relationship between these fields.³⁴⁴

NOTE ON METHODOLOGY

For the purposes of our investigation, we prepared a set of data:

- 1. A series that includes referenced and dated ethical statements; they criticise, on one hand, and take a prescriptive form (code, charter, program, doctrine, etc.) on the other hand;**
- 2. A series of biographical data regarding the producers and the "carriers" of ethical principles as well as their counterparts who identify campaigns of ethical content: the biographical component is deemed vital for a quick understanding of groups that determine ethics ("moral entrepreneurs" according to Becker) and their position in sports and other fields (especially the political field);**
- 3. A series of data on the relationship between organisations to which the producers of ethical principles belong and organisations whose moral rigor is criticised; supplemented by a series of data - from literature - regarding power struggles at the epitome of sports, mainly on an international level.**

³⁴⁴ J. DEFRANCE, "The Making of a Field with Weak Autonomy. The Case of the Sports Field in France, 1895-1955", in: P. GORSKIK (ed.), *Bourdieuian Theory and Historical Analysis*, Durham, NC: Duke University Press, 2012, Chapter 13, pp. 303-326.

By doing so, we will start from intense phases of reflection on sports ethics by showing what they are made of, who undertakes them, and the particular historical situation (**Section 1**)? Then we will question the logic of the activity of those who promote the proclamations of loyalty to sports principles (**Section 2**), and finally we will try to reconstruct the configuration of relationships between the stakeholders in sports in order to explain the social significance of this ethical mobilisation (**Section 3**).

Section 1. Production of Ethical Statements in Sports (around 1945 – 1975)

Among the many groups, committees, councils, agencies, *etc.*, created in the international arena of sports, some explicitly appear as references for the production and dissemination of ethical principles by aiming to accomplish actions of solidarity or the promotion of fair play. Others, under symbolic names (for instance, via a reference to Pierre de Coubertin or by displaying an allegiance to a religious doctrine), also aim to define behavioural norms and direct their messages to "all athletes, particularly "youths "or "leaders ".

As in other spheres of international activities where powers aspire to extend their jurisdiction globally, there are organisations that more or less cover the targeted political space, some remaining European, Western, Third World, Anglo-Saxons, French, *etc.*

In addition, each organisation must establish its headquarters in a physical location, which creates a specific relationship with the national space chosen, be it New York, Geneva, or Paris, all the while trying to acquire a "global" jurisdiction.³⁴⁵

Finally, this study was initiated in Paris - at the University of Paris 1, the Sorbonne-. We shall analyse the interference between international sports policies and national politics by looking into the French case.

Here, we will consider five groupings (§ 1 to § 5) whose purpose is producing ethics. This may take a systematic and legal form (for instance, *Essai de Doctrine du Sport*, Paris, 1965), but also a diffusing form to inform texts on the meaning of sport, its educational and aesthetic benefits, the "good" of competitions, *etc.*

§ 1. 1950. The French (then International) Pierre de Coubertin Committee

The study of the French Committee cannot be carried out without an analysis of the international situation of sports institutions after the disaster caused by the fascist rule and World War II. A very marked loss of legitimacy affected international sports organisations – the IOC and certain international federations – that were accomplices in this story.

³⁴⁵ S. SASSEN, *A Sociology of Globalization*, New York: W.W. Norton & C^o: tr. fr. La globalisation. Une sociologie, NRF Gallimard, Paris, 2009 (2007).

It also concerns some sports authorities in countries situated in the fascist camp (like Italy) or in countries collaborating with the occupier (as in France between 1940 and 1944): delegitimisation that brings out the need to "rebuild sports." It is a need expressed by educators and health specialists, as well as by representatives of "sports for all" in the ranks of competitive democrat athletes.

At a time when voices are raised to renew the managing staff of sports in France - on behalf of the organisations of the Resistance, the Communist side (Sports Federation and Gymnastics of Labour - FSGT) or non-Communist (French Pierre de Coubertin Committee) -, similar proposals are made in other countries and at other levels in the international arena of physical activities and sports. The disqualification of the International Olympic authority, whose activities had been widely exposed to all nations since the 1930s, is a very similar move taken up by sports activists from different countries, for example in France and Norway: a sports project for the Commission of the National Council of the Resistance (June 1946) states: "*There does not exist, strictly speaking, an international organisation for sports*", implying that national federations and the International Olympic Committee have been reduced to nothing due to their authoritarian tendencies. In addition, experts at the *International Conference on Sports and Health* in Oslo in February 1952 stated that the IOC "is a self-constituted international organisation with the sole task of arranging the Olympic Games every four years", and nothing more.³⁴⁶ The IOC is not recognised by UNESCO, "Because it had lost public credibility. It is regarded as the contracting organisation of the Olympic Games; total disregard for the unity of culture, neglect of the artistic competitions and without any attempt to hold scientific conferences in, all of which had been the case in de Coubertin's time ", said Carl Diem.³⁴⁷ In the opinion of the promoters of the Coubertin Committee, an international order remains to be established within the domain of sports, with a coordinating body on an international level, which would be the emanation of the sports world (not a co-opted committee) that governs in a "humanitarian fashion" and with transparency (not as a private agency).

An analysis of the Pierre de Coubertin Committee, which was done to assert very clear ethical standards, could lead to the making of a typology of actions of ethical dimensions: unlike bodies created to bring ordinary sports - - of fields, changing rooms, and courts – closer towards established moral values (against violence, doping, etc.), this body aims to correct the principles of action of the managing bodies of sports. Indeed, in the years following the end of World War II (1945), it is not the "basic" sporting manners that pose new problems (violence, incivility, chauvinism, sports racketeering), as much as the political and social life as a whole and the direction taken by the leaders of educational and sports organisations.

³⁴⁶ S. BAILEY, *Science in the Service of Physical Education and Sport: The Story of the International Council of Sport Science and Physical Education 1956-1996*, Wiley & Sons, London, 1997, p. 24. This wording was chosen at a meeting in Helsinki, August 17, 1959, by William Jones.

³⁴⁷ S. BAILEY, *Science in the Service of Physical Education and Sport: The Story of the International Council of Sport Science and Physical Education 1956-1996*, op. cit., p. 27.

The personality and work of Pierre de Coubertin, taken as a reference to an activity of ethical preaching, is understood, even though it has left in the collective memory rather contradictory concepts (enterprising but dispersed, diplomatic but authoritative, with democracy but aristocratic in his ways of doing, and gives high recommendations of the Nazi organisation during the 1936 Games, etc.)³⁴⁸ However, as of World War II, his character became the reference of the universal idealism of sports, as opposing the American or Soviet realism (realism tacitly conveying the principles of professionalism), and contrary to the chauvinism of the English (who still approach the world of sports from their own role in its historical foundation in Britain).

In France, the managing domain of sports sided a lot with the Vichy regime, even with Nazism (for instance, the director of the committee of the newspaper *L'Auto* with Jacques Goddet or the chairman of the National Sports Committee and FIFA, Jules Rimet).³⁴⁹ The "purification" of the sports world was almost inexistent in 1945, and many leaders continued their activity and renewed their mandates, as if nothing had happened (Amar 2002: Noah 2000). The archives of the Ministry of Foreign Affairs provides multiple testimonies from diplomatic personnel, or leaders from the Resistance, who notice that the spirit of sports is deeply influenced by Nazi or Vichy ideologies, whether federal or Olympic: Marianne Amar openly talks about the hostile reaction of the Ambassador of France in London during the Games of 1948 regarding the presence of Melchior de Polignac, a member of the French Olympic Committee and the IOC, but who was tried and convicted of collaboration with the abovementioned regimes (Amar 2002).³⁵⁰ Ministries as well as networks from the Resistance considered for some years after 1945 (but not beyond), *rebuilding sports beyond the control of the Olympic and federal institutions*, by taking things back to the start: this was exactly the organisational project of the Sports Commission of the National Council of the Resistance in June 1946 (document Organisation of International Sports 1946).

The foundation of the Pierre de Coubertin Committee still reflected this problem in 1950, even though the alliances weaved in the Resistance were defeated and the "Cold War" was engaged. The group felt the urgency to *defend* sports, *physical activity, and the outdoors* after a certain period, more specifically that of the Vichy regime. It is a regime that had worked so much on, and with, sports rendering it an instrument of political propaganda. The project aimed to reinstate, but it kept its distance from communist or collective initiatives.

³⁴⁸ J. MACALOON, *This Great Symbol. Pierre de Coubertin and the Origins of the Modern Olympic Games*, Chicago, Londres, University of Chicago Press, 1981; P. CLASTRES, "La refondation des Jeux olympiques au Congrès de Paris (1894). Initiative privée, transcendantalisme sportif, diplomatie des États", in: P. MILZA, F. JEQUIER, P. TÉTARD (dir.), *Le pouvoir des anneaux. Les jeux olympiques à la lumière de la politique, 1896-2004*, Vuibert, Paris, 2004, pp. 39-60.

³⁴⁹ J. DEFANCE, "Histoire du sport, régulations sociales et contrôle public : entre autonomisation et mise sous tutelle", in: J.-C. BASSON (dir.), *Sport et ordre public*, La Documentation Française, Paris, 2007, pp. 9-19.

³⁵⁰ See M. AMAR, "Un autre sport? Londres, Alger et la Libération", in: J.-P. AZÉMA (dir.), *Rapport sur la politique du sport et de l'éducation physique en France sous l'occupation*, March 2002.

This creation in 1950 is linked to the entry of the Soviet Union to the Olympic Movement (1951, but it was being prepared for since 1945), itself in line with the steps of the formation of the "Eastern bloc": it is built in the anti-Communist wave of the 1950s (presence of the newspaper *Le Figaro* at the time), under the guise of non-interference of sports in politics.

§ 2. 1958: International Council for Sport and Physical Education-ICSPE

A. Founding

The International Committee for Physical Education and Sports was founded by the desire to take the place of the IOC for governing these activities on an international scale. Its development is slow, however, from 1946 to 1958, and the body can be recognised in some older initiatives to coordinate physical education worldwide (such as the International Federation of Physical Education, supporting the method of Swedish gymnastics, founded in 1921, renamed in 1953). The body was unable to establish itself in the context of the Liberation – even though its project is completely legitimate. As it finds support and advances towards becoming an institution, the context becomes less favourable for it, and sports powers (mainly IOC) recover some legitimacy.

Before focussing on sports science - when it adopted the denomination of *International Council for Sport Science and Physical Education* in 1982 (ICSSPE) - the Committee set goals regarding the organisation and regulation of sports and physical education. It included networks focused on medical and social regulation of sports (with doctors, researchers in life sciences, and administrations of public health), networks of educators concerned with the application of physical education in schools around the world (with teachers and politicians), networks of athletes particularly linked to a certain audience, whether they are activists of women's sports or promoters of sports in the workplace and in learning centres, among other networks. Indeed, the activists of a "socially useful" sport dominate over the advocates of high-level competition.

Several times, the international committee expressed its desire to replace the IOC in the task of global coordination of sports and PE. It intended to govern in a "more democratic" way, a fashion more concerned with education and public health, and in a more "humanistic" approach. Health concerns led some activists to demand that the Committee be supported by the World Health Organisation (WHO), while educational and cultural visions of others addressed their concerns to UNESCO by requesting either of the following two options: first, that these international organisations under the United Nations establish a body for physical education (PE) and sports or to develop a specific program on the subject (throughout the 1950s) or, second, by asking to give the committee the status of advisory organisation specialising in sports (but neither the IOC nor the International Federation of PE, which are older organisations, have such a status).

The recruitment of the committee was done on an international basis. It took place within nations that clearly took a stand against Nazism and the actions of the powers of the Axis, Scandinavian countries, Britain, USA, and Commonwealth territories (Australia, New Zealand), so much so that the founding meetings were held in Melbourne, Oslo, Helsinki, and Paris. We also find in the committee Germans who fled Nazi Germany to escape the racial laws (Fritz Duras, Ernst Jokl).

But international sports also faced a wave of reclassification of former sports leaders involved in the sports of fascist or authoritarian Nazi regimes. This proves that the channels of change are not so different from those that historians have already identified (via anti-communist American and South American organisations, European networks, via the Catholic Church, the international Red Cross, Switzerland, *etc.*). The Olympic movement, deeply involved in the policies of fascist regimes, neither established the balance sheet of the experience nor did it operate a political cleansing: it used the logic of reintegration and rehabilitation of its most committed members who sided with fascism and racism, for instance Carl Diem and Avery Brundage. The Olympic institute, which was transferred to Berlin in 1938, came back to action. In addition, the Olympic Committee maintained a number of its members who had voted to support the Nazi Games.³⁵¹

We know that the reclassification of Nazis after the war was often made in favour of the first anti-communist offensives of the "Cold War". In political and cultural circles that advocated non-interference in politics - such as the sports domain - we find so many former Nazi, fascist, or Vichy officials: in these various specialised areas of activity, it should be crystal clear that the specific skills associated with this domain were neither left-wing nor right-wing, hence the desire to be dissociated from politics: the non-interference of sports in politics is especially relevant in the years following the end of World War II (see, for example, the tone of the articles of *L'Équipe*).

B. The Differentiation of Physical Activity and the Differentiation of Ethos

The domain of physical activity and sports is, on the long-term, structured by a practical and cultural differentiation between high level sports (spectacular, possibly professional) and physical and sports education (sports initiation, educational practice, regular leisure, and exercise for health). Education was also heavily used - if not more - than international competitions by dictatorial and racist regimes. The most violent regimes established a national doctrine of physical education, while mentoring youth and health (racial): see Italian *la Carta dello Sport* in 1928, the charter drawn up in 1941 under Vichy and, above all, the actions devoted by Hitler to physical education in *Mein Kampf* (1926). If federal sports organisations did not take any *aggiornamento* after the disaster of World War II, the domains of education and health, which are very directly controlled by politics, did witness a doctrinal shift, which necessarily raised ethical reflections.

³⁵¹ F. AUGER, *Une histoire politique du mouvement Olympique : l'exemple de l'entre-deux-guerres*, thesis Paris X University, 1998.

International organisations, under the umbrella of the UN, propelled the development of new principles of more "human" and peaceful behaviour: a *humanism* that is reflected by guidance provided to international agencies such as UNESCO and WHO after the war (see the books commissioned by UNESCO as *Race and History* by Levi-Strauss).

The persons reclassified in the domain of educational sports underwent a radical and ideological change to get accustomed to the humanist cultural context of intellectuals and teachers in post-war France, at the time of Sartre and Camus: take for instance the officials from the Vichy administration, associated with the doctrine of the plan of female PE (Marie-Thérèse Eyquem) or general sports education (Maurice Baquet), who continued their work under the Fourth Republic. It is worth noting that Eyquem was a member of the Socialist Party and that Baquet was a member of communist organisations. Both were successful in converting their sporting capital (that is, they are considered theoreticians of physical education as well as of original and "modern" sports, thus positively influencing the change in practices between 1950 and 1960).

The project of governing world sport seeming more and more clearly beyond the reach of the networks of the *International Council for Sport and Physical Education*, which were much more engaged with PE than competitive sport, its promoters having turned increasingly toward organisational goals of scientific research and conception of training for sport and PE: The Council brought together a network of higher education and university department managers, it changed its name in 1982 and took the name of *International Council for Sport Science and Physical Education* (ICSSPE). This orientation towards physical education and sporting sciences was criticised, for example by Carl Diem, who was always linked to Olympic sport, and who said that the ICSSPE became a "meaningless commission."³⁵²

The ICSSPE would trigger a series of international conferences and congresses, while still under a "provisional" status in the 1950s, and then it organised increasingly "official" international platforms, carrying messages with strong ethical content. However, with the growing division within the sporting world between the sector of highly competitive sport and the vast sector of utilitarian or distractive physical activities, it was possible to observe a differentiation of the ethos of the two environments organising divergent practices. The tensions between competitive sport and physical education is permanent and evident within networks constituting the ICSSPE (sparking resignations or strategic clashes): such tensions were, for example, particularly marked between an American woman, campaigning for sport and Women's PE (Dorothy Ainsworth), and a former activist for the Olympics characterized by a heroic and manly vision of the education of the body under Nazism (Carl Diem). The first quit the Committee for being too "sporty" (in favour of accession to other international organisations of women's physical education), the second criticised the lack of moderation in the world of international sport.

³⁵² S. BAILEY, *Science in the Service of Physical Education and Sport: The Story of the International Council of Sport Science and Physical Education 1956-1996*, op. cit., p. 38.

While the ICSPE contributed to the construction of international relations between stakeholders in the sports world and physical education, it formulated the criteria of a “best practice” of these activities, while underlining the same tight links that have to exist between training the physical being and training the moral being within the practice of physical activity and sport. Preserving one’s dignity only seems possible on the condition that physical practices be accompanied with a cultural and intellectual activity, a sort of spiritual philosophy inspiring professionals of body control. As expressed by a sports instructor and a gymnast, the Director of Physical Education at Birmingham University (UK), the ethics behind practicing sports focus on the development of reflexive abilities and self-control through practice, which thereby becomes cultivating and humanising (see document below).

“At the International Conference of the ICSPE in Helsinki, August 1959, Dave Munrow gave a preliminary speech and said:

There is a need to re-examine the functions of competitive and aesthetic physical activity in modern society... Sport is a strong social force in the world and its influence is still growing. It has great potentialities for good but there are also dangers in its growth. Sport and Physical Education are an important means of non-lingual communication between people of different races and creeds and, in complex and mechanised societies, can add significantly to the happiness and dignity of mankind. But, for those ends to be achieved, the potential contributions of sport and PE must be sympathetically appreciated by those primarily concerned with scientific, cultural and moral aspects of life, as well as those concerned with industry, politics and health. Sport and PE can be fully effective only so far as those who teach and practice them understand the nature and implication of what they are doing. It is clear that there are fruitful possibilities in the exchange of knowledge and philosophy between those working in sport and PE on the one hand and those engaged in scientific and cultural activities on the other”.

(Bailey 1997, pp. 56-57)

From 1958 to 1978, the ICSPE resumed its relations with the UNESCO until the adoption of the International Charter of Physical Education and Sport under the authority of this organisation, as well as the creation of the Intergovernmental Committee for Physical Education and Sport (CIGEPS, 1977-78). These establishments were accompanied by the creation of the International Fund for the Development of PE and Sport (FIDEPS - 1978) and the gathering of Conferences of Ministers of PE and Sports (MINEPS) in 1976, 1988 and 1999. The organ gradually turned into a forum for dialogue in education and research concerning physical education and sport, a function far from that of coordinating international sport instead of the IOC. The ethics produced by the ICSPE reflect this educational orientation and divergence from competitive sport.

§ 3. 1960-1963: Olympic Solidarity

This organisation, created to deal with the links between the Olympic Movement and the sports authorities of newly independent countries (African countries, but also Asian countries), in the wake of the wave of decolonisation around the 1960s, is of a purely ethical nature.

By affirming solidarity between former colonial countries and former colonized countries, this tool sought to accentuate moral values and give credit to the Olympic institution which, while being stricken with violent political tensions (especially those of the “Cold War”), was attempting to regain a certain legitimacy. However, this body, which provided technical and economic aid to the Third World – Olympic solidarity – occupied an ambiguous position vis-à-vis the International Olympic Committee, since, while allowing the moral recapitalisation of the Olympic institution, it carried the political ambitions of the newly adherent nations and engaged in the Soviet Union’s complex power games and its satellites within the IOC.

As shown by the work of Pascal Charitas (2009, 2010), the IOC remained ambivalent on the subject of Olympic Solidarity: it accepted its creation which seemed suitable while a series of new nations had to be integrated within the Olympic apparatus and encountered significant material difficulties in order to be on the same level as the other members of the “club”: but its leaders perceived the Soviet Union’s hand in this initiative, and that of nations such as France, who manoeuvre within the sports organisation for the purpose of promoting their political interests (at the zenith of the Cold War and the decolonisation phase).

Initiatives following this direction began in 1959, and were not limited to the establishment of a solidarity fund for poor countries: Soviet representatives at the IOC supported the recognition of new Olympic Committees, since 1951 with Nigeria, they proposed the integration of specifically African sports into the Olympic programmes, and, above all, they demanded a statutory reform of the IOC in order to establish new operating rules modelled according to those of the UN, which would radically shift the balance of powers within the International Olympic Committee. French Olympic leaders, who survived the Occupation without uttering a word and on good terms with the old Right movement such as François Piétri, opposed all these measures and hindered the recognition of Third World countries. The proposals made by the Soviets were again presented at the Olympic Congress of Athens in 1961, and an Olympic International Aid Commission was formed that year. Run by Frenchman Jean Beaumont, a Count and a businessman in Africa, it comprised an IOC Soviet member (Adrianov) and a member from Kenya (Alexander). The device seemed to have functioned poorly, despite the support initially garnered, in France, by Maurice Herzog, Minister of Youth and Sport, and despite a re-launch by the Soviets in 1964 (the functionality of this device is not an essential point for us).

For our analysis, we will bear in mind the power games which led to the affirmation of the principle of solidarity among the peoples within the Olympic Movement, especially among the former colonialist and colonised peoples. The ethical principle is a weapon among older and new members of the Olympic “club”, brandished by various forces, concerned countries, but also countries like the USSR and its satellites: these forces developed the principle of equality and cooperation among peoples through sport (Peace Movement), but did not bother, however, to maintain anti-Semitism or racism in their internal affairs, or to dominate Eastern European Socialist nations.

§ 4. 1964-1973: International Fair Play Committee (and French Committee), and later the International Committee Against Violence in Sport

Statements of ethical nature appeared in the 1960s and early 1970s, under the title of the "fight against violence in sport" and as part of a project to promote the values of "fair play" in sport. They were first adopted by an International Fair Play Committee (IFPC) in 1964 and a French Committee (CFFP) in 1973.

Why did this issue of regulation of violence in sport and recognition of the principle of fair play come to centre stage in 1964? It is known that the history of hooliganism started much earlier with Anglo-Saxons (Dunning, Murphy, Williams 1988). However, at this moment in France, there is the formulation of a public issue regarding "rough play" in football, and disorders caused by very agitated spectators. Among various warning signs, we mention the publication by Jacques Ryswick in the newspaper *L'Équipe* of an editorial entitled "Stop Football of muerte".³⁵³ Rijswijk is close to journalist Jacques Ferran (they launched, together with Gabriel Hanot, the European Cup in 1954-55), which then attempted to create a Fair Play Trophy within the Pierre Coubertin Committee.³⁵⁴

In France, the newspaper *L'Équipe* (of the successor of the pre-1945 newspaper, *L'Auto*) represents a kind of alternative authority in the sporting community, rivalling the Ministry, the CNOSF or any other established authority. On several occasions, while developing a critique of the policies of Federations, CNOSF or the Ministry, it took the position of challenger to the established powers. In an article entitled "The Most Serious Threat",³⁵⁵ journalists from this newspaper raised both the issue of bad behaviour in and around football fields, and criticized FIFA for the lack of commitment in regulating competitions held outside its jurisdiction (Intercontinental Cup: European Cup for clubs): serious incidents occurred and showed the lack of sportsmanship in club football. At a UNESCO seminar held in Germany in 1963, the idea of promoting the value of "beautiful game", "fair play", was formulated by members of the International Committee for Sport Science and Physical Education (ICSSPE) and representatives of the International Sports Press Association (AIPS) in which Jacques Ferran was a member: a coalition of teachers and journalists, somehow the "intellectuals" of the sport. The suggestion is reiterated at another meeting held under the auspices of UNESCO in Paris on December 5, 1963. An International Committee for Fair Play was established, under the leadership of Jean Borotra as President (former head of Sport during the Vichy regime), Stanley Rous (FIFA President) and William Jones (President of Basketball IF) as vice-presidents, and Jacques Ferran as secretary general.

However, the critique of the established sports powers developed by *L'Équipe* was not limited to a stigmatisation of FIFA's lack of firmness in the face of the game's disorders on the football field.

³⁵³ *L'Équipe*, 5 November 1963.

³⁵⁴ *Ibid.*, 7-8 December 1963.

³⁵⁵ *Ibid.*, 17 November 1963.

In addition, in 1963-64, international games were organised by the "new" Asian countries, which for the most part, did not have access to the Olympic Games because of the competitive level of their elite athletes and the lack of appropriate infrastructure. Therefore, they created the Asian Games. The IOC, at first, was inclined toward recognising these games as regional games, but it feared the establishment of a parallel international sports movement. In December 1963, in Jakarta, the Indonesian NOC that organised the event decided to back the delegations of Israel, Taiwan and the Philippines for political reasons. In response, the IOC suspended the NOC of Indonesia for not respecting the political neutrality of international sport, which withdrew from the Olympic Movement and renamed the games, "Games of the New Emerging Forces (GANEF0)". *L'Équipe's* journalists observed this manifestation from their "athletes" point of view, this competition giving rise to "small performances", which is why it is of little interest for Westerners.³⁵⁶ But they noted that with this event, "sport could well be led to a schism" under the direction of leaders who are very ambivalent about sports authorities and established political powers, while wielding an ethical discourse: sometimes they say they would remain within Olympism, then they say that Olympism does not concern them anymore because it betrayed the ideals of Coubertin. In an opening speech of an event in Jakarta, an announcer said: "Through these GANEF0, we also set the course for our struggle to create a new world, free of exploitation of man by man." One way to denounce non-compliance with the principle of equality between humans by the leaders of the IOC, an argument which is not without merit when one recalls the frankly racist views of Avery Brundage, for example (Guttmann 1984). The President of Indonesia, Sukarno, added: "There are, on the one hand, the old established forces that want to maintain their position of dominance, and, on the other hand, new emerging forces in the Asian peoples, Africans, Latin Americans and in Socialist countries. It is to these people that the GANEF0 are open. "It approved de Coubertin's Olympism, but condemned the imperialism that manipulates the IOC. It is possible to see, here, the power games within the IOC, the Soviet Union, as part of its foreign policy and for the purpose of expanding its influence in the world, giving attention to this initiative of the countries of the "Third World." Upon hearing these words, *L'Équipe's* journalists wondered whether GANEF0 movement aimed to replace the IOC for the peoples concerned,³⁵⁷ with the use of ethical arguments (the ideal of de Coubertin) being the sign of conceptual divergence in terms of fundamental principles, a sign of an imminent break. Meanwhile, *L'Équipe* also expressed concern about the values of sport, and favourably commented on the initiative of the Coubertin Committee to establish a Fair Play Trophy.³⁵⁸

It is important to retain, from this genealogy, the close link between the Fair Play committees and UNESCO who wished to participate in the promotion of a sport conceived as a cultural practice, bearing humanistic and peaceful values. The International Committee for Sport Science and Physical Education, a group of international physical educators and sports leaders played a mediating role in this respect, in the 1960s and until recent years, when International Conferences of Ministers of Physical Education and Sport (MINEPS) would be organised.

³⁵⁶ *L'Équipe*, 3 December 1963.

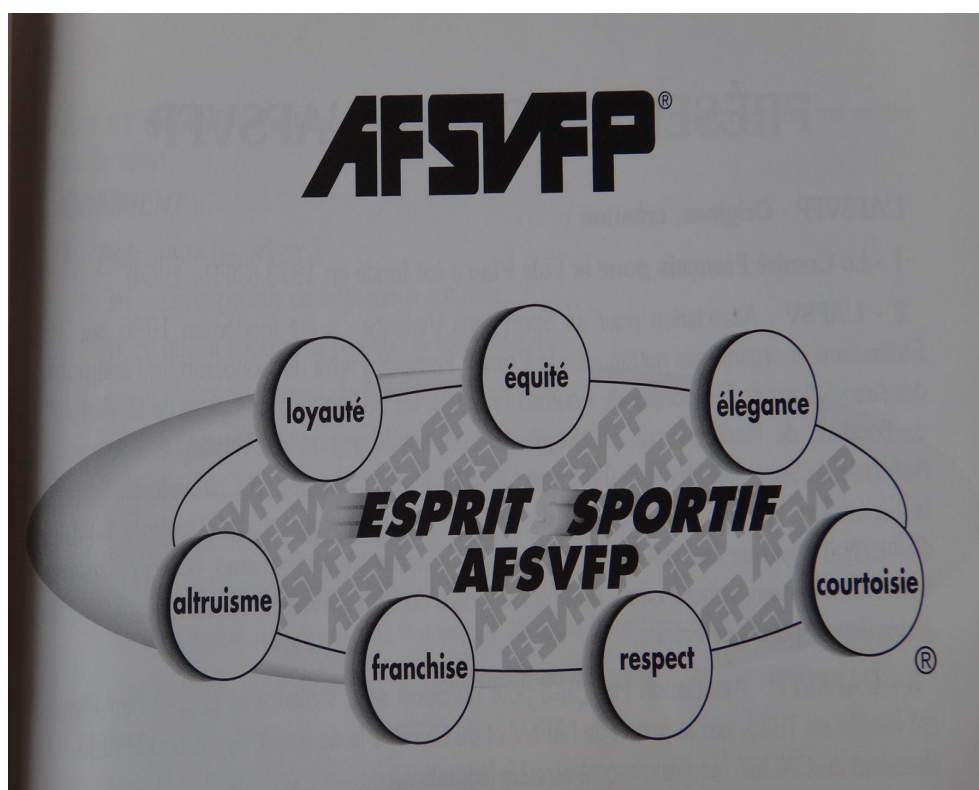
³⁵⁷ *Ibid*, 5 December 1963.

³⁵⁸ *L'Équipe*, 7-8 December 1963.

Tensions linked to high performance sports and professional sports are permanent, which does not exclude phases of negotiation and reconciliation.

Thus, the International Fair Play Committee was established without official recognition by the IOC. But in 1974, contacts led to the establishment of a relationship, the IOC President becoming Honorary Chairman of the Committee, jointly with the General Director of UNESCO. Finally, the International Fair Play Committee was awarded the status of Non-Governmental International Organisation. The international level led to the creation of a national one: a French Committee for Fair Play was created in 1973 (and the equivalent in other countries), and in 1980, it turned into the French Association for Sport without Violence and for Fair Play (AFSVFP), whose speech has a characteristic ethical orientation (see document below).

§ 5. 1980-81: The French Association for Sport without Violence and for Fair Play



Values promoted by the French Association for Sport without Violence and for Fair Play (loyalty, fairness, elegance, courtesy, respect, frankness, altruism).

The French Association for Sport without Violence and for Fair Play is the transposition of International Committee against Violence in Sport on the national level, but at the time when the abbreviation was changed, the link between the old Pierre de Coubertin Committee (then French Committee in 1973) and this renovated Fair Play defence organisation was revealed. By participating in the re-founding of the Fair Play movement, the junction is achieved between an initiative of the 1950s and one of 1960-70, and drew the first outlines of a forum for sports and education organisations challenging the ultra-competitive orientations of sports power, and in France and Italy, the Ministry of Youth and Sports or CONI.

In fact, in addition to a few specialised federations favouring high-performance sports the French Association for Sport without Violence also contained the following institutions: the National Federation of University Sports, the Cultural and Sports Federation of France (Catholic), the Labour Sports and Gymnic Federation (Communist), the French Union for Secular Works of Physical Education (including the Sports Union of Primary Education), the Sports General Union of the Free Education, the National School Sport Union, that is to say, organisations that place emphasis on the educational and social aspects of sports. These multi-disciplinary organisations have much more pronounced ethical concerns than specialised sports federations, and many of them refer to doctrines explicitly constructed to guide their educational and sporting action (religious principles, secular morality, *etc.*).

§ 6. Declarations of Ethical Principles under the Cover of Other Critical Themes

Our investigation is not intended to be exhaustive. It only deals with a fragment of the "fabric of organisations," and ignores other situations leading to the public declaration of ethical principles for sport. It should be stressed that the adoption of an ethical posture does not fit (even not often) under the banner of morality or dissemination and imposition of "big ideas", perhaps because authorities hardly endorse moralists, especially since the 1980s, and the success of sports pragmatism (heavily influenced by the neo-liberal doctrine). We will quote two kinds of labels denoting actions in sport whose objectives presuppose a statement of ethical principles: the "Sports for Everyone" current and the initiatives for "clean sport" without doping.

The "Sport for All" current was formalised on the international and European levels in the 1970s, and interfered with old policies - national, but perhaps especially municipal - of planning the access to sports for sections of the public who cannot afford to join a club. These aspects of social, cultural or youth policies were underpinned by **the principles of fair opportunity**, as well as **solidarity** implemented via mechanisms of social redistribution. They represent a topic in the construction of Welfare State policies in place since the Liberation.

The 'clean sport' current, or fight for doping-free sport, gradually took shape amid doping practices already prevalent in 1960-1980. Resulting from a long and complex history, the cause defended by anti-doping devices is rooted in the **principle of fairness**, the advantage attributed to doping substances not being accessible to all and establishing inequality in competitive events. The debates surrounding the fight against doping are expressed in ethical conceptions stemming from sports ethics and health ethics.

Public and federal policies regarding these topics have resulted in many communication activities for young people, competitors, women, *etc.*, with multiple reminders of the common practice of sports ethics, charters, moral contracts engaging participants, and a revival of the ethical discourse to meet the general taste.

Section 2. Biographical Research on the Dispositions and Stances of Ethical Producers and “Carriers”

The objective of this section is to identify the social and cultural characteristics of the stakeholders who produce or carry the ethical message in the sporting community (properties of the agents who influence the properties of the tools they build). It is known that applied ethics developed through interrogations about the validity or correctness of practical decisions in the medical and social fields (assisted reproduction, human experimentation, organ transplant, *etc.*), and later in the areas of environment, business, government, *etc.*; and that in these debates, religious beliefs, political affiliations, and philosophical views are important.

But the rule of the sports field imposes a form of apoliticism, agnosticism and a-dogmatism, a neutralisation of social properties and ideological implications, in order to only take into account the "sporting" dimension of the person, his achievements in the very framework of sports matches. In other words, in the public sphere of sports, the athlete euphemises or occults his own socio-cultural features to highlight his talents and performance abilities. This results in methodological difficulties (§ 1) as well as in very high opacity in the biopics of such agents (and difficulties for the social historian) (§ 2). Another difficulty arose with the appearance of the competing fair play “ethic”, qualified as utilitarian, which favours victory at all costs (§ 3).

§ 1. Method

A. A Selection of Biographies

Given the difficulty of establishing biographies in this area of practice, we will limit our study to identifying key individuals active in the founding and leadership of the organs studied previously.

= 1950. French Pierre de Coubertin Committee

Founders: Rosier – Brisson - Rostini

Presidents: Chailley-Bert - Bourdeau de Fontenay - Bontemps - Baumgartner - (Rosier) - Comte-Offenbach: 8 biographies.

= 1960-1963: *Olympic Solidarity*

Members of the International Olympic Aid Commission: de Beaumont - Andrianov (URSS) - Reginald Stanley Alexander (Kenya). Among those three, two embody neo-colonial business! 3 biographies.

= 1958 *International Committee for Sport & Physical Education* (ICSPE): 6 biographies

= 1963. *International Fair Play Committee*, and: 1973. French Fair Play Committee

One member of ICSPE (P. Noel-Baker, executive member), one from AIPS (J. Ferran), J. Borotra (+ Bazennerye, L. Miller, M.T. Eyquem), one from UNESCO (P. François). 7 biographies

= 1980: *French Association for Sport without Violence and for Fair Play*: R. Pringarbe, N. Paillou: 2 biographies.

→ Total: 26 biographies (8 + 3 + 6 + 7 + 2).

B. Nomenclature of Biographical Information

Some information is standard, such as social origin (not used), date and place of birth, education, professional qualifications, social status, political options, and religious affiliation: some are specific according to the political purpose of the group studied. Indeed, the 1950 Coubertin Committee constituted during a period of political rehabilitation after the Second World War, said that the Solidarity of 1963 should take place in the context of decolonisation and a policy of maintaining relations with the "Third World "while the 1960-1970 Fair Play Committee seemed more related to changes in relations within the sporting community (professional players and managers," hooliganism ", doping, etc.).

The biographical characteristics of the agents should be reported to the types of human relations which the organisation needs, for example, where one deals with solidarity between imperial powers and former colonies, there have to be men with experience in relations between these kinds of powers: provided that, in addition, the specialised bodies in ethical production are necessarily connected with other bodies in sports or outside, which provides moral support and material support without which ethical preaching would be unlikely to be effective.

§ 2. Stakeholders and their Resources

Name	Place of birth, education, profession	Sports and Political roles
<i>French Pierre de Coubertin Committee</i>		
Rosier	Born in 1900 (France). Faculty of Law Director, high level public servant	Confederation of Intellectual Workers Resistance fighter
Brisson	Born in 1939 (France). Journalist, drama critic, son of director of <i>Le Figaro</i> (that went through a period of resistance?), became director	<i>Le Figaro</i> Athletics, rec. F. 110 m. hurdles. UNESCO (sport), French Olympic Committee

Rostini	Born 1920 (France). Faculty of Letters and Human Sciences. Journalist, manager of academic works	Resistance. UNEF World Congress for Students, UNCU, leader PUC, relations with unions, including <i>Force Ouvrière</i> (workers union)
Chailey-Bert	Born in 1890 (France). Medicine. Medical Assistant, then Prof. of Medicine in college, dir. ENEP, dir. IREP	CG (War Cross) 1914-18, Resistance 1940 PUC chair, CNS member, commissioner of Republic in 1944
Bourdeau de Fontenay	Born in 1900 (France). Stanislas school, BA in Law, Lawyer, Councilor of State, dir. ENA	Resistance member, CG, Regional Commissioner of the Republic 1945
Bontemps	Born in 1883. Dole School: engineering officer, military staff officer, stockbroker	Fencer, member of Racing club, President of FF Fencing. President of National Sports Committee (NSC)
Comte- Offenbach	Born in 1910 (France). Condorcet High School, Faculty of Law, <i>Sciences Po.</i> , CEO of companies, bank administrator, deputy UDR	Vice-president of the FFPE (1962- 1973), m. of CNS, vice-president. Nat Committee of PE, m. High Youth & Sport Committee, Member of the Committee of <i>l'Essai de Doctrine du Sport</i> (with Bazennerye, Borotra)
Baumgartner	Born 1902 (France). Buffon High School, Faculty of Law, Arts, doctorate in Law, <i>Sciences Po</i> , Finance Inspect., Ministerial office, Governor of Bank of France, Minister	Tennis, mountaineering, m. of Automobile Club of France
<i>International Committee for Sport and Physical Education ICSPE</i>		
F. Duras	Born in 1896 (Germany), high school, infantry in 1914, medicine. Doctor at university hospital, dir. Institute of Sports Medicine	Iron Cross. Jewish origins, dismissed, exiled to the UK, Australia: Dir. Of PE in Univ. Of Melbourne: chair of ICSPE

E. Jokl	Born in 1907 (Germany), high school, medicine and professorship in PE, dir. Institute of Sports Medicine: Climate medicine in Switzerland Married to a PE teacher and athlete selected for Olympics	400m runner hurdles and 4x400m, vice champion of Germany, emigrated in 1933 to South Africa: Dir of PE at Stellenbosch University, influenced the training programmes in PE, returned to Germany then USA: founding member of Amer. College of Sports Medicine, ICSPE
C. Diem	Born in 1882 (Germany), wealthy family, career in sales, writes in sports press, then manager of sports organisations	Runner, organised a club, engaged in the national sports organisation (DSB), elected to office: led the German delegation in Olympics 1906, 1912, Collaborates with Lewald, founded a school of Sports Science, got the 1936 Olympics in Berlin. Remained in office under Hitler's regime, although his wife is Jewish. Quickly rehabilitated in 1945
Dorothy Ainsworth	Born in 1894 (USA - Illinois), college, degree in history, taught PE and then volunteered in France: Health and PE instructor taught basketball and dancing: PhD. in PE from Columbia, Master of Art. Dir. PE in Moline	Association of Dir. of PE for Women, other associations, chairman 1st Int. Congress on PE for Girls & Women 1949, founded IASPEGW, member of ICHPER and ICSPE
D. Munrow	Born in 1908 (England), BA. in PE, Dir. PE in University of Birmingham Wife: prof. of dance	Gymnast, author of technical books, member of Sports Council, ICSPE
P. Noel-Baker	Born in 1889 (England). Quaker schools of obedience, King's College Cambridge	Selected for the Olympics in 1912, captain in 1920 and 1924 Olympics of, British delegation Peace Conference in 1918-19, contributed to the creation of the League of Nations, the Conference of Disarmament, Minister Atlee government, president ICSPE - UN Charter Nobel Peace Prize

<i>Olympic Solidarity</i>		
de Beaumont	Born in 1904 (France). Count, <i>Ecole des Roches</i> , Political Sciences, journalist Businessman operating in the colonies, banker (bank Rivaud), politician, member of the Jockey Club	Representative of Cochinchine, not registered, votes in favour of full powers in 1940, invites resistants to his administrative boards after 1945, then close relations to the RPR: international Olympic shooting, university sport, president. COF, vice president. IOC and presidential candidate in 1972 (beaten by Kilanin)
Andrianov (USSR)	Born in 1909 (USSR). Administrative training. Moscow University, sports manager	Founded the Soviet NOC, member of IOC executive board, member of the Olympic Solidarity, organiser of 1980 Moscow Olympics
Reginald Stanley Alexander	Born (England). Business school, Audit and financial consultant, director of the Kenya Oil C°, Mayor of Nairobi under colonial administration	Grass hockey player (in Kenya!) among other sports, white businessman, founder of the Kenyan NOC, co-opted by O. Mayer to the IOC, member and president of Olympic Solidarity
<i>International Committee for Fair Play</i>		
W. Jones	Born in 1906 (Italy), English father. Graduate (in Phys. Ed.) from Springfield College USA. (in PE?) and manager of basketball.	Founder of the IF of basketball, introduced FIBA to the IOC, SG Int. Council for PE and Sports Science, International Referee, great integrity (finals, 1972 Olympics)
Ferran	Born in 1920 (France). Education? Journalist	Created the European Cup with journalists from <i>L'Équipe</i> and the <i>le Ballon d'Or France Football</i> . Founded with Borotra, the Int. Committee. For Fair Play, under the aegis of UNESCO

Jean Borotra	Born in 1898 (France). Polytechnic, executive officer, tennis	Famous champion, Commissioner of General Educ. & Sports under Vichy, pétainist (but not collaborator), deported, CG 39-45, vice-president. of the UNESCO Sports Council, adviser of govt. of de Gaulle in 1963 (Doctrine Commission)
Bazennerye	Born in 1913 (France). Faculty of Law, civil administrator. General Inspector of NE	Administers PE and sports as of the 1930s and under Vichy, then after 1945, Pres. Sports Committee of the Council of Europe in 1966, UNESCO Consultant in 1950, CG 39-45, member of the Doctrine Commission
L. Miller	X	X
M.T. Eyquem	Born in 1913 (France). Worked in feminine crafts then BA. In literature, secretary of Catholic sports club, and then of federation. Writer in Vichy administration.	Catholic, director of women's sports under Vichy, doctrine of women's' sports, inspector of women's' sports in 1945, member of Sports Fed. Of France, the Int. Catholic Fed.: member of the Socialist Party, the Democratic Women's' Movement and close to Mitterrand
P. François	Born in 1907 (France). A pastor among grandparents, strict bourgeois education, scouting. Agronomist.	Militant scout, General Commissioner under Vichy, active after 1945, connected with the League of Education, CEMA, creates the Youth division in UNESCO
<i>French Association for Sports and Fair Play Without Violence</i>		
R. Pringarbe	Born in 1921 (France). Primary school, certificate of study. Bank employee. Leader of Catholic Sports Club...	Participates in the liberation of Paris. Involved in Catholic movements, SG Catholic Sports Federation, member of the NSC, SG CNOSF

N. Paillou	Born in 1924 (France). Orphaned at age 7 and pupil of the Nation, studied literature, literature teacher in high school, club leader at university	International handball referee, president of <i>Fédération des Œuvres éducatives de l'Éducation Nationale</i> , delegate at 1972 and 1976 Olympics, President of FNOSC, founded the AFSVFP, m. Eco. & Social Council
-------------------	--	--

In 1950, 1963, and the period between 1964 and 1973, new groups are formed with an outlook of reminding of the ethical principles applicable to sport, as if the sports institutions established were “losing the true meaning of the activity” and they had to be reminded of it. People who criticised the management of sports affairs and suggested “getting back on track” did so in the name of higher principles, placed above all. The message was only noticeable if its sender had the moral qualities guaranteeing the frankness of his/her remarks, and on the condition that these comments were clearly detached from any personal interest or local pressures and solely referred to the common good.

The dominant biographical characteristic of the members of the Pierre de Coubertin Committee of 1950 is the commitment on the side of the Resistance and the lack of connection with the Communists: therefore, it was a political movement that took charge of the moral recovery of the sports world (and that was close to the MRP (Popular Republican Movement in France)? to the Christian Democracy? relationship with the *Force Ouvrière* union, which was just detached from the General Confederation of Labour). The leaders were involved in sports, in particular in disciplines close to educational trends (federation of physical education, academic clubs, amateur athletics) and bourgeois sports (tennis, mountaineering, automotive sports, fencing), and not professional sports or popular sports. However, there were two members of the National Sports Committee, thus there was a link with the federal competitive sport, this “centre of gravity” of the sports institution. Committee members were trained in law and letters, and included journalists, businessmen, senior officials, and military men. With an article in *Le Figaro* newspaper and high-level presidents (Director of the *Ecole Nationale d'Administration*, Inspector of Finance, Governor of the *Banque de France* and Minister of Economy, bank administrator and Member of Parliament), the Committee had a good chance to get its message across. In addition, a connection with UNESCO was observed. Its message had a clear ethical content: it defended the three main operating principles of educational sport defined by Thomas Arnold and reaffirmed by Pierre de Coubertin as the foundation of the Olympic ideal: realistic amateurism, fair play, and autonomy of the sporting movement against any exploitation by the economic and political powers (Carpentier 2004).

The network of the International Council for Sport and Physical Education (ICSPE) recruited in the “white” world of Western powers, in the beginning excluding Africa, Asia, and the communist countries, etc. A common feature of the leaders of this network was belonging to the field of physical education whilst having an experience in sport. The competences of the activists were in the field of organisation and negotiation with large international organisations such as UNESCO or the WHO. The presence of Carl Diem indicated the reclassification of the cadres of sport of the fascist period, present alongside those who had to flee because of the racial laws: a coexistence that constituted a clear expression of the will to overcome ideological differences and install apolitical ethics (however, several members of the ICSPE refused to deal with the Communists, whether German Carl Diem or American Dorothy Ainsworth).

The biographical characteristics of the members of the Olympic Solidarity were different in nature, and related to a separate universe. Involved in maintaining or strengthening ties between Western powers and African and Asian countries, one could find in this Commission a man doing business with the decolonised world (John Beaumont) and a mayor (of European descent) of an African city under colonial administration (Alexander), while the third, a Soviet, acted on behalf of his State and its policy of foreign aid to the Third World as part of an ideological offensive in Africa and Asia. Stakeholders were directly involved in internal political manoeuvres in the Olympic Movement: Andrianov animating power relations (often strained) between the IOC and the Association of National Olympic Committees, Beaumont aiming for the IOC presidency (which he did not reach, defeated by Kilanin), Alexander trying to reinforce within the IOC the clan of voices secretly hostile to the enlargement of the Olympics to multiple countries gaining their independence (and more or less racist). With Olympic shooting and Field Hockey, they were introduced to the sports world through “small” disciplines (but this was not the case of the Soviet, who practiced football and athletics).

The small number of biographies limits the analysis here.

The fourth form of organisation of ethical preaching - the one that promotes fair play - is clearly linked to UNESCO and critical vis-à-vis official sports institutions (in 1950-1960 and 1970). At a founding meeting of the International Council for Sport and Physical Education (ICSPE, linked to UNESCO) in 1959, William Jones said that “*the role of the International Olympic Committee ... is statutorily limited to the organisation of the ‘Olympic Games’ and ‘regional games’*”.³⁵⁹ In other words, there is still room for an umbrella organisation of the international organisations involved in sports (he was himself the leader of the International Basketball Federation - FIBA). It could be said that the IOC was not empowered to oversee the entire international sports world, nor rule over it, nor indicate the “good conduct” it should follow.

³⁵⁹UNESCO, Minutes of the consultative meeting on the possibilities of coordination of international organisations concerned with issues of physical and sport education, Helsinki, 17 August 1959, p. 6 (UNESCO online archives).

A few years later, when the International Council of Sport and Physical Education (ICSPE), which supports the Fair Play Committee, issued a *Sport Manifest*,³⁶⁰ René Maheu, the Secretary General of UNESCO, said he was

“delighted to see the Manifest stressing the importance of fair play which gives sport its human quality and is made of complete loyalty towards the opponent, even in the most heated battle, and of a moral obligation vis-à-vis oneself” (preface of the Manifest)

The speech also criticised the IOC, chaired by Avery Brundage and marked by his struggles to save amateurism until the 1960s and early 1970s:

“The rules that continues to compel (elite athletes), on paper, to an unconditional amateurism proceed from an aristocratic conception of sport that no longer corresponds to its massive democratisation. The brown amateurism of the champions that this democratisation inevitably led to in order to circumvent these old rules is a lie that discredits the very people - leaders and athletes - whose role is to offer sport in its entirety a model of moral rectitude along with physical accomplishment.”³⁶¹

UNESCO took the side of cultural democratisation, against the aristocracy of amateur elite supported by the IOC. The relay was made by Philip Noël-Baker, president of ICSPE (who was awarded a Nobel Peace Prize for his work in favour of disarmament within the League of Nations and then the UN), who denounced the “overemphasis by some of the victory (which) causes the most distressing cheating, abuse, doping, and ultimately opens the door to all excesses.”³⁶² In the *Manifest*, organised in six points, there is a clear affirmation of ethical principles that circulate throughout sports but are not always clearly set: loyal spirit in the game (I, 2 V, 1), sincerity, esteem, solidarity, generosity, selflessness (II, 2), family spirit, sympathy, warmth, friendship, cohesion (II, 3), fight against discrimination (IV, 2), amateurism (VI, 1), humanism.

The threats to sport were seen as more and more numerous: chauvinism was mentioned; “this pride should never, at any level, degenerate into chauvinism, a low and dangerous feeling that can lead to transforming the stadium into a battleground where, in front of fanatical spectators, athletes committed to winning at all costs clash without discipline or restraint.”³⁶³ But at the same time are affirmed, in fact, ethics of efficiency within the high-level teams, the wording of which was found by an American coach.

§ 3. A Code of Bad Conduct? The Moral of "Victory at all Costs"

The moral codes developed in sports attempted to balance the ends and means of competitive sport.

³⁶⁰ International Council for Sport and Physical Education (ICSPE).1964. *Sport Manifest*. Paris: ICSPE and UNESCO House (p. 24)

³⁶¹ *Sport Manifest*, p. 6.

³⁶² *Id.*, p. 7.

³⁶³ *Id.*, p. 18.

They aimed at developing practical principles (of ethical value) so that behaviours are not confined solely to the implementation of all possible ways to win, whether they are harmful to others, contrary to the principles of equal chances of winning, contrary to the rules of the game, violating the rules of safety, decency or loyalty vis-à-vis the sports club, etc. In this situation, the tensions between two styles of play is revived, "victory and crushing of the adversary" (or) "the beautiful style of play and the respect of others."

Certainly the ethics of "fair play" are built, from the beginning, to contain the violent behaviours in competitions and moderate the ardour of athletes tending towards victory. Winning by any means, including harassing opponents (insulting, shoving, threatening), gestures to limit violence authorised by the regulations, "dirty tricks", is a strategy criticised and disqualified by proponents of the "good game" who wish to preserve the esteem of the opponent, and who agree to lose if it is with honour and recognition of their loyalty and their style of play: and if it is with a clear conscience that the game can be replayed, and victory could switch sides. By refusing to make victory absolute by accepting the possibility of honourable defeat, supporters of the ethics of fair play set a higher limit than the intensity of the confrontation, and allow the possibility of returning to cordiality between opponents as soon as the game ends.

It can be said that supporters of "rough play" generally remained disqualified in sports arenas during the first half of the 20th century. The misadventures of French rugby show that, when a national federal organisation - the French Rugby Federation (XV) - tolerated the development of "rough play" in the national championship - which took place in the 1920s - a higher body, the International Board, could disqualify the national body and exclude the French team from major international competitions (the Five Nations tournament) for many years, 1931 to 1947.³⁶⁴

It was at the other end of the international sports scene, away from the land of the British amateur rugby players, in American professional sports, that the development of a utilitarian ethic that favours winning at all costs was observed. The determination to win among American athletes had been previously noted (for example, during the Inter-Allied Games 1919: Terret 2002), but an unprecedented form of legitimisation of the absolute desire to win was noticed around 1950 in American professional football. First expressed by a coach on his own account in 1949-50 (Henry Russell Sanders, *Bruins* team of the University of California at Los Angeles) - a kind of personal ethics -, the formula: "*Victory is not more important than other things; it is the only important thing*" is repeated by a more famous coach in the late 1950s and in the 1960s, Vince Lombardi, coach of the Green Bay Packers (Wisconsin). It then had tremendous repercussions:³⁶⁵ "*Winning is the only thing*" became a slogan, the principle of success for the heroes of movies and other fictional characters.

³⁶⁴ P. DINE, French, Football. *A cultural history*, Oxford, New York, Berg Publ., 2001; J. VINCENT, *Le crochet, la passe et la mêlée. Une histoire des techniques de rugby de 1845 à 1957*, thesis Lyon, 3 vol., 2008.

³⁶⁵ S. OVERMAN, "Winning isn't Everything. It's the Only Thing": The Origin, Attributions and Influence of a Famous Football Quote", *Football Studies*, Vol. 2 Issue 2, October 1999.

The formula appeared in glowing portraits drawn by the sports press. It became the obligatory argument to contradict the aphorism of the Olympic institution according to which “the essential thing is not winning but participating.” The formula was not only a simple sentence, it became the symbol of an increasingly widespread manner of playing and training, and marked the “toughening” of the forms of playing in professional sports in the USA and elsewhere in the world of professional sports. With the increasing financial issues related to publicised sporting events, this moral of victory above all, by all means, was being silently legitimised by those who invested financially in the sports business. This ethic of efficiency was gladly exported from the sports world to the business world, participating since 1980 in the celebration of the competitive spirit and the taste of “winning”: it was combined with a model of distribution of the profits of victory, that allocates all stakes to the winner (“The Winner take-all model”), developed by economic theorists.³⁶⁶ This reversal of ethical perspectives deeply devalued the principle of the “good game”, more valuable than victory, which now seemed naive or idealistic.

Section 3: The Relationship between the Bodies Spreading Ethical Principles and the Governing Sport Institutions

The organisations and the relationship between organisations that we are describing are not the only ones to criticise the direction taken by sport and to suggest a turnaround of the practical orientations of sporting life: we only deal with a part of the network of stakeholders and relationships that act to inject moral principles in sports behaviours. The part that was not tackled by this text became increasingly important after the 1980s, when the issues of control/repression of hooliganism and the fight against doping invaded sport areas. We will not describe these additional elements, but we must take into account the fragmented nature of our study.

What we outline is the picture of a social dynamic in which are built social relationships (networks) as well as divisions, changes in the sports world animated by tensions between “currents” or “poles” of the sports world in the broad sense, which refer the analysis to an approach in terms of the sports field structures and relationships between organisations.³⁶⁷ One can identify a multitude of organisations that were, since 1950-1970, interested (or who wanted to get involved) in education, public health, social recreation, or associations that unite the professions, and involved in the debates on Physical Education and Sport in their various forms (educational practices, recreation, military training, competition, health): e.g., the International Association of PE & Sport for Girls & Women (IAPESGW), the International Military Sports Council (CISM), the International Sports Press Association (AIPS), etc.

³⁶⁶ R. FRANK, H. COOK, J. PHILIP, “The Winner-Take-All Society: Why the Few at the Top Get So Much More Than the Rest of Us”, *New York: The Free Press*, 1995.

³⁶⁷ P. BOURDIEU, “Comment peut-on être sportif ?” (Congrès HISPA, 1978), in *Questions de sociologie*, Paris: Minuit, 1980, pp. 173-195, 1978; H. MINTZBERG, *Power In and Around Organizations*, Englewood Cliffs (NJ), Prentice-Hall, 1983; W.W. POWELL, P.J. DIMAGGIO (eds), *The New Institutionalism in Organizational Analysis*, Chicago: The University of Chicago Press, 1991.

In addition to the emergence of these organisations, certain nation States were getting involved, particularly those that were expanding their operations in sport as part of welfare State policies during the period of 1945-1975.³⁶⁸ State policies were present in the jurisdiction of each nation, but they were also the source of the policies of inter-governmental bodies such as UNESCO, the Council of Europe, *etc.*, according to complex power relationships, that we leave out of our analysis. All these organisations were more or less interdependent. They formed a network, although they acted according to distinct interests at different levels and with specific resources. The sociology of networks³⁶⁹ encourages us to specify the nature of the “network” formed by these entities and their relationships.

§ 1. The Organisation of the Fight for Values in Sport

In the specific case that interests us, we can understand a configuration of relationships arranged in two (or three) rows of bodies: those with the objective of preaching ethics, classifying moral precepts in codes and preaching directly to the public, carrying messages of ethical content (combating violence, discrimination, chauvinism, *etc.*); and those that legitimise the action of the former, providing material, political, and moral support to missionaries.

An example is the International Fair Play Committee, on the “front line”, which can count on the backing of several support organisations, standing “behind” it, including the International Council of Sport and Physical Education on the “second line” supported by UNESCO (in the “third line”), which seeks to impart to competitive sports a moral rule to avoid the moral of “Victory at all costs.”

This stratification of the organisations, from the most specialised (*ad hoc* organisations) to the most powerful general umbrella organisations (UNESCO, UN, WHO, Council of Europe, *etc.*, or national States on another level) can be described in the direction opposite to the one we adopted, *i.e.* starting with the decisions of the authorities of the highest levels down to the intermediate levels (national organisations), and the “base”, relying on legal texts, circulars, recommendations, and following their effects, as do lawyers (*e.g.* Miege, Lapouble 2004). The downside of the description according to hierarchical logic and from a legal perspective stems from its tendency to present the actions of putting sports behaviours in order, as an initiative of established governing bodies, anxious to respond to the new “social problems” emerging within their sphere of action, decisions adjusted to a set of objective constraints which are needed in the field (in short, a functionalist model, which we have criticised). Tensions around the poles of power, the actions taken before the established powers could react (criticisms and denunciations of the shortcomings of the established authorities; “unofficial” *precocious* initiatives), all the facts *older* than the official decisions to handle the problems disappear. While many of the reform measures are only taken by the authorities under pressure from criticising groups or groups in the position of challengers facing directions, the legal-formal description erases them and transfers to the authorities mentioned by the criticism, the credit of the measures their opponents initiated.

³⁶⁸ A. SWANN, *In Care of the State*, Oxford: Polity Press & B. Blackwell, 1988.

³⁶⁹ M. KIDUFF, W. TSAI, *Social Networks and Organizations*, Sage, London, 2003.

Our presentation in terms of "force field" or "configuration of power relations" deals with an interdependent space of sports organisations, and it takes into account the temporality of actions, the moments of tension in sport before ethics-preaching campaigns began. It restores the contentious dimension to phases reminding of the ethical nature of sport (those moments when one speaks again on land and in the corridors of sports about solidarity, loyalty, purity, *etc.*). It brings to light purely political resources used to construct arguments, to give a precise meaning to the disapproved behaviours and to the ones proposed as examples, *etc.*³⁷⁰

§ 2. Structural Coalitions and Divisions in the Sports Space

Some lines of tension in sport, whose effects are observable in the analysis of the forms of ethics preaching in sports management, have a long history: it can be said that they refer to *structural*, durable yet historical oppositions (they end up becoming long-term), which characterise the sports field.

A. The Split between Physical Education and Sport

This line of tension is sensitive in many countries and is valid throughout the entire process of institutionalising the federal competitive sport. It fits in an opposition between common learning of physical activities directed by teachers (in an academic or associative educational context), offered to the entire population, and sports training for individuals highly selected for athletic performance on the national and international levels. A series of secondary oppositions or oppositions derived from the first comes doubling its conflicting effects: and while the activities of the "base" can -under some conditions- be complementary to those of the "elite", they end up contradicting, and the stakeholders end up in brutally opposed positions.

The conceptions of training with intense physical effort supported by physical educators and physicians had an important influence on the space of sports until the years 1930-1950, and training techniques (general fitness, teaching the technical movements) remained for a long time close to physical education programs.³⁷¹ But gradually, competitive sports constituted their own standards of work and conduct, the training became "methodical", and they dissociated themselves from the moderation standards of educators and medical officers. Moreover, competitive sports clubs attracted young people outside the control of physical educators and their outdoor or gym activities: the competition between youth coaching organisations became visible. The Physical Education/Sport divergence became vivid.

³⁷⁰ We rely on political sociology and the analysis of the process of institutionalisation: W.W. POWELL, P.J. DIMAGGIO (eds), *The New Institutionalism in Organizational Analysis*, *op. cit.*; J. LAGROYE, M. OFFERLÉ (dir.), *Sociologie de l'institution*, Belin, Paris, 2011.

³⁷¹ A. ROGER, *L'entraînement en athlétisme en France (1919-1973) : une histoire de théoriciens?*, thesis Lyon 1 University, 2003; T. TERRET, "Les modèles d'entraînement en France dans les années vingt : diversité, références scientifiques et pressions internationales", in J.P. SAINT-MARTIN, T. TERRET, *Le sport français dans l'entre-deux-guerres. Regards croisés sur les influences étrangères*, L'Harmattan, Paris, pp. 145-161.

Then, in several countries like France and West Germany during the 1960s, competitive sports take over the methods of gymnastics in academic physical education programmes (Klein 1995), resulting in the social disqualification of several of the oldest currents of physical education between World War II and the years 1960-1970. With chronological differences, a similar dynamic of relationships is found in the Scandinavian countries and the United States.

Advocates of physical education focusing on teaching self-control and the values of responsibility, driven out of various sports (and social) scenes, retreated to organisations that offer the prospect of re-moralisation of sport. One of the bodies of reclassification of leaders preaching a "method of personal and systematised life from an ethical point of view" (in sports) according to Weber's concept about Western religiousness³⁷² is the International Council for Sport & Physical Education, which provides the link between a body specialised in spreading messages of ethical content (Fair Play Committee), and a general political body such as UNESCO, a leading producer of ethically structured educational and cultural standards.

B. Educational/Competition Divergence and Tension between States and Private Organisations

Many nation States got involved in the organisation of national, compulsory, and public education systems to raise the level of general education of their people. As such, they controlled physical education (that very often took a gymnastics form). However, competitive sports developed into private initiatives, that is, within associations and independent works of the State. The differences in orientation between these two sectors came to be due to the tensions between the public and private sectors, whose tension degrees vary across countries and over time.

C. Political Divergence between Sports of Capitalist Countries and Socialist Countries (Communist)

It is a line of structural and durable tension that involves State forms established according to the political regimes: this fuels various criticisms against sports systems established under "the protective wing of the State".³⁷³ Tensions persist throughout most of the twentieth century. However, this relationship takes a different turn in the domain of sports around 1950, when the Soviet Union and its satellite countries rally the international sports movement, and the "Cold War" begins. The geopolitical mess of the post-war period being overcome: a situation where "labour" sports are distinct from organised competitive sports on an international level and where there is a politicised critical force, such as in France with the Sports Federation and Gymnique Labour (FSGT), political unions, or cultural organisations associated with it, via the French Communist Party; in 1945-1950 "labour" sports are integrated in established institutions.

³⁷² M. WEBBER, *Sociologie de la religion*, p. 218, Kalinowski. Paris : Flammarion.

³⁷³ A. SWANN, *In Care of the State*, Oxford: Polity Press & B. Blackwell, *op. cit.*

This move produced champions who aspired to join classical federations and to participate in great Olympic or world events. This led them to abandon their subversive projects and replace them with a more moderate reformist position. As a result, the source of critique and calls for the moralisation of sports that are extracted from the capitalist and individualist logic of commercial profit and nationalistic chauvinism disappear. Leaders of politicised sports organisations (sports labourism covers in certain periods socialism and communism) become active in producing ethical principles applicable to sports, and we even find that they are associated with some of the organisations that we examined (Sport for All Sport without Violence, etc).

D. Divergence between Confessional Movements and Secular Movements (in Education and Sports)

It constitutes tension that markedly varies from one country to another, depending on the political history and the relationship established between the church and the State. For example, in France and Italy, the Catholic Church organised educational movements to guide the youth (and adults) during leisure time. This movement is characterised by its own sports organisations, which are distinct from secular organisations. Similarly to Communists, but with a different ethical requirement doctrine, Catholics are involved in the building of federal sports with much more moral demands compared to sports groups without doctrine. Catholic sports suffered the same transformation as that of labour sports: Standards of "pure sports", free of any interference with any doctrine whatsoever for the sake on non-political interference, but mostly because of pragmatism that considers competitive requirements above all, devalues the moral skills of organisational leaders referring to a doctrine. They will be reclassified in the sports committees we examined that adopted an ethical goal: and in the 2000s, Catholic and French Communists came together-but with a sense of evident unease- as prisoners of their past in coalitions of ethical aim. Such an example is the "group of 18" (federations) that seeks to counterbalance the power of established Olympic institutions, in this case the CNOSF (on a model of counter-power that managed to become an institution in Italy with the *Unione Italiana Sport Per tutti* (IPSC), which organises the practice for all in a way that does not include the values of the Italian National Olympic Committee – INOC ad is not subject to its control).³⁷⁴

The major source of a systemisation of the principles of conduct in the sporting world was religion, in the seventeenth century (and it was still, for example, in the very Catholic province of Quebec until the 1950s, or in the current theocracy in Iran for example): in the twentieth century in England, Germany, France or the United States, a secular morality, very close to Christian morality, took precedence over religious ethics, under the leadership of national States. The fact that the source of ethics is from outside the sports institutions does not prevent the latter from developing ethical rules. However, this somehow places them in second place, as sports ethics incorporate the principles of ethics of human activities in the public sphere regulated by the State and the law.

³⁷⁴ F. ARCHAMBAULT, "L'Union italienne du sport populaire : Avanti popolo sportivo rosso!", in: *Sport et Plein air*, 2013.

Thus we find the State in one form or another in the structural divisions that appear in sports and that are influential in ethical issues: first, the educating State (Rosanvallon 1990), which is when one considers sports as a means of education (what the IOC supported since the beginning), and whose intervention provokes resistance in the name of individual freedom (divergence between physical education and sports); second, the State as an organisation of powers in society, differently designed based on the political regime (democratic liberals, communists, theocratic, military, *etc.*), and that imposes its authority over sports bodies in different ways, that is, "interference" in sources of conflicts in the international arena of sports: finally, a secular State, of varying degrees depending on the country, that develops relationships with churches that range from pragmatic coordination to conflict of power, resulting in either joining forces under the single banner of "pure sports" or in the split and the formation of separate organisations and competing networks, all justified by distinct ethical and political considerations.

§ 3. A Cycle of Moralisation of the Game?

A person reading the documents of the Pierre de Coubertin Committee or older manifestos for the movement for Fair Play is struck by the old, somewhat naive, style of ethical preaching from 1950 to 1970: Yet the arguments are, basically, the same as today's, but in form, they are a reflection of moralism of post-World War II. A long term campaign for sports played in the spirit of fair play is driven by elite morals activists, born at the beginning of the century and making plenty of room for representatives of religious confessions and humanitarian work: it is of great importance that the message of the ICSPE was morally accredited by a Nobel Peace Prize, issued from the sector of organisations that aim to pacify international relations (SDN and UN). In addition, the ICSPE was headed for some time by an official of the French Catholic Sports Federation (Robert Pringarbe). But there were also men and women, who believed in the principles of secular morality, and which, as public servants, were given the task of education (physical and mental) of youth, women, disabled persons, *etc.* (Dorothy Ainsworth, Nelson Paillou...).

The moralisation initiatives of sports that we have analysed took place between 1950 and 1970. They are addressed to a sports institution still marked by amateurism, and in which an important place is occupied by the so-called "affinitary" federations. These federations might be based on: first, a religious doctrine, rooted in ethical principles - Christian morality (for the Federation of patronage - FSCF or Protestant sport), second, a secular doctrine (school sports), third, an *ethos* of political activism (FSGT): organisations, along with school federations, still represented in France in 1958, as many graduates as "Olympic"³⁷⁵ federations.

³⁷⁵ "Half a century of sporting licenses". In 1958, the "understanding" federations and school and university federations (amateur and multi-sports) grouped 1,038,000 licencees, single sport "Olympic" federations identify 1.036.000 licencees. Ministry of Sports (French), Stat-Info, No. 04-06, November 2004.

The message is relayed in the "small levels" of sports, that is, via the action of "basic" sports teachers and among volunteers who provide the initial training of athletes, as proved by some sociological studies.³⁷⁶ A potential audience for the moralising discourse, is an audience that internalised similar principles, in their dedication to volunteer and animate neighbourhood sports associations.

This system of moralising sports play faded during 1970-1980, both as a result of a cultural tipping marked by May 1968 and its aftermath, and the crystallisation of a new equilibrium in social relations as part of neo-liberalism in the 1980s. The world of sports emerged radically changed: where traditional sports (athletics, football, fencing, and cycling) dominated, "new sports" were imposed (windsurfing, surf, Americanised basketball, and biking), and great champions who showed their pride in belonging to powerful groups (clubs, regions or nations) were replaced by performers developing images of individual or commercial brands. Changes which affect the ordinary practice are not the same as those that transform high-level sports: but, in both cases, the conditions for receiving ethics change. Moralisation campaigns from 1950-1970 came to an end, and a new phase in morality in sports came to be.

Conclusion of Chapter 2

1. Statement on Ethical Principles

We have selected, among some of the numerous ethical statements, a few examples of formulations of principles, produced on behalf of groups (excluding ethics commissions of sports federations and the Olympic Committee: and above personal positions of champions) to clarify the standards upon which sports is based.

Drafted on behalf of groups, in an organised framework and in order to regulate behaviours that constitute the sporting life, these words mean something to the individuals saying them, to their position regarding the relationship with power, and in their practice before moral reflection or coaching others (pastors and preachers, teachers and sports coaches, doctors and trainers, referees and team captains, etc.). They are also the projection of an ideal or a personal aspiration, that is, the product of a negotiated agreement between the practitioners of sports convention. As the philosopher Robert Simon says "*(they) can be distinguished from rules without being mere conventions. Rather, the kinds of considerations they point to seem to be presuppositions of sporting practice in at least the sense that they must be accepted if our sporting practice is to make sense, or perhaps make the best sense.*"³⁷⁷ Ethical standards are not designed and adjusted through an interaction with the "base" before being brandished before federal directions.

³⁷⁶ G. LOIRAND, *Le Bénévolat sportif : les ambiguïtés d'un engagement*, Nantes, Laboratoire de Sociologie (internal report), 1997.

³⁷⁷ W.J. MORGAN, K.V. MEIER, A.J. SCHNEIDER (eds.), *Ethics in Sport. Champaign (IL), op. cit.*, p. 40.

Once "said", ethical references occupy a high position in international relations, and can only be a distant criterion against which the ordinary athlete may judge others' behaviours or adjust his own.

These considerations do not aim, in this document, to maintain scepticism about the regulatory effects (variable, sometimes low) of ethical rules.

Sociological analyses support the argument (as in Part 3 of the report) that ethical rules in sports are to be considered relevant resources in the power struggle between top leaders of sports, even more so as tools to control basic behaviours, a regulation that operates by other means.

2. Role of the Periphery in the Call for an Ethical Refoundation of Sports

We aimed to rebuild the conflicting logic of production of ethical principles that find material value in the diffusion of dissatisfaction within sports. These principles are categorized in accordance to themes, and are then amplified and systematized by organisations that challenge established sports authorities. Initiatives on ethics initially have a peripheral character; however, only in a second step can authorities in a central position take up the theme, or help to bury it, based on institutional proposals of reform that are seen in other domains.³⁷⁸ The picture we draw is different from that of the law, for instance, that emphasize the self-reform logic of authorities, thus updating ethical codifications³⁷⁹: the difference is that they grasp the construction of ethical problems starting from the legal bases of official bodies, and they obscure the socio-political dynamics that takes place before the dispute, then refer to federal departments.

3. Ethical Differential between Groups

Universal principles that support the "right" behaviour are translated - in selected and analysed cases - as principles embodied in the actions of stakeholders who portray themselves as more "fair" than their competitors and beyond power struggles (a little "more", much "more" just).

An *ethical difference* can be noticed between two groups, two networks, two candidates for a position of power: this is not a *gap* between "people with principles" and "people without principles". It is the unequal desire of people's intentions to act according to ethical principles, uneven commitment to transparency, to act according to principles, and to systematise the principles of conduct of life in a moral and "athletic" sense (which gives meaning to ordinary practices).

This asymmetric relationship in which ethical principles are formulated and presented may be transient or permanent: it is transitional if it corresponds to a phase in the struggle between those in power and pretenders (like the competition phase between Beaumont and Kilanin for the IOC presidency in 1972). The relationship changes as the fight progresses; it would be sustainable if it were based on differences in social positions, job function, and education.

³⁷⁸ J. LAGROYE, M. OFFERLÉ (dir.), *Sociologie de l'institution*, Belin, Paris, 2011.

³⁷⁹ C. MIÈGE, J.-C. LAPOUBLE, *Sports et Organisations Internationales*, Economica, Paris, 2004.

We notice sustainable ethical differences between players of competitive sports and those of physical education. As for educators, they were dominated for decades in power relationships within the domain of sports. However, they were in a position to impose ethical standards in relation to their critical relationship in instituted competitive sports.

Presumably, to understand the controversy over the "right" way to play and organise sports nowadays, the precise identification of stakeholder groups and their ethical resources constitutes useful information.

4. Spiritual Powers and Temporal Powers (Cultural Capital v. Economic Capital)

If we look closer, we notice that some groups are always present in the various attempts to determine the ethical principles applicable in sports: religious or theological scholars, philosophers, teachers and various educational leaders, and journalists engaged in professional ethics of the press. Other groups are more specifically related to a class of normalising ethical activity, for instance, doctors in the fight against doping, policemen in the fight against violence or illegal bets, *etc.* Is this how the opening of a debate on *Europe, guarantee for sporting ethics* should be opened? In a conference for Dietmar Mieth, Professor of Theology at the University of Tübingen (Germany), in a meeting of university clubs and sports reporters who, *a priori*, have no confessional ties: moral philosophy and ethical questions are usually clarified by philosophers and theologians who have to deal with morals and principles that legitimize various categories of conduct as part of social life.³⁸⁰

The sociological analysis of the production of ethical principles in sports begins by examining committees that launch campaigns to preach ethics, just as we studied the Pierre de Coubertin Committee, *International Committee for Sport and Physical Education*, *etc.* But, it is essential to show all the support negotiation work that these small groups perform for multiple organisations, often larger, with more extensive powers (UNESCO, IOC, inter-State associations, *etc.*) in order to extend the domain of validity of the principles being defended. Agreements and support vary over time, depending on the sporting institutional order, that is to say, the arrangements between international and national organisations, which themselves depend heavily on (political) relations within the international world order (Sassen 2007).

We will notice later, in the 2000s, ethical reflections that will further be intertwined with economic principles (business ethics). The link with secular morality, pacifism and the ethics of public service must also be studied further.

³⁸⁰ See B. ANDRIEU (dir.), *Éthique du sport*, *op. cit.*; M. MCNAMEE, *The Ethics of Sport: A Reader*, *op. cit.*; W.J. MORGAN, K.V. MEIR, J.A. SCHNEIDER, (eds.), *Ethics in Sport. Champaign (IL): Human Kinetics* (second ed. 2007); W.J. MORGAN, *Why Sports Morally Matter*, *op. cit.*, NY, London: Routledge; R.L. SIMON, "Internalism and Internal Values", in: *The Ethics in Sport*, J. WILLIAM (eds.), *Champaign (IL): Human Kinetics*, 2006, p. 40;. R.L. SIMON *et al.*, *Fair-Play: The Ethics in Sport*, Boulder, CO: Westview Press, 2010.

In recent years, the production of ethical principles applied in sports has not diminished: what seems to have changed is the relative position of groups aspiring to achieve spiritual control over the world of sports, compared to the federal sports authority whose material power, and, consequently, political power have suddenly increased.

We should also "measure" the ability of established institutions to absorb attempts of moralisation and destabilisation waged by small groups that we have studied: the more the budget becomes important in international sports organisations, the more sophisticated the communication and strategies for neutralising protesters become more sophisticated. The change is the result of the numerous professionals who advise sports authorities to portray themselves as an image of democratic, equitable, non-discriminatory, ecological, feminist, in short "virtuous". After decades of this game of powers and masks, the established sports powers can appear as authorities who spontaneously turned to the values they extol. They will say, for example, they have their own initiative and their own implementation of regulatory sporting behaviour, such as the World Anti-Doping Agency³⁸¹: by themselves and them alone? The sociological studies show a more complex origin. States might take over the fight against doping, thus depriving the sports movement of control over its own affairs (because these sports authorities have long remained passive in face of the problems). The power game behind this creation can be understood only if they take into account the multiplicity of stakeholders in the game, and by decentering in relation to the leaders in place.³⁸²

The systematisation of principles for the "conduct of life" in sports in the form of an Ethics Charter is currently experiencing an indubitable boom, when we link it to economic, media and commercial changes that affect sports. However, as is shown here, the production systems of older ethical principles are no less questionable (as we show here), and we assume that an understanding of the latter can clarify the current logic of production of ethics.

Chapter 3. Understanding the Semiotic Discourse on Sports Ethics

Deciphering the ethical logic may also be done through the use of semiotics, a discipline whose object is the study of signs and, by extension, of communication, and more specifically, language. Semiotics allows discovering the meaning, often hidden, of speeches and their underlying positions. The extent of the corpus to be analysed - discourses, charters, declarations, guidelines, *etc.* - is such that it cannot be considered here as an outline. However, it is indicative of the actors' logics and their positioning.

³⁸¹ "The International Olympic Committee thus took on the role of organiser and regulator by creating... the World Anti Doping Agency in 1999..." according to Y. GROSSET and M. ATTALI, "The International Institutionalization of Sport Ethics", *op. cit.*

³⁸² B. HOULIHAN, *Dying to Win. Doping in Sport and the development of anti-doping policy*, Strasbourg: Council of Europe Editions, 2003; L. SALLÉ, *Le Gouvernement du dopage en France. Entre pouvoirs publics, acteurs sportifs et médecins. La production de la loi de 1999 comme illustration*, thesis Rouen University, 2004; L. SALLÉ, L. LESTRELIN, J.-C. BASSON, "Le Tour de France 1998 et la régulation du dopage sportif : reconfiguration des rapports de force", *STAPS*, No. 73, pp. 9-23, 2006; D.V. HANSTAD, A. SMITH, I. WADDINGTON, "The establishment of the world anti-doping agency: A study of the management of organizational change and unplanned outcomes", *IRSS*, vol. 43 (3), 2008, pp. 227-249; J. DEMESLAY, *L'institution mondiale du dopage. Sociologie d'un processus d'harmonisation*. Petra, Paris, 2013.

Sport has become a major symbol of transcendence and conquest. Today it embodies the individual's continuous desire of metamorphosis towards a form of glory. This glory is the expression of the magnificence defining the extent of the work to be done to achieve a sort of fullness; it is both individual and collective since it reflects on the country of origin of athletes.

This cult of performance in sport also is linked to the cult of technological performance. In fact, these two performances, linked to sports and technology, condition each other and provide an increase of the initial capacities of the human being.

They are thus linked to the Promethean desire to surpass the original condition of man and aim towards ever greater perfection.

Sport thus becomes a means of identification to the traditional hero while the athlete embodies the ideas of quest and conquest.

These symbols, however, were not spared by the changes observed in modern sport, the most visible aspect of which is professional sports, which essentially became a spectator sport. These changes may be explained by the occurrence of certain factors, in particular financial considerations (greed and one-upmanship, including the salaries of athletes) and personal considerations (desire for fame and recognition). Their growing importance ended up distorting the elements of spectator sports such as uncertainty and identification. These two elements go together: threatening the uncertainty of the outcome of competitions by manipulating them amounts to undermining the ability of athletes to represent the communities of spectators. To counter this threat, some stakeholders in the sports movement produced an ethical discourse, in most cases, within codes of ethics or conduct. However, such initiatives produce effects and are instrumentalised by certain States. This raises the question of what remains of the ethical principles originally associated with athletic competitions

These movements are illustrated through the following phenomena: the idealism of the IOC (§ 1), the disruption of the relationship between the desire to win and the rules that accompany this desire through the pursuit of profit and glory (§ 2), the creation of codes of ethics or conduct by institutional actors (§ 3), the possible reactions to these codes (§ 4), the political instrumentalisation of the ethical discourse (§ 5) and, finally, the relationship between the change in the relationship between the show and sports (§ 6).

§ 1. IOC Idealism

The IOC's positioning is fundamental. It embodies the vision of sport as progressive system within a composite and rival humanity, but which is animated by a universal spirit of harmony.

The Olympic flag symbolises the unity and intermingling of nations. The intertwined circles illustrate the possibility of universalism through differences: humanity in its differences and its unity.



The main idea is that of a metamorphosis of self and of Man in general is, in short, an aim towards Excellence.

The major signs of identification of the IOC support this idea, this goal of outperformance:

- the motto: glorification of the superlative, "faster, higher, stronger" in a sort of never-ending qualitative self-begetting;
- Flame: phantasm of transcendence and unwavering determination to overcome the primitive nature.



However, this movement is offset by:

- the Olympic anthem: "subjection" to the ancient mind, spirit of the gods (subordination),³⁸³
- the Olympic creed: fair play as participatory pleasure in opposition with the primal instinct to win at all costs;
- The Olympic oath: declaration of actors in the sense of obedience to the framework and rules of games.

⇒ This is a project whose ultimate aim is the magnification of Man and summarizes the extent of the human desire to get out of one's original condition of being weak and incomplete at birth, to succeed in becoming a new Man, idealised or sublimated. The project reflects Man's project as a fundamentally improvable and this is precisely what defines human beings compared to other animal species.

³⁸³ "Immortal spirit of antiquity / Father of the true, beautiful and good / Descend, appear, shed over us thy light / Upon this ground and under this sky [...]."

§ 2. The opposition of competition/rules and profit

Fundamental elements involved: desire and recognition. If, originally, there was the desire - to conquer -, genuine competition requires the combination of two competing but complementary vectors:

- the desire to win against the others: diehard competition and will to defeat;
- The need for a structural framework: appease, make the battle arena impartial and truthful (which is opposed to manipulating competitions which goes against the philosophy of effective overachievement). These rules give legitimacy to a victory.

However, these two competing but complementary vectors may become antagonistic because of different stakes, and in particular financial stakes.

The disruptive role of money and fame. Money often disturbs the relationship between competition and ethical fair play by disrupting the process of fair competitions. Added to this intrusion of financial stakes are the quest of glory and the media coverage which also contributes to undermining fair competition.

For these reasons, it is important to implement an effective regulation of sporting events.

§ 3. The Codes of Ethics and Conduct of Institutional Actors

The discourse and speeches of leaders of institutions such as UEFA and the IOC show their commitment to reduce the importance of money and glory in the minds of athletes, and advocate the notions of equal opportunities and working on oneself as values.

These declarations are therefore intended to reduce the effects of the factors undermining the conduct of authentic competitions.

A. The Notions of Ethics and Morals

The general nomenclature: ethics v. morals. Although etymologically, the concepts of ethics (Greek) and morals (Latin) relate to the idea of mores, one can nevertheless distinguish them without totally opposing them. These concepts define how to act and both lead to a normative discourse. They include value judgments, but do not exactly overlap concerning the status accorded to values.

The table below shows the basic differences between the two concepts:

Morals	Ethics
Emphasis placed on Good and Evil	Emphasis placed on Good and Bad
Absolute values: abstract universality	Relative values: concrete particularity
Major reference: the Law	Major reference: perennial concord
Commandments/imperatives/duty	Advice/recommendations/potential
Unconditional obedience	Art of living
What should I do?	How should I live?

The term used unanimously by institutions and organisations is “ethics”, not “morals”, because of the negative and backward-looking connotations that the latter inspires: rigid verticality, domineering and overly ancestral: hierarchical and monarchical patriarchy, *etc.* Emphasis is placed on the word “ethics”, which refers to a kind of horizontal agreement (kinship), a sort of adjustment and a will of living together within the framework of a pact (instead of a moral contract coming from above). The word ethics thus appears in the foreground and refers to integrative recommendations, sensitivity, an emotional pact, the conditions of a living together...

This approach is found in some codes of ethics or conduct which contain strict rules aimed at implementing this unilateral and universalist discourse.

B. The Contents of the Codes of Ethics and Conduct: UEFA, FIFA, IOC...

The terms used in the consecutive ethical or morals codes and the sanctions they provide for appear in this regard as moral and imperative injunctions. It is the "you must" of traditional morals. However the major difficulties in enforcing sanctions are obvious.

Thus, in the absence of an effective regulation, the substance of the discourse, despite the use of imperative wording, resembles a sort of ethical exhortation with little consequence.

Nonetheless, the virtues of the promotion of ethics are real.

C. The Virtues of the Promotion of Ethics

Therefore, the word “ethics” seems to be more appropriate at first look, since it does not impose the compliance with rigid obligations.

The injunctions resulting from ethics are presented as if they were the product of a realistic movement of harmony and, eventually, as a way of life, while clearly indicating the road to be taken to achieve victory through effort and not through fraud. The end does not justify the means.

Winning is only a “value” if it is coupled with fairness. Otherwise, it is a mere sham and an organised deception.

The ethical discourse thus promotes belief in a real show. The fight against all kinds of abuses then becomes the cornerstone that brings credibility and, in time, belief. Otherwise, it is the realm of deception that deters potential viewers.

The rhetoric of institutions is designed to have us believe that they regulate and ensure the proper functioning of events.

However, the current state of affairs does not lack examples that contradict these good intentions. The globalisation of sport is a real challenge to the effective control of events/fights.

§ 4. Possible Reactions to the Contents of Codes of Ethics or Morals

This ethical rhetoric, like suspected or established fraudulent conduct, can cause four types of reactions:

- credulity: the rhetoric and the codes are reassuring, and I believe them;
- disbelief: the rhetoric constitutes mere statements of principles and I do not believe it;
- denial: the rhetoric is wishful thinking and I want to believe it (in fact, I do not want to know the truth);
- perversion: the rhetoric is illusory but I pretend to believe it because it suits me (determined duplicity).

The last two cases are the most complex.

Ethical codes and rhetoric are perhaps mere statements with the primary aim of resolving a potential conflict for the recipients. They would reduce cognitive dissonance while constituting a paradoxical injunction. The resolution of a conflict would be achieved through the adhesion to a mere declarative proposal.

But there is another use for ethical discourse: directly serving the political interests of States.

§ 5. Political Exploitation

Here, sport is used by the public powers, as was the case of the Olympic Games, which can be instrumentalised by the leaders of the host country. The latest example is embodied in the 2014 Winter Olympics

Having become the symbol of overachievements, sport constitutes a vector of identification for States that need to advertise themselves.

The political benefits for the leaders who host major sporting events are easily identified and are substantial:

- demonstrating their capacity as a statesman, seducing policymakers and defeating competitors;
- demonstrating their ability to organise, implement and monitor the construction of facilities for hosting the event, supervise, decide, demand...;
- advertise and magnify the host country, associating its culture and history to the event;
- boasts their status as sovereign and all-powerful master.

To illustrate this aspect, it is sufficient to remind the main themes evoked by Vladimir Putin in his speeches and interviews, as well as their reception during the organisation of the Sochi Winter Olympic Games.³⁸⁴

- The festive and spectacular dimension:

"The Sochi Olympics will be a big festival".³⁸⁵

- Sport for all: absolute democratism:

"I hope it will influence the development of mass sports in our country. This success is shared by myself and the Government of the Russian Federation."³⁸⁶

- The personal prestige of elites in his relation to report:

"The American agency Around the Ring placed Russian President Vladimir Putin in second place in the Golden 25 ranking, which identifies the persons who might have the greatest influence on the international Olympic movement in 2014. The ranking places Thomas Bach, president of the International Olympic Committee in first place (IOC). The third place is occupied by Sepp Blatter, the president of the *Fédération Internationale de Football Association* (FIFA)."³⁸⁷

- Technological magnification: the performance dimension:

"On Sunday, November 9th, two Russian cosmonauts exited the International Space Station (ISS) to give the Olympic torch its first spacewalk.

³⁸⁴ See below, the various editions of *The Voice of Russia*.

³⁸⁵ *The Voice of Russia*, 19 January 2014.

³⁸⁶ *Id.*

³⁸⁷ *The Voice of Russia*, 8 January 2014.

“Besides space, the Olympic torch will also be brought into the depths of Lake Baikal (Siberia) and the summit of Mount Elbrus (Caucasus, 5633 m) after having already travelled to the North Pole, during a journey of 123 days which began on October 7 in Moscow and ending at the opening Ceremony of the games on 7 February 2014. the red and grey torch is one of the 16,000 torches used by runners for a month in Russia for the flame’s longest course in Olympic history (65,000 km).

The Olympic torch had been transported on the ISS before the Atlanta Olympics in 1996 and the Sydney Olympics in 2000, but it was never taken to outer space”.³⁸⁸

- Russian power (economic and social).

Vladimir Putin: "There is a link between the Olympic Games in Sochi and the dream of a strong Russia. For success in the sport is already largely a manifestation of the results of economic and social policy".³⁸⁹

- Democratic hygienism.

"We are also developing sport, primarily to create good conditions that would allow us to address demographic issues and improve the health of the nation. I think this is extremely important, and these are not my personal ambitions, but the direct and concentrated interests our State and our people."³⁹⁰

- Vladimir Putin’s personal monitoring and inspection activities (his total involvement).

"Vladimir Putin skied on Friday in Sochi, where he went to inspect, once again, the progress of the work a month before the Winter Olympics scheduled for February 7 to 23. The Russian President was accompanied by Prime Minister Dmitry Medvedev. The two men skied near the "Laura" cross-country skiing and biathlon complex located near the ski resort of Krasnaya Polyana."³⁹¹

"At a preparatory meeting, Putin, in remarks relayed by television, said that **"much has been done, but we are still far from reaching perfection."** The President stressed that the most difficult task would be to complete construction and fine tune the work at Olympic venues."³⁹²

"Russian President Vladimir Putin will inspect all the sites built for the Sochi Olympics, said the President’s spokesman Dmitry Peskov. "In the coming days, the President will inspect in detail all the objects of the coastal and mountain complexes again and attend the rehearsals of the opening ceremonies of the Olympics and Paralympics in the Fisht stage", said the spokesman".³⁹³

³⁸⁸ *L'Express.fr*, 9 November 2013.

³⁸⁹ *The Voice of Russia*, 19 January 2014.

³⁹⁰ *The Voice of Russia*, 17 January 2014.

³⁹¹ *tdg.ch*, 16 February 2014.

³⁹² *Africa to Sports*, 28 November 2013.

³⁹³ *Ria Novosti*, 3 January 2014.

- Security.³⁹⁴

"In his first reaction to the attacks that bloodied Volgograd and the Caucasus, Russian President Vladimir Putin vowed to continue the fight against the terrorists who threaten the Olympics in Sochi".³⁹⁵

§ 6. The Spectacle and Sport

Two questions arise:

- Could it be said that the spectacle is becoming the unsurpassable hurdle for sport, which is thus transformed into a quasi-simulacrum during which aesthetics take precedence over the ethics and fairness of sports competitions, and that athletes are becoming more akin to actors than to competitors competitors?
- Is it not possible to say that sport has become a means allowing the creation and sustainability of the spectacle?

If these two hypotheses come to be verified, then there would be a great risk that sport would become devoid of its substance, which are mainly the uncertainty of the results and a mechanism of identification.

Conclusion of Chapter 3

Competitive sports become the symbol of "success" through superior mental and physical capacities.

But if today's athlete represents the realisation of oneself and of the Self, the means of achieving this result are at the opposite spectrum of issues of moral and even ethical conformity.

What is more, ethics gradually become linked to the aesthetics and the spectacle of this new Man, freed from his original chains, and are no longer linked to the original concept of ethics.

Finally, far from regulating behaviours, ethics – the modern word for morals, which is considered as obsolete –, risk becoming the bard of sports, which became a sham.

Chapter 4. Expertise in Sports: A Major Ethical Stake; from Lobbying to Citizen Defence

Any ethical reflection on sport should go through a reflection on the degree of independence in sports knowledge of producing bodies vis-à-vis different sports, financial and political powers involved in sports economics.

³⁹⁴ ria.ru, 31 December 2013.

³⁹⁵ L'Express.fr, 31 December 2013.

Under the influence of sponsors and media, sports institutions have never ceased to grow in order to turn into symbolic, technocratic and financial powers. Taking place in the 1960s and 1970s, this mutation was then denounced by the “radical critique of sport”. Having drawn inspiration from Freudo-Marxism, this intellectual movement in trend at some European and North American universities condemned sport for being a repressive institution like the State, school and religion. It revealed itself through initiating a number of boycotts (the football World Cup in Argentina in 1978, the Moscow and Los Angeles Olympic Games in 1980 and 1984 respectively). During the same period, sporting events became a platform for many other demands: the Civil Rights Movement, national minorities, Feminism, sects and religious extremism.

In the face of this intellectual and ideological challenge, sports institutions attempted to produce expertise on sports. This is why they created their own research laboratories that were often supported by their archives and documentation centres, as well as scholarship systems that never leave room for research independence as far as questioning is concerned (§ 1). In addition, to give their theses the appearance of scientism and neutrality, they called upon –and financed - private back rooms and lobbies that invested in the lucrative field of sports research (§ 2). Rare are, in fact, the intellectually independent places like the “Fair Play” conferences held in Denmark, where sports research can deliver works that are in the counter current to preconceptions (§ 3). As for the new activism of citizen defence of sport, then barely emergent on the European and global scales, it also chose to rely on surveys and statistics (§ 4).

§ 1. Centres of Studies Founded by International Sports Institutions

In addition to the other international bodies in charge of sport, the IOC, well before the 1980s, then FIFA by the 1990s, had understood the interest of producing and controlling research on sport. This is particularly true in Human and Social Sciences insofar as such disciplines provide a theoretical and quantified substrate with the ability to help in political decisions and administrative action.

Since the 1980s, the IOC has been producing its official history of Olympic Games thanks to resources from its Olympic Museum and Olympic Study Centre that fulfils its proselyte mission with benevolence and discretion. On each continent, many university study centres and scientific events are also funded by the IOC, through its main sponsors, or through the Organising Committees for the Olympic Games (OCOG) that never hesitate to guide the research. For example, the creation, in January 1995 of the International Chair of Olympism, although in collaboration with the Autonomous University of Barcelona, lists among its primary objectives “the documentation and propagation of the Olympic Movement Ideals” without asking the main question about the value and necessity of these very “ideals”. Another example is the whole new scholarship programme for Olympic research launched in October 2013 by the IOC, which notably guides the researcher’s demonstrations: the study of candidate cities and guest cities for the Olympic Games has to be considered from the perspective of “essential factors that ensure the appeal and feasibility of the organisation”, as well as that of “the link between art, culture and Olympism” by means of “improvement possibilities”...

There are also the Olympic para-structures, such as the Pierre de Coubertin International Committee (CIPC), funded by the IOC since its inception in 1980, and whose foundational role is the commemoration of the French Baron and spreading his “philosophy”. In the same spirit, there is the International Olympic Academy, established in 1961 by the Greek Government, the vocation of which is to offer the leaders and the volunteers of the world, training sessions on the Olympic Ideal, on site, at the very ancient sanctuary of Zeus. Eagerly wishing to control the writing of its own history, the IOC and its ramifications are not drawing lessons from the past to build the future.

The *Fédération Internationale de Football Association* (FIFA) or the Union for European Football Association (UEFA) share similar practices in their relation with research and the academic world. Moreover, the “Joao Havelange” research scholarship, named after FIFA’s former President, is apparently founded according to the principle of the researcher’s freedom of choosing the subject. However, FIFA and its university partner, the International Centre for Sports Study (CIES) of Neuchâtel, actually define the themes and disciplines of priority.

§ 2. Private Sports Research Entities

Originally meant to bring together sports and leisure federations and clubs the “Sport & Recreation Alliance” in the United Kingdom³⁹⁶ turned into a sports lobby, with its own representatives at the British Parliament and European Institutions. The body which preceded it, the Central Council for Recreative Physical Training, had been founded in 1935 through donations for developing sports practices in the UK, coordinating the action of sports groups and federations, and managing a certain number of establishments like the famous Crystal Palace. Funded by the Minister of Education as of 1961, it became, in 1972, under the rule of Conservative Prime Minister Edward Heath, a non-governmental body charged with managing the interests of sports firms and federations in the UK. Not only has it always been assigned with the development of sports practices in the UK, but it also ensures better governance (Code of Good Governance and Smart Sport...). For this purpose, it publishes and funds surveys, often pro domo, on the levels of sports practices in the UK or the impact of the Olympic Games in terms of club development: to be more accurate, the Alliance is now known to be a consulting and management assistance firm.

The Institute of International and Strategic Relations (IRIS)³⁹⁷ established in Paris with the slogan “Strategic Expertise with all Independence” is often presented in the media as a research lab. However, it is in fact an association that, through its recognition as an institution of public utility, has the capacity of receiving donations and legacies, as illustrated by its “Geostrategic Observatory on Sports” which is funded by sports institutions and intergovernmental bodies at the same time.³⁹⁸

³⁹⁶ [<http://www.sportandrecreation.org.uk/>].

[[http://www.sportandrecreation.org.uk/sites/sportandrecreation.org.uk/files/web/Sport and Recreation Alliance - Who We Are.pdf](http://www.sportandrecreation.org.uk/sites/sportandrecreation.org.uk/files/web/Sport_and_Recreation_Alliance_-_Who_We_Are.pdf)].

³⁹⁷ [<http://www.iris-france.org/%5D/>].

³⁹⁸ [<http://www.iris-france.org/analyse/obs-geostrategique-sport.php>].

Owing to the funding received from the European Commission and the European State Lotteries and Toto Association, IRIS is in charge of a “European Programme for Fighting against Match-Fixing”³⁹⁹. It conducts the programme in partnership with the Centre for Sport Business at the Salford Business School,⁴⁰⁰ the think tank “Sport and Citizenship”, and the two bodies for the defence of sports interests: SportAccord and the European Non-Governmental Sports Organisation (ENGSO). As for “Sport and Citizenship”, it is defined as a think tank for European networking “specialised in the analysis of sports policies and the study of the impact of sport”. Created in September 2007 in Brussels, only a few months after the adoption of the “White Paper on Sport” by the European Commission, it declares its contribution to the initiation of the “European Civic Forum in the field of sport”, through connecting public powers, the sport movement, but also Civil Society, universities, the economic sectors and the associative stakeholders. As a matter of fact, it functions as a lobby at the European Commission, as proven by its list of sponsors –the French Sports Foundation and the Hippocrene Foundation, French National Lottery and European Lotteries, Nike and Nestle Waters, as well as the representation offices related to it - Kurt Salomon Consultancy on Company Transformations, KEA European Affairs, specialised in cultural consulting, legal expertise in the field of media rights management, and assistance with obtaining community funding. “Sport and Citizenship” also organises events that bring together researchers in sports sciences, EU executives and European sports federations, European representatives and Commission members, on widely varied themes.

§ 3. The “Play the Game” Conferences: An Example of Independent Research

It was in 1997 that the Denmark hosted the first “Play the Game” conference, upon the initiative of hundreds of journalists and researchers, organised within a network called “Sports Intelligence Unit”⁴⁰¹ that became independent in 2004, and with the desire to address the issues of doping in professional cycling, the evolution of sport into a show business, and conflicts of interests linked to globalisation. This biannual cycle of conferences truly took off in 2000 and tackled many sensitive topics such as corruption, the necessary democratisation of sports institutions, sports press freedom, human rights, the proliferation of doping in amateur practices, violence and sexual assault, governance, the autonomy of sport, child athletes, major events, digital stakes, sport ethics, financial stakes, match-fixing, disabled sports, women’s position, counter-terrorism and counter-hooligans, financial fair play and unused stadiums. The originality of these studies lies in their attempt to place the sport phenomenon in larger contexts (societal, cultural, educational, medical and public health-related), as well as to join together relevant diverse competencies, chiefly from human and social sciences, but resorting, when necessary, to science and technology.

³⁹⁹ [<http://www.iris-france.org/analyse/obs-geostrategique-sport.php?cat=1>].

⁴⁰⁰ [<http://www.salford.ac.uk/business-school/research/centre-for-sports-business>].

⁴⁰¹ [<http://www.playthegame.org/conferences/conference-1997/siu.html>].

Since January 2011, these conferences are placed under the authority of the Danish Minister of Culture within the Danish Institute for Sport Studies (Idrættens Analyseinstitut or Idan). This institute seeks to produce scientifically indisputable works, inform the large public, question public policies concerning sport, reinforce the ethical dimension of sport, and to advance Democracy, transparency and free discussion within sports bodies, whether national or international.⁴⁰² The statutes of the organisation⁴⁰³ may lead one to think that the conferences are henceforth under the political control of the Danish Minister of Culture. In fact, the latter appoints the eight members of the Board of Direction at Idan, provides funding, and issues his recommendations regarding the composition of the organizing committee of “Play the Game” conferences, whose Chairman he also appoints.

However, the works produced by “Play the Game” can never arouse criticism if we consider that the subjects tackled do not spare any of the realities of contemporary sport. For example, the 8th “Play the Game” World Conference held in Aarhus between 28 and 31 October was entitled “Steeping up for Democracy in Sport”. It tackled themes as decisive as sports authorities and governments against match-fixing, the reform of sports institutions at the expense of losing autonomy, the fight against doping irrespective of the private life of athletes, the lost cause of sports hobbies, sports architecture and Urbanism for the benefit of citizens, the forgotten democracy by the organisers of the Olympic Games. Another example of this independence is the report entitled “World Stadium Index - Stadiums built for major sporting events - bright future or future burden?”⁴⁰⁴, showing to what extent big stadiums are under-used once major sporting events pass, and thus opposing in this respect the mainstream of the common opinion fabricated by sports powers and public works firms: big stadiums and other venues. Other studies show that major sporting events have no impact in terms of residents’ sporting practices, unlike a preconception notably shared by politics officials.⁴⁰⁵ As for the project entitled “Action for Good Governance in International Sports Organisations (AGGIS)”,⁴⁰⁶ launched in 2012 and funded by the European Commission, it led to the introduction of a new tool for measuring the degree of transparency, the democratic aspect of procedures, and the internal control mechanisms of sports organisations.

§ 4. The Rise in Power of Citizen Associations on Sports Defence

With the advent of the 2000s, it would seem as though some new citizen initiatives emerged, without the aim of introducing humanitarian questions or exogenous claims into the sports community, but rather advocating a democratisation of the governing bodies, better transparency at managing national and international federations.

⁴⁰² [<http://www.playthegame.org/about-play-the-game/objectives.html>].

⁴⁰³ [<http://www.playthegame.org/about-play-the-game/statutes.html>].

⁴⁰⁴ [<http://www.playthegame.org/knowledge-bank/theme-pages/world-stadium-index.html>]

⁴⁰⁵ [<http://www.playthegame.org/news/detailed/mega-events-do-not-have-a-trickle-down-effect-on-sports-participation-5691.html>].

⁴⁰⁶ [<http://www.playthegame.org/theme-pages/action-for-good-governance-in-international-sports-organisations.html>].

This demand followed different scandals that had tarnished the reputation of the IOC (Salt Lake City) or FIFA. The sports universe is, in fact, one of the rare social (and professional) spaces where the forms of competition separate players on the basis of origin, sex, gender, or health status: colonisers and indigenous, whites and non-whites, women and men, as well as heterosexuals and homosexuals, disabled and non-disabled persons.

For the time being, these dynamics emerged in old Democracies and are still largely initiated by State authorities. This is why the movement "True Sport" was launched by Canadian authorities in charge of sport, on both the federal and regional scales. Nevertheless, one can at the same time bet on their expansion to the global scale, and on a growing involvement by citizens who are scandalised by corruption and cheating cases, more and more revealed by the press. The International Sport and Culture Association (ISCA)⁴⁰⁷ was, for example, launched in the Denmark in 1995 with the aim of offering to the whole world an alternative for the focus of international federations on the sole dimension of sport performance. It brings together, from around the world, more than 130 non-governmental organisations involved in the development of sports for everyone and leisure sports. The Women's Sports Foundation (WSF) which was established by tennis player Billie Jean King in San Francisco in 1974 played a pioneering role in the field of sports defence in the United States. Meanwhile, the ambition of the Atlanta Committee is totally different : since the Atlanta Olympic Games in 1996, this association resorts to the IOC and supporting statistics to claim a feminisation of national teams and partite at the Olympic Committee itself.

Conclusion of Chapter 4

This brief overview of some of the bodies that produce knowledge in sport, helps to provide a clearer idea of "who is talking" and "from where". In addition, there is little doubt that the repetition of the scandals that undermine the integrity of sports competitions will encourage independent and long term research.

Conclusion of Title 2

The combined analysis of the way the challenges of manipulation of sports competitions are viewed by global public opinion, combining ethics, sociology and semiotics, enabled us to complete the economic analysis and to uncover what underlies many speeches on sport integrity.

The analysis by ethicists showed how the issue of ethics unfolded in sport, from both an individual and a collective point of view and how, in particular, the dialectic between the individual and the group should serve as a main thread for solving issues concerning the relationship between the values, which are presumably conveyed by sport, and the expected conduct, with respect to these values. It also raises the issue of the liability of athletes and institutions.

⁴⁰⁷ [<http://www.isca-web.org/english/home>].

They also showed how, under certain conditions, the issue of ethics could help rationalise the organisation of sports at the local, national and international levels and explain why, under certain conditions, the pursuit and amplification of the awareness-raising activities for the professionals of the sporting world to ethical issues are essential. This was followed by a series of recommendations.

As for sociologists, they showed that ethical codifications in sport are to be considered as relevant resources in the power struggles between the senior officials of sport, rather than as tools for regulating behaviours, the latter stemming from other routes. They further emphasised that initiatives in the field of ethics initially have a peripheral character; and that it is only later that executive bodies, which are in a central position, take up ethical considerations, or help to bury them, through the institutionalization of reform proposals, as may be observed in other fields. From the sociological analysis, one may also observe a palpable difference in ethics between the actors of competitive sport and those of physical education, the latter being, at the same time, dominated for decades within the sporting field, and in a position allowing them to impose ethical standards in their critical relationship with institutionalised competitive sports. Finally, it appears that certain social groups are always present in the various attempts to establish ethical principles applicable to sport, and that the entities that initiate ethical campaigns, do so according to a very elaborate strategy.

The semiotic approach to ethical discourse also helped to reveal the strategy of the producers of this ethical discourse. Therefore, through the prism of campaigning for sports ethics, the analysis of the “words of sport” reveals a world of meaning, which is not always flattering for those who carry these words, whether or not they do so consciously.

Finally, the search for what underlies discourses on integrity, would not be complete without a review of the main knowledge-producing organisms. Again, it was not only useful but essential to know "who speaks", "for which interests" and "from where"...

Title 3. Understanding the Manipulation of Sports Competitions by Stakeholders with Regulatory Power

Experience in the operation of the sports world shows that two main types of actors share, through various means that will be discussed, the power to deal with the abuses affecting sports, and in particular the manipulation of sports competitions: these actors are sports institutions (**Chapter 1**) and public authorities (**Chapter 2**). Beyond the historical and technical aspects, the sharing of the responsibilities between sports organisations and public authorities in the fight against the manipulation of competitions remains a central issue (**Chapter 3**).

Chapter 1. Sports Institutions Faced with the Challenge of the Manipulation of Sports Competitions

Understanding the methods of implication of sports institutions in the fight against the manipulation of sports competitions cannot be presented without first discussing the history of sports institutions and their relation to sports ethics.

Section 1. History of Sports Institutions and Sports Ethics

Sports institutions, like sports ethics, are at the same time a product and a moment in history, which means that they have not always been there and that they are contingent upon given societies and confined in a certain place and time. In this case, the process of sportisation, to recall a neologism coined by Norbert Elias, was initiated in Renaissance Europe and persists to the present time. It expresses the codification and dissemination of rules, a performance query and mental management, a progressive grant of independence of game venues and sports calendars from civil to religious authorities (residents communities, corporate organizations, sects and Churches, princes), the adoption of a common language made of words and images, the emergence of a specialised press. One may reproach this historical account for being centred in North Western Europe. However, this would be unfair since it is clear that the rules and values of sports in Europe were defined and disseminated to the rest of the world in the colonial and imperial framework, and international sports institutions in 2014 still have their seat in the heart of Europe.

The process of transforming games into sports is not limited to the codification of rules; it is complemented by the introduction of special values systems to the social groups dominating the practices (chivalry, popular codes of honour), which are constantly redefined as illustrated in the 19th century by British fair play and the chivalry of sport dear to the French Baron Pierre de Coubertin (§ 1). As part of a dual dynamic of creating distance from religion (secularism) and politics (neutrality), the International Olympic Committee takes control, since its inception in 1894, of the international sports community: it is the Olympic ideology that allows it to join together within an Olympic Movement the international sports federations (ISFs), although they are regularly tempted by secessionism (§ 2).

In fact, these ISFs have followed a rather parallel path to that of the IOC: they strive to control continental and national federations, in addition to clubs associated with their own practice – but with two limits, the professional sports leagues and sports competitions belonging to private investors – and invest the ethical question which made the news as of the 1980s as a reaction to allegations of corruption. The doping issue has been able to put the IOC and ISFs in a state of competition, and then bring them closer due to the threat of the intervention of States who give themselves the task of ensuring public health and the integrity of competitions. The creation of SportAccord in 2009 revived the old process of division of powers between the ISFs and the IOC on a global scale, to the point where the Olympic Movement could well be threatened with collapsing, or even disappearing (§ 3).

§ 1. Sports Rules and Fair Play, Chivalry of Sport and Olympic Revival

The age preceding the time of sports, clubs and federation rules should not be treated with the contempt of a modernity that would have triumphed over some archaisms. Past societies have their own complexity, often quite large, given that they undergo a process of normalisation that is a lot less powerful than ours: these are societies where States are fragile structures, where spaces were inhabited according to walking and race horse scales, where media outlets are practically non-existent, and where particularisms were myriad.

In the plurisecular process of codification that led some medieval games to becoming contemporary sports, the *jeu de paume* (palm game) seems to occupy the historical forefront along with fencing and equestrianism. But they differ from one another insofar as fencing and equestrianism are part of war education (A) Other kinds of entertainment demanding less physical activity such as darts, pool, and card games are also part of this first regulation movement. It is a matter of implementing game rules that allow players to agree on the activity's location, limits of the field, equipment, gestures and authorised moves, and scoring. The purpose is to avoid disputes among players as well as among bettors who are often the same persons because these games are consubstantially linked to money bets (B).

Sporting values would have been part of a solely British and Imperial history – in terms of adopting sports values by the indigenous elite subject to the rule of London – had a young French Baron not been infatuated in 1892 with reviving the athletic competitions of Antiquity and giving them an international dimension. In fact, Pierre de Coubertin (1863-1937) added an aristocratic aspect to the heteroclit physical practices in form as well as in the socio-cultural essence: the physical arts of the Nobility such as fencing, shooting, horseback riding and air gymnastics, both popular and of a patriotic-military atmosphere, as well as Anglo-Saxon sports, (the term “les nages” now “natation” in French, both indicate swimming) (C). The project he had wished for in the beginning was reserved for young people issued from the Bourgeoisie and Nobility, and yet not only did it spread to masculine popular classes but it ended up covering the world gradually after the fall of the European colonial empires between the 1920s and 1970s. (D)

A. Rules, Handicaps, Pools

Unlike fencing and equestrianism, which would later function as a conservatory for aristocratic traditions given the socio-economic, political and cultural monopoly over horses and swords as arts of war, the practice of palm (with bare or covered hands, and a netted beater or racket) took early popular shapes such as the long palm played outdoors, palm played in alleys, Princely short palm at hundreds of palm halls in the Kingdom of France at the beginning of the 17th century. Because the palm madness is a French madness to the point where Robert Dallington (*The View of France*, 1604) considers that “the French are born with a racket in their hands, and that the country is filled with palm games more numerous than churches, with more players than English beer drinkers”: for an English Puritan, palm sports are well and truly even more dangerous than drinking. This palm game madness, in fact, does not reflect a simple admiration for the beautiful moves and challenges; it also corresponds to a true passion for money games. The acts prohibited by the royal, princely and ecclesiastic police and courts inform us of the existence of palm at least since the 14th century. Palm halls are also taverns, gambling dens, brothels, *i.e.* places where the rejection of civil and religious authorities is manifested. The combination of alcohol, gambling and prostitution gives rise also to private violence and violation of public order to the extent that the rules of the game vary from one palm hall to another, from one province to another and from one kingdom to another. Even though palm games were popularised in the Kingdom of France throughout the 15th and 16th centuries, it is worth noting that all European princes practiced “real tennis” in the Renaissance.

Moreover, numerous initiatives were taken by the Church or by sovereigns to normalise the game, as well as regulate and supervise it. The fact that the first rule (*regula*) of the palm game was laid down by a regulator, namely the monk Antonio Scaïno de Salò of Italy, is not surprising (*Tratatto del Giuoco della palla*, 1555). The rules are such that palm functions as a game where randomness is a major factor, in order to maintain passion, but also to make bets possible without leaving room for cheaters. In fact, the value of the opponents is constantly rebalanced, dictating that the better player must go back 15 steps for every scored point, thus increasing the area he has to defend. This counting system (15, 30, 40, game) would be reintroduced by the English Major Wingfield when he invented, in 1875, lawn tennis. And to preserve this sport’s glorious uncertainty, thus allow betting, the organisers of tournaments in the Belle Époque would waste no time adopting a handicap system which gives, as the match starts, one point, and even two advantage points to the weaker player opposing to the stronger one. These handicaps would pass to the ranking system adopted later on by the French Federation of Tennis to rank national players: a player ranked “- 15” is one who starts the game with a one point disadvantage, whereas a “15” starts with a one point advantage.

The concept of handicap—originally a game that involves sliding the hand into a cap “hand in cap” in order to estimate, by touch, the value of a hidden object – is found in other disciplines such as turf or golf. In horseback racing where bets are allowed since the eighteenth century at least, the practice consists in the handicapper overweighing the better horse to allow uncertainty. The word handicap spread across the world just as turf did: it arrived in France in 1827 at the time when the first horse races were organised by the Jockey Club. During the first athletics and cycling competitions that saw the light between 1850 and 1880, runners did not necessarily spring from the same departure lines: on the contrary, “scratch” races are competitions where all opponents are aligned on a line scratching the ground, hence the word scratch. As for pedestrians, dressed in silks and riding with a crop in hands, they belonged to “stables” funded by gamblers. The same concept is found in golf, where handicap represents the number of shots taken by a player compared to the reference score established by a first-class player with zero handicaps. Weight classes in combat sports (boxing, wrestling, judo...) aim here to render results uncertain and arouse passion, making betting possible *de facto*.

The same thing may be said about “pools” where athletes and players are joined together according to their level of performance: these level groups allow the elimination of draws that could lead to having competitors of very disparate levels playing against each other, thus eliminating all uncertainties in terms of results. It is not innocuous to notice that the term “pool” originates from card games, which are an excellent example of gambling games. Under the name “polla”, it denotes the highest ace, the ace of “Coins” or “Deniers”, the one that allows winning, in Castellan and Florentine styles of games (the other insignias are Cups, Staves and Swords). This denotation was adopted in French card games, then English card games under the names “poule” and “pool” respectively to also label the total of bets placed by gamblers on the table. Pool in English has also denoted a game similar to billiard. However, “polla”, in Latin America, means equestrianism and football bets as well. The term was borrowed by turf to label trial races aimed at ranking three-year old young horses called “foals” that have never run before and whose value is not known. This word is also found in fencing when evoking competition formulas, where fencers are gathered in numbers and opposed to one another for the purpose of establishing a ranking. Moreover, it is found in rugby since the 1860s. It should be noted that “foals”, in boxing, means “young professional boxers” who are part of the manager’s stable, in other words someone who is deeply involved in the bettors’ activities.

B. Fair Play and Amateurism

The regulation of games and their transformation into sports stem from the necessity for Churches and States in the European continent to organise the practices in order to avoid vice and corruption, but also to decrease violence between people. In this process, players and bettors aren’t necessarily absent, for the stabilisation of rules aims to amplify the glory of the victor and increase the uncertainty of results. The pacification of manners that are dear to the sociologist Norbert Elias is not simply an act performed by the authorities; it may also tap into the will of the concerned parties to reassure games and sports spectators who wish to place a bet.

This dear-to-bettors uncertainty of the game taps also into the glory of champions, giving rise to “the glorious uncertainty of sport”. As for cheating, denounced by clerics and the Nobility alike, respecting the rules and the game play can be founded in virtue under the term “fair play”. This way, through enhancing the role of randomness, giving way to God’s judgment, fair play makes courtesy towards opponents and honesty of bets possible. As a matter of fact, it is only a secondary matter that the term “fair play” departed from its original meaning of “respect for the rules or equal treatment of all concerned”, to adopt the meaning of “sportsmanship”. The transition from the strict observation of rules to a social and cultural way of behaving in the world (loyalty, self-control, beauty of gesture, free engagement, and dignity in victory as well as in defeat) actually indicates an assumption of power, that is, of gentlemen over players, *i.e.* the amateurs from Nobility over professionals from the people. Sportsmanship is a means for the elite to retake the symbolic control of games through turning them into sports, and regulating sub-societies composed of players and gamblers. Gentlemen are by no means opponents in sports betting, in which they are involved in their capacity of organisers, managers for example, or big players: they simply want to verify the regularity in order not to be taken for pigeons, nor be de-feathered, to use poultry metaphors.

Placed in such a context of bet security and player moralisation, rules are adopted throughout the eighteenth and nineteenth centuries, characterised by the decline of popular cultures before the progress of the State, religions, and aristocracies. It is not surprising that the rules for the most popular, most violent games, or the ones that are susceptible to betting, are the first ones to be codified. This is also the case for cricket and golf, or even boxing and turf. While cricket is probably invested by bettors since its origins, the Cavalier Parliament passed a Gambling Act in 1664 limiting the amount of a bet (stake) to 100 pounds: this is the time when rich bourgeois and aristocrats exercised their patronage over the game. A patronage they strengthened by adopting the first Codes of Cricket between 1744 (Artillery Ground of London) and 1788 (Marylebone Cricket Club). All these Laws - the term itself is significant for the first nation to adopt the parliamentary system - were developed by “gentlemen and noblemen” of different counties or cities in England.

The wave of puritanism spreading across England in the years 1830-1840 gave birth to a parallel, if not opposite, dynamic of protestant education of the body: the Muscular Christians took control of sporting games played at public schools with the purpose of moralising their students. The passion for the game led certain directors in the years 1880-1890 to bet on the performance of young sportsmen in order to increase the prestige of their establishments. And it is also in reaction to the rise of sports professionalism among athletes coming from popular classes that the gentry erected a social and symbolic double barrier: the amateurism of gentlemen will oppose henceforth the venality of players. It is this system of values based on amateurism and honour that the young Pierre de Coubertin discovered in English public schools starting from 1883. He would then have one idea in mind: pass it along to the French system of secondary education.

C. Chivalry in Sport

Pierre de Coubertin's project has aimed at nothing other than to create a "sports chivalry", a new kind of elite who's not necessarily of royal blood, nor above all, elite in terms of money, but instead, one of prowess and dignity. All his life, he would have only one goal: to take his revenge from the French revolutionaries of 1793 by forging a new kind of Nobility that combines the war ethos of French horsemen of the pre-Absolutist monarchy with the manliness and fair play of English public school students. Borrowing from the Director of the Rugby School, Thomas Arnold, reveals as more calculation rather than contempt. If he was the victim of the Arnoldian legend created by Charles Kingsley and Thomas Hughes, he was a consenting victim. He knew very well that the posthumous fame of the headmaster of Rugby did not reach all the English elite. He was the only one, however, to believe that "athletic education" is the main explanatory factor of British power during the Victorian Era. In fact, he needed a pedagogical guarantee like Doctor Arnold, although English and Protestant, to guide the Republican education of the French elite in a more aristocratic direction.

Beyond forging a French-style Christian gentleman, his project sought to invent a new national chivalry that would outdo the athletic servants of the Victorian Era: the chivalry of sportsmen. This is why Pierre de Coubertin had to convince mainly his own side: Conservative educators and Catholic circles. But his educational proposition would only shock them, if not surprise them. While the "education of distrust" had been until then "an art of prolonging childhood", he proposed to accelerate reaching adulthood by making room for "the more spontaneous sociability" of young people which is expressed by the creation of the first sports communities in the early 1880s. The resistance of Conservative Catholics and Jesuits to his reform project not only closed the doors of religious boarding schools for him, but it deepened the gap between his religious education and his strong faith, on the one hand, and intransigent Catholics on the other. However, his educational initiative was heeded by the famous Minister Jules Ferry who was not in power then, but who was convinced that "the Republic does not reside in a unique formula, inflexible like a dogma, and that Conservatives joined together – Pierre de Coubertin was one of them – would bring many others".

D. The Revival of the Olympic Games and International Peace through Sport

Pierre de Coubertin's project of reviving ancient games in a modern mould precisely fit his project of creating a new kind of chivalry, by taking it, this time, to the scale of global elites, *i.e.* Occidental in spirit.

Held in June 1894 by French sportsmen, the Sorbonne Congress "for the study and dissemination of the principles of amateurism" concluded with two major innovations in the field of international sports relations: the adoption of an international amateur norm and the "revival" of the Olympic Games". Incapable of controlling potential encounters between French athletes and foreign professionals, the directors of French clubs created an international common front for amateurism.

The working document distributed to representatives of world athletics specified that “sport for honour” is a “fundamental and invariable” formula “to which we must aim”. Without explicitly excluding workers, the first Congress commission adopted a definition of an amateur athlete which remained segregationist: “any person who has never taken part in an open competition, nor competed for a prize of any kind or an amount of money, regardless of the source, notably field admissions, or with professionals, and who has never been, at any given period of his life, an instructor or mentor of physical exercises”. With two close nuances, it is this very definition that the second commission, labelled “Olympic”, upheld: fencing matches would be open for professionals, *i.e.* masters of arms, in order to avoid a very poor level of competition, on the one hand, and athletes had to “present pledges of good morality” on the other.

Taking advantage of his position as Secretary General of the Congress, Pierre de Coubertin, in fact, surreptitiously added an eighth item to the agenda: “the revival of the Olympic Games on the basis and conditions that conform with the requirements of modern life”. Although the concept was adopted with acclaim, the debate, however, focused on the nature of the athletic events, the composition of the International Committee for Olympic Games, the location and date of future Olympics. At least three factions were opposed: the very influential communities of shooting and gymnastics, Greeks with the wish to resurrect at home this Antiquity event, and sportsmen who were in favour of new disciplines. The Olympic programme adopted by the general assembly was therefore the result of compromise: “athletic sports” (races, jumping, discus and weight throwing) end up joined together in a General Championship of Athleticism called “pentathlon”, water sports (rowing, sailing, swimming), “athletic games” (football, lawn-tennis, palm), skating, fencing (foil, sabre, sword), boxing, wrestling, equestrian sports and polo, shooting and gymnastics (individual performance, group performance), cycling, and Alpinism. A little more than forty kilometres long, “the Marathon Race” was a chimera coined by French linguist Michel Bréal who wished to commemorate Greek physical courage and national unity, but above all celebrate the new performances of the “human machine”.

Thanks to the enthusiasm of the Congress attendees, the first International Olympic Games Committee (IOGC) was established in order to ensure continuity during the Olympic Games. It consisted of cosmopolitan educators, aristocrats and bourgeois, patriots and colonialists, all persuaded about the educational and regenerative benefits of sport: two Englishmen, one Hungarian, one Czech, one Russian, one Swede, and one Italian, soon joined by a German and a Belgian, but also an American, an Argentinean and a New Zealander. Next to the Greek President Demetrios Bikelas were two French guardian angels, General Secretary Pierre de Coubertin and Treasurer Ernest Callot. This allocation of roles at the IOGC was the result of a difficult negotiation between the inventor of the Neo-Olympic idea and the last-minute representatives of the Greek Monarchy, a negotiation that focused in particular on the future location of the Olympic revival. Faced with the threat of a solution from London, Pierre de Coubertin had to curb his initial project of Games linked to the Universal Exposition of Paris in 1900 and accept that Greece host the first Olympics in Athens in 1896.

To impose his draft, Pierre de Coubertin knew how to play the Philhellene Western elite athletes and take advantage of an Olympic times atmosphere: Olympic seminar of Rondeau near Grenoble from 1832, excavations of the German archaeologist Ernst Curtius at Olympia (1852-1871), "Olympic games" of Much Wenlock in Shropshire since 1850, athletic contests of the Hellenic Diaspora in Athens between 1859 and 1893 but, unlike these nostalgic, folk, or patriotic "revivals", Pierre de Coubertin wanted to promote modern sports and advocate itinerant and pacifist Olympics. He then criticised Charles Maurras who considered "the modernised Olympics [...] a blatant stupidity" because "all Internationalism, Cosmopolitanism conceals almost certainly some Anglomania." Covering the Olympics of Athens in April 1896 on behalf of the Gazette de France, Maurras changed his mind when he discovered the patriotic exultation of Greek and American audiences. He then welcomed the ability of Olympic Games to allow "people to interact directly (and not via ambassadors, who are solemn, balanced, measured, and slow people) to exchange insults mouth-to-mouth and heart to heart". Such an interpretation of the revived Games was not to the liking of Pierre de Coubertin who adhered to liberal Pacifism and the principles of arbitration since joining, in 1889, the Peace Congress upon the invitation of Jules Simon. Stated for the first time in November 1892, the project merely reiterated a more universal version of the proposal of Hodgson Pratt and Frederic Passy to organise athletic and peaceful encounters between students from foreign nations. Pierre de Coubertin was convinced that "the telegraph, railways, the telephone, the passionate pursuit of science, congresses, and exhibitions have done more for peace than all treaties and all diplomatic conventions." He even believed that sporting events were the "Free Trade of the Future" and that "the day when they would be introduced in the manners of old Europe, peace will have received a new and powerful support." His Pacifism through sport was part of a Humanist and liberal movement, as well as neutralist and educational, which aimed to provide concrete responses to the horrors of war of the Industrial Era (Secession, Crimea, Solferino): the Young Men's Christian Association founded in London in 1844, universal Exhibitions in London in 1851 and then in Paris in 1867, Henry Dunant's Red Cross initiated in Geneva in 1863, and soon the 1895 Nobel confessions or the Scouts of Baden Powell.

§ 2. Olympism, the IOC, the Olympic Movement

The study of Olympism is needed here because the International Olympic Committee is the only sporting institution on the international level to be founded since its inception in 1894 on a corpus of values presented as intrinsic to the Olympic Games revived in Athens in 1896. Established more than a decade before international sports federations, the IOC has come to be recognized as the apex institution for world sport through the quadrennial ritual of the Olympic Games and its ideological magistrate: beyond the major conflicts of the twentieth century, it managed to somehow maintain its dominion over what it ended up naming the "Olympic Movement" (A).

The flow of money generated by the media as of the 1960s enabled President Juan Antonio Samaranch to make a Copernican redefinition of Olympism at the threshold of the 1980s: The participation of professional athletes in the Olympics was now combined with the conclusion of rich business partnerships. To protect itself from further attacks by potential competitors, the IOC conducted a charming offensive aimed at supra-state institutions (UN, Council of Europe, European Union...) and attempted to rebuild its image after the ethical scandal of Salt Lake City (**B**).

A. From the Invention of Olympism to Neutralism during the Cold War

Even though it gives the appearance of tradition owing to its reference to Antiquity, Olympism is nothing but an ideological construct invented by Pierre de Coubertin in response to the abuses faced by the first editions of Olympics (1). As for amateurism, its definition continues to evolve under pressure from various lobbies to the point where Pierre de Coubertin ends up preferring an oath of sports loyalty: the Olympic Oath (2). The European war shook the pacifist beliefs of the IOC President and his colleagues who opted for excluding from games nations considered as "responsible for the war" by the winners (3). The end of the First World War marked the end of the Olympic monopoly, with the IOC and the Olympic Games being subject to rival bodies and competitions (4). The organisation of the Games in Berlin in 1936 by Hitler's Germany raised serious questions about the IOC which was confronted for the first time with a dictatorship (5). With the Cold War between the USA and USSR that lasted more than four decades, the IOC adopted a neutral position at the risk of being accused of sacrificing the defence of freedom (6).

1. Olympism: An Invented Ethical Tradition

Unlike other athletic and sports competitions that were born between 1850 and 1930 - the America's Cup dates back to 1851, the Tour de France to 1903 and the first football World Cup 1930 -, the Olympic Games have been invested, since 1894, with ethical content by their founder, the French aristocrat Pierre de Coubertin. Through healthy competition between amateur champions, de Coubertin sought to promote better cooperation between different nations, and roll back the spectre of war. Peace through sports confrontation between the social elite of non-professionals, such was the hallmark carried to the baptismal font at the Sorbonne in Paris in June 1894.

This "revival of the Olympics", in the words of Pierre de Coubertin, was not exactly a restoration; since the two projects were separate. It was rather a reinvention under the auspices of the ancient tradition, in other words, a tradition that is invented, and even a tradition that the IOC continues to invent today. To take one example, the ancient truce is quite different from the cessation of hostilities demanded by the IOC since 1992, and that the UN promotes since 1993 (Olympic Truce Resolution 48/11 55/2 recovery in the resolution of the Millennium Declaration of 8 September 2000), the UNESCO since 1997, and the European Parliament since 2004.

Indeed, the ancient Greeks did not know the idea of peace before the fourth century while the games date back to the year 776 BC, according to legend. War is in fact the permanent state of relations between cities and Greek peoples, and the truce proclaimed by the priests (ekecheiria), which does not stop the wars, is nothing more than a safe-conduct given to athletes and pilgrims and protection offered to the sanctuary of Olympia.

In fact, since its inception in 1894, the IOC has consistently justified with authority and ethical arguments, the existence of the modern Olympic Games. It has also surrounded them with a religious aura, a ceremony and decorum largely borrowed from religious processions and military parades. It was during the years 1896-1914, in response to the changes to the Olympic Games that he deemed harmful such as Nationalism, marketing, or the specialisation of athletes, that Pierre de Coubertin coined his theory about sport called "Olympism", for the first time in 1910. Olympism was not born in 1894, along with modern games, but it is an answer forged a posteriori that is powerless before the commercial, sociological, and political developments of the Athens Games in 1896, Paris in 1900, St. Louis in 1904, London in 1908 and Stockholm in 1912. Among these mutations, the emergence of female athletes did not seem to please Pierre de Coubertin who excluded them from the project, or his IOC colleagues who made sure that they were under control. Similarly, the modern Olympics were designed neither for workers nor for the people under colonial rule. Olympism, according to Pierre de Coubertin and his IOC colleagues, can only be representative of the Western elites.

a. The First Games under the Threat of States and of Commercial Exhibitions

After many twists and turns associated with Greek domestic policy, the first Games in Athens finally took place and proved to be an extraordinary sporting and popular success. The Chauvinism of Americans after their many victories in athletics, and of Greeks after the unexpected victory of Spiridon Louīs in the marathon, annoyed Pierre de Coubertin while Charles Maurras was excited, since had feared that the renovated Olympics would lead to the dissolution of nations and to cosmopolitanism. At the closing lunch ceremony in honour of athletes, King George I expressed the wish that the Games settle permanently in Greece: "I do not bid you farewell, I say to you goodbye again." In order to hold the Games in Paris in 1900, Pierre de Coubertin found no other solution than to put his IOC colleagues in a competition to choose the place of the 1904 Olympiad: this is how the candidacies of New York, Berlin and Stockholm were made public. Moreover, the military defeat in the spring of 1897 against the Ottoman Empire weakened Greek Nationalism and ruined Greek finances. But Greece did not give up, supported by the German members of the IOC: the "International Olympic Games in Athens" would be organised in 1906 in exchange for a promise to hold the Olympic Games in Berlin in 1908. These intermediate Games were a great sporting and diplomatic achievement for the Greek monarchy who would, however, fail to regain control of the Games after the Great War. All Greece had to do was to bring its contribution to the Balkan Games (Sofia in 1931, 1932, Sofia in 1933, Zagreb in 1934, Istanbul in 1935).

As for the 1900 Paris Games, they were swallowed up in the vast machinery of the World Expo. Pierre de Coubertin and his IOC colleagues were dismissed by the Republic that was promoting patriotic associations for gymnastics and shooting, the French army, automobiles and airships manufactured in France. Cycling competitions between professionals were better promoted than athletic competitions between amateurs relegated to the mundane facilities of the Racing Club de France. Few European athletes and only two IOC members went from St. Louis in 1904. Again, the Games were absorbed by a commercial Exhibition and it did not take long before turning into a masquerade: doping and cheating in the marathon, athletic human zoos under the name "Anthropological Days."

Slated to take place in Rome in 1908, the Olympics were secretly moved to London by Pierre de Coubertin, who wanted to promote the entente cordiale in the stadium on behalf of his friend, Foreign Minister Théophile Delcassé. Pierre de Coubertin considered the Stockholm Games in 1912 as his greatest achievement. The event received the honours of the sovereign, without any attempt at political exploitation, and popular enthusiasm was not accompanied by nationalist overflow. In addition, the IOC was able to impose its geopolitics, as stateless nations, like Bohemia and Finland were represented under their own flag. Finally, art competitions were held and Pierre de Coubertin himself was rewarded for his Ode to Sport presented under a pseudonym: his poem written in French and German is a hymn to peace along with an exultation of virility.

b. Olympism: An Illuminated and Misogynistic Elitism

In response to some changes in sport that Pierre de Coubertin disliked, he was led to clarifying his thoughts. The educational conferences (Le Havre in 1897, Brussels in 1905, Lausanne in 1913 and 1921, Prague in 1925) and the Olympic Review he founded in 1901 provided the space for his reflection and propaganda. Olympism was theorised in spurts, between 1906 and 1918. Against the creeping professionalism of art objects given to the winner, against the profit motive of bettors, against "snobbery" and the decline in fair play, he proposed, in 1906, to establish "the Oath of the Athlete". The first oath of loyalty and selflessness would be sworn by Belgian fencer Victor Boin at Antwerp in 1920. Because he saw the fading of artistic culture among athletes and audience, because he knew the frequent disdain of artists at the sporting location, Pierre de Coubertin envisioned, in 1906 to marry arts, literature and sports together. To put an end to the bickering between English and American athletes in London, he coined this formula that would outlive him: "The important thing in life is not the triumph but the fight; the essential thing is not to have conquered but to have fought well." Fearing that the prospect of the Berlin Games in 1916 would not prevent a clash of sports Nationalism, he offered, in August 1913 to illustrate Universalism and Olympic Pacifism with a white flag on which five colourful rings interlock to represent the five continents.

Pierre de Coubertin was also an opponent of big stadiums where popular emotions were concentrated and were hardly controllable. His fear of the crowd made him prefer the gathering of several thousand spectators, all of whom were educated in mutual respect and amateurs of physical aesthetics, on gently sloping grassy areas around the athletics track. And to organise the masses, he provided a whole ceremony inspired by the ancient liturgy of jousting tournaments, as well as aesthetic reflections of John Ruskin on the light and harmony of sounds: parade of participants organised by nation, proclamation of the opening of the games, athletes' oath processions and tableaux, torches and fireworks, speeches and great choral masses, distribution of medals and presentation of Olympic qualifications.

Pierre de Coubertin was very late to adhere to the formula of "Sports for Everyone". Vigilant on the progress of socialist sport and the entrenchment of democracy, he announced, in 1910, in the magazine of French gymnasts: "Young people who have nothing can no longer remain the disadvantaged in sport. The time has come for you as well to taste the muscle joy. "It was also necessary that municipal gyms be supervised by elites and a programme of educational seminars be offered to the sons of the people. As specialism in sports tended to prevail, and this was the first step towards professionalism, Pierre de Coubertin glorified the complete athlete, the modern pentathlete crowned for the first time in Stockholm in 1912; duel shooting at 25 m on visible targets, 300 m freestyle swimming, 4 km horseback course fraught with obstacles, the fencing event with swords, a cross-country tour of 4000 m. It was not until after the war that Pierre de Coubertin tried to forge a "religion of the athlete": "Olympism is the religion of energy, the cult of intensive will developed by the practice of manly sports based on hygiene and good citizenship, and surrounding oneself with art and thought." The Humanism of Coubertin was an exaltation of virility and a hymn to the complete man, a sort of elitist and illuminated Masculinism that excludes women. A Western man or one who is coming from new worlds once acculturated to Western norms and values, including the rules and techniques of the sports born in Europe and North America.

c. The Female Athletes Prohibited from the Olympic Games and Women's Sport under the Control of Men

The opposition of Pierre de Coubertin to women's participation in the Olympics is well known: "A female Olympiad would be impractical, uninteresting and unsightly and, we are not afraid to add, incorrect" he wrote in the Olympic Review on the eve of the Stockholm Games 1912. Like many of his colleagues in the IOC, he feared that sport would masculinise women - "I have always been horrified by the man-woman," wrote President Baillet-Latour in 1935 - and assimilated the spectacle of the female bodies in the stadium to pornography - "no unfortunate exhibitions", he decided at the Congress of Prague in 1925. Reducing women to their maternal and reproductive role, Pierre de Coubertin recommended the practice of gymnastics which reinforces the midsection so useful for better child delivery.

However, with the complicity of the organisers, female athletes were able to participate in tennis and golf events in 1900, archery in 1904 and 1908, swimming in 1912. Under pressure from Scandinavian and Anglo-Saxon NOCs, the IOC provisionally authorised the participation of women in some athletic events at the Games in Amsterdam in 1928: sports newspapers at the time spread a rumour that the female competitors had staggered and collapsed on the arrival line of 800 m. It is also true that women sports societies from England, the United States, France, Czechoslovakia and Italy, united under Milliat Alice and Sophie Elliott Lynn, formed the International Women's Sports Federation (FSFI) on October 31, 1921 in Paris. Then they organised female World Games in Paris in 1922, in Gothenburg in 1926, Prague in 1930. The support of the International Federation of Amateur Athletics (IAAF) to the cause of female athletes was more ambiguous than that of the International Skating Union: it was a matter of removing "the whole thing", as written by the Swedish IAAF President Sigfrid Edstrom to the American Brundage in January 1935. By assuming the role of referee, the IAAF nibbled positions within the IOC while taking control in 1938 of women's athletics which were integrated in the first European Athletics Championship. The fourth and last Women's Games were held in London in 1934 and the procrastination IOC lead to the scuttling of the FSFI after the Berlin Games.

2. Amateurism and the Olympic Oath during the *Belle Époque*

Although the creation of the Olympic Games in 1894 was closely linked to the principle of amateurism, this did not stop some professionals from participating in the official competitions in Paris in 1900 against the advice of Pierre de Coubertin, then in St. Louis in 1904, London in 1908, and in the interim games in Athens in 1906. Although the vast majority of sports leaders at the time shared the idea of indifferent practice, the fact remains that they all had a different understanding of amateurism. Not only divergent national sports cultures, but also the conception of amateurism from one sport to another: no equivalence between aristocratic bourgeois lawn tennis, equestrianism and fencing practiced by military career, and professional cycling from the outset. However, in Stockholm in 1912, the Olympic Games kicked off for the first time with consensus on the definition of amateurism.

It is not surprising that the first case of disqualification due to professionalism was witnessed on this occasion, sanctioning an athlete who belonged to a minority group, namely Native American Jim Thorpe. This first disqualification pushed the IOC to regulate its competitions and seek solutions to prevent cheating. One of these solutions was the Olympic Oath that accompanies a ceremony. Despite the effort of staging, tainted with sacralism and patriotism, the process especially revealed the powerlessness of the IOC in the fight against professionalism. But the oath would be kept permanently with some modifications depending on the context and the current issues: today, for example, it focuses on the use of doping substance.

a. The Two Stakes of an Olympic Definition of Amateurism

After three Olympiads, several international investigations were conducted at sports organisations to adopt a single and definitive standard for amateurism. The IOC used two surveys it conducted in the Olympic Review in 1905, then in the reference newspaper *Sporting Life* in the wake of the London Games in 1908, to put the debate in opportune terms. Discussions continued within the IOC and the international sports world until the Olympic session in Budapest in 1911. A few months before the games in Stockholm, a strict definition was passed unanimously, inspired by the most intransigent British officials. Common practices such as the resale of trophies, disguised employment, the double status of amateur in one sport and professional in another were particularly prohibited. Although the loss of earnings was also condemned, a significant change became tolerated: the refunding of travel and hotel expenses by the club.

"Any person is qualified as an amateur and can compete in the Olympic Games if this person has never:

A. (a) Competed in an athletic match for a cash prize or money, or for any other wager.

(b) Been rewarded with money or any pecuniary benefit for having taken part in a competition, exhibition, or athletic representation.

(*nota bene*) Refunding a competitor by the Company which designates him/her to represent it, travel and hotel expenses thereby incurred, does not lead to the loss of amateur status.

(c) Received, either directly or indirectly, any payment or taken any reward for the time lost while competing or practicing to compete in an athletic contest.

(d) Sold or pledged a prize won in an athletic competition.

B. (a) Derived profit from teaching any athletic exercise, or services he would have rendered.

(b) Accepted a paid employment under the formal or tacit condition of having to encourage, instruct or take part in any athletic exercise whose practice, encouragement and instruction is not part of the normal functions of this employment

C. (a) Competed in an athletic match open to persons other than amateurs.

(b) Competed in an athletic competition against a professional, whether for or without a prize.

(c) Been recognised as professional or disqualified forever as amateur in any other sport."⁴⁰⁸

⁴⁰⁸ Minutes of the Olympic session held at Budapest, 23-27 May 1911, Archives of the IOC, Lausanne.

This definition continues to clearly separate the sportsman from the professional: the amateur status attests above all of the infallible morality of the gentleman athlete who can only be a loafer or a soldier⁴⁰⁹. It explicitly aims to exclude all professionals from Olympic Games, including gymnastics or sports trainers, as well as fencing instructors. In particular, by adopting a narrow definition, the IOC asserts its control on the international sports federations (ISFs), established one after the other since the 1900s: the IOC who controls the selection of participants via the emerging national Olympic committees, in addition to defining the list of sports on the program of the games. A broader Olympic definition would have left, on the contrary, the power of selection in the hands of the federations, and reversed power relations. Although the definition of amateurism is a social feature, in that it excludes the popular athletes from Olympic performance, it also functions as a strategic tool of domination for the IOC on ISFs.

However, to this date, no official Olympic regulation exists. The IOC members are responsible for representing it in their countries and sporting organisations to which they belong. The Olympic Review also serves as a mediator between the IOC and the emerging sports movement, provided, however, that the institutions are subscribed to it. If the debate is fierce in the Committee on the subject of amateurism, the decisions therefore show relative and largely incomplete publicity in the international sporting world.

b. The First Athlete to be Disqualified as an Example: American-Indian Jim Thorpe

While the IOC had taken time and extreme care to legislate on the subject of amateurism, it was not responsible for detecting the first case of fraud during the games. It was thanks to the American managers who denounced and disqualified double Olympic champion, James Francis "Jim" Thorpe from their own ranks. The Native American athlete was 24 years old when he won two gold medals in the modern decathlon and pentathlon, with his exceptional physical qualities engraved in the minds of the spectators and the King of Sweden. Denounced by reporters a few weeks after the games, Thorpe was accused of having received money for participating in baseball games, before he was selected for the Olympic team. Thorpe attempted to provide explanations to James Sullivan, then Secretary General of the American Athletic Union (AAU) and the American Olympic Committee, but his arguments only led to more confusion. To relativise his violation of the rules, he advanced the argument of his American Indian ancestry, his youth and his ignorance of Olympic regulations. He also criticised a common practice among his fellow athletes: professionalism under pseudonyms.

⁴⁰⁹ On the Olympic amateurism regulation, see F. CARPENTIER, "Un siècle d'amateurisme olympique : itinéraire d'un règlement fondateur et controversé" in: C. BOLI, *Les Jeux olympiques. Fierté nationale et enjeu mondial*, Biarritz, Atlantica, 2008, pp. 25-33.

The reaction of the AAU was immediate and unequivocal: an official statement was sent to the IOC, in which American leaders held James Thorpe solely responsible for serious misconduct, that can only be explained by his Indian origins and low level of education, "Mr Thorpe is an Indian of limited experience and education in the ways of other than his own people"⁴¹⁰. Finally, having apologised to the Swedish organising committee, the IOC and all participating countries, American officials pronounced the sporting dishonour of Thorpe, with retroactive effects:

"The Amateur Athletic Union regrets that it permitted Mr Thorpe to compete in amateur contests during the past several years, and will do everything in its power to secure the return of prizes and the re-adjustment of points won by him, and will immediately eliminate his records from the books"⁴¹¹.

Faced with such zeal, members of the IOC, meeting in session in Lausanne in May 1913, had no choice but to disqualify the double Olympic champion. On the proposal of two English representatives, the committee congratulates the AAU "for [its] clearly sporting attitude in these circumstance"⁴¹² and awarded it the Olympic Cup for 1914. James Thorpe, called "Bright Path" according to the Sauk and Fox custom of the Mississippi, appeared as an ideal scapegoat and his disqualification served different purposes. It allowed the IOC to vividly enforce the recently defined principle of amateurism. Its radicalism praised the actions of the AAU and allowed it to hold off sports professionalism, which was in vogue in the United States since the 1870s. It is worth noting that the AAU had not commissioned a survey to identify professionals competing under a pseudonym: this would become a way of protecting its own athletes, non coloured and falsely amateurs. As for James Sullivan, his zeal brought him closer to the IOC and to Pierre de Coubertin with whom he was at odds since the 1900s.⁴¹³

c. The Olympic Oath and Ceremony

After the disqualification of Jim Thorpe in 1913, Pierre de Coubertin proposed, in the *Olympic Review* the adoption of an athlete's oath at the Olympic Games: "How can we imagine for a moment, that after being called upon to swear on the flag of his country that he had never violated the amateurish regulations, he [Thorpe] risked to swear a false oath that not only demoted him as a sportsman but disgraced him as a man for life? To ask the question is to answer it and besides its beautiful moral value, the oath proves to be the only practical way to end an intolerable state of affairs."⁴¹⁴ Conceived by the founder since 1906 for "moralising" the sports workers of the Gymnastics and Sports Federation Sponsorships of France⁴¹⁵ and inventing a "religion of the athlete", the "loyalty oath" refers to the aristocratic values that were so dear to Pierre de Coubertin: chivalry, honour,

⁴¹⁰ *Revue olympique*, No. 88, 1913, p. 39, discussed by Mark DYRESON, *Making the American team: Sport, Culture, and the Olympic Experience*, University of Illinois Press, p. 171.

⁴¹¹ *Revue olympique*, No. 88, 1913, p. 39.

⁴¹² *Revue olympique*, No. 88, 1913, p. 59.

⁴¹³ P. DE COUBERTIN, "Le serment des athlètes. Lettre à Charles Simon", *Revue olympique*, July 1906, pp. 107-109.

⁴¹⁴ *Revue olympique*, No. 88, 1913, p. 59.

⁴¹⁵ P. DE COUBERTIN, "Le serment des athlètes. Lettre à Charles Simon", *Olympic Review*, July 1906, pp. 107-109.

loyalty or "selflessness", all qualities needed in the fight against the spirit of profit, lies or laziness. Discussed by members of the IOC in 1909, the oath was finally adopted after the disqualification of Thorpe and would be delivered for the first time by Belgian athlete Victor Boin, during the first post-war Games in Antwerp in 1920. Integrated in the calibrated protocol of the opening ceremony, the short text is publicly declaimed by a representative of the athletes, not swearing on the Bible but on the banner of their country, as the new regulation of 1921 would specify:

"If there is a religious ceremony, that is when it must intervene. Otherwise the oath swearing ceremony of the athletes is directly proceeded to. One of the athletes, native of the country where the Games are held, approaches the grandstand on foot, holding in his hand the country's flag and surrounded by the bearers of all other national flags arranged in a semi-circle at the place the space previously occupied by the Committees. He pronounces aloud the following oath, which all athletes combined recite while raising their right arm, "We swear we will take part in the Olympics Games as loyal competitors, respecting the rules which govern them and desiring to participate in a spirit of chivalry, for the honour of our country and for the glory of sport". The choirs are heard again."

According to the instructions of Coubertin himself, the opening ceremony, in particular, is carefully orchestrated in both manners of a church service and a military ceremony: parades of athletes under their respective national banner, raising the Olympic flag, addresses by the sovereign or head of state, national anthem, canons and trumpets alongside choirs, releasing pigeons in the colours of the nations, even an ecumenical service in London in 1908 and Stockholm in 1912.

This protocol syncretism was complemented by three other ceremonial moments that reinvented the age-old tradition: the lighting of a basin on the stadium of Amsterdam in 1928, the torch relay in Olympia as of 1936, and the adoption of a Greek Olympic anthem in 1960. This staging, unprecedented in the sporting community, and showing the inspiration of John Ruskin's theories on Pierre de Coubertin, actually illustrates the political project of the founder amid heightened international rivalries; the Olympic Games seek to bring people together, but without rejecting their patriotic manifestations. The sanctity of the opening ceremony, while respecting different religions, invented a unique style of international multi-sport competitions, at a time when young ISFs were considering to organise their own world championships.

3. Peace through Sport & Olympism in the Context of the First World War

The Great European War of 1914-1918 was the first time the Olympic idea of international peace through sport was put to the test, and also the concept of sport as a space for neutrality. But how could sport, which in itself is a euphemised clash between athletes, clubs, and nations, have prevented the cataclysm of the summer of 1914? Instead, wouldn't sports, conceived as the fabric of men of action (struggleforlifers), carry within it the seeds of vitalism, risk, virility, and to sum up, war?

In fact, the expression of sporting Nationalisms was manifested in the Olympic Stadium during the first Games in Athens in 1896, and the interest of States in national sports performance dates back to the London Games in 1908 with the fierce clash between British and American imperialism. Against the rise of international tensions in the sports community, Pierre de Coubertin had also recycled a passage from a sermon by the Bishop of Pennsylvania in the Cathedral of St. Paul: "The most important thing in the Olympic Games is not to win but to take part, because the important thing in life is not the triumph but the struggle; the essential thing is not to have conquered but to have fought well". But the process of gearing alliances, triggered by the assassination of the Austro-Hungarian heir Franz Ferdinand in Sarajevo on 28 June 1914, would engage the people of Europe and the world in a 50-month war without precedent in terms of violence and destruction.

How would the pacifist Pierre de Coubertin, or the Olympic institution devoted to peace in sports homelands, or the Olympic ideology, face the Great War, its outbreak, its violence, and its duration? Would sports and the Olympic Games conceived by Pierre de Coubertin contribute to the brutalisation of youth even before the eruption of war? And would Pierre de Coubertin's chivalrous manner of considering the sacrifice of warriors become one of the aristocratic forms taken by the culture of war? Finally, was the return of athletes of the central powers to the Olympic competitions only in 1928 evidence of a slow exit from war? Or should this be seen as a way of importing the seeds of peace in warring times?

a. Pierre de Coubertin: A Frustrated Patriot

Unlike the patriotic gymnastics disseminated between 1870 and 1914 in schools and communities where military service was compulsory, sport was first perceived and qualified as a social hobby, an Anglo mania, cosmopolitanism devoid of military virtues. Such attacks, constantly renewed, led sports zealots to criticise the patriotism of the muscle or even nationalism, and to demonstrate the value of sport in military preparedness, valour and bravery in battle, and in the final victory. Moreover, they imported military vocabulary into sports, and sports vocabulary into war, even going so far as to try to convince, like Henri Desgrange did, that "war is a great game."⁴¹⁶ But what about the founder of the Olympics? Was he a militant of the Great War? Or was he the apostle of peace?

While being deeply aware of international issues, Pierre de Coubertin did not foresee the Great War and took time to understand its profound nature, namely mass murder. He was also torn between two feelings that ran through him: his love for the country and his faith in liberal pacifism. He did not indulge in utopia and tried several times to enlist and fight in the war. Too old to even serve in the Territorial Army - he was 51 years old in 1914 -, he was in charge of the moral training of the 1916 class by the Minister of Public Instruction, Sarraut. To this end, he tours France's high schools and suggests a type of sacred union between sport and gymnastics to recruit more resilient and adaptable soldiers.

⁴¹⁶ *L'Auto*, 3 August 1914.

He then issues a request for French youth that he calls "Decalogue". His ten laws of 1915 state: "the duties are imposed on the French youth", that is to say, in spirit the young elites, "to organise the day of Victory" and ensure the triumph of French civilisation over Germanic barbarism. By developing his physical abilities, by teaching him a story that is not limited to France, through the integration of patriotism as greater value, by his abilities of individual initiative, by his respect for the opponent, the young Frenchman should be able to survive in a very competitive world.

At the same time, and without informing his IOC colleagues, Pierre de Coubertin installs the Olympic seat in Lausanne by contract with the municipality on 10 April 1915, and vested in the Swiss Baron Godefroy de Blonay with the position of interim president. The reason is simple: he had just obtained the authorisation to wear the military jacket of English language interpreters. In reality, he was serving France from Paris, where he participated in the national propaganda at the Quai d'Orsay. He also coordinated the publication of historical booklets with a colonial patriotic tone. In addition, and for pure personal reasons, he led, in 1916 unofficial embassies with Spanish and Latin America politicians. With little support from the government teams, marked by an unsuccessful candidacy for the Academy of Moral and Political Sciences, and disappointed with the disintegration of the Sacred Union, he moved away from France in 1917 and chose to temporarily take up residence in Lausanne where he organised physical exercise sessions and conferences for the French and Belgian military patients. At the end of the war, he had planned to permanently establish the Olympic Games in Switzerland, on the shores of Lake Geneva, to put an end to recovery attempts by States. And since the Games scheduled to take place in Berlin for 1916 could not take place, he decided to give it the title of "sixth Olympiad" to highlight the immortality of "Neo-Olympism".

b. Coubertinian Sport: A Brutalisation of Youth before the War?

In order to understand the ambivalence of the patriotic and pacifist commitments of Pierre de Coubertin, it is convenient to question his conception of sport as a preparation for war. While being a supporter of sporting excess, Pierre de Coubertin was not considered to be a follower of any muscle and body excess. For example, he was opposed to the "Manifesto of Futurism" published 20 February 1909 in *Le Figaro* by Filippo Marinetti and Giacomo Balla, in whom he only perceived "anxious morbidity and mental distress." In fact, he preferred the "beautiful human strength, so fresh and calm, true and only" of sportsmen to the "brutality, uproar and crazy speed" of futurists. The "extravagance" he blames futurists for, not only for having proclaimed "the death of Time and Space" and for wanting to destroy the past, but for calling for "the burning of paintings and books admired by humanity" at the risk of leading to "social disorder" and unleashing "the fury of the masses". In 1910 he also dismisses as being "monsters" those who "adore their own body after becoming an idol", and those who "would transported into the domain of physical education, Nietzsche's superman."

Pierre de Coubertin "shudders at the thought of the reserves of refined ferocity, hence, of possible barbarism that would conceal the influenced human nature" because, he adds, "it would only take a small number of examples of such kind emerging from the crowd to act strongly around them and have a formidable imprint on the society of their time. "

Even though he rejects the blind worship of strength, Pierre de Coubertin, however, believes sport to be a school of war: "with sports, he wrote in 1912, all the qualities needed for war flourish: carelessness, good humour, tolerance to the unexpected, and an exact notion of the effort to be done without wasting unnecessary energy. The young sportsman obviously feels more prepared than were his elders. And when one feels prepared for something, one does it more willingly." As for the sporting experience in the colonies, he sees two purposes: to make the "yoke lighter and more tolerable" for the indigenous elites who would experience the diversity on the stadium with the colonial elite, and discipline young men originating from the people since "sports generate all sorts of good social skills, hygiene, cleanliness, order, and self-control."

At first glance, one would be tempted to believe that Coubertinian sport is a contribution to the "normalisation of violence" even before the outbreak of war, and thus a kind of pre-"brutalisation" of youth. His playful and chivalrous conception of war shares the cult of the beautiful death taught to him by the Jesuit fathers of in the day school of rue de Madrid. But in his case, it is accompanied with a belief in the ability of sport to bring people together. This is expressed in his "Ode to Sport" rewarded in 1912 with a gold medal in the art competitions of the Stockholm Games: "O Sport, you are Peace. You establish happy relations between nations by bringing them together in the worship of controlled strength, organised and in control of itself. Through you the universal youth learn self-respect and as a result, the diversity of national qualities becomes the source of a peaceful and generous emulation." Foreseeing the rise of danger, he himself drew the Olympic flag as the synthesis of national flags on all five continents. Ironically, he presented it to delegates gathered in Paris for the twentieth anniversary of the revival of the Games on June 23, 1914, that is to say, a few days before the Sarajevo attempt.

c. The Contribution of Sports Victory and the Thwarting of Revolutionaries

Between the announcement of his programme of peace in "Fourteen Points" by President Wilson in January 1918, and the opening of the Peace Conference in Paris in January 1919, Pierre de Coubertin and his IOC colleagues were convinced that sport had not only increased the resistance of the Allied armies, but had contributed to their final victory. This was a way of defending the patriotic and military utility of sport against supporters of gymnastics, but also of restarting the Olympic dynamics by keeping at a distance the States and powers who wished to take control or launch world championships to rival the Olympics.

By February 1918, Pierre de Coubertin established the first link between sports and the production of national strength: "We had already known with certainty, before the global war broke, that sports Renaissance had created the national force by means of cultivating individual energies. The present great tragedy has proven it in a compelling and bloody way. History will set the course of the upward curve that allowed the Republic to write in forty years the most admirable colonial epics and led youth through the dangers of a pacifism and freedom taken to the extreme, up until the mobilisation of August 1914 which will remain one of the most beautiful shows that Democracy has given to the world. The role that sport played in this arousal was seen on the other side of the Ocean and probably even better appreciated than in Europe itself." Moreover, in January 1919, he did not hesitate to say that, along with physical education, "Sports are the leading architects of the victory." De Coubertin's American colleague, William Sloane, first advanced the argument further when he wrote, on 27 August 1918, that "Western powers are stronger because of the practice of outdoor sports" and that "the Olympic thing must be able to take advantage of this."

However, the military victory could announce, according to the leaders of the IOC, a future defeat, a social one, against Bolshevik and Spartakist forces on the rise in St. Petersburg and Berlin. By February 1918, Pierre de Coubertin had addressed the issue of the usefulness of sports in the development of a new society: "Sport can do more for us; it will ensure for us in the future, if we know how to let it, the essential good outside which no sustainable reconstruction would be possible: social peace. "Against the plutocratic insatiable appetites and thirst for domination driven to the point of insanity", and to prevent that the "revolution against injustices accepted for too long, from keeping civilisation under the threat of a post-war period that could be worse than war itself," Pierre de Coubertin envisioned a third way, involving sports. He wanted to prepare "the driving forces of collaboration of all citizens" in order to "offer to new generations the path of intelligent and pure civics, of fraternal and joyful cooperation." He envisioned conducting the fight against both Capitalism, via anti-plutocracy, and against "the utopia of complete Communism," through the defence of property rights and the rejection of any revolution. His solution involved the following: "the ancient Greek gymnasium renovated", in other words, a public cultural complex that would include "sporting fields and buildings, bathhouses", and an outdoor theatre that functions as "a kind of popular university". His credo: to extend the Sacred Union on the stadium. As the 1920 Antwerp Games drew closer, he even appealed to sports federations and companies to open "free or almost free courses for all proletarian youth sports" because "the proletariat's time for revenge has come, engulfing an elite that has not always managed to remain worthy of its privileges."

d. An "Olympiad of War" as a Prologue to Peace

The Great War was not even over when Pierre de Coubertin and his colleagues attempted to not only redirect the IOC, but above all to consider organising the Olympic Games in 1920 and 1924. This is not counting the American offensive, through the YMCA, to launch international sporting competitions that would substitute Olympic Games, considered too European and too French.

The "Olympiad of War" that Pierre de Coubertin wanted to set up "in honour of the champions of the Allied Armies in Antwerp... if not in Rome or Versailles (had Antwerp chosen 1924)", is a response to the project of the YMCA and the American Army to organise "Inter Allied Games" in Vincennes in 1919. The resentment and desire for vengeance of Pierre de Coubertin and his Belgian colleague Henry de Baillet-Latour were such that they called for resuming the Olympic cycle in Antwerp to honour those who died in the war and to "celebrate the restoration of peace in the world". This why, for the first post-war Games, Pierre de Coubertin arranged for a new organisation and ceremony: "No public festivals, or at least the minimum, an organisation as military and simple as possible, competitors and even visitors who wanted it could be lodged in camps; in short a true Olympiad of war, a mark of serious joy, speed and pacification."

Even more precisely, the goal was to adjust the double issue of the participation of the defeated and neutral nations in the Games after the war. Pierre de Coubertin was determined to oppose German participation. His anti-Germanism proved to be stronger than his liberal pacifism: "Obviously, he wrote in December 1918, no German can be accepted at the next Games. This is a point on which all allies agree. There are even the elated who would like to exclude the neutral, but it is impossible and would also be a blunder without equal. As for Germany and Austria, we can consider these States as temporarily non-existent." Only Godefroy de Blonay, the Swiss IOC member, opposed the eviction of Germans. Their British colleague, Rev. Coucy-Laffan addressed the question of neutral countries: "If we can organise an Olympiad in 1920, I fully agree with the idea of baptizing it the Olympiad of War, provided that the Germans would be excluded, but that the neutrals be admitted. For now, it seems very difficult or nearly impossible to meet with German colleagues at the IOC, this temple of brotherhood that underpins our existence as an international organisation. "

The all too diplomatic solution to be finally adopted by the IOC avoids all forms of exclusion in order not to compromise the message of international peace embodied in the Olympic Games. On the one hand, the IOC was careful not to publically announce the exclusion of German and Austrian athletes. On the other hand, provided that all German and Austrian members of the IOC were either dead or had resigned, the IOC resorted to the following solution: "Only the countries represented at the IOC would be entitled to participate in the next Olympic Games." From the preparation of the Stockholm Games in 1912 to the Antwerp Games in 1920, Pierre de Coubertin and his colleagues of the Triple Entente were swaying between the desire for peace in Europe and the "hatred of the German enemy". This state of double constraint led them to elaborate and defend chimerical projects that turned sport into a preparation for war and a contribution to peace at the same time.

Over the ruins of a mourning Europe, would sport be able to serve the physical and psychological reconstruction of individuals, as well as help the process of reconciliation between peoples who fought each other? It is worth noting that the leaders of the IOC, in this case, Frenchman Pierre de Coubertin and the Belgian Henri de Baillet-Latour whose two countries had been particularly affected by the war, followed the winners' diplomacy: the countries judged "responsible for the war", Germany and Austria, were excluded from the Olympic Games until 1928. From 1914 to 2014, the IOC and the International Sports Movement were proven to be incapable of preventing wars, stopping them, or imposing peace through sport. Before the force of arms, before the Bellicism of Nationalists and the spirit of revenge, Olympism had to recognise its own limits.

4. The First Olympic Charters and the Difficult Defence of Amateurism in the Interwar Period

Even though the Thorpe Case encouraged Pierre de Coubertin and the IOC members to follow the path of regulating the Games, it is the first post-war that marks, more generally, the regulatory turn for the Olympic institution. The cancellation of the Olympic Games slated to take place in Berlin in 1916 came close to putting an end to the Olympic project as well as the IOC itself. All the more so since the ISFs took the offensive to lay claim to the world sporting community. In order to avoid being overwhelmed, the IOC resolved to publish its first regulations – which the committee amended several times before the Second World War -, and elaborated a precise protocol for Olympic competitions.

It is in 1924, on the occasion of the Paris Games, that the term "Charter" appeared for the first time in the regulatory production of the IOC. The Charters of 1927 and 1938 are unable to curb the rise of professionalism within a context of popular demand for the sporting show. In parallel, the most powerful ISFs, whose sports are the most popular and the most professionalised, claimed their independence by leaning on renowned competitions (Tennis Davis Cup, Football World Cup).

Thus, within a period of twenty years, the IOC created a legal regulatory tool. However, this was done under the pressure of an institutional and sports context in strong evolution: the fast development of young ISFs, the threat of world championships rivalling the supremacy of the Olympic Games, the popularisation of sporting practices and its corollary, the rise of professionalism. The Olympic Charter fixed, primarily, the organisation of the Olympic competitions, which Pierre de Coubertin missed in the first editions. Furthermore, it elaborated a precise protocol, the symbols of which serve the moralistic project of the founder: pacifism, patriotism, indifference and the sacralising of sporting activity. The new Olympic regulation aimed notably to distribute roles and powers between the IOC, organising committees, federations, whether international or national, and the national Olympic committees. Following this logic, the definition of amateurism, then professionalism, allowed the IOC to maintain its authority over other institutions.

a. The Regulations of 1920-1921 and the Charter of 1924: the First Signs of Sporting Law

In the first official brochures published by the IOC in 1908, and then in 1911, there was no mention pertaining to the organisation of the Olympic Games. It was all about the model of the Parisian aristocratic circles which the IOC members assiduously frequented, the composition of the Committee, its mundane activities and its bylaws (recruitment, organisation, rights and duties of the representatives). However, in the delicate context of the negotiations of the Versailles Treaty, the Olympic leaders were led to adopting a first regulation related to the Olympic Games. In the 1920's document, which largely restated the brochure of 1911, a new page aimed to define exactly the conditions for admission in the Games: to be an amateur athlete as defined by the IOC and to be a native of a country recognised by the IOC. This last point, which tacitly adopts the principles of peace as dictated in the Versailles Treaty, led to the exclusion of the Germans and their "allies" from the devastated lands of Belgium. While Pierre de Coubertin had conceived, before war the "sports geography" as different from international geopolitics, it is worth noting that the IOC adopted the winners' diplomacy.

In 1921, emancipated from the authoritarianism of their president, some active members of the IOC⁴¹⁷ obtained the creation of an executive commission, which, from that moment on, took many issues into its own hands and would later receive the resignation of Pierre de Coubertin in 1925. The new powerful men of the IOC were from then on Henri de Baillet-Latour from Belgium, and Sigfrid Edstrom from Sweden, both future Presidents of the IOC; Godefroy de Bolenay from Switzerland, Reginald Kentish from Great Britain, and Melchior de Polignac from France. They would particularly apply themselves to rewriting the Olympic rules which, as of 1921, were increased by five pages dedicated to the celebration of the Games. This regulation introduced the principle of time and space unity for the competitions, imposed a minimal programme of sporting and artistic competitions, divided powers within the IOC, between the organising committee and the international federations, accurately arranges the opening and closing ceremonies, the awarding of prizes, and finally lays down the diplomatic protocol of invitations, nation representation and precedence. Although the drafters of these regulations were not legal professionals, many of them have attended law school, as Pierre de Coubertin at the Catholic Institute of Paris, and Henri de Baillet-Latour, President of the new Executive Committee, at the Catholic University of Leuven. Also, they all brought their extensive experience as leaders of many sports institutions. Finally, several of them, again as Baillet-Latour and Coubertin, had long frequented diplomatic circles.

⁴¹⁷ F. AUGER, *Une histoire politique du mouvement olympique : l'exemple de l'entre-deux-guerres*, thesis Univ. Paris 10, 1998; F. CARPENTIER, *Le CIO en crises. La présidence de Henri de Baillet-Latour, successeur méconnu de Pierre de Coubertin (1925-1940)*, L'Harmattan, Paris, 2004.

Three years later, a new version was released, much more comprehensive (16 pages), which takes the name of "Charter" for the first time and includes a "general technical regulation". Each paragraph of the rules was made of "articles," and the text referred to previous decisions that had acquired the status of references and case law. It takes the shape of a legal text when precisely defining the sanctions system, request procedures, and the pyramid of bodies and their competence to judge. "Field juries" and "appeal juries" were established for each sport by the competent federations, while the IOC Executive Board formed the "Honour Board" which was responsible for all queries not covered by the former. Finally, for the first time, the issue of amateurism occupied half a page; though not to redefine it, but to identify the bodies authorised to define the status of athletes. However, if one is to look at the provisions of the text, this capacity seemed to fall in the hands of ISFs. Nevertheless, as provided in the decisions of the Olympic Congress held in Lausanne in 1921, it is the 1911 Olympic definition that served as a reference: federations had the unique power to make this definition stricter, if they wished to do so. In addition, nationwide, sports fans were certified as amateurs by both the National Federation and their national Olympic committee. Thus, this new "Charter" in 1924 paved the way for a sports law with a focus on allocating different powers, executive, legislative and judicial, between the dominant Olympic institution and the ISFs.

b. The 1927 and 1938 Charters

Strict amateurism became hardly tenable for champions, who were getting more and more requests from advertisers and the media. Some of these champions, with modest means, perceived the competitions as another way of making a living. Others took advantage of the media success of their sport by taking a share of the profits related to the show, in football, boxing or tennis. Continuously from 1921 to 1939, "hidden professionals" are at the heart of debates within the IOC. Described as "brown amateurs", they were assimilated to "brown Negros", slaves who had escaped the civilising benevolence of their masters and returned to their "savage state", that is to say, they had found their freedom. As soon as the situation became strained, scapegoats were found as was the case during the lifetime bans in 1932 of French runner Jules Ladoumègue or Finnish distance runner Paavo Nurmi.

The new leaders of the IOC had to yield to the facts: defining amateurism was no longer enough to deal with the range of practices. The new Charter of 1927, adopted on the eve of the Amsterdam Games, suggested complementarily specifying the contours of professionalism. Moreover, it imposed on each participant to sign a declaration of honour.

"The following persons are not qualified to participate in the Olympic Games:

1. Anyone who is or must have been aware of his professionalism in his sport or any other sport
2. Anyone who could have received reimbursements as compensation for lost wages

Furthermore, every athlete is required to sign the declaration on the following honour: "I the undersigned declare on honour being an amateur in accordance with the Olympic rules on amateurism."⁴¹⁸

Defining amateurism became more complex as concealed professional practices multiplied and diversified. Although all federations were facing this problem, only the FIFA – certainly the most concerned – resolved to create a World Cup open for professionals in 1930, before admitting them officially in 1931. The majority of all other federations turned its back or came up with minimal legislation. As for the IOC, it followed its initial logic, moralising and strategic, by refusing professionalism. It specified it again in 1938 in a new edition of the Charter, which created two new extremely targeted exceptions for employees who were on unpaid leave and athletes who supported a family (implicitly, female athletes did not seem to be concerned).

"The following persons cannot be qualified to participate in the Games:

[...]

2. Anyone who could have received reimbursements as compensation for lost wages. The leaves within the normal conditions of the profession, or the leaves granted within the same conditions on the occasion of the Olympic Games, provided that they do not constitute an illicit way to receive direct or indirect reimbursement for the lost wage, and the payment within the limits of an entirely exceptional tolerance follows an individual investigation and takes the shape of a direct payment of an indemnity by the employer to the athlete's wife, mother or father during his absence, in case he is the sole supporter of a family, fall within the terms of Art.2.

3. Anyone who is remunerated for physical education or sport, with the exception of anyone who, at the same time of the normal subjects of the study programme, accessorially teaches elementary physical education or sports."

c. The Secession of ISFs: The Cases of Football and Tennis

Two federations, being more powerful than the others because of their earlier relationship with advertisers and the media, managed to be emancipated from Olympic authority in the 1920s, namely the international federations of tennis and football (soccer). Known to be common practices of the British gentry of the nineteenth century, "lawn tennis" and "football association" had taken, however, separate paths in the early twentieth century. While the former remained the leisure of the bourgeoisie, the latter became popular very quickly and turned into a mass practice since before the Great War. Nevertheless, both have a crucial advantage: highly publicised international competitions.

⁴¹⁸ Official Bulletin of the IOC, No. 5, January 1927, p. 9.

The Wimbledon tennis tournament was created in 1877, and in a matter of years, became a prestigious international event. Four years later, the United States founded their own international tournaments, the US Open and the Davis Cup in 1900 which would become the equivalent of a world championship for teams. With these old international competitions, the young International Lawn Tennis Federation founded in 1913 did not need the Olympic tournament to meet its players' needs. In the 1924 Paris Games, the organisation of a tennis tournament partially eluded the ILTF, which notably failed, to impose its own supplier of balls, and its own definition of amateurism. Also, the newly elected President of the federation in 1925, Frenchman Albert Canet, provoked a conflict with the IOC for the sole purpose of removing tennis from the Olympic programme; it was removed after the Games of 1924, only to return to the Olympic fold in 1988 in Seoul. Having had its share of competitions with tours and exhibitions for professionals, the International Tennis Federation then developed its own international competitions that would remain amateur until the beginning of the "open" era in 1968-69.

The case of football is significantly different. With the increase in the number of practitioners in the world, the idea of a world championship was already brewing in the federation since the 1920s. At the same time, as professionalism grew, the status of amateurism caused tension between FIFA and the IOC. After a dispute with Baillet-Latour during the Amsterdam Games in 1928, the President of FIFA, Frenchman Jules Rimet, announced the creation of a FIFA World Cup open to all players. However, the amateur Olympic tournament remained in the programme, and the organisation of the World Cup every four years since 1930, that is to say, in between Olympic Games, allowed FIFA to offer its players two World Championships, an amateur one and the other professional. In 1931, the federation officially authorised professional football.

During this Interwar Period, other international federations, those of skiing, skating and riding, challenged the Olympic authority and its definition of amateurism, but none of them, unlike football and tennis, was able to afford to give up the Olympics, which were the only opportunity for international matches.

5. The IOC Confronted with Nazism

Is it appropriate to entrust the organisation of sports mega-events to dictatorships or authoritarian regimes? The question arose on various occasions since the Olympics in Garmisch-Partenkirchen and Berlin in 1936, assimilated today to "Nazi Games": the Football World Cup in Videla, Argentina in 1978, the Summer Olympics in Moscow in 1980 and Beijing in 2008, the Winter Games in Sochi in 2014, not to mention sporting events that are smaller but which draw international attention as is the case for intra-continental matches or world championships in various sports. When athletes and their respective countries participate in competitions organised by regimes that violate the most basic human rights such as the rights to free speech and free expression, does this not mean that they condone it? On the contrary, does this not put a spotlight on political regimes that plan to manipulate their own public opinion as well as the world's public opinion, and is it not equivalent to denouncing how crude the influence of their propaganda is?

Moreover, is the principle of political neutrality that allows sports organisations to theoretically protect themselves from political authorities actually valid in these extreme cases? And do world sports organisations not run the risk of being reported for collaboration, passive or active, with anti-democratic regimes, and see their reputation negatively affected in the world's public opinion? Instead, wouldn't entrusting the organisation of sports mega-events to democracies only lead to denying the universality of sport and splitting the world in half?

It may be interesting to see how, for the first time in history, a State could use the organisation of the Olympic Games for propaganda purposes, and how a first boycott was initiated and failed. Faced with such a political and ideological offensive, the response of the IOC and its leaders was to defend the continuation of games in Germany at the risk of being seen as serving the interests of the Nazi leaders. In addition, some of the highest ranking Olympic managers were able to reveal their ideological proximity with Nazism, which facilitated the shifting of the Olympic institution towards the New Order since 1938. This was certainly the view of Anglo-American liberators of Europe from 1944 to 1946, the ones who engaged in a process of denazification of the IOC, only to be interrupted by the Cold War. The issue is still open to this day, for the IOC and international sports federations, concerning the place given to representatives from dictatorial regimes within these bodies. Some will argue that sport is the one area where nationals of opposed political regimes are forced to collaborate, while others will assume that the mere presence of leaders from dictatorships is enough to discredit the international sports institutions.

a. The Nazi Orchestration of the Berlin Games in 1936

Attending as observers in Los Angeles, the organisers of the Berlin Games were unmatched in terms of agitating German crowds and foreign tourists in order to spread their propaganda to the five corners of the world. The pre-Olympic campaign orchestrated by the Ministry of Propaganda covered the entire planet with postcards, badges, newsletters translated into 14 European languages, 200,000 posters in 19 languages including a thousand in Japanese, in addition to 4 million brochures distributed by the German Railway Company. It attracted three million paying spectators for a total of 9 million Reichsmarks, including 15,000 Americans and 60,000 foreign visitors. On Hitler's orders, considerable work was underway to demonstrate the German technological and industrial power: a 100,000-seat stadium and outdoor facilities that can accommodate 250,000 spectators, a giant tower equipped with an Olympic bronze bell, two new metro stations, a Triumphal Motorcade Route for the Führer, an ultramodern Olympic village for the 4,400 male athletes, separated from the 360 female athletes. An extraordinary communications system was developed for the Berlin Games, the biggest media event of the time: miles of telephone lines, almost a thousand connections, Siemens teletypes routing information to the press within 15 minutes, a press box for 1,100 journalists insufficient to accommodate the 2,800 journalists present, direct radio offered for the first time in 105 foreign radio stations to 300 million listeners worldwide, an entirely new closed television circuit for 160,000 spectators in 25 cinemas around Berlin.

It was *Olympia*, Leni Riefenstahl's film screened in preview for the birthday of Adolf Hitler, which left the deepest impression of a Nazi parade. While the first part of the film relays the history of the competitions, the second part was a hymn to Aryan beauty. With the financial support of Goebbels, the young actress-turned-filmmaker was able to make a film of great technological and aesthetic modernity: rails travelling along the 100 m track, a camera-catapult for jumping competitions, cameras floating on water and under water, lenses and bifocals never used before, slow motion technology, 400,000 meters of coil turned into 200 minutes of film, the use of low-angle views to give athletes a majestic stature. As for the latest innovation following the initiative of Carl Diem: an Olympic torch manufactured by Krupp armament factories, lit in the sanctuary of Zeus, and then sent with runners to the basin over the stage of Berlin. The torch, a symbol of purification, as well as the swastika, covered an already widely brown central Europe.

b. The IOC and the Boycott Issue

During the two Olympic weeks in August 1936, the Third Reich agreed with all those who, like the IOC, considered that politics and Olympics must not be mixed together. Indeed, apart from the inaugural military parade, the Nazi regime gave its visitors a sense of freedom and brotherhood. The SA and SS, as well as the Hitler Youth, were restricted to the outskirts of the Olympic arena. Banned books found their way to bookstores. In truth, the Berlin Games were used to disguise the true nature of the regime and did not help ease the violence of the Reich against Hitler's opponents and the Jews. In addition, they reassured the German population that the new regime was universally admired and respected. A number of foreign tourists came back with the idea that these Games were those of Jesse Owens rather than those of Hitler. Besides, black or Jewish athletes (but not under the German or Austrian jersey) could compete on German dirt tracks and in German pools.

Two waves of boycotts surfaced in Europe and North America following the appointment of Hitler as Reich Chancellor in January 1933, and during the months that preceded the opening of the Games in August 1936. In the United States as in Europe, promoters of the boycott were human rights activists, labour unions, Christian humanists, and Jewish organisations. In addition to those, some sports organisations like the Amateur Athletic Union of the United States (AAU), stressed, in November 1933, that "if the Jewish athletes of Germany are not allowed to prepare and train for the Olympic Games in Berlin, or to participate, athletes of the United States will not participate either."

The episode of the Berlin Nazi Games had a profound impact on the Olympic history since the three main opponents of the boycott movement were Presidents of the IOC for half a century: the Belgian Count Henri de Baillet-Latour from 1925 to 1942, the Swedish industrialist Sigfrid Edström from 1942 to 1952 and the Chicago billionaire Avery Brundage from 1952 to 1972. It was in the name of sport neutrality that they called for the holding the Games in the capital of the Third Reich.

In fact, records show that the IOC Olympic leaders were quite aware of the discriminatory policies and violence against Jewish people and athletes. And in their private correspondence, one can discover their motivations: contempt for parliamentary democracy, admiration for order regimes in general and Hitler's in particular, anti-Communism and visceral anti-Semitism. Neither naive nor uninformed, the leaders of the IOC not only aspired to saving the Olympic institution; they also sought to find a place in the new Europe.

Admittedly, President Baillet-Latour stepped in on several occasions in 1933, among the German sports leaders to stop sporting discrimination. Then, in August 1936, he exhorted Hitler to respect the Protocol, that is to say, not to congratulate the German athletes in front of the audience at the stadium. But he did not object, in 1938, to the appropriation of the Olympic Review by the Nazis, the creation of an Olympic Institute in Berlin, or the appointment of the Nazi spy Klingeberg at the head of the IOC's Secretariat in June 1939. While delivering, in May 1934, a truncated and misleading report concerning the fate of the Jewish athletes in Germany, Avery Brundage dealt a fatal blow to the boycott movement in the United States. His anti-Communism and anti-Semitism had completely blinded him. While Japan had just invaded China, he became an advocate, in February 1938, of the Tokyo Games. As for Sigfrid Edstrom who can pass as a liberal, he went to the Nuremberg Nazi parade after the Berlin Games, enthusiastically thanked Himmler for his hospitality, intervened to free Karl Ritter von Halt although convicted at the Nuremberg trials, and invited Carl Diem to the London Games in 1948.

c. The Blindness of Pierre de Coubertin

Although he was no longer the President of the IOC in 1925, the French Baron Pierre de Coubertin kept interfering in Olympic affairs until his death in 1937. Though he was courted by envoys of Hitler's and Goebbels, he neither travelled to Berlin nor got carried away by anti-Semitism. However, fearing that the revival of "his" Games would be questioned by the boycott movement, he paid homage to Germany and its Chancellor Hitler.

Immediately after the Games, a polemic opposed, on the one hand, Jacques Goddet, who ridiculed, in the magazine *L'Auto*, the "Games Disfigured" by the sport-spectacle, the hypocrisy of amateurism and the political propaganda, and on the other, Pierre de Coubertin, who was quoted in the 27 August issue of *Journal* by journalist Andrew Lang, as saying: "What? 'Disfigured' Games? The Olympic idea sacrificed to propaganda? This is entirely wrong! The grand success of the Berlin Games beautifully served the Olympic ideal... The Olympic idea should be left to develop freely and one must learn to fear neither the passion nor the excesses that created the fever and enthusiasm. To seek to bend athletics to a regime of mandatory moderation is to follow a utopia [...]. There is concern in France that the 1936 Games were illuminated by Hitler's strength and discipline. How could it be otherwise? On the contrary, it is highly desirable that the Games go well with this happiness, in each garment that people weave for four years for themselves".

A week later, he made similar comments in newspaper *L'Auto*: "In Berlin, everyone was thrilled about an idea that we are not to judge, but which represented, however, the exciting passion that I constantly seek. On the other hand, the technical part was organised with all the desirable care and it is not possible to accuse the Germans of sports disloyalty. How could you want me, in these circumstances, to repudiate the celebration of the XI Olympiad? Since the glorification of the Nazi regime was the emotional shock that paved the way for the immense development they have experienced." These statements at the time of the racial laws of Nuremberg and the remilitarisation of the Rhineland are nothing less than those of a man entangled in the neutralist ideology of sport he himself helped to forge, and who was at this point so obsessed with perpetuating his Olympic endeavour that he did not perceive the criminal singularity of the Nazi regime. However, there is no account of his explicit adherence to Nazi theories of world domination by the Aryan race.

As shown by his writings since 9 May 1933 to the ambassador of France in Bern, Pierre de Coubertin was not fooled by "Hitler's ill-defined attempts to take over the leadership of the movement". But under the influence of the leaders of German sport, like Theodor Lewald and Carl Diem, whom he knew since before 1914, his opinion subsequently changed. On 25 April 1934, at a time when he could not ignore the deadly impact of the Nazi dictatorship, he confessed his admiration for Hitler to Sigfrid Edström: "I do not know what you think of Germany. I do not admire Mussolini, but I do admire intensely Hitler. He is becoming the leader of new Europe and shortly of the new rising world." At a time when he was forgotten by his French compatriots, ruined and overwhelmed by his children's illness, he could but be sensitive to the honour shown to him by the Nazi officials: a project to erect a bronze stele at the entrance of the stadium in Berlin, translation and dissemination of his brochures and literature, the Führer's personal contribution of 10,000 Reichsmarks at a fundraiser organised by his friends. Moreover, the Nazi press, Mussolini Thaon di Revel, then Minister of Finance, the Japanese Senator Jigoro Kano and the French Nationalist MP Francis Pietri lent him their support in 1935 for the Nobel Prize. But because he was further perceived as the candidate of dictatorships as the Berlin Games boycott intensified, the Swedish jury preferred the German journalist Carl von Ossietzky, the political prisoner locked up in a concentration camp.

How is one to interpret the secret negotiations led by Pierre de Coubertin with Moscow to integrate the USSR in the Olympic Movement? As a project to spread the Olympics globally at the expense of the disappearance of the Communist Olympics called "Spartakiades". Still, was Pierre de Coubertin always naive enough to believe that the Olympics would be more powerful than the Nazis, and that the Games did not deserve a boycott? As for his beloved country, now led by Léon Blum, he despaired of it to the point that he chose to be buried in Switzerland and have his heart set inside a stele in Olympia.

d. The First Signs of Purification

While the 1948 London Summer Olympics loomed ahead, and the American and British military authorities still remembered the Berlin Games and the alignment of the IOC with Nazi positions, President Edström protested the neutrality of sport and Olympism, and rejected any State intrusion. His first official statement could not be more soothing because it erased the recent past: "The interest in the Olympic movement is stronger than ever. The future belongs to the youth. For this young generation, the Olympic concept not only entails international cooperation for physical improvement, which is necessary after this terrible global conflict, but also embodies a strong desire to work hand in hand for the restoration of peace." This was a way for the IOC to mark its independence by ending a period of twelve years without the Olympics, but also to avoid denazification.

In fact, the first issue of the *Bulletin of the International Olympic Committee* that was to be published in October 1946 still included the names of active German and Japanese IOC members of the 1930s. In 1946, and again in 1949, Edström even considered co-opting Carl Diem, the organiser of the Berlin Games. However, he had to dismiss this possibility and transfer of the Olympic Institute from Berlin to Lausanne. Along with his vice-president Brundage, he attempted to recognise the "German Olympic Committee" created in Frankfurt by former leaders of Nazi sports, Carl Diem and Duke zu Mecklenburg. But they were met with the opposition of the American military government (February 5, 1947) and the Allied Control Council. The IOC then carefully postponed its decision until "after the establishment of a new Germany by the Western States".

Although pledges of denazification were given to the Allies, this was done half-heartedly. IOC Secretary Klingeberg, a spy of the Reich, was not reinstated despite reiterated requests until 1951. Eventually, only two IOC members were excluded: Marshal Horthy's son, the strongman of Hungary, and General Mussolini Vaccaro. Yet, the response of the British ambassadors to Prime Minister Winston Churchill was eloquent: the French Marquis Melchior de Polignac was considered as "definitely beyond the pale," the Serbian General Djoukitch as "persona non grata", like the Belgian, Norwegian, and Bulgarian members. These persons, along with their Japanese colleagues, found their seats without being worried, in any way, about their complicit activities. Edström and Vice-president Avery Brundage even took advantage of the Soviet Committee's demand for recognition in order to obtain the release of former Reichsportsführer Karl Ritter von Halt from the USSR. The latter was then released at the end of 1949, and in 1951 became President of RFA NOC, and resumed his seat in the IOC from 1957 to 1963. As for Carl Diem who failed to be integrated in the IOC, he was encouraged in his pursuit to create, with the support of Greece, the International Olympic Academy.

6. Olympic Neutralism in the Context of the Cold War

How must an international sports institution position itself when it is stuck between two powers in a state of diplomatic and ideological conflict? How can it protect itself against instrumentalisations and pressures? Is it enough to proclaim the political neutrality of sport? Moreover, when one of these two powers does not respect human rights, should neutrality be defended at any price, that is to say, establish the dogma called neutralism? Is the risk not, out of weakness or helplessness, to relax ethical standards? Previously considered in the context of Games orchestrated by the Nazis in Berlin, the issue of the political neutrality of sport and sports institutions reappears with new urgency during the Cold War.

From the arrival of Soviet athletes in the Olympic arena at the Summer Games in Helsinki in 1952 until the collapse of the USSR in December 1991, the United States and the Soviet Union had never ceased to compete to defeat one another both in sports and symbolically. In order to shine in the universe of sports, the two superpowers and their allies had resorted to several tools outside of the traditional State diplomatic pressure on the IOC and the countries organising the Olympics: Artificially produced champions, intrusion of "National Sports" into the Olympic programme (American basketball 1904/1936, Russian-Scandinavian biathlon in 1960, Japanese judo in 1936/1964, and Korean taekwondo in 1988/2000), organising but also boycotting the Games, promoting political representatives within the IOC and its Executive Committee, retrieval and manipulation of the Olympic values...

Faced with these multifarious attacks that threatened its autonomy, the IOC had few options. At the end of the Second World War, it took the position of apparent neutrality which was seen as a diplomatic anchor in the West. The integration of the USSR in the Olympic Movement in 1951 allowed it to pursue an equilibrium policy between the East and the West, a policy that sportingly favoured the athletes of the Communist camp. The Olympic Games, which also became the pedestal of the oppressed and of the nations of the South, were then threatened with extinction by the growing number of boycotts (Montreal 1976, Moscow 1980, Los Angeles 1984).

a. The Proclaimed Neutrality of the IOC and its Anchorage in the West

The decisions taken by the IOC after the Second World War announced its desire to appear as a neutral institution, but also matched its choice to be pillared in the group of Western democracies.

The choice was made to organise the 1948 Summer Games in London to pay tribute to the British capital that resisted against Hitler's attacks. For the opening ceremony, the IOC also recommended that each country "lower the flag at the official platforms" to avoid national or political demonstrations that might recall Berlin in 1936.

As for the defeated States, they would not organise the Games for a long time: the Italian ski resort of Cortina d'Ampezzo was awarded the 1956 Olympics, Tokyo, which had been approached for the Games in 1940 and 1944 would have its Olympic salvation in 1964, and West Germany hosted the 1972 Munich Games. As to the 22 new members of the IOC, they were all selected from the alliance system of the United States, and that was several months before American President Harry S. Truman had called the Congress and the world to choose between "freedom" and "oppression" in his *containment* speech of 12 March 1947. While the London conference between Americans and the Soviets, called "the last chance", failed at the end of 1947, the IOC formulated incantatory wishes: "The interest in the Olympic Movement is stronger than ever. The future belongs to the youth. For the latter, the Olympic idea means not only international cooperation to physical improvement if necessary after this terrible world conflict, but also a strong desire to collaborate for the restoration of peace." The IOC therefore remained closer to neutral countries; after the Swiss resort of St. Moritz, which was chosen for 1948, it was the turn of Helsinki and Oslo to be designated for 1952.

Finally, since the Americans, but especially the British, did not wish that German athletes triumph in London, a tacit rule was adopted in October 1945, according to which an invitation to participate in the Games would only be sent to "countries whose National Olympic Committees are accepted in the community of nations," that is to say "politically and commercially recognised." And to prevent the Finnish President Paasikivi from inviting East German or North Korea athletes to Helsinki as part of the country's neutrality policy which was favourable to the USSR, the new Olympic Charter, adopted in 1949, provided that the recognised NOCs would now be invited "exclusively" rather than "primarily". This simple statement was intended to avoid any repetition of the imbroglio in which the IOC found itself when it had to recognise the new German NOC.

b. In Case of Partition, Which State to Recognise? The Cases of Germany, China and Korea

It is true that the Cold War generated the partition of several States after the liberation of Europe and Asia by the American and Soviet armies (German and Korean cases) or revolution (Chinese case), and that the IOC was facing a dilemma: to recognise one National Olympic Committee at the expense of universalism, or recognise both and risk a boycott.

For two decades, the IOC was able to act as if Germany was not divided into two parts. Following the intervention of General Robertson, the British High Commissioner in West Germany, the IOC recognised in May 1950 the "German NOC", founded in Bonn in September 1949. Then on the grounds that it recognises one NOC per 'country', it provisionally admitted in 1955 and finally in 1965, the East German NOC formed in April 1951. Taking advantage of the "first detente" of 1953-1955, the IOC had the German people represented by a joint team at the 1956 Melbourne Games. It could now boast of fostering peace where States failed: "It is good to see how the union of the two regions of Germany was favourably achieved for the Olympic Games in the field of sport, and that politics have failed to accomplish that so far."

Despite the crises in Hungary, Berlin and Cuba, a joint team was still set up for the 1960 Games in Rome and Tokyo in 1964. At the Mexico and Grenoble Olympics in 1968, the two Germanys had separate teams, but the IOC still managed to maintain the illusion of Olympic fraternity by imposing similar and neutral attributes: Olympic rings superimposed on the black-red-gold flags, as well as Beethoven's "Ode to joy". It was ultimately on the occasion of the 1972 Munich Games, *i.e.* on West German soil, that the GDR and FRG were permitted to have two sportingly and symbolically independent teams.

The way the Olympics dealt with the Korean and Chinese cases was somewhat similar in that the IOC first recognised the NOCs of non-Communist States, which were also the first to be formed, and then pushed in favour of establishing joint teams. Founded in 1946, the NOC of South Korea was recognised in 1947, one year before the creation of the corresponding State. However, the NOC of North Korea formed in 1947 was only integrated in the Olympic Movement in 1953, following the Pam Jon Mun peace treaty, and North Korean athletes would make their first appearance at the 1964 Winter Games in Innsbruck. Four years before the Games in Rome, the project of a unified team failed for both Korea and China. As for the rise to power of Mao in 1949, it led to the creation of a popular Chinese NOC, a rival to that of Nationalist China which was pushed back to the island of Formosa (Taiwan). On the proposal of French IOC members, the two Chinas were then permitted to participate in the 1952 Helsinki Games, but the Taiwan China, which was the only China recognised to the UN, made the choice not to take part in the Games. To protest against the obstinacy of the IOC to recognise the two Chinas, Beijing hardened its position, boycotted the Melbourne Games in 1956, and announced its withdrawal from the Olympic Movement in August 1958. Therefore, Taiwan enjoyed Olympic exclusivity for twenty-five years, but not without punctual incidents. Under Soviet pressure, IOC President Brundage required Nationalist Taiwan to participate in the 1960 Games in Rome under the banner "Formosa". This was why the head of the Taiwanese delegation waved a sign "Under Protest" in front of TV cameras everywhere.

The Sino-Olympic crisis rebounded in 1976 when Canadian Prime Minister Pierre Trudeau opposed any assertion of sovereignty on the part of Formosans, who eventually boycotted the Montreal Games as well as those held in Lake Placid in 1980. Communist China was eventually readmitted in 1979 under the name "Chinese Olympic Committee" and witnessed the participation of the "Olympic Committee of Chinese Taipei" during the 1984 Los Angeles Games. Meanwhile, Mao's China, which was definitively distanced itself from the USSR in July 1962, consolidated its own sports block. During the same year of the Tokyo Games in 1964, it organised, in Beijing, a military competition that brought together thirteen Socialist nations including Poland, North Korea and Albania. Mao's China then tried to take control of the Games of Emerging Nations (GANEF) organised in 1963 by Indonesia, which was suspended from the Olympic Movement between 1964 and 1967. Thirty-nine nations participated in Beijing in 1965 in the second GANEF but the formula became soon the victim of disunity between the countries of the South and the Chinese Cultural Revolution.

c. The Soviet Brotherhood's Attack on Olympism

After denouncing the Olympics for three decades for "diverting workers from the class struggle to prepare them for new imperialist wars", the leaders of the USSR decided to end their sports isolationism and sent, in 1946, an embarrassing integration request within the Olympic Movement. The IOC had never erected so many barriers for the entry to the Olympic community: the prior adhesion of Russian sports federations to international federations and the compliance with amateur rules of the Olympics. On the Soviet side, the Olympic Stadium was as a loudspeaker for Socialist performances and even attempts to take over the IOC.

In his memoirs published in 1987, Nikolai Romanov, the political head of the Soviet Committee for Physical Culture and Sports, said that he "sent a special note to Stalin guaranteeing victory, to get permission for his athletes to participate in international competitions." The results also had an impact since, with 71 medals including 21 gold medals, the Soviet was threatening, since 1952, the Olympic supremacy of the United States (75 medals including 39 gold medals). Moreover, through their good humour and spirit of camaraderie, Eastern athletes gave a positive image of Socialism, while the Western press had predicted a sporting clash between the USA and the USSR. Faced with American supremacy in athletics and swimming, Eastern countries focused initially on different gymnastics competitions, which constituted traditional disciplines in Central Europe, and placed their hopes on the athletes. These athletes were able to compete with the Americans in their favourite disciplines, as illustrated by Valeri Borzov's victory over Robert Taylor in the 100m in Munich in 1972. The athletic and dramatic intensity of some encounters between East and West, such as basketball or ice hockey matches between the United States and the USSR, embodied the state of a Cold War that never witnessed diplomatic breakthroughs. After twenty years of rivalry in basketball, the Soviet team triumphed in Munich in 1972 by 51-50 after having twice replayed the last three seconds of an encounter that had until that moment been going in favour the Americans. In fact, in this new phase of history when the destructive capacity of nuclear weapons made direct military confrontation impossible, the Olympic Games offered to the two "super Greats" the opportunity to symbolically and physically measure their relative power. Because, beyond the strictly athletic verdict, each protagonist, whether Soviet State athlete or an athlete sponsored by an American university, contributed more or less consciously to the victory of the socio-political model he represents.

Respectively co-opted in 1951 and 1952, the Soviets Constantin Andrianov and Alexjev Romanov were, in fact, constantly in control of the IOC and its Executive Committee (EC), or were at least able to influence its decisions. To do this, they took advantage of the rivalry between the IOC and the international sports federations (ISFs). In 1959, they proposed to end the principle of co-optation and make the recruitment of recognised NOC Presidents and ISFs automatic. By tripling the number of IOC members, such a manoeuvre would have transplanted the logic of blocs, which prevailed in the UN, into the Olympic organisation. In 1960, they failed to develop European Games similar to the Asian Games already sponsored by the IOC.

In 1961, the IOC rejected a request made by the USSR to have a NOC for each of its eighteen republics, a request inspired by the UN tactics adopted by Moscow. The USSR also attempted to manipulate the IOC members from the nations of the South who were newly established States or willing to break free from the United States. In 1962, Andrianov drew the attention of the IOC to the financial difficulties many African NOCs and indicated that the USSR had already launched an aid programme. Finally, Avery Brundage failed to oppose the creation of global sports forums threatening his own magisterium: the General Assembly of International Sports Federations (GAISF) in 1967 and the Permanent General Assembly of National Olympic Committees (AGP -CNO) in 1968.

The election in 1952 of the American Avery Brundage as President of the Olympic institution not only brought the defender of full amateurism to the head of the IOC, but it was also a way for the vast majority of IOC members to place themselves under the indirect protection of the United States.

Since Helsinki, sports authorities and the Western media expressed doubts about the consistency of the performance of the athletes of the Eastern States. In January 1953, the spokesperson for the American Amateur Union denounced "grants" and "proletarian methods", in other words, the fact that "millions of athletes train every day while working for the government." During the Athens session in June 1961, two months before the construction of the Berlin Wall, the six IOC members representing the Eastern countries were accused of "State amateurism" and "constitution of a socialist bloc". Romanov then opposed Avery Brundage with the professionalism of Western athletes, beginning with the United States, and denounced the segregation of black Americans. A special commission on doping was created by the IOC in March 1962, under the pretext of suspicious deaths in cycling, but especially to contain the devastating progress of Socialist sports performance. Similarly, the IOC established an International Olympic Aid Committee (RIBO), which foreshadowed the current "Olympic Solidarity", officially to support the athletes of the South, but in reality to bypass the financial assistance provided by the USSR to some NOCs in Africa or the Middle East.

d. The Helplessness of the IOC against Boycotts

The televised coverage of the Olympics, carried out by telecasts since 1960, offered a great platform for the claims of oppressed peoples, and also for the phenomenon of boycotts which reached its peak in the early 1980s.

Regarding the issue of black people in the United States and around the world, it was clear that the IOC was not progressive at all. Certainly, the Olympics helped the worldwide promotion of blacks such as American sprinter Jesse Owens at the Berlin stadium in 1936, marathon runner Abebe Bikela under the Arch of Constantine in Rome in 1960, Californian athletes John Carlos and Tommie Smith on the podium in Mexico City in 1968. However, the IOC, refusing, for a long time, to interfere with American or South African Home Affairs, left the image of an institution, if not approving racial segregation or apartheid regimes, at least indifferent to liberation struggles.

For example, in the person of Avery Brundage, the IOC immediately suspended and expelled African-American students wearing the "*black power*" glove from the Olympic Village in 1968. And then, in the name of sport's ability to bring down racial barriers, the IOC tried to keep South Africa in the Olympic Movement at any cost. While some international sports bodies had excluded the apartheid country in 1948, the IOC waited for the Tokyo Games in 1964 to impose a first ban. Then, noting the concessions made by Johannesburg (multiracial team, unified jersey for the two communities, shared travelling of athletes), the IOC decided to reinstate South Africa for the 1968 Games in Mexico. It was due to indifference toward the protests from African and Asian countries, the American black movement, and the public opinion, that the IOC changed its position and South Africa was definitively excluded in 1970. With twenty-nine African countries boycotting the 1976 Montreal Games, pressure went up a notch as the matter was related to the IOC exclusion of countries like New Zealand who maintained sports relations with South Africa. Only the official abolition of apartheid in March 1992 allowed the return of South African athletes in Barcelona.

No Olympic Games were boycotted since 1945. Boycotting Games has, in fact, many diplomatic advantages: it costs nothing, expresses moral condemnation, allows peaceful action when military action is excluded, avoids breaking trade relations, and offers great media exposure. A first peak was reached in 1956 in Melbourne: Egypt, Iraq, and Lebanon denounced the Anglo-French-Israeli intervention in Suez, while Spain, the Netherlands, and Switzerland were protesting against the Soviet intervention in Budapest. But it was the double boycott of the Moscow Games in 1980 and the 1984 Los Angeles Games that caught the attention of commentators and analysts. In the first case, it is regularly argued that the Americans wanted to punish the Soviet invasion of Afghanistan launched on 25 December 1979. However, the archives of the CIA and the testimony of the advisor for national security affairs, Brzezinski, revealed that the boycott was planned since the second half of 1978. The American diplomacy was leaning on the Helsinki Accords signed on 1 August 1975 to demand from the Soviet Union to respect human rights. How can Washington tolerate Moscow's promotion as a showcase of Socialist countries through private American television? American President Jimmy Carter had to increase the political pressure and financial threats in order to convince the very independent Olympic Committee of the United States (USOC) to boycott the Moscow Games: withdrawal of sponsors, removal of privileged tax status, cancellation of Congress grants, threat of a national emergency decree to dismiss the possibility offered by the IOC to American athletes to compete under the Olympic colours. Margaret Thatcher saw, however, the control of its NOC escape from her hands, while Valéry Giscard d'Estaing was hiding behind the neutrality of sport. Finally, sixty-four States did not make the Olympic journey to Moscow, including the four most important sporting nations in the eyes of the Soviet Union: the United States, China, Germany, and Japan. On 30 July 1980, President Carter declared to the 400 selected Americans absent in Moscow: "Future generations will know that in 1980 you did more than anyone anywhere in the world to maintain the banner of freedom and peace elevated".

Four years later, sixteen Communist countries, with the exception of Ceausescu's Romania, refused to take part in the first Olympic Games of the professional era in Los Angeles, on the grounds that the United States violates the human rights of the black community. This absence is usually presented as a retaliatory measure taken after the boycott of 1980, "a counter-boycott" as American Secretary of State George Shultz would want to assert later on. However, the USSR and its allies had intended to triumph in California, as shown by the Soviet and American archives. The most conservative advisers of President Ronald Reagan's administration were responsible for using once again the Olympic Games to destabilise the Soviet Union and its allies, and demonstrate that "America is back." Their aim was threefold: to denounce the failure of the USSR to comply with "human rights", obtain the defection of Soviet athletes during the Games, and demonstrate the doping and cheating of Eastern athletes. And it was in vain that the IOC President Juan Antonio Samaranch attempted reconciliation between the California organising committee and members of the Soviet NOCs who complained about visa procedures, access restrictions for members of their delegations, and the accreditation in Los Angeles of the stations "Radio Free Europe" and "Radio Liberty."

When the Council of Europe noted that "the Olympics are about to die" (9 May 1984), the President of the USOC, William Simon, said before the IOC Executive Board that it was time to create a "new" Olympic Movement that takes into account the fact that "80% of Olympic funds come from American television contracts." It would be the "Samaranch Revolution" of the 1980s. Since that time, Olympic officials would have to face a new challenge: should neutrality be limited to its sole political definition? Should sports institutions not remain neutral *vis-à-vis* private companies, and also *vis-à-vis* religions and faiths? The IOC certainly won its independence from the States before the end of the Cold War, on the threshold of the 1980s, with the abandonment of the amateurism dogma which was accompanied by the signing of contracts with quite advantageous media and corporate partners. In addition, the IOC "market neutrality" was still preserved in the Olympic venue where brands did not have the right to appear. Nevertheless, didn't the IOC pass from the influence of States to that of sponsors? As for the adoption of clothing with religious connotation at sports venues in the name of religious tolerance and non-discrimination - the first appearance of a veiled athlete in the Olympic area dates back to the opening ceremony of the 1996 Atlanta Games -, does it not jeopardise neutrality? Will the new sporting and Olympic challenge of the twenty-first century be to avoid, in the future that Olympic competitions turn into religious wars between interposed athletes?

A. The Reinvention of Olympism in the Commercial Era

The cash flows generated by the media in the 1960s enabled President Juan Antonio Samaranch to make a Copernican redefinition of Olympism before the start of the 1980s: the participation of professional athletes in the Olympic Games became linked with the signing of wealthy commercial partnerships (1). To protect itself from further attacks by potential competitors, the IOC conducted an operation to attract supra-State institutions (2) (UN, Council of Europe, European Union...) and tried to rebuild its ethical image after the Salt Lake City scandal (3).

1. The End of Amateurism in the Olympic Games and the New Olympic Charters

The 1980s marked a turning point in the history of the IOC: the end of an ideology of amateurism. The advance of American television since the 1960s and the invention of sports sponsorship on the global scale by Horst Dassler in the 1970s were at the centre of other major changes made by the Olympic Movement: contracting with the media and sponsors, the self-financialisation of the IOC, the development of an internal administration...

Since the Second World War, the reference document that is the Olympic Charter has continued to grow. Each annual IOC session is an opportunity to introduce multiple amendments proposed by members or the executive board to deal with special and specific situations. With the advent of 1980s, Olympic Charters were constantly being rewritten to constitute a complex legal tool with limited power.

a. From Brundage to Killanin: A Slow and Chaotic Transition Towards Professionalism

Following the Second World War and the death of Baillet-Latour in 1942, the new President of the IOC, the Swede Sigfrid Edström, former President of the International Association of Athletics Federations, had kept a very conservative political approach regarding amateurism. In 1952, he gave his place to a close friend, the American Avery Brundage, who would vehemently combat professionalism, like Edström, leaving the rift to grow between the Olympic regulations and the economic realities experienced by athletes.

After much debate and violent resistance, the IOC finally allowed in 1961 the principle of "compensation for lost wages" - or "loss of earnings" - that athletes had been practicing since the 1920s. However, the ultimate symbol of a political offset of its time, Brundage's long term of office ended in 1972 in the highly publicised disqualification of Austrian skier Karl Schranz for professionalism. This was also the time when the balance of power between the IOC and federations was being reversed. The IOC indeed lived in fear of the departure of top amateur athletes to the professional world championships, or even to rival Olympics. Under the short presidency of Michael Killanin (1972-1980), he began his revolution by removing the word "amateur" from the Olympic Charter and signing his first sponsorship contracts in Montreal in 1976, just a year after the death of Avery Brundage.

This slow and chaotic evolution can be explained notably by the new media situation. When the era of televised Games began in 1960 in Rome with 21 broadcasting countries, the IOC of Avery Brundage did not immediately understand the financial benefits that could be derived from this phenomenon. All the rights were paid to Italian organisers who only paid back 5% to the IOC. In the following years, the sale of rights considerably increased the pace of the technological evolution, the number of channels in the world and the proliferation of private and public channels.

The amounts spent grew from \$1.2 million in 1960 to 17.8 million in 1972, and reached 88 million by 1980.⁴¹⁹ This almost sudden windfall proved decisive for the IOC, under the presidency of Michael Morris Killanin (1972-1980) who was weakened at the time by the political context. According to Jean-Loup Chappelet in 1972, "the IOC possessed a capital of about two million dollars that were barely sufficient for the operation of its modest administration."⁴²⁰ Eight years later, it had 45 million, entirely owing to the sale of broadcasting rights.

b. The Commercialisation of Games and the Olympic Cold War

Until the late 1980s, the fees paid by American TV channels, ABC and particularly NBC, represented approximately 80% of the IOC's revenues related to broadcasting. This financial leadership put these TV channels, but also the United States Olympic Committee (USOC) and many American sponsors in a strong position before the committee, without even having to be members of the IOC. American television encouraged international federations to make their sport more telegenic and imposed on the IOC the programming of certain Olympic events in a way as to broadcast them live during prime time in the United States. But the end of amateurism also finds its explanation in the context of the Cold War, since the Americans intended to use the Olympic Movement as part of their diplomacy of influence (soft power).

Over the 1970s and 1980s, American television despised having to heavily broadcast, in their own countries, the spectacle of sports superiority of the USSR, or even the GDR. It also could not bring itself to indirectly finance Eastern athletes via "Olympic Solidarity", which played a large part of television rights to the NOCs of poorer countries. This political and economic reality constituted a strong argument for Jimmy Carter to orchestrate a boycott of the Moscow Games in 1980, as demonstrated by historian Jerome Gygax.⁴²¹ By taking fifty allied countries under their wing, Americans subjected the IOC to their economic imperialism.

The United States model of a sporting dynamic funded by the private sector and directed by television was imposed on newly elected IOC President, Samaranch. A few months after the Moscow Games, opening the Olympic Games to professionals was endorsed at the 1981 Olympic Congress. The following year, the Spaniard returned the two gold medals to James Thorpe posthumously. Finally, in 1986, "Rule 26", an emblem of the definition of amateurism since the post-war period, finally disappeared from the Olympic Charter in favour of an "athletic code."

⁴¹⁹ According to *Olympic Marketing Fact File*, 2013, p. 27, online on the website [www.olympic.org].

⁴²⁰ J.-L. CHAPPELET, *The Olympic System*, Grenoble, Grenoble University Press, 1941, 1997.

⁴²¹ J. GYGAX, *Olympisme et guerre froide culturelle. Le prix de la victoire américaine*, Paris, L'Harmattan, 2012.

c. The Olympic Programme (TOP): The Financial Autonomy of the IOC Negotiated by ISL

The USOC offensive did not stop there. With the organisation of the Games in Los Angeles in 1984, the United States Olympic Committee diverted significant revenues from the Games sponsorship programme into its own profit and hoped to perpetuate this system well beyond the Olympiad in California since the American multinationals were preparing to fund future Games. To counter this economic stranglehold, Samaranch solicited the services of one of his relatives, Horst Dassler, son of the German founder of Adidas, to whom he owed his own election in 1980 as President of the IOC.⁴²² This manager, who had been the head of Adidas France for over twenty years, had just invested in football, the other major global sports market. He supported the candidacy of Brazilian Joao Havelange as President of FIFA in 1974, in a difficult financial period for the federation. At the FIFA World Cup in 1978, the equipment provider became the exclusive provider of FIFA, and obtained that American giant Coca-Cola be the other sponsor of the competition. In 1982, Dassler founded his own legal consultancy in marketing firm, International Sports and Leisure (ISL), which specialised in drafting sponsorship deals with international sports institutions.

After months of unsuccessful negotiations with the USOC and American sponsors, ISL established The Olympic Programme (TOP), an exclusive four-year contract (1985-1988) for some sponsors. In addition to the two American companies Coca-Cola and Kodak, it managed to obtain the sponsorship of some competitors of the 1984 sponsors (Visa rather than American Express, Panasonic rather than Canon, *etc.*) to join TOP instead of the USOC. Thus, with only nine multinationals, the Olympic sponsorship programme managed to raise a budget (about \$100 million) equivalent to that of the USOC which had to conclude contracts with 47 sponsors in 1984. In return, Dassler had negotiated the particular choice of the city of Seoul for the Games in 1988 in order to open the Korean market, and more broadly the Asian market, for Adidas.

d. Geopolitical Contingencies and Commercial Pressures on the IOC

In 1945, the Charter was amended to ensure that Germany would be excluded from the London Games. In 1949, the committee members intervened again on the Charter to prevent Finland from inviting East Germany and North Korea to the 1952 Games. Thereafter, the modifications were less about geopolitical contingencies, and rather reflected the new economic and business environment.

For example, global broadcasting and early commercialisation led the IOC, in the 1970s, to regulate the use of Olympic emblems, rings in particular. Modified in order to fit different contexts, the regulatory text lost its coherence.

⁴²²According to investigative journalist A. JENNINGS in: *La face cachée des Jeux olympiques*, Paris, Archipel, 2000.

In the early 1980s, Jean-Loup Chappelet stressed that "the fundamental still cohabited with the trivial and the ephemeral".⁴²³ Legally speaking, the document caused many interpretation problems between the English version and the reference version in French. Furthermore, the statutes of the IOC suffered gross deficiencies. Upon his election to the presidency in 1980, Samaranch modernised the Games and the IOC by professionalising its administration. An overhaul of the Charter was entrusted to a team of lawyers and led to the 1990 version, composed of five chapters that can still be found in the current version: the Olympic Movement, the IOC, the ISFs, the NOCs and the Olympic Games.

Despite the length, complexity and obvious precision of the hundreds of pages that make up the official document, the latter contained several limitations. First, it cannot claim to fully define the contractual relationship with sponsors, host cities, television channels, athletes, and all organisations involved in the running of the Olympic Games. Thus, other legal frameworks were set on the peripheries of the Charter by companies outside the IOC, such as the previously mentioned ISL, or in the context of candidacies of cities for hosting the Olympic Games. Therefore, the States applying for hosting Games committed to ensure the safety of the Olympic event, the commercial monopoly of the IOC and its sponsors during the Olympics and in the field of play. The 2012 London Games have shown the implications of "brands police" in terms of the decline of public power.

In addition, although the Olympic regulation provides strict sanctions against stakeholders in case of noncompliance, the sanctions remain theoretical. Few exclusions were imposed, no city was ever stripped of its games, and no boycott was ever punished in the history of the IOC. Strategic constraints related to the universalization of competitions, as well as financial issues, eventually upheld the Olympic values. Finally, the Charter suffered from a limited recognition of the sports movement: faced with the States or other sports movements which would be organised on a global scale, the leverage exercised by the IOC, similarly to other INGOs remain thin. Its rules only apply to those who are willing to comply.

2. The IOC and the Conquest of the UN

In a way, the IOC controlled the overall athletic field much better than the UN organised the world community. Indeed, beyond the NOCs and ISFs, it dominated even sports associations and local clubs. In addition, it imposed regulations on Organising Committees for the Olympic Games (OCOG), or even on athletes and judges. Finally, through the subtle play of "Olympic recognition", other organisations and institutions were indebted to it like the International Olympic Association for Research in Sports Medicine or the International Association for Sports Information, the International Sports Press Association, the International Federation for Sports Cinema and Television. The IOC also led a policy of magnetisation towards other sports organisations that escape its tutelage such as the International University Sports Federation, the International School Sport Federation, the *Fédération Internationale Sportive de l'Enseignement Catholique* (International Sports Federation for Catholic Education), the International Labour

⁴²³ J.-L. CHAPPELET, *op. cit.*, p. 68.

Sports Confederation, the International Military Sports Council, the International Police Sports Union, the International World Games Association concerned with non-Olympic sports.

a. The Olympic Truce Integrated in the UN Millennium Declaration

Afraid of being reduced to Olympic Games only and assimilated to sport business, the IOC multiplied, since 1992, its humanitarian actions at the various UN bodies. Employing an array of figures who were doubly involved in the sporting, political, economic or cultural fields on an international scale, the IOC thus succeeded in imposing the idea that sport and physical activity can contribute to the "harmonious development of man and the preservation of human dignity". It obtained the UN's permission to declare 1994 as the "International Year of Sport and the Olympic ideal". In 1999, during the 54th session of the UN General Assembly, the acting permanent representative of Argentina, Ana Maria Ramirez, did not hesitate to attribute to sport an ability to solve problems that are certainly beyond it (armed conflict, ethnic cleansing, terrorism, drug trafficking, hunger, unemployment, or recurrent violations of human rights).

After numerous interventions, the IOC obtained, in 2000, the addition of a paragraph on the observance of the Olympic Truce in the United Nations Millennium Declaration. The UN Secretary-General Kofi A. Annan said: "Olympic Ideals are also United Nations ideals: tolerance, equality, fair play and, most of all, peace. Together, the Olympics and the United Nations can be a winning team. But the contest will not be won easily. War, intolerance and deprivation continue to stalk the earth. We must fight back, Just as athletes strive for world records, so must we strive for world peace."

The IOC can also count on the backing of former athletes, grouped since 1995 within the World "Olympians" Association (WOA). It is with great sincerity, but often with great *naïveté*, that Olympians engage in humanitarian activities. Australian Olympic athlete Daniel Kowalski gave an account of his own humanitarian Olympic experience at the UN. "As a representative of athletes for the UNHCR, I had the opportunity last year to participate in a programme to provide assistance to refugee camps on the border between Thailand and Cambodia. We went to these camps as mere strangers, to let these people know that other people in the world cared about their situation. We brought the refugees many sports items as well as educational material. It was truly an incredible experience. At the end of our journey, we were able to notice that our visit had been successful. I will never forget the faces of these children, every smile and every look full of hope. This brings me much more satisfaction than actually winning a gold medal at the Olympics".

b. Olympic Support for United Nations Bodies

The IOC cooperates, for example, with the UN High Commissioner for Refugees (HCR) in refugee camps and repopulation zones in more than 30 countries in Africa, Latin America, Asia and Eastern Europe: purchase of equipment and development of sports infrastructures for Guatemalans who returned to their country after the 1997 Peace Accords, training sessions as well as sports matches for thousands of Sudanese and Africans young persons at the Kakuma camp located in the North-Western region of Kenya. On the basis of the right of human beings to “aspire to their spiritual development and material progress within freedom, dignity and equality of opportunities”, the IOC jointly developed, with the International Labour Organisation (ILO), trainings for sports professions in order to reinstate workers who escaped exploitation, or former militants (Albania, Guinea-Bissau). In a notable collaboration with the Organising Committee for the 28th Olympiad in Athens, the IOC offered its support in another ILO initiative called “SOLVE” which aims to provide specific training for the prevention of drug use, violence and work-related stress.

Since the 1996 Atlanta Olympics, the IOC has also been collaborating with the United Nations Development Programme (UNDP) within the “Decade for the Eradication of Poverty” (1994-2004). The IOC financially supported the UNDP communication campaign entitled “Teams to end Poverty” in which famous sports champions such as Zinedine Zidane and Ronaldo willingly participated. While 1996 generated unprecedented profits to the detriment of Greeks who demanded to organise the Century Games, athletes launched “an appeal against poverty” from the Olympic village: “We, Olympic athletes, commit ourselves to contribute with all our powers to eradicate poverty and promote human solidarity and development”. Moreover, the IOC signed, in 1997, with the UN Food and Agriculture Organisation (FAO), a cooperation agreement in order to “encourage recreational activities and promote a healthy lifestyle through sport, but also to consolidate the communal structure and curb the exodus from rural areas to cities”, by providing diverse basic sporting equipment and light installations in Burkina Faso, Cambodia, Tanzania and Ecuador.

c. Sustainable Games?

The IOC attempted to invest in a “third Olympic dimension” after the sports and humanitarian dimensions: the environmental dimension. A “sports and environment” commission was established in 1996 within the IOC. As was the case for athletes from the South or disabled athletes, it was with a certain delay and under pressure that the IOC considered new goals, as if it had been impossible for it to adopt a progressive approach or play a pioneering role in human development.

In fact, it adorned itself with the green colour following a media campaign denouncing the ecological blunder of Albertville in 1992. The Sydney Games in 2000 were therefore promoted, and even sold, as “ecological Games”: security vehicle powered by solar energy in the streets of the Olympic Village, a systematic use of solar panels as electricity providers, the International Regatta Centre

initiatives for the preservation of the marine ecosystem. However, these Games were not followed by similar examples, since the following celebrations took place in Athens, often presented as Europe's most polluted city, and Beijing, the capital of China, who still has not ratified the Rio and Tokyo Accords on environmental protection to this day.

3. The New Olympic Ethics: From the Salt Lake City Scandal (1998) to the Election of Jacques Rogge (2001)

By the end of the fifth presidential term of Samaranch, a corruption scandal shook the IOC, which was forced to reconsider its internal organisation and promote a new ethic before the worried world opinion and sponsors. This profound crisis radically transformed the IOC which, shifted from a "private club" functioning mode to that of a modern and dynamic enterprise. In 2001, the Belgian, Jacques Rogge, elected after the Samaranch, applied himself to restoring the shiny image of the committee, all the while ensuring its financial success.

a. The Established Corruption of Twenty IOC Members

In 1995, Salt Lake City, the capital of Utah, was elected to host the 2002 Winter Olympics, to the detriment of three competing cities. In November 1998, on the basis of an anonymous testimony, the scandal broke in the international media. The case was brought in front of the Head of the Trade Committee at the United States Senate, Republican John McCain. The two directors of the city's bidding campaign, Mormon legal advisor Tom Welch and his friend Dave Johnson, a former distributor, were investigated for fraud and corruption allegations against IOC members, their families and their close entourage. Since the launching of the project, the two men paid large sums to learn about the habits and hobbies of the Olympic representatives and their entourage, hiring specialised informants⁴²⁴ and visiting the hotels frequented by the committee members.

Published on 1 March 1999, a few months after the investigation, the report of Republican Senator George J. Mitchell revealed that the IOC members had received four million dollars in cash and seven million in the form of gifts and services.⁴²⁵ He also pointed out to the luxurious conditions in which the IOC members and their families, including Samaranch, were received in Salt Lake City, under the pretext of inspecting future sports installations. But above all, it was discovered that many among them were used to such practices and had very demanding requests: they demanded that bidding cities finance their vacations, shopping, offer their children tuition fees at prestigious universities, or transfer money to their secret accounts. The financial pressure exercised on cities intensifies until the moment of voting, where appointed agents sell the precious Olympic votes for a last time.

⁴²⁴ In particular, Patricia Rosenbrock, member of the Australian bidding team for the city of Sydney for the Summer Games, who leaked private information to candidate cities on the IOC members that she had collected unbeknownst to them by meeting them on a regular basis. Her records, more than 400 pages long, were made public in 1999 by the Minister of State of New South Wales in charge of Olympism. According to A. JENNINGS, *The hidden face of the Olympics*, Paris, L'Archipel, 2000.

⁴²⁵ J.M. GEORGE, *Report of the special bid oversight commission: U.S. Olympic Committee*, 1999.

For his part, since December 1998, Mr Samaranch had ordered an internal investigation to be conducted by a commission comprising his closest colleagues: Canadian lawyer Richard Pound and athlete Thomas Bach, both of whom were working for Dassler at the Adidas Company, the IOC legal representative, Keba M'Baye from Senegal, and Belgian Jacques Rogge. Following the public declaration of an Executive Board member, Marc Hodler, stating that corruption has been a common practice within the IOC, the President also sent a letter to all bidding cities, since 1990, to learn about the attitude of the IOC members. Thirty of these cities corroborated the actions of the representatives already implicated in Salt Lake City.

In January 1999, six Olympic delegates, four of which were African members,⁴²⁶ were expelled from the IOC, ten received a warning, while four others chose to resign. Such sanctions were inevitable to preserve the image of the committee, but were, however, minimal and conveyed little credibility according to the American Congress. Also, given that the United States were the main funders of the Games, the Senate interfered in IOC internal policies by advocating a series of reforms. Summoned for a first time before the United States Congress in April 1999, Mr Samaranch refused to resign from Lausanne and instead sent American IOC representative, Anita Defrantz to testify before the Senate. He was finally forced to appear in December, to testify under oath and submit the new anti-corruption measures.

While Welch and Johnson were finally acquitted in 2003, in the absence of plaintiffs, the repercussions were much heavier for the IOC. The Salt Lake City scandal represented an ethical crisis for this not-for-profit organisation, which had been defending the moral values of sport since its inception. The actions undertaken would focus on restoring the “clean” and attractive image for athletes, but most of all for TV viewers and sponsors.

b. Ethics to the Rescue of the Olympic Crisis

On the recommendations of Washington, Samaranch's IOC engaged in a series of internal reforms aiming at more democracy within the committee and especially more transparency to keep the United States informed on how the Olympic funds are spent. Therefore, limited terms replaced co-optation for life,⁴²⁷ presidencies became limited to twelve years, the twenty-year embargo on minutes of Olympic meetings was removed, and a more important position was granted to Olympic athletes, 15 of which entered the IOC since 1995.

Furthermore, on the basis of the American “Business ethics” model of the 1970s,⁴²⁸ and following the footsteps of American companies stricken by numerous financial scandals in the 1990s, the IOC was required by the Congress to form an ethics committee charged with the drafting of an “ethical code”.

⁴²⁶ The expelled members were Jean-Claude GANGA (Congo), Lamine KEITA (Mali), Zein EL-ABDIN AHMED GADIR (Sudan), Charles MUKORA (Kenya), Sergio SANTANDER (Chile) et Agustin ARROYO (Ecuador).

⁴²⁷ However, this measure was applied progressively and only to the newly elected members.

⁴²⁸ In 1977, The International Labour Organisation drafted a “Charter of Conduct Guidelines for Multinational Enterprises”, a predecessor of “the ethics codes” that notably emerged in the 1990s.

Chaired by Judge M'Baye, appointed by Samaranch, the commission prepared a complete document, which was approved by the IOC in the April 1999 session. The prescribed ethical principles addressed all the parties involved in the organisation and the unfolding of the Olympic Games. These principles strongly oppose corruption, but also all kinds of discrimination, as well as doping. An oath of honour for newly admitted members was also included that same year in the Olympic Charter: perjury would now lead to an exclusion from the committee.

“Granted the honour of becoming a member of the International Olympic Committee and of representing it, and declaring myself aware of my responsibilities in such capacity, I undertake to serve the Olympic Movement to the very best of my ability, to respect and ensure the respect of all the provisions of the Olympic Charter and the decisions of the IOC, which I consider as not subject to appeal on my part, to comply with the Code of Ethics, to keep myself free from any political or commercial influence and from any racial or religious consideration, to fight against all other forms of discrimination and to defend in all circumstances the interests of the IOC and those of the Olympic Movement.”⁴²⁹

But the United States Congress was not the only one to impose its crisis management model upon the IOC. Under pressure from the sponsors of the TOP IV programme, which were ready to break their Olympic partnership, IOC marketing director Michael Payne contacted the United States firm Hill & Knowlton, which specialises in communication.⁴³⁰ This firm had built its reputation in the 1950s, by working for the tobacco industry to minimise the carcinogenic image of cigarettes in the eyes of the public. After defending various companies in the energy and pharmaceutical sectors, or even the so-called Church of Scientology, its president Tom Hoog took an active part in the presidential victory of Governor Bill Clinton in 1993. A few months before the Salt Lake City scandal, the group also managed to redress the Swissair airline, which was facing a crisis after a terrible crash that killed 230 people. With such a strong reputation, Hill & Knowlton signed a \$1.5 million with the IOC⁴³¹ to restore its image through a careful public relations strategy. Backing their case with historical values carried by the Olympics, which represent essential assets for rebuilding the IOC's image, the new consultants focused on ways to disseminate the ethical message of the Games, with the view of gaining better control of the media discourse around the world. Spokespersons were selected and trained for the many press conferences, such as Richard Pound, Michael Payne and Jacques Rogge. Journalists around the world would receive press releases by the IOC on a regular basis, and the committee became associated with any sports event, which became an excuse to make statements. Mr Samaranch and Olympic representatives were also staged in a string of less luxurious lifestyle, travelling for example by private buses rather than limousine on their visits before the opening of the Games in Sydney. Finally, Mr Samaranch enlisted the advice of Henry Kissinger, former Secretary of State for Presidents Nixon and Ford, Nobel Peace Laureate in 1973, who shifted to private practice, and in particular, the management of relations between multinational corporations and governments.

⁴²⁹ Olympic Charter, 12/12/1999.

⁴³⁰ IOC Executive Board minutes, June 1999, cited by A. JENNINGS, *op. cit.*, 2000.

⁴³¹ IOC Executive Board minutes, June 1999.

Integrated into the Olympic Committee to discuss reforms - "IOC 2000" Committee - Henry Kissinger would be named "honorary member" of the IOC for life since 2002, a category specifically tailored for him and allowing him to participate in Olympic sessions, only in an advisory capacity.

By the end of 1999, the media crisis seemed to have passed, and the relations with the United States and the sponsors had improved. The important measures adopted to reform the IOC and restore an "ethical" image of the Games resulted in the financial success of the Sydney Games, which neither sponsors nor television channels lamented in the end. The expiry of J.A Samaranch's mandate and the election of Jacques Rogge in 2001 turned the page on the crisis: the new President was in charge of beginning a deep transformation process in the Olympic organisation.

c. Jacques Rogge: A Candidate for Putting a Term to a Trust Crisis

Although the resignation of Mr Samaranch had been fiercely demanded to the point of forming a crisis in the media, he had always been overtly supported by Olympic representatives, who considered that the departure of the twenty-year-serving patriarch could have aggravated the internal chaos. This emergency situation did not even allow potential candidates to organise their presidential campaigns.

However, even if the success of the Sydney Games made everybody forget the corruption scandal for some time, the 2001 elections were part of the IOC's logic of reform. Besides South Korean Kim Un-Yong, who had been among the representatives who were severely blamed in 1999, the other four candidates for the presidency distinguished themselves through their involvement in the management of the Salt Lake City crisis: Richard Pound from Canada, Anita Defrantz from the USA, Pál Schmitt from Hungary or Jacques Rogge from Belgium. The German Thomas Bach, the *protégé* of Dassler and Samaranch also seemed favoured for the succession,⁴³² but did not submit his candidacy and preferred to wait for his turn in 2009 or 2013. Favoured along with Pound and Un-Yong, Belgian Jacques Rogge won the elections in the second round, and was left to face the Korean, then President of the General International Sports Federations Association, soon to be SportAccord. According to former Chinese Sports Minister, Yuan Weimin, Rogge obtained the votes of China and its friends in exchange for the election of Beijing for the 2008 Games.⁴³³ It should also be noted that the elected president is a stranger to the worlds of finance and politics, unlike his predecessors and his opponents. His past career as an orthopaedic surgeon made him respectable and offered, at the same time, a new image of the IOC. Committed to combating doping within the IOC Medical Commission, he was also involved in the creation of the World Anti-Doping Agency in 1999, at the peak of the crisis.

⁴³² According to an interview with Marc HODLER published in: *Libération*, 25 January 1999. [http://www.liberation.fr/sports/1999/01/25/l-olympisme-contraint-au-menagele-cio-a-recommande-hier-l-exclusion-de-six-membres_262052].

⁴³³ Information published in the Belgian daily *Le soir*, 19 October 2009.

As the head of the IOC, Jacques Rogge now had the difficult task of strengthening a weakened institution, by applying the recommendations of Hill & Knowlton, namely the support of humanitarian projects. The cooperation between the IOC and the United Nations was reinforced under this new policy, which crowned twelve years later, on the eve of Rogge's departure, by the creation of a UN "International Day for Sport development and peace", celebrated every 6th of April.⁴³⁴ Upon taking office, the new IOC President Thomas Bach, said he would continue pursuing this policy.

§ 3. The ISFs and the IOC: An Intertwined History

The challenges faced by sports organisations of a local, national or international level are as old as sport: cheating, violence, corruption, match-fixing, illegal bets and doping. Many examples would show the existence and reality in the late nineteenth century, but as in previous centuries, if not in ancient times if we wish to recall that in Olympia, of cheaters, whether athletes, judges or organisers, who were condemned to offer a statue to the god Zeus as reparation for their actions.

Undoubtedly, the fact that it predated the ISFs (creation in 1894, the first games in Athens in 1896) enabled the IOC to take control of the global sporting community and impose its core values. However, the ISFs would fight for their independence and win, since 1925 the power to establish the rules of their sports, while the IOC maintained the organisation of the Olympic Games without even having to compete with sports world championships (**A**). Indeed, although 80% of the ISFs corresponding to current Olympic sports appeared before the Second World War in three successive waves (1881-1892, 1900-1913, 1921-1934), they experienced great difficulty in obtaining their emancipation from the IOC as evidenced by the often late creation of their own World Championships (**B**). In terms of the affirmation of sporting values as well as ethical action, the ISFs have long been lagging behind the IOC, which somehow had the monopoly in this field. It took the UNESCO launching an offensive in the 1960s to combat violence in sport and encourage fair play to get the IOC to take over the issue in the early 1980s, and to bring the ISFs to convert very slowly in the 1990s and 2000s (**C**).

It should be noted that in the fight against doping, the IOC and the ISFs won few victories. Rare were the cases where athletes from the German Democratic Republic were sanctioned for doping although it is now known that systematic doping was organised at the highest level of the State and the hierarchy of sports in the years 1960-1980. And the very low number of North American athletes sanctioned until today, apart from the highly publicised case of Ben Johnson in Seoul in 1988 and Marion Jones in 2008 following the "BALCO affair" in 2003, is not enough to prove the efficiency of anti-doping mechanisms employed by ISFs and the IOC. Both the "Festina" (1998) and "Armstrong" (2012) cases, a decade apart, highlighted this inability despite the creation of the co-managed World Anti-Doping Agency in 1999 (**D**).

⁴³⁴ Decision adopted at the UN on 23 August 2013 in the presence of Jacques ROGGE and Tennis player Novak DJOKOVIC, UNICEF Ambassador.

In this context of destabilisation of the IOC by the media and by the States, who were trying to regain control through combating doping and corruption, ISFs operated a global reorganisation, with the transformation, in 2009, of their General Assembly (GAISF) into a more offensive structure called SportAccord. With Marius Vizer at the head of this organisation, it would seem as though the ISFs should be able, if not to deconstruct the overarching role of the CIO, at least to get it to renegotiate the division of sports competences on the global scale (E).

A. ISF Efforts to Gain their Independence until 1945

To understand what is at stake between the IOC and the ISFs, it is necessary to go back in time well before the creation of the IOC in 1894, to the appearance of the first international federations. It is also important to identify the decisive impulse of the period 1900-1914, during which major ISFs were born like those of football in 1904 or athletics in 1912 (1). Despite numerous attacks, including a failed attempt by the French to put world sport under the authority of the League of Nations, the IOC managed to keep control of world sport and only concede to the ISFs the power of technical regulation of their own disciplines (2). The IOC also had to face the diplomacy of imperial nations who tried to enter the universe of sports: the Young Men's Christian Associations which had considerable influence in Pacific Asia and Latin America was founded through the efforts of the United States, the Commonwealth Games organised by United Kingdom, and the All Africa Games organised by France (3). Finally, it is important to mention ideological alternatives to the conservative and masculinist liberalism of the IOC: the Women's World Games or the Socialist and Communist sports internationalisms (4).

1. Sports Internationalism against Olympism

The IOC owes much of its sustainability and global magisterium to its early appearance (1894). Indeed, apart from the case of the international gymnastics (1881) and rowing and skating (1892) federations, it was not until the years 1900-1914 that the international sports community became organised within international sports federations (ISFs): cycling (1900), football (1904), yachting and shooting (1907), ice hockey and swimming (1908), Athletics (1912), fencing and tennis (1913). It is clear that the sports that were professionalised earlier such as cycling or football established an international body long before the sports that had remained elitist like fencing or tennis. In fact, two Frenchmen presided over these last two ISFs: Henri Wallet in the International Lawn Tennis Federation (ILTF) and René Lacroix in the International Fencing Federation (IFE). Even beyond full amateurism, which was abandoned only in 1981, the ISFs challenged the claims of the IOC members to rule the sporting community and contributed to the resignation of Pierre de Coubertin, who headed the Olympic sphere from 1896 to 1925. Although French sports leaders played an active role in this international architecture, it is often for national reasons. The transition to the international level notably leads to the marginalisation of competing federations as illustrated by the case for football.

Table 1
Olympic Sports Federations Created before the Birth of the IOC in 1894

International Federation Current President	Date and Place of Creation	First President <u>First non- European President</u>	Sporting Nations Represented at the Time of Creation (non- European)	First World Championships	Current Headquarters	National Associations in 2014
Gymnastics IGF Bruno Gandi (Italy) since 1996	1881 Liège	Nicolas Jan Cuperus (Belgium)	Belgium, France, the Netherlands	1903, Antwerp (Belgium)	Lausanne since 2008 Liège then Prague, Geneva after 1945, Lyss in 1973, Moutier in 1991	130
15 and 7 players Rugby IRB Bernard Lapasset (France) since 2008	1886 Dublin		Scotland, Ireland, Wales	1987 (Australia and New Zealand) World Cup	Dublin	118
Skating ISU	1892 Scheveningen (Netherlands)	Pim Mulier (Netherlands)	The Netherlands, United Kingdom, Sweden	1896, Saint- Petersburg (Russia)	Lausanne	68
Rowing IRF (Switzerland) From 1989 to 2014	1892 Turin		Belgium, France, Italy, Switzerland	1962 Lucerne (Switzerland)	Lausanne since 1922	118

Paradoxically, the "Congress of Football Association" which brought together, in Paris from May 21 to 23, 1904 the representatives of Belgium, Denmark, France, the Netherlands, and Switzerland took place without the presence of the English inventors. They had in fact declined the invitation, probably by contempt for a continental practice deemed of poor quality, but also because football in the British Isles was already largely professional. Recognising only one federation by nation, the Secretary General of the USFSA, Robert Guerin, who became the first President of FIFA, and his Dutch colleague, Hirschmann planned to impose amateurism on footballers around the world. But the amateur obstinacy of Robert Guérin soon led FIFA to an impasse and he resigned when the British joined in 1906.

Table 2
Olympic Federations Created between 1894 and 1914

International Federation Current President	Date and Place of Creation	First President <u>First non-European President</u>	Sporting Nations Represented at the Time of Creation (non-European)	First World Championships	Current Headquarters	National Associations in 2014
Cycling UCI Brian Cookson (Great Britain since 2013)	1900 Paris	Émile de Beukelaer (Belgium)	Belgium, <u>United States</u> , France, Italy, and Switzerland	1893 (Track Cycling) 1927 (Road Cycling) 1950 (cyclocross)	Aigle (Switzerland) since 2002 Geneva from 1965 to 1992, then Lausanne	179
Football FIFA Joseph Blatter (Switzerland) since 1998	1904 Paris	Robert Guérin (France) João Havelange (Brazil) in 1974	The Netherlands, Belgium, Sweden, Denmark, Switzerland, Spain and France	1930 Montevideo (Uruguay)	Zurich since 1932	209
Wrestling IFAW Nenad Lalovic (Serbia) since	1905	Einar Raberg (Sweden) from 1921 to 1924		1904 Vienna (Greco-Roman) and 1951 Helsinki (Free Wrestling) and 1987 Women Lorenskog (Norway)	Corser-sur- Vevey (Switzerland)	
Weightlifting IWF Tamas Ajan (Hungary) since 2000	1905 (with wrestling) 1920 Paris	Jules Rosset (France)		1922 in Tallinn (Estonia)	Lausanne	187 in 2009
Sports Shooting ISSF Olegario Vázquez Raña (Mexico since 1980)	1907 Zurich	Daniel Mérillon (France)	Argentina, Austria, Belgium, France, Greece, Italy, Holland	1897 Lyon (France)	Munich	154

<p>Sailing ISAF</p> <p>Sweden since 2004</p>	<p>1907 Paris</p>	<p>Ralph Gore</p> <p><u>Paul Henderson</u> (Canada) since 1994</p>				
<p>Ice Hockey IIHF</p> <p>(Switzerland) Since 1994</p>	<p>1908 Paris</p>	<p>Louis Magnus (France)</p> <p>Georges Hardy (Canada) in 1948</p>	<p>Belgium, France, Great Britain, Switzerland</p>	<p>1924 Chamonix</p>	<p>Zurich</p>	<p>72</p>
<p>Swimming</p> <p>Julio Maglione (Uruguay) since 2009</p>	<p>1908 London</p>	<p>George Hearn (Great Britain)</p>	<p>Germany, Belgium, Denmark, Finland, France, Great Britain, Hungary and Sweden</p>	<p>1973 Belgrade (Hungary)</p>	<p>Lausanne</p>	<p>202</p>
<p>Athletics IAAF</p> <p>Lamine Diack (Senegal) since 1999</p>	<p>1912 Stockholm</p>	<p>Sigfrid Edström (Sweden)</p> <p><u>Lamine Diack</u> (Senegal) since 1999</p>	<p><u>Australasia</u>, Austria, Belgium, <u>Canada, Chile</u> Denmark, <u>Egypt</u>, Finland, France, Germany, United Kingdom, Greece, Hungary, Norway, Russia, Sweden, United States</p>	<p>1983 Helsinki (Finlande) (Finland)</p> <p>Paris (France) 1985 (Indoor)</p>	<p>Monaco</p>	<p>212</p>
<p>Tennis ITF Tennis ITF</p> <p>Francesco Ricci Bitti (Italy) since 1999</p>	<p>March 1913 Paris</p>	<p>H. O. Behrens</p>	<p><u>South Africa</u>, Germany, <u>Australasia</u>, Austria, Belgium, Denmark, France, Great Britain, the Netherlands, Russia, Swede, Switzerland</p>	<p>Davis Cup 1900 between Great Britain and the United States 1905 in Australasia, Austria, Belgium, France</p>	<p>London</p>	<p>202 (2004)</p>

Fencing IFF Alicher Ousmanov (Russia) since 2008	November 1913 Paris	(Belgium) <u>Miguel de</u> <u>Capriles</u> (United States) in 1961		1921 (between Europeans) 1937 in Paris	Lausanne	148
---	---------------------------	---	--	--	----------	-----

2. ISFs and the League of Nations against the IOC during the Inter-War Period

After five Olympics between 1896 and 1912 and a successful comeback at the end of the conflict in 1920, the Games were seen as a success and especially since they constituted the only world tournament for the majority of sports. Federations did not yet have enough members or means to organise large international competitions, and were therefore *de facto* dependent on Olympic organisation. But throughout the 1920s, ISFs ensured the regularity and the smooth progress of international competitions and the first world championships or equivalent that could eventually compete with the Olympics: cycling and fencing in 1921, cross-country in Glasgow and weights in Estonia in 1922, swimming in Paris in 1923, speed skating and figure skating in Davos in 1923, bobsleigh and ice hockey in 1924, shooting in 1925, table tennis in 1927, wrestling in 1929. In 1921 ISFs organised themselves as a permanent Office of International Federations, which is the ancestor of SportAccord.

Coubertin and his colleagues therefore had to deal with the leaders of the ISFs and their main demand: to be part of the IOC in order to have influence over the organisation of the Games. This institutional competition was also accompanied with personal conflicts, mostly French. In 1921, ten of the 18 international federations' headquarters were located in France. For a long time, their leaders, who mostly belonged to the Parisian bourgeoisie, were competing with Pierre de Coubertin in the French sports community, within the *Union des sociétés françaises des sports athlétiques*, in the National Committee of sports as well as in the French Olympic Committee. These events affected the dialogue between post-war leaders and strengthened Coubertin's initial principles: in order to preserve the independence of the Committee, in no circumstances would the IOC members be the representatives of their institution or their government. Debates were held at the Olympic Congresses, which are the only occasion when the various stakeholders in the world of sport can meet. The first *modus vivendi* adopted for the 1908 London Olympics was confirmed at the Olympic sessions of 1921 and 1926: the IOC would be in charge of the general organisation of the Olympics, setting the number of sports and events as well as defining amateurism. The ISFs would provide the technical definition of the events and constitute the honour juries. In essence, the ISFs adopted positions that were both more liberal and more democratic. They welcomed the participation of women and workers early on, they argued in favour of events for professionals alongside amateurs, they were in favour of the marketing of sports entertainment that would provide stadiums and gymnasiums for all. The main sticking point was the question of amateurism.

In 1925, in Prague, the pressure applied by ISFs was felt more strongly after a major change within the IOC: the resignation of its founder who was replaced by Henri de Baillet-Latour. Indeed, as early as 1920, the more democratic ISFs were aiming at deposing Pierre de Coubertin from the "Olympic Senate" (the IOC). The French government, and more specifically, the radical-socialist Under Secretary Gaston Vidal, soon used the dissatisfaction within the movement to try to subordinate the international sporting movement to the League of Nations and obtain the 1924 Olympics for Paris. In a way, Pierre de Coubertin had to surrender: France would organise the VIIIth Olympiad. In fact, Coubertin himself was in a minority position within the IOC since 1921. At that time the Belgian Count Baillet-Latour discreetly created an Executive Committee that would allow him to reach the presidency after the founder's resignation in 1925. That year, as well as in 1927, France launched new offensives to subordinate the IOC to the International Labour Office. In addition, American, Scandinavian and Czech diplomats were trying to establish a Standing Committee on Physical Education that would compete with the IOC.

The new President Baillet-Latour and his colleagues used diplomacy, took a more democratic position, and benefited from the situation in the 1930s which caused the League of Nations to lose interest in sporting issues. It is also true that the IOC benefited from the sporting and popular success of the 1924, 1928 and 1932 Olympiads in Paris, Amsterdam and Los Angeles. Meanwhile, Pierre de Coubertin, in his personal capacity undertook many idealistic initiatives to gain ground in the educational field. The *Bureau International de Pédagogie Sportive* (BIPS) was formed in 1928 to combat the "deviations and excesses of sport" but became an empty shell. Similarly, the Charter of Sport Reform presented at the League of Nations in 1931 did not go beyond mere wishful thinking.

3. The Imperial Nations Sharing the World of Sports

Organising the 1919 Inter-allied Games in Paris allowed the IOC members to identify a formidable competitor in the world of sports: the YMCA and the young American nation. From 22 June to 6 July 1919, the Pershing Games, named after the commander in chief of the American armed forces, brought together 1,500 athletes from 18 nations in Paris. Aiming at usefully occupying partially demobilised soldiers, these games were placed under the responsibility of the American Expeditionary Forces, funded by the Young Men's Christian Association and validated by Marshals Petain and Georges Clemenceau. The initiator of these military Olympics was Elwood Brown, an athletic director of YMCA engaged, since 1910, in the dissemination of sports in the Philippines and the Asia-Pacific region. He also launched, in Manila, in 1913, the first Far Eastern Championship Games that were held regularly until the conflict between Japan and China over Manchuria. Precisely, in the year 1934, the YMCA attempted a new breakthrough in the Indian subcontinent with the West Asian Games in New Delhi. Meanwhile, Elwood Brown also organised the 1922 Latin American Games in Rio and the 1927 Christian Games for "Sport, Gospel and Peace" in Copenhagen (400 athletes from all Christian denominations coming from 22 countries).

The IOC had an opportunity to strike back with the travels of Baillet-Latour to Eastern and Latin America by offering Elwood Brown to form an alliance at a time when Filipinos, Chinese and Japanese tried to gain their emancipation. The IOC then granted sponsorship to the Central American Games (Mexico 1926, Havana 1930, Salvador 1935, Panama 1938) and the Far Eastern Championship Games, while isolating the 1938 Bolivar Games, held in Bogotá. The IOC also had to take into account the British Empire Games taking place in Canada in 1930, London in 1934 (500 athletes representing 16 nations), and Sydney in 1938.

Therefore, Pierre de Coubertin and his colleagues, most of whom were involved in colonisation, tried to develop the African Games. At least in the French baron's mind, these games would not only aim at enabling African colonial elites to compete on the playing field and give them "muscles, breath, strong guts and legs of steel." He also intended to involve indigenous elites in order to integrate them culturally following the model of the British Empire. As for popular components, Pierre de Coubertin allowed their participation in sports, except in those that involved military skills, since "sport is a strong means of teaching discipline." Ultimately, the African Games, scheduled to take place in Algiers in 1923 and then in 1925, and in Alexandria in 1929, would not be held, as colonial governors opposed them for fear of Muslim excesses and nationalist demonstrations in connection with any potential victory over the Europeans.

The world of sports provided territories that could be colonised even within Europe. In fact, snowy mountains were indeed a subject where European nations competed commercially: the winter games constituted a major touristic stake. Although Pierre de Coubertin expressed his interest in winter sports early on, the IOC would only see the interest of organising winter Olympics with the development of winter tourism during the *Belle Époque* and the Roaring Twenties. At this point however, the Northern Games had had a long-standing existence in Scandinavian countries (1905, 1909, 1913, 1917, and 1922). Mainly due to the influence of resort owners and tourism offices, the major Alpine nations, including France, Switzerland and Italy then formed an alliance to organise a "week of winter sports" in 1924 in Chamonix. The 293 competitors representing 17 nations marched into the Olympic arena holding their skis, skates or curling brooms. Scandinavian and North American athletes particularly stood out in skating, cross country skiing and ice hockey. It was not until the completion of the construction of the Midi cable car in 1927 that Chamonix could host downhill skiing competitions. The success of the week in Chamonix led the IOC, meeting in Prague in 1925, to formalise winter competitions as Olympics Games. The last Winter Games would be held in Stockholm in February 1926, in the absence of French athletes.

4. Alternative Sporting Internationalisms: Women's Games, Popular Games

Pierre de Coubertin's opposition to the participation of women in the Olympics is a well-known fact. On the eve of the 1912 Games of Stockholm, he wrote in the *Olympic Review* that "[a]n Olympiad with females would be impractical, uninteresting, unaesthetic and, let us not be afraid to add, improper". Like many of his colleagues in the IOC, he feared that sports may masculinise women.

In 1935, president Baillet-Latour wrote: "I have always hated the idea of the man-woman," and compared the presence of female bodies in the stadium to pornography. The 1925 Prague Congress decided "no unfortunate exhibitions". Coubertin reduced women to their maternal and reproductive role and recommended that they practice gymnastics in order to strengthen their abdominal which will be useful when giving birth. However, with the complicity of the organisers, female athletes were able to participate in various competitions such as tennis and golf in 1900, archery in 1904 and 1908, and swimming in 1912. Under pressure from Scandinavian and Anglo-Saxon NOCs, the IOC provisionally authorised the participation of women in some athletic events at the 1928 Amsterdam Games. Due to their lack of preparation, the competitors staggered and collapsed at the finish line of the 800 m. In addition, the women's sport societies of England, the United States, France, Czechoslovakia and Italy, brought together under the leadership of Alice Milliat and Sophie Elliott Lynn, formed the International Women's Sports Federation (IWSF) on 31 October 1921 in Paris. Afterwards, they organised the Women's World Games in Paris in 1922, in Gothenburg in 1926 and in Prague in 1930. The support brought by the International Association of Athletics Federations (IAAF) to the cause of female athletes is more ambiguous than the one brought by the International Skating Union. By acting as a referee, the IAAF, presided by Sigfried Edstrom (Sweden) gained influence within the IOC while taking control of the women's athletics programme integrated in the first European Athletics Championship in 1938. The fourth and last Women's Games were held in London in 1934 and the great delays of the IOC led the IWSF to suspend its activities at the end of the Berlin Games.

The progress of the democratic ideal, the development of workers' sports, particularly in Germany and Austria as well as the Bolshevik threat, led Pierre de Coubertin to change his strategy at the end of the war. Still driven by his obsessive fear of social disunity, he wrote on 31 December 1919 in *La Tribune de Genève*: "we fail to see that social conflicts do not only arise from the clash of opposing interests which are difficult to reconcile. Sorrow, anger, and humiliation also play an important part in those conflicts. There is nothing like sports to relieve young men from these injuries. Sports for all is what we now want to organise with the help of progressive municipalities and major labour organisations. Some have called it proletarian Olympism. I am not afraid of labels." In the following year, during the Antwerp Games in 1920, he appealed to sports federations and societies to open "free or almost free classes in all sports for the proletarian youth". He further suggested to the ILO, led by the moderate socialist Albert Thomas, to develop "workers' physical recreation".

Coubertin believed that the sports clubs of the Second International, federated under the Lucerne Sports International (LSI) and gathered in Prague in 1921 for the discreet Workers' Olympics, would ultimately join the Olympic Movement. His IOC colleagues such as the Swedish industrialist Edström, the Finnish ship-owner Krogus and Count Clary feared the infiltration of the workers' representatives, especially since the formation in Moscow in 1921, of a Red international sports federation (RSI) criticising "the chauvinistic and nationalistic Olympics."

The success of the 1925 "Workers' Olympics for the promotion of Peace" held in Frankfurt (1,100 athletes and 40,000 spectators) convinced the IOC to hold talks with the LSI through the ILO. Such a rapprochement was facilitated by the organisation of the first Spartakiades in August 1928 in Moscow (14 nations and 7,000 athletes, mostly Soviet), held in response to both the 1927 Socialist Olympics of Prague and the 1928 Amsterdam Olympics. However, the situation became tense again after the 1931 International Workers' Olympiads of Vienna, which imitated the IOC's ceremonial and the 1932 Berlin Spartakiade. Indeed, as part of the policies of the United Front against fascism, socialist and communist athletes met in Paris in 1934 and Antwerp in 1937 where municipal authorities rejected the request for cancellation made by President Baillet-Latour. A "People's Olympiad" was meant to be held in Barcelona from July 22 to July 26, 1936, during the Berlin Olympics. It did not take place because of the outbreak of the Civil War started by Colonel Franco.

B. World Championships and Headquarters of the ISFs: Europe in Command

Describing the history of the autonomisation of each of the 35 ISFs of Olympic sports (28 summer sports and 7 winter sports), not to mention the others, would be too tedious and inefficient for our two major demonstrations:

- Firstly, the IOC's anteriority, founded in 1894, blocked the development and hampered the emancipation of the ISFs for a century,
- Secondly, the historical weight of European leaders in the creation of the ISFs and the IOC had long-term effects that are still largely visible today;

The reader can refer to the four tables below (ISFs established before the creation of the IOC in 1894, between 1900 and 1914, in the interwar period and from 1945 onwards) for more details on:

- the places and dates of creation of ISFs,
- the founding sporting nations,
- the names and nationalities of the presidents (founders and current, first non-European presidents),
- the date and place of the first World Championships,
- the headquarters and number of member sporting nations in 2014,

1. The Belated Establishment of World Championships

The IOC and its founder, Pierre de Coubertin, made sure to adopt an ecumenical approach to sports. They created a first Olympic programme which included all the sports already organised in ISFs such as the International Federation of Gymnastics created in 1881, the Rugby Board created 1886 (but the tournament could not take place because of the lack of participants), the International Rowing Federation of 1892, but not the International Skating Union of 1892 that would be integrated to the first winter Games in Chamonix in 1924.

This program also included many unorganised sports (shooting, sailing, swimming, tennis, palm, fencing, boxing, wrestling, equestrian sports, polo, cycling, skating, and mountain climbing). By doing so, the IOC established a sort of supreme world championship that mechanically slowed down the appearance of world championships in each sport.

World championships were organised for only three sports before the second Olympics held in 1900 in Paris: weightlifting in 1891, cycling in 1893, sport shooting in 1897. Therefore, the IOC leaders who were also heading several ISFs ensured that global sporting events would not compete with the Olympics. Consequently, it was not until the end of the war that the ISFs took advantage of the difficulties encountered by the IOC to operate a reorganisation and thus emancipate themselves. Eight new world championships were created, mainly in the 1930s (fencing, ice hockey, table tennis, football in Uruguay and skiing in the United States, archery, handball and canoeing) and seven others between 1949 and 1962 (volleyball, modern pentathlon, basketball, horseback riding, sledding, judo, golf, rowing). The proliferation of television channels in the 1970s and the end of the dogma of amateurism in the 1980s would lead to the birth of world championships in field hockey, swimming, taekwondo, badminton, athletics and rugby.

2. An Incomplete Globalisation in 2014: Overwhelmingly European Headquarters and Presidents

As the tables below show, only three of the 35 ISFs are located outside of Europe. They involve sports that were organised in federations and added to the Olympic program much later: Taekwondo in Kukkiwon in South Korea since 1973, triathlon in North Vancouver, Canada since 1989 and badminton in Kuala Lumpur in Indonesia since 2005. Twenty-one are located in Switzerland, with a concentration that has accelerated since the 1980s, three in the United Kingdom (tennis in London, rugby in Dublin in Ireland, curling in Perth in Scotland), two in Monaco (athletics and modern pentathlon), and two in Germany (sport shooting, Luge). Very few ISF are located in the United Kingdom and the United States although they invented most of the modern sports. This situation is explained by the fact that these sporting nations have long neglected to organise international sporting events beyond an Anglo-Saxon circle. They preferred to focus on the creation and application of rules within the frameworks of the Boards.

Continental Europeans, and especially the French, nurtured the ISFs. Out of the fifteen ISFs in addition to boxing, which were created before the First World War, seven are located in Paris (cycling, football, wrestling, weightlifting, sailing, ice hockey, tennis and fencing). Skiing and field hockey (1924) and volleyball (1947) were then added to this list. This domination is further strengthened by the Treaty of Versailles which gave France a leading position within the League of Nations (LN) headquartered in Geneva. The decline of the French influence was clearly noticed at the end of the 1920s with the creation of ISFs headquartered in Mitteleuropa: table tennis in Berlin in 1926, 11-player handball in 1928, archery in 1931 in Ukraine, basketball in 1932 in Geneva.

The creation of the International Golf Federation in Washington in 1958 and the World Curling Federation in 1966 in Vancouver not only marked the beginning of the Cold War but also showed the forthcoming globalisation, confirmed by taekwondo in South Korea in 1973 and triathlon in Canada in 1989.

Europe's leading position persists to this day because the expansion of the ISFs across the world – as the wave of decolonisation in the twenties in the Near and Middle East and between 1945 and 1980 in Asia and Africa – did not systematically lead to the election of non-European presidents. In 2014, at least 25 out of 35 presidents of ISFs are European, including 4 Italians, 4 Swiss and 4 Spaniards, 3 Scandinavians, 2 French and 2 Germans. Otherwise there are two Africans (Senegal for athletics and Egypt for handball), two from the Near East (Turkey for archery, Jordan for equestrian sports), two Latin Americans (Brazil for volleyball, Uruguay for swimming), two Northern Americans (Canada for curling and table tennis) and one Asian (South Korea for taekwondo).

Finally, it is worth noting that women are hardly represented in the leadership of the ISFs. Only Haya bint al-Hussein for equestrian sports and Marisol Casado for triathlon are heading a federation.

Table 3
Olympic Federations Created since 1918

International Federation Current President	Date and Place of creation	First President First non-European President	Sporting Nations represented at the moment of its creation (non-Europe)	First World Championships	Current Headquarters	Domestic Associations in 2014
Amateur Boxing International Boxing Association Dr Ching-Kuo Wu (Taiwan) since 2006	1920, Antwerp (Belgium) During the Olympics	John H. Douglas (Great-Britain) <u>Don F. Hull</u> (USA) in 1978	France, Great-Britain, Belgium, Netherlands, Denmark, Switzerland, Norway, Sweden, Brazil, USA, Canada	1979, World Cup, New York	Lausanne	196 in 2007
Boxing (Professional) World Boxing Association Gilberto Mendoza (Venezuela) since 1982	1921, New York, USA	<u>Walter H. Liginger</u>	USA		Panama	
Equestrian Sports IFES	1921	Baron du Teil (France)		Show Jumping 1953 in Paris Dressage 1966 in Berne	Lausanne	

Haya Bint al-Hussein (Jordan) since 2006		General Guy V. Henry (USA) in 1931		WEG 1990 in Stockholm		
Bobsleigh and Skeleton IBSF Ivo Ferriani (Italy)	1923	Renaud de la Frégeolière (France)			Lausanne	60
Skiing International Ski Federation Gian Franco Kasper (Switzerland) since 1998	1924 Chamonix (France)	Ivar Holmquist (Sweden)	14 nations	1931 Alpine Skiing 1950 Nordic Skiing Rumford (USA) 1958 Biathlon Saalfelden (Austria)	Oberhofen Thun (Switzerland)	107
Field Hockey IHF Leandro Negre (Spain) since 2008	1924 Paris 1927 IWSF 1982 Merger of the two ISFs	Paul Léauté (France)	Men's ISF: Austria, Belgium, Spain, France, Czechoslovakia, Hungary, Switzerland IWSF: South Africa, Austria, Denmark, Scotland, USA, Great Britain, Ireland, Wales	1971 Barcelona (World Cup)	Lausanne Brussels until 2005	127
Canoeing-Kayaking ICF / ICF José Perurena López (Spain) since 2008	1924 Copenhagen		Germany, Denmark, Austria and Sweden	1938 Vaxholm (Sweden)	Lausanne	157
Table tennis FITT / ITTF Adham Sharara (Canada) since 1999	1926 Berlin	Ivor Montagu (Great Britain) <u>Ichiro Ogimura</u> (Japan)		1926 Berlin	Lausanne	207
Handball IHF / FIH Hassan Moustapha (Egypt) since 2000	1928 (11-player handball) 1946 (7-player handball)	<u>Hassan Moustapha</u> (Egypt) since 2000		1938 Germany 1954 Sweden 1957 Yugoslavia (women)	Basel	159 in 2007

Archery FITA / WAF Ugur Erdener (Turkey) since 2005	1931 Lwów (Poland)	Mr Fularski (Poland) <u>James L. Eaton</u> (USA) in 1989	USA, France, Hungary, Italy, Poland, Sweden, Czechoslovakia	1931 Lwów (Poland)	Lausanne	151
Basketball FIBA Yvan Mainini (France) since 2010	1932 Geneva	Léon Bouffard (Switzerland) <u>Antonio Dos Reis Carneiro</u> (Brazil) in 1960	<u>Argentina</u> , Czechoslovakia, Greece, Italy, Latvia, Portugal, Romania and Switzerland	1950 Argentina (men)	Mies (Switzerland) Bern from 1940 to 1956, Munich from 1956 to 2002, Geneva from 2002 to 2013	213
Badminton FIB / BWF Poul-Erik Høyer Larsen (Denmark) since 2013	1934 London	George Alan Thomas (Great Britain) <u>Ferry Sonneville</u> (Indonesia) in 1971	England, <u>Canada</u> , Denmark, Scotland, France, Ireland, <u>New Zealand</u> , Netherlands and Wales	1977 Malmö	Kuala Lumpur since 2005	177

Table 4
Olympic Federations created after World War II

International Federation Current President	Date and Place of creation	First President <u>First non- European President</u>	Sporting Nations represented at the moment of its creation (non- European)	First World Championships	Current Headquarters	Domestic Associations in 2014
Volleyball FIVB Ary Graça Filho (Brazil) since 2012	1947 Paris	Paul Libaud (France) <u>Rubén Acosta</u> (Mexico) in 1984	14 countries	1949 Prague 1952 Moscow (women)	Lausanne since 1984	220
Modern Pentathlon UIPM (with biathlon from 1957 to 1993)	1948 Sandhurst (Great Britain)	Tor Wibom (Sweden)	15 countries	1949 Stockholm	Monaco	102

Klaus Schormann (Germany) since 1993						
Judo IFJ / IJF Marius Vizer (Romania) since 2007	1951	Aldo Tori (Italy) <u>Risei Kano</u> in 1952		1956	Lausanne	199
Luge FIL Josef Fendt (Germany) since 1984	1957 Davos (Switzerland)		13 countries	1955 Oslo	Berchtesgaden (Germany)	50
Golf FIG / IGF Peter Dawson (Great Britain)	1958 Washington (World Amateur Golf Council renamed IGF in 2003)		35 countries, including 22 non-European countries	1958 World Amateur Team Championship in St. Andrews (Scotland)	Lausanne	132
Curling FMC/WCF Kate Caithness (United Kingdom) since 2010	1966 Vancouver	Allan Cameron (Scotland) Colin A. Campbell (Canada) in 1969	Canada, France, Scotland, USA, Norway, Sweden and Switzerland		Perth (Scotland) Edinburgh from 1994 to 2000	45
Taekwon-Do WTF Kang Won Sik (South Korea) since 2010	1973 Kukkiwon (South Korea) ITF 1966 Seoul (competing federation)	<u>Un Yong Kim</u> (South Korea)		1973 Kukkiwon (South Korea)	Kukkiwon (South Korea)	
Triathlon FIT / ITU Marisol Casado (Spain) since 2008	1989			1989 Avignon (France)	North Vancouver (Canada)	
Biathlon Anders Besseberg (Norway)	1998 Attached to the UIPM since 1957			1996 Hochfilzen (Austria)	Salzburg (Austria) since 1999	57

C. The Shared Struggles for the Preservation of the Integrity of Sport against Doping

The creation of the World Anti-Doping Agency (WADA) in 1999⁴³⁵ followed the discovery by French customs agents of an organised trafficking of doping products, a few days before the start of the 1998 Tour de France and the wide media coverage that followed the scandal. Indeed, the major problem is not so much the revelation of these facts, which were widely known in the sports microcosm, as their wide communication to the public, which undermined the two essential virtues attributed to sport: its benefits for health, and the integrity and fairness of its competitive practices. Moreover, this scandal known as the "Festina affair" opposed one of the most influential personalities of sports, Hein Verbruggen as the president of the *Union cycliste internationale* (UCI) to one of the leading States in the fight against doping (since 1965): France.

The WADA's difficulties in adapting itself to the evolution of doping practices was perfectly summarised by its General Director when he declared, in November 2009, before the UNESCO, that "the fight against doping was pathetic and only caught the fools." The British Olympic Association (BOA) was even more severe when denouncing, in 2011, the WADA's inability to "achieve its own goals despite hundreds of millions of dollars spent in ten years." It is indeed undisputable that a vast majority of the most significant and publicised doping cases were not detected by the action of the WADA, or on the basis of the implementation of the World Anti-Doping Code, but by customs, police or judicial proceedings and investigations, in other words, State action. This fact is evidenced by a second case known as the "Armstrong case" of 2012.

1. The "Festina Affair" and the Creation of the World Anti-Doping Agency (1999)

The creation of an entirely new international body to organise the fight against doping occurred following in an emergency context, without any prior agreement on the framework to be adopted. This body brought together, on the one hand, the IOC and ISFs as producers of an abundant "*lex sportiva*" (it would be better to talk about "*leges sportivae*" because of the important variations of the law regulating sports from one sport to another) and on the other hand State institutions that were not very involved so far, with a few exceptions.

a. The Original Lack of Involvement of States

Neither the components of the sporting movement nor the States adopted a homogeneous and coherent approach to the fight against doping. Two conceptions coexisted within sporting organisations since the late 1960s (First actions of the IOC on this issue with the development of a list of banned products at the Olympics in 1967 and the first monitoring activities under its auspices at the Grenoble and Mexico Olympics).

⁴³⁵ For a legal analysis of the status and functions of the WADA, see *infra*, Part 3.

The first is based on a rationale that recognises the extent of the problem and on a very strong willingness to fight all the wrong habits and behaviours in a rigorous and transparent manner. The second, which prevailed in many international federations, was reluctant to establish, and especially to define, a clear and *insurmountable* barrier between medical assistance to improve performance and the illegal or dangerous practices and processes. The latter view consisted in punishing certain presumably individual behaviours and denouncing the harmfulness of their broadcasting through the media.

States were even more divided on the timeliness and the usefulness of their involvement. Their positions obviously differ according to their institutional culture towards public policy in sports. Although forty of them, including Australia and Canada, ratified the Anti-Doping Convention⁴³⁶ adopted in November 1989 by the Council of Europe, very few implemented it through further domestic legislations. The United States were handling the issue through the Food and Drug Administration (FDA), but the vast majority of States left this fight entirely in the hands of the sporting institutions.

This original lack of involvement from the States – to the exception of the United States, Canada, Australia, New Zealand, and France – led the sports movement to start acting with the creation of the WADA at the Lausanne Conference in June 1999, at the height of the Salt Lake City scandal. The movement would further provide the necessary funds in the early years. Six years passed before the adoption, in October 2005, by the UNESCO, of the International Convention against Doping in Sports.⁴³⁷ This Convention entered into force in February 2007 and has since been ratified by 174 countries as of 1 August 2013, making it the second largest UNESCO Convention in terms of ratifications.

b. An International Institution Established Modelled as a Swiss Law Foundation with a Paritarian Management System

Since its inception, the WADA easily adopted the status of international institution modelled as a Swiss law foundation and retained it after the transfer of its headquarters from Lausanne to Montreal in 2002. Its first president was the Canadian Vice-President of the IOC, Dick Pound, who was succeeded, according to the statutory rotation system, by John Fahey, former Australian Minister of Finance in 2008, and then by Craig Reedie, a British national who had worked at the IOC. In addition to its regular cooperation with the UNESCO, the WADA signed a confidential agreement with INTERPOL (which seconded a French official to that effect), but entertains functional relationship with the WHO.

The Foundation Board is WADA's supreme decision-making body. Besides the President and his Vice President (currently Makhenkesi Arnold Stofile, former South African Sports Minister), the Board is constituted of 18 representatives of States and 18 representatives of the sporting movement.

⁴³⁶ [http://www.coe.int/t/dg4/sport/Source/CONV_2009_135_EN.pdf].

⁴³⁷ [<http://www.unesco.org/new/en/social-and-human-sciences/themes/anti-doping/international-convention-against-doping-in-sport/>].

The former are divided according to Olympic Regions pursuant to the division established in 2001 by an intergovernmental advisory panel: 5 European, 4 American, 4 Asian, 3 African and 2 Oceanian representatives. The representatives of the sporting movement are divided as follows: 4 appointed by the IOC, 4 by the IOC Athletes Commission, 4 by the ANOC, 3 by the ASOIF for summer sports, 1 by AIOWF for winter sports, 1 by SportAccord, 1 by the International Paralympic Committee.

Under the auspices of the Foundation Board, the Executive Committee is in charge of the functional, administrative and financial management of the Agency. It comprises the President and Vice President, 5 ministers (one per Olympic Region) and 5 representatives of the sports movement (from the Athletes' Commission, from the ASOIF for 2 of them, from ANOC and from SportAccord). Only two members of the Executive Committee, namely the European and African ministers, do not hold positions on the Foundation Board.

WADA's assets (about USD 30 million in 2013) are obtained as follows: half from the sporting movement and the other half from the States according to a distribution decided in 2003: 47,5% from Europe, 29% from the Americas – not including Canada's outstanding contribution for the establishment of the headquarters – 20.5% from Asia, 2.5% from Oceania, 0.5% from Africa. 64% of the expenditures are for logistics (salaries and charges, consulting fees, travel expenses, administrative and IT costs and amortisation). 17% of the budget goes to research and only 5% of it is spent on the tests (usually financed by the Agency's State and sporting members).

Headed by Scotsman Sir Craig Reedie, and piloted by David Howman, a lawyer from New-Zealand and former representative for Oceania at the Foundation Board, the management of the WADA includes 4 Canadians, 2 South Africans, 1 Australian, 1 Japanese, 1 Swiss, 1 Uruguayan and 1 French. The WADA publishes rather comprehensive meeting minutes, much more transparent than the majority of similar documents published by international sports bodies, which bring to light some of its difficulties in implementing its statutory tasks.

c. Insufficiently Binding Statutes

These difficulties arise from the fact that WADA's statutes and the original version of the World Anti-Doping Code⁴³⁸ (adopted in 2003, in force since 2004) are designed as a catalogue of diverse provisions containing more incentives than obligations. Three general principles are underlined: the development of common references between States and the sporting movement, the supervision of the implementation of rules established in the World Code and the regulation and harmonisation of the actions of the parties involved.

⁴³⁸[\[https://wada-main-prod.s3.amazonaws.com/resources/files/wada_antidoping_code_2009_en_0.pdf\]](https://wada-main-prod.s3.amazonaws.com/resources/files/wada_antidoping_code_2009_en_0.pdf).

The flexibility of this regulatory framework allows States as well as sporting agencies to adapt its application to their own interests. Indeed, apart from those that already had a legislative framework before WADA's creation, very few States complemented the UNESCO Convention's ratification through their domestic laws. Several international federations, including the most important ones such as the football and tennis federations, were late in implementing the World Code's provisions in their own regulations, often invoking their lack of importance or utility for their disciplines.

Moreover, several countries such as France, seemed, for some time, to lose interest, which is illustrated by the appointment of a Spanish Under Secretary for Sports (a country that showed reluctance concerning the anti-doping fight) as the European representative to WADA's Executive Committee. Some sporting organisations benefited from this withdrawal and regained control over initially shared competences. For instance, the UCI, eager to avoid some national laws, obtained the extension of the concept of "international events" (under the sole responsibility of ISFs) to events organised by local clubs (the whole French Road Cycling Cup is now considered as an international event). Since then, the States that had taken some distance from the Agency, manifested signs of resuming their involvement, which can be observed through the designation of a French national, Ms. Valérie Fourneyron, as the European representative in the Executive Committee.

2. The "Armstrong case" (2012): USADA against WADA

WADA's approach is grounded in the rules and practices of the sporting world and largely consists in the detection of substances. Although it may still have some effect on individual practices, often clumsy or stupid, this approach appears largely unsuitable in the case of scientifically organised doping with medical assistance that makes detection a difficult task.

a. The WADA's Weaknesses

The World Anti-Doping Code is certainly WADA's greatest accomplishment. Many positive aspects in terms of support to the anti-doping fight are worth noting: the development of the Annual List of Prohibited Substances and Methods, the accreditation of testing laboratories, an independent observer program, the definition of a common standard for the issuance of the Therapeutic Use Exemption (TUE), the obligation for athletes to provide their whereabouts, the creation of a data management system (called ADAMS), the creation of regional anti-doping organisations and a coherent and effective research programme.

However, WADA's results in terms strategy and rule-making are much less convincing. The discrepancy between the lack of positive tests and known facts of doping is not taken into account when establishing the lists. Some provisions such as the TUE, the biological passport, or the ADAMS system, are very unevenly implemented. The lack of reliable statistics creates further doubts about the efficiency and effectiveness of some State or sports institutions. Similarly, the coordination of the network of national agencies is made impossible by the absence of a minimal harmonisation of their organisation and functioning.

In the context of the monitoring of the compliance with the rules, the WADA's actions can be characterised by a relative failure. Until very recently, the WADA remained silent in the face of the very weak or inexistent enforcement of numerous provisions of the World Code, by numerous countries which are, however, signatories of the UNESCO Convention. This tolerance has even been interpreted as a form of connivance with some international federations that have been lax about enforcing the Code, although its provisions became binding under the Olympic Charter as amended in 2003.

For reasons going far beyond the mere issue of the fight against doping, calls for enabling an effective sharing of information between State and sporting institutions remained unheeded. Moreover, the WADA did not participate in handling the conflict of jurisdiction that opposed the French Government to the UCI between 2005 and 2009 (*i.e.* before the extension of the scope of international events in 2010) concerning the organisation of tests in some cycling races.

b. The WADA's Failure in the Armstrong Affair

The last blow to the WADA came from the management of the Armstrong affair by the US Anti-Doping Agency (USADA)⁴³⁹ and especially the publication of its findings⁴⁴⁰ on 10 October 2012. To complete its investigation, the USADA completely ignored the World Code and even the existence of the WADA. The agency used judicial or police procedures, made direct contact with national authorities in order to collect useful data, and took great care not to disclose any information to the International Federation involved, considered as an accomplice to the *violations*, or even to the WADA, considered as being too "porous" with the UCI.

Thus, the USADA highlighted the WADA's complete ineffectiveness in the most significant doping case of the last 15 years. The American agency pointed to the numerous negative tests taken by Armstrong (nearly 500) during the period when the Armstrong himself tacitly admitted to taking drugs (since he did not use his right of appeal). The agency also highlighted the many deficiencies of the UCI with respect to the World Code and the agency's actions (independent observers' conclusions pointing out several deficiencies of the UCI on the Tour de France of 2003 and 2010 that have never been followed-up on).

The follow-up on USADA's report is even more deplorable. The WADA merely refused to participate in the so-called "independent" commission created (later abandoned) by the UCI. Moreover, the WADA was supposed to launch a thorough investigation on its own responsibilities and those of its members (starting by those of the UCI).

⁴³⁹ [<http://www.usada.org/%5D>].

⁴⁴⁰ [<http://www.usada.org/default.asp?uid=4035>].

c. The Necessary Reform of WADA

The destructive effects of the Armstrong case as well as a greater involvement of the States' representatives (especially European States), could pave the way for many improvements of the agency's current functioning: adapting the World Code to the evolution of doping techniques, banning certain substances which are currently tolerated (corticoids...), requiring the communication of the ADAMS data to all the parties involved, revising the distribution of competences for international events. Other improvements are also possible: rapprochement between the WHO and Interpol for the research on molecules used fraudulently and the fight against drug trafficking, less "political" processes (*i.e.* by taking into account only on scientific bases) for establishing the lists, coordination of the National Anti-Doping Organisations (NADO), creation of an independent structure for the arbitration of disputes between States and federations...

However, the main problem certainly lies in the evolution of the WADA's scope of action. The sports movement seems to want to limit coordination and support functions in order to become in charge of the anti-doping fight but obviously, States cannot accept the exclusion of any strategic dimension. A middle ground could however be found in establishing a greater responsibility for all of WADA's members in the implementation of the World Code. This could come with the creation of an independent body with large powers of evaluation, regulation or sanction in order to ensure the proper enforcement of its provisions. In any case, it is obvious that WADA's difficulties during the first 12 years of operation come from the lack of definition, prior to the creation of the agency, of a consensual basis with the shared goals and responsibilities of each party. This structural deficiency should therefore be rectified to ensure the sustainability of this organisation.

A new World Anti-Doping Code was adopted on 16 November 2013 at WADA's last World Conference in Johannesburg. The Code will enter into force on 1 January 2015. The main changes include: increasing the suspension time for cases of intentional doping with use of prohibited or specified substances from 2 to 4 years, extending the statute of limitation from 8 to 10 years to promote retroactive testing, and obligating federations to disclose the information they collected to WADA – particularly through the biological passport – and giving an incentive for States to establish a close cooperation with police and customs agencies. Two other measures, directly inspired from the "USADA - Armstrong" report have also been included: considering as admissible, in addition to test results, of evidence obtained through documentary investigations, testimonies or confessions, and the possibility of sanctioning the entourage of the athletes involved, such as coaches, managers, trainers and doctors.

E. The Tensions Revealed by the Creation of SportAccord (2009)

Since the creation, in 1921 of their permanent bureau, the ISFs never truly surrendered before the IOC. They were simply facing heavy internal changes, the need to strengthen their global control over their own discipline, tough competition around them, and more than everything, the diversity of their sports cultures

making difficult any strategy towards alliances. In addition, they only made aggressive moves during the IOC's moments of weakness (post-war periods, scandals of the 1990s-2000s) and the improvements of the economy and the situation in the media for the sports sector. Yet, a multi-sport organisation entering exclusive contracts with the world's best athletes would suffice to jeopardise the Olympic monopoly. This is in a way the project supported by Marius Vizer, the Austrian-Romanian President of the International Judo Federation during his candidacy in March 2013 to take over SportAccord presidency then held by Hein Verbruggen.

The values displayed by SportAccord, which brings together nearly a hundred ISFs are "neutrality, transparency, and accountability" while supporting an "ethical and socially responsible sports movement."⁴⁴¹ To preserve the integrity of sport, SportAccord has developed a set of tools: code of conduct,⁴⁴² procedures to deal with sports betting,⁴⁴³ the "Integrity in Sport" guide to understand and prevent match fixing,⁴⁴⁴ a database enabling access to the current laws and regulations applied within States and ISF concerning the fight against match-fixing,⁴⁴⁵ an e-learning programme called "Real Player" to prevent attempts of corruption.⁴⁴⁶

1. From GAISFS to SportAccord

The ISFs need financial support in order to dialogue and negotiate with the IOC from a position of strength. The rise of TV rights, and their increase during the 1960s and 1970s, launched, once again, the rapprochement process between international federations. It first materialised within the loose scope of a General Assembly in 1967 (26 FIS),⁴⁴⁷ becoming the General Association in 1976 (GAISF), headquartered in Lausanne, and moved to another tax haven in 1978, Monaco. The fact that an Association of International Sports Federations recognised by the IOC (ARISF)⁴⁴⁸ was established in 1984 (32 ISF in 2013) is enough to show how the IOC's leaders were seeking to preserve their powers against the GAISF.

In 2003, GAISF launched the first "SportAccord International Convention" whose motto was "by sport for sport". This was done in collaboration with the Association of Summer Olympic International Federations (ASOIF) and the Association of International Olympic Winter Sports Federations (AIOWF) as well as several sponsors.⁴⁴⁹ GAISF was renamed SportAccord in 2009 and moved its headquarters to Lausanne.

⁴⁴¹ [<http://www.sportaccord.com/en/who-we-are/mission-and-values/>].

⁴⁴² [<http://www.sportaccord.com/en/what-we-do/sports-integrity/?idContent=16889>].

⁴⁴³ [http://www.sportaccord.com/multimedia/docs/2011/11/Model_Rules_on_Sports_Integrity_in_Relation_to_Sports_Betting1.pdf].

⁴⁴⁴ [http://www.sportaccord.com/multimedia/docs/2013/03/2013-02_SportAccordIntegrityReport_UpdatedFeb2013.pdf].

⁴⁴⁵ [<http://www.sportaccord.com/en/what-we-do/integrity-database/>].

⁴⁴⁶ [<http://realplayer.sportaccord.com/>].

⁴⁴⁷ Air Sports, Rowing, Basketball, Bobsled, Boules, Canoeing, Cycling, Equestrian Sports, Fencing, Gymnastics, Handball, Hockey, Ice Hockey, Judo, Luge, Wrestling, Motorcycling, Aquatics, Modern Pentathlon, Roller Sports, Skiing, Shooting, volleyball, Weightlifting, University Sports, Maccabiah Games.

⁴⁴⁸ [<http://www.arisf.org/>].

⁴⁴⁹ More than 2000 representatives of the sports are expected in 2014 in Antalya Belek in Turkey for the 12th SportAccord International Convention.

Unlike the International World Games Association which brings together 35 ISF and organises, since 1981, competitions for disciplines that are not included in the Olympic Games, SportAccord claims to regroup all sports, whether or not they constitute Olympic disciplines.

While only 33 federations are members of ARISF as of 2013, SportAccord was able to better expand its network, claiming the adhesion of 93 ISFs and the affiliation of 16 associated organisations.⁴⁵⁰ With the exception of the Federation of International Bandy (Russian hockey that is played on a frozen football field), all the ISFs members of ARISF are also members of SportAccord: air sports, motor sports, baseball, Basque pelota, billiards and snooker, bowling, bridge, chess, cricket, dance sport, floorball, ultimate, karate, korfball, lifesaving, motorcycling, mountaineering, netball, orienteering, polo, powerboating, racquetball, roller skating, squash, sumo, surfing, tug of war, underwater sports, water skiing and wushu. At this point, therefore, the question of ARISF's usefulness arises. With its central positioning and growing reputation, SportAccord can represent its members on the global scale. In other words, it can lobby not only the IOC, but also the UN, the Council of Europe and the European Union.

2. A Pragmatic and Limitless Definition of the Concept of Sport

Faced with the IOC which dominates the world of sports recognised as "Olympic sports" and which struggles to renew its programme because of the lobbying of ISFs and Sates, SportAccord has a major advantage: a pragmatic and quasi limitless definition of the concept of sport.⁴⁵¹ Unlike traditional meanings that involve the concept of engaging the body, SportAccord considers the notion of competition as a central and necessary condition, without neglecting the disciplines that require a technical and aesthetic evaluation by judges. Nevertheless, the activities only involving a minimum use of the body are unlikely to be defined as sports by SportAccord. This open definition excludes activities based on luck, endangering the athletes and participants' health and physical integrity, harming living beings, or even requiring having equipment sold by only one supplier.

Thus, under SportAccord's definition of sports, mind games and motorised sports are fully considered as sports. Also, the candidature of mind games will, from now on, only be processed after the delivery of an opinion by the International Mind Sports Association (IMSA). Finally, a clause requires that martial arts and combat sports international federations, applying to integrate SportAccord, be subject to close scrutiny because the differences can be very small from one discipline to another. In addition to the 33 disciplines within the ARISF mentioned above, and Olympic sports in general, not to mention FIFA and soccer, SportAccord welcomes disciplines as diverse as sport fishing or casting, bodybuilding or cheerleading, curling or darts, American football or lacrosse, go or dragon boat racing, sepak trakaw or underwater sports, sambo or savate, sled dog or tug of war, chess or draughts.

⁴⁵⁰ [<http://www.sportaccord.com/en/members/>].

⁴⁵¹ [<http://www.sportaccord.com/en/members/definition-of-sport/>].

SportAccord's representativeness is not limited to International Federations representing only one sport. Some peer and multisport federations are also associated members (International Military Sports Council, university sport, worker and amateur sports, International Paralympic Committee, International Federation for sports adapted to persons with intellectual disabilities called the Special Olympics Sports, International Committee of Sports for the Deaf, International School Sport Federation, lifelong sports called the Master Games, International Mind Sports Association). This list also includes regional Games (Commonwealth Games, Mediterranean Games) or games with global ambitions (World Games for non-Olympic sports), philanthropic societies (Panathlon International), representatives of the medical or paramedical community (IF of Sports Chiropractic), network of manufacturers and developers of sporting facilities (International Association for Sports and Leisure Facilities), media partners (European Broadcasting). It is worth noting that, as of 2013, the Maccabi World Union does not seem to be a SportAccord member anymore. Also, neither the Gay and Lesbian International Sport Association nor the Federation of Gay Games have ever been part of SportAccord.

3. The End of the Olympic Monopoly?

Many attempts to establish parallel and competing Olympics have been made since the 1920s: Olympics organised on the basis of gender (women's international games), political (Spartakiades), ethnic and confessional (Maccabiah Games), colonial and post-colonial (Commonwealth Games, Francophone Games), World Games in 1980, not to mention regional games (Nordic, Pan American, Asian, African, Mediterranean games...). Until then, the IOC has always managed to eliminate, absorb the competition or to control it through partnership agreements and division of powers (ASOIF, AIOWF, ARISF, SportAccord).⁴⁵² Still, a new spectacular sporting product, destabilising the global balance of international competitions is being tested by Marius Vizer and SportAccord before definitively imposing it: the United World Championships, in other words, thematic world championships, on the model of the X-Games taking place every year in the United States since 1994.

The World Combat Games (WCG)⁴⁵³ served as a trial balloon and a consumer appeal product with thirteen particularly popular disciplines in the Asia Pacific region, from the Turkish arc of the Balkans to the Altai, and in the former Eastern Bloc countries, Russia included: aikido, boxing, judo, jujitsu, karate, kendo, kickboxing, wrestling, muaythai, sambo, sumo, taekwondo, wushu. A first event was held in Beijing in 2010 bringing together more than 1,100 athletes from 96 nations. The second took place in St. Petersburg in 2013 with 1,400 athletes from 62 nations, 18 television channels broadcasting in 120 countries (with savate and fencing included). A third edition is already scheduled for 2015.

⁴⁵² [<http://www.olympic.org/content/the-ioc/governance/international-federations/>].

⁴⁵³ [<http://www.worldcombatgames.com/>].

The ranking of nations, based on the number of medals won, varies greatly from the one of the Olympics as Russia, China and Ukraine are on the podium in 2010 and 1st, 5th and 6th in 2013 (France ranked 4th then 2nd) Great Britain and the United States respectively ranked 25th and 40th in 2010 and 14th and 19th in 2013. Meanwhile, nations so far marginal, but with a great culture of fighting sports emerged, such as Thailand (7th and 10th), Iran (9th and 4th) or Azerbaijan (13th and 11th). Other versions are already being considered such as the World Artistic Games (synchronised swimming, roller skating, aerobics, hip hop, rhythmic gymnastics...), or even the World Beach Games (beach soccer, volleyball, tennis, handball and rugby but also surfing, kiteboarding and beach triathlon...).⁴⁵⁴ Moreover, Marius Vizer is thinking about creating an International Bank of Sport, International Insurance of Sport and International Lottery of Sport. Working with private companies specialised in these three areas, would these structures' purpose be to sell to the highest bidder the savings of those involved in sports, or insurance for sporting equipment and events, or even the monopoly on sports betting? Moreover, Marius Vizer intends to transform SportAccord into a kind of platform for ISFs to access strategic sports information, legal, management, marketing and sponsorship, communication assistance.⁴⁵⁵ Finally, his "Sport for All Program", shows even greater ambition it aims to handle (certainly via the national sports federations affiliated to the ISF) sports practices of individuals, young and elderly, no matter their living standards.

In this context, how could the partnership agreement signed on November 4, 2013 between, on the one hand, the ANOC led by Kuwaiti Sheikh Ahmad Al-Fahad Al-Sabah, former OPEC President, and on the other hand, SportAccord, led by Marius Vizer, be interpreted if not as a recognition of this project by the IOC? The signing took place in the presence of Thomas Bach, newly elected President of the IOC (only fifty-five days earlier). Time will tell if the schedule of athletes, TV and other media, sponsors and spectators can fit such a great number of worldwide competitions: one-sport world championships, thematic world championships and Olympics. Samsung managed to be the official sponsor of the two competitions, but the watchmaker OMEGA sponsors the Olympics while Tissot sponsors the 2nd WCG. There is a good chance to see the model based on the Olympic sports in vogue in the late nineteenth century, and which are abandoned by today's youth, strongly contested by the new sports federations gathered under SportAccord. In the medium term, the United World Championships may dethrone the Olympics.

Conclusion of Section 1

Beyond the historical layers that shaped the contours of sports institutions, those of sport integrity, as well as their dialectic relationship, the way that sports organisations deal with the manipulation of sports competitions is through the concept of sports public order. Sports public order is in fact the core of the normative body on which the fight against the abuses of sport is based.

⁴⁵⁴ [<http://www.francsjeux.com/2013/10/28/le-nouveau-combat-de-marius-vizer/6623>].

⁴⁵⁵ [<http://mariusvizer.com/message.html>].

Section 2: Construction of a Sports Public Order and the Fight Against the Manipulation of Sports Competitions (Jurisprudential Approach)

The concept of public policy is difficult to grasp, and even more difficult to define. Both its content and foundation are characterised by "mysteries." However, it is well-known that the existence of such a set of rules, considered essential for maintaining cohesion within a given social group, requires a certain degree of centralisation of the normative system, whose public policy constitutes the most least transgressible aspect. In the sporting legal order, for several years, the CAS has been working on consolidating the founding values of the sports movement by becoming a vital part of it and key player in the fight against the abuses in sport (§ 1). By drawing primarily from the general principles of law, whether derived from national legal systems or from the legal systems it considers necessary for the cohesion of the sports movement (§ 2), the CAS thus works for the consolidation and structuring of the sporting public policy in which the rules of ethics and integrity of the competition are essential (§ 3).

§ 1. Public Policy, Public Policies and Sport Public Policy

Although in principle, public policy is a concept closely related to the presence of the State,⁴⁵⁶ one can clearly recognise the existence of a sports public policy specific to the sporting movement (A) whose substance is mainly fuelled by the Court of Arbitration for Sport precedents (B).

A. The Concept of Public Policy

1. The General Concept of Public Policy

Public policy is a polymorphic notion which, even in its legal essence, can have several meanings. It is usual to distinguish substantive public policy or police public policy from legal public policy, or procedural public policy.⁴⁵⁷ The first is understood as an ideal state of the society that could be disturbed by certain behaviours. Good order, public safety, salubrity and tranquillity or even morality, build the state of social peace. The government bears the primary responsibility to protect it. This substantive public policy is within the scope of jurisdiction of administrative police and criminal law, and has a *positive effect* by setting substantive rules directly applicable to the members of society. For its part, the second relates to the applicability and effects of the acts and rules within the legal system concerned. It refers to "a set of principles of the legal system [...] considered as fundamental at some point and from which no derogation is permitted."⁴⁵⁸ Public policy has a *negative effect* by excluding the theoretically applicable norm (contract, law, etc.), but contrary to public policy.

⁴⁵⁶ S. ROLAND, "L'ordre public et l'État. Brèves réflexions sur la nature duale de l'ordre public", in: C.-A. DUBREUIL, *L'ordre public*, Éditions Cujas, Paris, 2013, *op. cit.*, pp. 9-10; F. LATTY, "L'ordre public sans l'État. (Quelques remarques sur un oxymore en trompe-l'œil)", in: C.-A. DUBREUIL, *L'ordre public*, Cujas, Paris, 2013, pp. 21-31.

⁴⁵⁷ J. RIVERO, "État de droit, état du droit", in: *Mélanges en l'honneur de Guy Braibant*, Dalloz, Paris, 1996, pp. 609-614; S. ROLAND, "L'ordre public et l'État" *op. cit.*, pp. 13-14.

⁴⁵⁸ J. SALMON (dir.), *Dictionnaire de droit international public*, Bruylant, Brussels, 2001, entry: "Ordre public", first definition, pp. 786 *et seq.*

In both cases, public order constitutes a "fundamentality"⁴⁵⁹ as its rules are deemed intransgressible. The rules of public policy are the very foundation of the legal system, in which the societal order can be achieved. This fundamental nature does not however imply their absoluteness since public policy is primarily specific to each domestic legal order. As such, there are as many public policies (domestic) as there are States.

However, the emergence of fundamental principles common to all States was in part made possible by a double variation of the concept of public policy at the *supranational* level. On the one hand, in the international-interstate legal order, peremptory norms of general international law are defined as "norm[s] accepted and recognised by the international community of States as a whole, as norm[s] from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."⁴⁶⁰ The primary purpose of these norms defined as *jus cogens* is therefore to limit the normative capacity of States in order to preserve certain core values whose violation would necessarily undermine the foundations of the international community.⁴⁶¹ On the other hand, in international trade law and even more specifically in commercial arbitration, the "transnational public policy" or "the truly international public policy"⁴⁶² also relates to a set of universal standards recognised by international consensus, not dependent on any specific domestic legal system and applicable to all actors.⁴⁶³ However, a gradual convergence between public policy rules applicable to States and rules applicable to private persons⁴⁶⁴ can be observed. Thus, some rules which enjoy a truly universal consensus, such as the prohibition of corruption and the respect for the fundamental human rights of the human person appear.

However, the notion of public policy remains extremely malleable: a rule considered imperative in a given domestic legal order is not necessarily considered as such in all domestic legal systems nor will it systematically impose itself in the same way at the international level, upon States or private persons.

⁴⁵⁹ S. ROLAND, "L'ordre public et l'État", *op. cit.*, pp. 13-14.

⁴⁶⁰ Article 53 of the Vienna Convention on the Law of Treaties of 23 May 1969.

⁴⁶¹ There is no perfect correspondence between *jus cogens* norms and public policy rules in public international law even if the two are often used interchangeably (*jus cogens* being the substantive public policy). *Erga omnes* norms, *i.e.* norms imposing obligations upon States towards the international community as a whole and which concern all States, are also involved in the idea of public order. See I. MOULIER, "L'ordre public international", in: C.-A. DUBREUIL, *L'ordre public*, Editions Cujas, Paris, 2013, p. 87.

⁴⁶² Jurisprudence and doctrine talk about a *truly* international public policy in order to clearly distinguish this theory from the exception of international public policy in private international law. The latter allows a State court to deny recognition or enforcement of a foreign judgment or arbitral award rendered in a foreign jurisdiction when it is contrary to the domestic public policy, thus to domestic law (for example, in the area of civil law, certain rules relating to marriage). Here the nature of international public policy is not due to the mere consideration of principles supposedly common to all States. The public policy is international simply because it is used to examine a decision of a foreign legal system.

⁴⁶³ P. LALIVE, "Ordre public transnational (ou réellement international) et arbitrage international", *Revue de l'arbitrage*, 1986, pp. 329-373; J.-B. RACINE, *L'arbitrage commercial international et l'ordre public*, LGDJ, Paris, 1999, p. 623.

⁴⁶⁴ M. FORTEAU, "L'ordre public 'transnational' ou 'réellement international'. L'ordre public international face à l'enchevêtrement croissant du droit international privé et du droit international public", *JDI*, 2011, pp. 3-49.

2. The Concept of Sports Public Policy

The situation may seem different when public policy is no longer considered as it applies in national legal orders, but instead as a sporting public policy as it applies in the sporting legal order. However, the specificity of this *sports public policy* when compared to the concepts previously discussed is not obvious, as the mechanisms behind it are similar to those of State public policy.⁴⁶⁵

In the context of the fight against the manipulation of sports competitions, both traditional meanings of the concept can be found. Firstly, the belief in the need to combat the manipulation of sports competitions because of the security risks it entails (corruption, money laundering, crime...) and because it constitutes a threat to public order, relates to the substantive conception of public policy as understood in domestic legal systems.⁴⁶⁶ Secondly, the need to identify common principles, that must govern the actions of all the actors of the fight against the manipulation of sports events, relates to procedural public policy since the issue here is to define the limits of the normative freedom of these different actors.⁴⁶⁷ In both cases, the sporting public policy often draws from the principles and mechanisms of State public orders.⁴⁶⁸

However, this irreducible link between the sporting public policy and the State public policy does not prohibit the creation of some fundamental rules that are specific to the sporting movement, as it is constituted as a social body controlled by an autonomous legal system. The theses relating to legal pluralism as well as those relating to the transnational law⁴⁶⁹ showed that public policy can be established without directly originating from the State. In other words, public policy can be formed on the initiative of private individuals.⁴⁷⁰ Similarly, and by extension, the idea that public policy can be built without the intervention of the State is now accepted.⁴⁷¹ The existence of a sporting legal order is therefore perfectly admissible.⁴⁷² Its purpose must be understood as seeking to ensure compliance with and the primacy of certain fundamental principles applicable to all sports organisations and all of their members, without the possibility of derogation, and whose transgression is considered as a violation of the very existence of the sporting public order. The CAS, as a sort of Supreme Court of the sporting movement, therefore participates in the most significant way to building this sporting public order.

⁴⁶⁵ F. LATTY, "L'ordre public sans l'État", *op. cit.* p. 31.

⁴⁶⁶ It is for this reason that the frameworks against manipulation of sports competitions are inconceivable without the compliance with national and international public policies. See *infra* Title 2, Chapter 3, Section 2, § 2.

⁴⁶⁷ On the identification of the common principles, see *infra* Part 3, Title 3, Chapter 3, Section 2.

⁴⁶⁸ On the articulation between sporting rules emanating from the internal sports law and sports rules emanating from the external State law, see the presentation of M. BOUDOT, "Sport et hiérarchie des normes. *Lex sportiva europea*", *Cahiers de droit du sport*, 2013, pp. 17-24.

⁴⁶⁹ See in particular, F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, Martinus Nijhoff Publishers, 2007, in particular pp. 5-39.

⁴⁷⁰ See our developments *infra* Chapter 3.

⁴⁷¹ F. LATTY, "L'ordre public sans l'État...", *op. cit.*, p. 31.

⁴⁷² See F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, pp. 341-355; É. LOQUIN, *JDI*, 2012, pp. 371 *et seq.*; G. SIMON, "L'arbitrage des conflits sportifs", *op. cit.*, p. 215 (this last author evokes the "sports supra-legality").

B. The Central Role of the Court of Arbitration for Sport

The concept of a transnational public policy originated in the context of the *lex mercatoria* that can be defined as the set of "transnational rules that international trade partners will gradually impose upon themselves, including within the scope of their professional organisations, and that the arbitrators, appointed by party agreement to resolve their disputes, discover, and thereby clarify or develop for them."⁴⁷³ Among these commercial principles, some are "superior and fundamental principles in international trade law,"⁴⁷⁴ to the point that they are considered intransgressible. But a norm can only be deemed imperative by being recognised as such in most, if not all legal systems.⁴⁷⁵ Arbitrators identify and establish these principles as such by referring to international conventions, comparative law and arbitral precedents.⁴⁷⁶ The role of these rules is similar to that of case law, as it is under the arbitrators' authority that a principle of public policy is discovered, enforced against the parties and then disseminated to all the actors of international trade.⁴⁷⁷

The parallel between the *lex mercatoria* and the *lex sportiva* is well established. In light of the commercial "third law",⁴⁷⁸ the doctrine proposed to designate, in its Latin version, the set of international rules applicable to sports competitions and adopted by sports organisations, whether national or international. Similarly, the role of the CAS, as it applies sport law, interprets it and contributes to the harmonisation of global sports law,⁴⁷⁹ can easily be analysed through a comparison with the normative work of the international trade arbitrators in their own field. However, the contribution of the CAS precedents to build a sporting public policy has a greater dimension. Indeed, contrary to the lack of any centralised institutional framework in which international trade arbitration tribunals can work and in opposition to their ephemeral existence, the CAS, due to its near-monopoly and its function as an appellate body for the decisions of sports federations, has the judicial authority allowing it to structure the sports movement. Although its decisions are only binding upon the parties to the dispute and the arbitrators under its aegis are not bound by the *stare decisis* principle, the centralisation of dispute settlement under its aegis allows the emergence of a real case law that is consolidating itself on the basis of the most relevant precedents.⁴⁸⁰

⁴⁷³ B. GOLDMAN, "La *lex mercatoria* dans les contrats et l'arbitrage internationaux : réalité et perspectives", *JDI*, 1979, p. 475. The notion of *lex mercatoria* has been found by the same author who uses it the first time in an article of 1964, published at *Archives de philosophie du droit*, "Frontières du droit et '*lex mercatoria*'".

⁴⁷⁴ P. LALIVE, "L'ordre public transnational (réellement international) et arbitrage international", *Rev. Arb.*, 1986, No. 3, p. 331. See also P. KAHN, "Les principes généraux de droit devant les arbitres du commerce international", *JDI*, 1989, No. 2, p. 313.

⁴⁷⁵ It is in the context of the prohibition of corruption that the concept of transnational or truly international public policy was used for the first time. ICC award No. 1110 (1963), in: *Applicable Law in International Commercial Arbitration: A study in Commercial Arbitration Awards*, Dobbs Ferry, N.-Y., Oceana Publications, Inc./ Sitjhoff & Noordhoff International Publishers BV, 1978, pp. 553-555.

⁴⁷⁶ See M. FORTEAU, *op. cit.*

⁴⁷⁷ L. MATRAY, "Arbitrage et ordre public transnational", in: J. SCHULTSZ, A. J. VAN DEN BERG (eds.), *The Art of Arbitration: Essays on International Arbitration: Liber Amicorum Pieter Sanders*, 1982, p. 247.

⁴⁷⁸ M. VIRALLY, "Un tiers droit? Réflexions théoriques", in: *Le droit des relations économiques internationales - Etudes offertes à Berthold Goldman*, Litec, Paris, 1982, pp. 373-385.

⁴⁷⁹ L. CASINI, "The Making of a *Lex Sportiva* by the Court of Arbitration for Sport", in *Lex sportiva: what is sports law?*, Springer, 2012, p.158.

⁴⁸⁰ This trend can also be observed in other areas such as in arbitrations organised by the International Center for the Settlement of Investment Disputes (ICSID).

It is not always easy to assess the strength and consistency of these precedents, insofar as, under the principle that prevails in arbitration law, all the awards of the CAS are not systematically published.⁴⁸¹ However the growing interest created by the decisions of the CAS⁴⁸² proves its importance in consolidating sports law. Some commentators clearly acknowledge the normative function of the CAS.⁴⁸³ This function is rather obvious in the field of doping, where the CAS played a critical role in the harmonisation and consolidation of the rules.⁴⁸⁴ At a time when disputes relating to match fixing before the CAS are growing and while there is currently no instrument, in the fight against corruption in sport, harmonising the various sporting and State practices, the decisions of the CAS on these issues must be looked at with the greatest care. They could already contain the basis for principles that could be codified in the future, in a transnational instrument to combat the manipulation of sports competitions.

§ 2. Strengthening the *Lex Sportiva* by Revealing the General Principles Applicable to Sport Disputes

The consolidation of the *lex sportiva* is primarily done through the "discovery"⁴⁸⁵ by the CAS, of general principles of law that come to interpret or supplement the law applicable to the litigations⁴⁸⁶ (B). These principles are taken from both the national legal systems and the specificities of sports law (A).

A. The Nature of General Principles Applicable to Sporting Disputes

Proposing a universally accepted definition of the general principles of law is not an easy task. In domestic legal systems, these principles relate to unwritten rules of law, of general applicability, revealed by the judge and imposing themselves upon public authorities.⁴⁸⁷ In the legal order of the European Union, the general principles of European law are those established by the Court of Justice of the European Union and drawn from the constitutional traditions common to the Member States and international conventions for the protection of human rights to which the latter are parties.

⁴⁸¹ Article R 59 of the Code of the CAS establishes that "[t]he award, a summary and/or a press release setting forth the results of the proceedings shall be made public by CAS, unless both parties agree that they should remain confidential. In any event, the other elements of the case record shall remain confidential."

⁴⁸² As evidenced by the existence of columns dedicated to the CAS in several law reviews. See for instance the columns published in the *Journal du droit international* and in the *Revue de l'arbitrage*.

⁴⁸³ L. CASINI, "The Making of a *Lex Sportiva* by the Court of Arbitration for Sport", *op. cit.*

⁴⁸⁴ And the principle of the strict liability of athletes, which was codified in Section 2.1.1. of the World Anti-Doping Code.

⁴⁸⁵ It is traditionally considered that the judge does not "create" the general principles of law but that he merely "reveals" them so that no real normative power is recognised to the judge. The distinction between creation and revelation is however often tenuous, especially when the judge or the arbitrator finds the principles in domestic as well as transnational and international legal orders.

⁴⁸⁶ É. LOQUIN, "L'utilisation par les arbitres du TAS des principes généraux du droit et le développement d'une *lex sportiva*", in: *The Proceedings before the Court Arbitration for Sport*, Berne, Schulhess, 2007, pp. 85 et seq.

⁴⁸⁷ According to the position of general principles of law in the hierarchy of norms, all the bodies exercising public authority are not necessarily bound by them. As such, in France, the general principles of law are higher than decrees in the hierarchy of norms and are therefore binding upon the government, but have an *infra*-legislative status and are not binding upon the legislator. However, the general principles of law of the European Union have the same status as primary and secondary law of the Union. Thus, they are binding upon both the executive and legislative powers.

Public international law also has general principles of law, as they are common to all (or a significant majority of) States⁴⁸⁸ and general principles of international law which are "specific to the international legal order."⁴⁸⁹ The common characteristic of these principles is that they are unwritten and "activated" by the judge or the arbitrator. However, their material source and place in the hierarchy of norms (in domestic legal systems) may vary.

1. The General Principles Identified by the CAS

The same features characterise general principles applicable to the sports disputes and that are identified by the CAS. They bear a certain level of abstraction and have, as a result of their activation through the formal discovery by the judge, a general applicability. Therefore, these principles apply to all sporting organisations and all of their members, regardless of their codification in any applicable regulatory instrument. As for their material source, they are of two kinds: some general principles established by the CAS correspond to the general principles of law common to the national legal systems and that can be found in the international legal order; others are specific to the sporting legal order and can be described, by analogy with the general principles of international law, as general principles of sporting law.

The former are therefore drawn from the domestic legal systems, although because of the specificity of the disputes it resolves, the CAS sometimes makes a more flexible interpretation compared to that of State courts. Without claiming exhaustiveness, it can be noted that the CAS arbitration boards have established as such the principles of *in dubio pro reo*, *lex mitior*, *non bis in idem* and *res judicata* as well as the principle of proportionality of the sanctions to the seriousness of the offences, the principles of the rights of the defence, the principle of due process of law, the principle of non-retroactivity, the principles of clarity and predictability of the law, legitimate expectations and good faith.⁴⁹⁰ As explained by one of the CAS panels, they are "general principles of law based on a comparative reading of the various domestic legal systems."⁴⁹¹ There are three main types of principles: those applicable to the exercise of disciplinary power (in particular the principle of proportionality, which is at the heart of the CAS review for an appeal against a disciplinary decision of a sports federation), those relating to the proper administration of justice (the CAS regularly stressing the importance of the rights of the defence⁴⁹²) and those relating to the framework of any normative activity (which can be associated to a more general principle of legal certainty).

⁴⁸⁸ These are the general principles of law mentioned in Article 38 of the Statute of the International Court of Justice.

⁴⁸⁹ A. PELLET, *Recherche sur les principes généraux de droit en droit international public*, Paris, 1974, p. 357. In European Union law, principles that can be considered as specific to the UE legal order can also be found. See D. SIMON, "Y a-t-il des principes généraux du droit communautaire ?", *Droits*, 1991, No. 14, p. 76.

⁴⁹⁰ For a complete list and overview of the related extensive jurisprudence, see F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, pp. 316-320 and M. MAISONNEUVE, *L'arbitrage des litiges sportifs*, Paris, LGDJ, 2011, pp. 371-374.

⁴⁹¹ CAS 98/200, *AEK Athens & S.K. Slavia Prague v. UEFA*, Award of 20 August 1999, *Digest of CAS awards*, II, 105, para. 156.

⁴⁹² See especially CAS 2000/A/290, *Xavier & Everton FC v. UEFA*, Award of 2 February 2001, par. 10. See also *infra* § 3.

All of these principles also govern the normative, law enforcing and jurisdictional powers of public authorities. Their presence in the sporting legal order is not surprising: as expressly recognised in the *AEK Athens & SK Slavia Prague v. UEFA* award, "there is an evident analogy between sports-governing bodies and governmental bodies with respect to their role and functions as regulatory, administrative and sanctioning entities".⁴⁹³ Therefore, these principles, inspired from administrative and criminal areas should naturally be applied in the context of "sporting power".⁴⁹⁴

Alongside these principles of domestic origin, the CAS also reveals some "principles of sports law,"⁴⁹⁵ "general principles of law, which are applicable as a type of *lex mercatoria* for sports,"⁴⁹⁶ and "fundamental principles of sport"⁴⁹⁷ or "principles forming part of a '*lex sportiva*'".⁴⁹⁸ In other words, the general principles of sports law, according to the previously identified method, which only apply to the sporting movement. CAS arbitration panels identify them through a comparative analysis of the regulatory instruments of sports organisations (statutes, disciplinary codes, codes of ethics...) and constant interpretation by the arbitrators.⁴⁹⁹ The circular and artificial nature of the interpretation consisting in saying that the judge reveals rather than creates the general principles appears when, in the case of *principia sportiva*,⁵⁰⁰ the CAS establishes their existence (partially) through its own case law. However, it is important to note that even in this case, the CAS only grants the status of general principle to pre-existing legal rules that have long been recognised and applied.⁵⁰¹ Other general principles of law are worth mentioning: the principle of sporting merit, the principle of independence and autonomy of the international federations vis-à-vis the IOC in the administration of their sport, or some more specialised principles in the field of sport transfers or sport nationality.⁵⁰² Certainly, the general principle of integrity, which can be associated to the principles of fair play and equity, needs further examination.⁵⁰³

⁴⁹³ CAS 98/200, *AEK Athens & S.K. Slavia Prague v. UEFA*, Award of 20 August 1999, *Digest of CAS awards*, II, 64, para. 58.

⁴⁹⁴ See *infra* Part 3, Title 3, Chapter 3, Section 2.

⁴⁹⁵ CAS 98/200, *AEK Athens & S.K. Slavia Prague v. UEFA*, Award of 20 August 1999, *Digest of CAS awards* II, 64, para. 158.

⁴⁹⁶ CAS 2002/O/410 *GFA v. UEFA*, Award of 7 October 2003, para. 4.

⁴⁹⁷ CAS 2000/A/317, *A v. FIFA*, Award of 9 July 2001, para. 24.

⁴⁹⁸ CAS 2002/A/417, *IAAF v. CADA & S. Witteveen*, Award of 12 May 2003, para. 84.

⁴⁹⁹ F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, p. 324; É. LOQUIN, observations in TAS 94/126, *JDI*, 2002, p. 344.

⁵⁰⁰ According to the wording used by F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, p. 323.

⁵⁰¹ Thus, the rule of strict liability for doping was described by the CAS as a "principle of sports law" after it was adopted by the IOC and by almost all the international federations, but before it was codified by the World Anti-Doping Code. F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, p. 324.

⁵⁰² For a more detailed list of these principles and an overview of the related jurisprudence, see F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, pp. 323-332 and M. MAISONNEUVE, *op. cit.*, pp. 375-376.

⁵⁰³ On this principle, see, F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, pp. 329-332.

2. The General Principle of Integrity

The importance of the principle was highlighted in the *AEK Athens and SK Slavia Prague v. UEFA* award of 1999 that has already been discussed:

"integrity, in football, is crucially related to the authenticity of results, and has a critical core which is that, in the public's perception, both single matches and entire championships must be a true test of the best possible athletic, technical, coaching and management skills of the opposing sides. Due to the high social significance of football in Europe, it is not enough that competing athletes, coaches or managers are in fact honest; the public must perceive that they try their best to win and, in particular, that clubs make management or coaching decisions based on the single objective of their club winning against any other club. This particular requirement is inherent in the nature of sports and, with specific regard to football, is enhanced by the notorious circumstance that European football clubs represent considerably more in emotional terms to fans - the ultimate consumers - than any other form of leisure or of business."⁵⁰⁴

Currently, this principle systematically guides the analysis of arbitration panels for appeals against decisions rendered by sports organisations with regard to situations or behaviours contrary to the ethics of sport.⁵⁰⁵ doping, corruption of federations' officials, especially in the awarding of sporting events to host cities and the manipulation of sporting competitions. On the basis of this principle, the CAS developed a real zero tolerance judicial policy⁵⁰⁶ against these deviant behaviours. Here, the material source of the principle of integrity is to be found in the many instruments adopted by sports organisations, thus marking its importance. But this principle also prevailed because of its *necessity* and the needs of the sports movement. Thus, there is an *opinio necessitatis* which allows arbitration panels to give recommendations, through *obiter dictum*, to the sports federations. These recommendations have no other purpose than to encourage them to strengthen their framework for the fight against abuses in sport. Thus, in the *Amadou Diakite* case, addressing the FIFA, the arbitral panel stated that the federation:

"cannot remain passive and simply fight against corruption only when issues arise by chance. On the contrary, in order to promote transparency for its internal governance and the implementation of its ethical rules, FIFA should remain proactive in the fight against the corruption of its officials and, when facing suspicious activities, undertake all useful measures of inquiry, based on all the available legal means and possibly seeking assistance from the judicial authorities."⁵⁰⁷

Similarly, in the *Oriekhov* case the panel recommends that all sporting organisations:

⁵⁰⁴ *AEK Athens and SK Slavia Prague v. UEFA*, Award, para. 25.

⁵⁰⁵ On the implication of this principle in the analysis of the proportionality of disciplinary measures, see *infra* Part 3, Title 3, Chapter 3, Section 2 "The Common Principles to be Respected by all Actors".

⁵⁰⁶ A. SMITH, "All Bets Are Off: Match Fixing in Sport - Some Recent Developments", *Entertainment and Sports Law Journal*, 2011, No. 1.

⁵⁰⁷ Para. 103 of the Award of 8 March 2012.

"demonstrate zero-tolerance against all kinds of corruption and to impose sanctions sufficient to serve as an effective deterrent to people who might otherwise be tempted through greed or fear to consider involvement in such criminal activities."⁵⁰⁸

B. The Function of the General Principles Applicable to Sporting Disputes

The functions usually assigned to the general principles of law are numerous. The high degree of abstraction of these rules gives them unlimited possibilities. It is considered here that these principles mainly have two functions: one normative *in* the sports legal system; the other structuring *of* the sports legal system.

Concerning their normative function, the *praetor legem* recourse to the general principles allows to either interpret sports norms, or to complete them.⁵⁰⁹ The interpretation of the regulations of sports authorities is essential in CAS precedents. In case of an obscure text that might contain multiple meanings or be poorly drafted,⁵¹⁰ relying on the general principles allows guiding the proper interpretation. The principle of proportionality is thus often used to interpret the provisions of the disciplinary codes of sports federations.⁵¹¹ The same applies to the principle of equity and integrity of sports competitions, which can be used in the interpretation of practically all kinds of sports rules.⁵¹²

In their supplementary role, the general principles can also allow filling the gaps in sports norms. Therefore, the general principle of integrity of sports competitions can allow the sanctioning certain behaviours which, without being expressly prohibited by the applicable disciplinary code, clearly seem to be contrary to sports ethics.⁵¹³ This possibility is made all the more important by the fact that doping or manipulating sports competitions can take daring and unexpected roads, and that the disciplinary regulations of sports federations cannot predict all the possible schemes.⁵¹⁴

⁵⁰⁸ Para. 47 of the Award of 18 January 2011.

⁵⁰⁹ F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, pp. 332-339; M. MAISONNEUVE, *op. cit.*, pp. 376-379.

⁵¹⁰ G. KAUFMANN-KOHLER notes that "the more regulations are poorly drafted, the more arbitrators are based on the general principles of law", "Nagano and arbitration, or towards a *system of proximate justice*", *Bull. A.S.A.*, 1998, p. 319.

⁵¹¹ See for example on the rules of FIBA, CAS 92//80, *B c. FIFA*, award of 25 March 1993, *Rec. CAS I*, p. 292, § 10.

⁵¹² See for example on the rule for the change of nationality inserted in the Olympic Charter, CAS 98/215, *I.B.A.*, 4 January 1999, *Rec. CAS II*, pp. 704-705.

⁵¹³ See for example the *FK Pobeđa* case that occurred at a time when the UEFA disciplinary rules did not specifically sanction match-fixing. However, the arbitration panel held that: "No provision in the UEFA 2004 Statutes and 2004 DR refers specifically to "match-fixing". Still, the Panel is convinced that match-fixing touches at the very essence of the principle of loyalty, integrity and sportsmanship because it has an unsporting impact on the result of the game by inducing players not to perform according to their real sporting capacities and because they get rewarded for their misconduct. Match fixing is cheating and constitutes a clear violation of the basic principles under which sporting competitions shall be carried out" and that "Although match-fixing and betting activities were specifically implemented as examples of a breach of the principles established under article 5 DR only in the 2008 edition of the Disciplinary Regulations, the Panel has no doubt that already before, match-fixing activities always constituted a breach of the principles of loyalty, integrity and sportsmanship and thus, violated also the 2004 version of article 5 DR". CAS 2009/AJ/1920 *FK Pobeđa. Aleksandar Zabrcanec, Nikolce Zdravierski c. UEFA*

⁵¹⁴ For other examples of the use of general principles to complement sports law, see F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, pp. 336-339.

But it is especially in regards to a person's fundamental rights that the CAS was able to use certain general principles of law to fill the gaps in the disciplinary regulations of sports organisations. These principles are principles that are common to all laws, first among which is the right of defence. The adoption of these principles by the CAS leads to an interest in the potential *contra legem* recourse to the general principles.

In fact, it sometimes happens that disciplinary decisions of sports organisations be annulled for a violation of the rights of defence, or for the application of a sports rule to be discarded because of its incompatibility with the principle of good faith, of proportionality, or of due process of law. This prioritisation of the rules applicable in sporting disputes does recall the idea of a "sports supra-legality"⁵¹⁵ and inevitably shifts the analysis to contemplating the existence of a real public policy applicable to sports.

The same goes for the second function of the general principles in sports law, which is a structuring function. It essentially appears in the light of the general principles, borrowed from moral considerations and values, just like public policy in all its forms.⁵¹⁶ The principle of integrity of sports competitions along with its two components, the principles of equity and fair play, undoubtedly constitute vectors of the most fundamental sporting values, and serve as instruments to establish a legal framework. Indeed, the integrity of sports competitions seems to be more of a *goal* to be reached, because of its necessity, than a substantive rule providing a specific regulation of behaviour. As one author noted, a comparison can be made here with "goals of constitutional value" which we find in the precedents of the French Constitutional Council and which aim at guiding the action of the legislator and on the basis of which the law can be censored when it does not contribute to achieving them.⁵¹⁷ However, the objective of achieving sport integrity goes even beyond, since it applies to the holders of normative power – sports organisations – as well as to the subjects of sports norms – the members of these organisations. In the first case, it is on the basis of this *lex sportiva* goal that some CAS bodies make recommendations to sports organisations, with regard to the necessity of reinforcing the tools available for fighting doping or the manipulation of sports competitions. In the second case, the CAS extracts from the principle of integrity of sports competitions obligations that are directly opposable to athletes, which provides rules justifying many disciplinary decisions.⁵¹⁸ In both cases, the general principle of integrity allows to consolidate the essential values of the sporting movement and to use them as limits to the freedom to act of federations as well as their members. These are the characteristics of a public policy rule.

§ 3. The Contribution to the Emergence of a Sports Public Policy

The rules constituting sports public policy (A) converge with the public policy rules applicable in States (B).

⁵¹⁵ G. SIMON, "L'arbitrage des conflits sportifs", *Revue de l'arbitrage*, 1995, pp. 215 et seq.

⁵¹⁶ S. ROLAND, *op. cit.*, p. 16.

⁵¹⁷ F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, p. 332.

⁵¹⁸ F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, p. 340; M. MAISONNEUVE, *op. cit.*, p. 377.

A. The Rules Constituting Public Policy

Not all the general principles of law to which the CAS refers, may be considered as public policy principles, even though they have a scope of general application. But it is also obvious that it is from these principles that the imperative principles of the sports legal system should be drawn. In fact, by using some of these principles, such as a person's fundamental rights or the principle of integrity of sports competitions in order to cancel or set aside a sporting rule considered contrary to these principles (*contra legem* or *supra legem* recourse), the CAS raises these principles as "the non-derogable part"⁵¹⁹ of the *lex sportiva*.⁵²⁰

In fact, it is rare for the CAS to make explicit references to the existence of a true sports public policy. In an award dated 22 January 2010, a CAS tribunal described the World Anti-Doping Code as making up a part of a true transnational public policy in sports law. However, as noted earlier, not all the rules contained in the code are non-derogable rules. Nonetheless, the CAS arbitral tribunals sometimes qualify certain principles as "fundamental" or certain rules as "imperative".

B. The Concurrence of Public Policies

Like the general principles of law to which the CAS refers, these public policy rules are located at the confluence of two distinct public policy bodies: an exogenous body of public policy principles, the respect of which is imposed by the inevitable connection of the sports law to national laws,⁵²¹ and another of endogenous origin, drawing its substance from essential principles specific to sports. This syncretism with which the CAS is faced will not, however, be regarded as a halt to the elaboration of an autonomous body of sports public policy, capable of regulating the exercise of sports powers as well as the behaviours of the members of sports organisations for the purpose of satisfying the needs of the sports movement. The complementarities between the exogenous and endogenous influences that together form the sports public policy, reinforce the strength and legitimacy of the principles structuring the laws applicable to sports.

Some of the general principles of law to which the CAS refers have the value of public policy rules in the national legal order. The same can be said concerning the fundamental principles of the person (respect of the dignity of the human person, right to privacy, protection of the freedom to work, *etc.*). It is necessary to include these principles among the common rules to be respected by all the stakeholders in the fight against the manipulation of sports competitions.⁵²² It is possible to consider them as constituting a *truly universal public policy*, in the sense that it is applicable to the States as well as to private persons, including sporting organisations and their members.⁵²³

⁵¹⁹ P. MAYER, "La règle morale dans l'arbitrage international", in: *Études offertes à P. Bellet*, Paris, Litec, 1991, p. 390.

⁵²⁰ F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, p. 344.

⁵²¹ F. LATTY concludes that it is only an illusion that States seem foreign to the constitution of national public policies, whether those established on the basis of the *lex sportiva* principles or the sports transnational public policy. "L'ordre public sans l'État... », *op. cit.*, p. 23.

⁵²² See *infra* Title 3, Chapter 3, Section 2.

⁵²³ In this sense, F. LATTY, "L'ordre public sans l'État...", *op. cit.*, p. 26.

Prohibiting violations of the dignity of the human person is also qualified as “a fundamental requirement of Olympism” by the IOC Code of Ethics (article A § 1), as well as the principle of non-discrimination consecrated among the fundamental principles of Olympism.⁵²⁴ Prohibiting corruption should also be regarded as a principle of sports law. This prohibition is one of the first to be consecrated as a transnational or truly international public policy rule by the arbitrators in international commerce. Corruption is today unanimously condemned in the sporting movement.⁵²⁵ It is evident that the principle of integrity of sports competitions is closely related to it.

According to certain commentators, the assimilation of these public policy rules by the CAS is more guided by the timeliness of its decisions than by the desire to instil the same core values that constitute the foundation of national societies into sports law. Indeed, CAS decisions may be the subject of a request for annulment before the Swiss Federal Tribunal, which can then verify the compliance of the award with Swiss public policy.⁵²⁶ The latter is divided into a procedural public policy and substantive public policy which corresponds to transnational or truly international public policy, to which commercial arbitrators refer.⁵²⁷ But it is primarily to protect itself from the risk of annulment that the CAS should ensure that these principles are taken into account⁵²⁸ even though the Swiss Federal Tribunal decisions in annulment proceedings of CAS awards are extremely rare.⁵²⁹

If this were the sole motivation of the CAS, it must be admitted that this judicial policy would be objectionable. However, regardless of the real motivations of the CAS, on which no further comment will be added here,⁵³⁰ it is obvious that its precedents contribute to the convergence of the public policy of national origin and the sports public policy, and this can only serve to reinforce the legitimacy of the *lex sportiva*.

⁵²⁴ Fundamental Principles 4 and 5. The principle of non-discrimination is also repeated in Rule 2 § 6 of the Olympic Charter.

⁵²⁵ Even if, for a certain period of time, some were able to denounce the “corruption culture” within the Olympic Movement. After the scandal of the attribution of the Games to Salt Lake City in 1999, the sporting movement experienced such a wave of shock that combating corruption practices became a priority. See P. CHANTELAT, “Sport, enjeux économiques et corruption : crépuscule ou renaissance de l’utopie sportive ?” and A. JENNINGS, “CIO, 1999: Chronique d’un scandale annoncé”, in: J.-C. BASSON, *Sport et ordre public*, La Documentation Française, Paris, 2001, *op. cit.*

⁵²⁶ See *infra* Part 3, Title 2, Chapter 1, Section 1, § 3.

⁵²⁷ Procedural public policy corresponds to the protection of certain fundamental rules such as the right of defense, effective access to an independent and impartial justice, and the right to a free and contradictory debate, whereas substantive public policy aims at protecting the fundamental principles and values commonly shared by the Swiss society and forming the basis of any legal system. The two sides of the Swiss public policy invoked here are not the sole rules of public policy of internal law in Switzerland.

⁵²⁸ See in this sense F. LATTY, “L’ordre public sans l’État...”, *op. cit.*, p. 26. Some CAS awards corroborate such an analysis, emphasising the need to respect some fundamental principles regarding the requirements of Swiss public policy. See notably the CAS award 2011/A/2433 *Amadou Diakite v. FIFA*, Arbitral Award of 8 March 2012, §§ 58-59

⁵²⁹ See J.-M. MARMAYOU, “Le TAS et la juste proportion entre ordre sportif et ordre public”, *Cahiers de droit du sport*, 2012, pp. 9-14.

⁵³⁰ See on this issue our developments *infra* Part 3, Title 3, Chapter 3, Section 2.

Some general principles of sports can also be considered as belonging to a transnational sports public policy, not only with respect to their primacy but also because of their function of structuring the sports public policy. The principle of integrity of sports competitions, along with the principles of equity, sincerity, and fair play that stem from it, is undoubtedly the cardinal element of this component of the sports public order, since it is based on an evident *opinion necessitates*.⁵³¹ Enshrined by the Olympic Charter as supreme values of the sporting movement, and relayed in the numerous disciplinary regulations and ethical codes adopted by national or international sporting federations, these principles should be considered as consubstantial to sports.⁵³² The CAS considers their respect as the *sine qua non* condition for the survival of sports and the sporting movement.⁵³³ It does not hesitate to refer to them in order to contest the legality of a rule, or, conversely, confirm the severity of a sanction adopted against an athlete whose behaviour was unworthy of the highest sports values (doping, cheating, corruption). In addition, it can refer to these principles to interpret the general principles of law, including those of domestic origin, such as equality of treatment and proportionality, so that it modulates their rigour to take into account the specificity of the sports movement's needs.⁵³⁴

The principles of proportionality and respect of the rights of defence also deserve attention. The principle of proportionality is not a *principia sportiva*. It is rather a general principle of law found in most State, national, international, and regional (especially European) legal systems. Its value as a public policy principle is debatable. Formally, it does not prescribe any positive material behaviour, but rather intervenes as a mechanism of reconciliation of the various interests and values involved. The same applies to the respect of the rights of defence, which can be the subject of derogations in domestic legal systems. The CAS however, sees an inevitable principle in the first one, and a principle of fundamental value for which no derogation is allowed in the second.⁵³⁵

Yet, as noted by an author, by establishing these principles regulating the actions of sporting organisations, the CAS protects another essential interest of the sports movement, which is its independence vis-à-vis authorities:⁵³⁶ in order to prevent the intervention and censorship by authorities, arbitral tribunals pay close attention to principles that are most likely to be reviewed by state bodies.⁵³⁷ The principle of independence of sports organisations can thus also be included among the principles of the transnational sports public policy, even if the latter is faced with serious limitations in the internal and international legal systems.⁵³⁸

⁵³¹ In this sense É. LOQUIN, obs. under CAS OG 98/004-005, *JDI*, 2001, p. 268.

⁵³² F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, op. cit., pp. 344-347, p. 352.

⁵³³ CAS 98/200, *A.E.K. Athens & S.K. Slavia Prague/UEFA*, award of 20 August 1999, *Rec. TAS II*, p. 52, § 25.

⁵³⁴ See for example CAS obs. under CAS OG 00/004, *JDI*, 2001, p. 258 with the observations of É. LOQUIN. See also M. MAISONNEUVE who speaks, concerning the principle of fairplay, of moderating principles, op. cit., p. 378

⁵³⁵ See for example TAS 2000/A/290, *A. Xavier & Everton F.C./UEFA*, 2 February 2001, in: *Rec. TAS II*, p. 564, § 10; CAS 2004/A/777, *ARcycling AG / UCI*, 31 January 2005, § 68.

⁵³⁶ F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, op. cit., p. 351.

⁵³⁷ This reconnects with the aforementioned analysis of certain authors that the CAS monitors the compliance with some basic principles of national legal systems only in the perspective of avoiding censorship of SFT.

⁵³⁸ See *infra* Title 3, Chapter 3, Section 1.

Conclusion of Section 2

It is important to underscore that public policy is not an immutable concept. Just like in any other legal system, it is likely to include new fundamental principles whose imperativeness is determined according to the evolution of the values underlying the sporting movement. The sports public policy's constant element, no matter the period during which it is being considered, is its hybrid form, since it is formed of both purely sporting principles and principles belonging to a truly international public policy of State origin. Moreover, the attachment to State public policy seems to tighten within the context of the challenges that the sports movement is presently facing, which require the support of the public powers and the implementation of means of combating abusive conduct in sports, which should necessarily be deployed in the respect of the fundamental rules of national and international legal systems.⁵³⁹ The reception of these principles by the *lex sportiva* is chiefly ensured by the CAS, which has a true constitutional dimension within the sports movement. But it goes without saying that all sports organisations vested with normative power of general and impersonal extent should also be responsible for this task.

Section 3. Understanding the Stakes of Combating the Manipulation of Sports Competitions by Sports Institutions in Terms of Governance

Sports institutions have long developed a discourse on sports ethics in which sport integrity plays a central role. More recently, they built a "sports public policy" which transforms these values into principles or rules of law (see *supra* Sections 1 and 2). It is with more reluctance and sometimes under external pressure that they also started considering the protection of the integrity of sports competitions and the fight against the manipulation of sports competitions in terms of governance. Therefore, governance has two dimensions: the good governance of sports organisations (§ 1); systematic instruments and strategies for the prevention and suppression of the manipulation of competitions that cannot produce their full effect unless they are backed by sound institutional structures and practices (§ 2).

§ 1. Links between Governance and Combating the Manipulation of Sports Competitions

The problem of the governance of sports institutions is no longer a taboo. "Good governance" seems to be the first rampart against all forms of corruption in sports, including the manipulation of sports competitions.

Possible failures of the governance of sports institutions are indeed likely to increase, directly or indirectly, their vulnerability vis-à-vis the manipulation of sports competitions.

⁵³⁹ See *infra* Title 3, Chapter 3, Section 2, § 2, "The Subjection of the Devices for Fighting against the Manipulation of Sports Competitions to the Requirements of Normative Public Policy"

Directly, by not protecting them against the risk of corrupting agents acquiring influence in some of their directing bodies or on some of their members. Indirectly, by preventing them of either resolutely engaging in combating the manipulation of sports competitions (for lack of sufficient response, for instance), or leading this fight in an effective manner (because of lack of legitimacy for example).

To understand this, it is necessary to first go back to the definitions of governance and good governance (**A**) before addressing, the correlation between governance and sport integrity (**B**).

A. Definitions of Governance and Good Governance

Beyond the etymology, which was originally meant to designate the “direction of a ship”, *the concept of governance* accounts today⁵⁴⁰ for the manner in which power and control are employed in the management of the economic and social resources of an organisation, whichever it may be,⁵⁴¹ in light of its development.⁵⁴²

Disregarding the methodological debates and controversies that accompanied the return of the concept of governance to the political, institutional, and scientific literature since the 1990s, the usage of this concept has the advantage of emphasising:

- that “the government on the functional level and the government on the organic level, or even the institutional level, shall not be confused in the same concept (...) by highlighting government in its functional sense from government in its official sense”,⁵⁴³ which allows understanding both the phenomena of multipartite governance and of multi-level governance;
- that even in the absence of a centralised government, a number of partial regulations may exist in a given activity sector;
- that there exist alternatives to the conduct of an authoritarian and hierarchical policy, namely “instruments that use incitement rather than commands, and goals that aim towards a systematic response rather than individual obedience. According to a now classic metaphor, it’s about steering not authority”,⁵⁴⁴

⁵⁴⁰ The evolution of the uses of this term is well summarised in the critical article of C. GOBIN, “Gouvernance”, *Quaderni*, No. 63, Spring 2007, pp. 54-57.

⁵⁴¹ Political or legal institutions, economic institutions, social or community institutions.

⁵⁴² Definition inspired by the ones suggested by the World Bank and the Organisation for Economic Co-operation and Development (OECD).

⁵⁴³ O. PAYE, “La gouvernance : d’une notion polysémique à un concept politologique”, *Etudes internationales*, vol. XXXVI, No. 1, March 2005, pp. 13-40, p. 4 of the online version.

⁵⁴⁴ J. CROWLEY, “Usages de la gouvernance et de la gouvernementalité”, *Critiques internationales*, 2003/4, No. 21, p. 5 of the online version.

- that beyond the norms, one must question “all the organisational mechanisms that aim at delimitating the powers and influence the decisions of the managers; in other words that govern their conduct and define their discretionary area’ (Charreaux, 1996)”,⁵⁴⁵
- that there exists “an apparatus involving institutions, relations, rules, and behaviours”,⁵⁴⁶ and that the analysis must not be focused exclusively on the managers.⁵⁴⁷

The World Bank identified *good governance* as a condition for development and used it not only as a criterion of conditionality but also as a genuine dogma – and guide for the actions of international economic organisations.⁵⁴⁸ The requirements it covers – transparency, absence of corruption, accountability, respect of the rule of law, participation of a plurality of stakeholders – are regularly reminded to the States by Non-Governmental Organisations, first among which *Transparency International*; they currently oppose certain actions of public institutions as well as private institutions, for profit or not-for-profit, whether or not holding a regulatory power.

Although distinct, the concepts of “governance” and “good governance” are related. In fact, promoting better governance has become necessary and delicate through two phenomena:

- On the one hand, the global character of the structures and their complexity have caused an increase of interactions between governments and/or economic stakeholders for decades;
- On the other hand, the necessity of governing with a greater number of partners requires an “effort to reach a consensus or obtain the consent or assent necessary for the execution of a program in an enclosure where many divergent interests overlap.”⁵⁴⁹

When combining these phenomena, one must be careful of the great risks of corruption and conflicts of interests. But at the same time, the “multipartite governance” or “network governance” impose additional obligations in terms of governance on the stakeholders (private stakeholders in particular): the participation in the deliberation or decision-making process can indeed be subject to the fulfilment of certain criteria of “good governance”:

⁵⁴⁵ E. BAYLE, “La gouvernance des fédérations d’associations chargées d’une mission de service public : le cas des fédérations sportives françaises”, *Revue Politiques et Management Public*, vol. 27, No. 1, 2010, p. 14.

⁵⁴⁶ According to R. PEREZ, *La gouvernance des entreprises*, La Découverte, Repères, Paris, 2003, cited by T. ZINTZ, D. VAILLEAU, in: “La gouvernance des fédérations sportives. Proposition d’un cadre d’analyse et d’action”, *Revue française de gestion*, 2008, No. 7, pp. 16-17.

⁵⁴⁷ *Ibid.*

⁵⁴⁸ C. BARON, “La gouvernance : débats autour d’un concept polysémique”, *Droit et société*, No. 54, 2003, pp. 329-351; for less about the concept and more about its sudden apparition and its technical uses, see H. GHERARI, “Le respect de l’État de droit comme élément de la ‘bonne gouvernance’ en droit international économique”, in: SFDI, Colloque de Bruxelles, *L’État de droit en droit international*, Pedone, Paris, 2009, pp. 153-176

⁵⁴⁹ United Nations Research Institute for Social Development.

“Good” governance is based on a number of complex requirements:

- the legitimacy of the managers of the organisation (by election or appointment for instance);
- the strategic vision including, in all their complexity, including relevant historical, cultural, and social facts;
- the respect of fundamental freedoms, but also of the economic freedoms of private persons;
- taking into consideration, without exception, all the members of the institution (for example: women and disadvantaged persons for States, handicapped persons for sports federations, workers for companies) and, beyond this circle, all the stakeholders (meaning in sports: sports actors, sponsors, TV broadcasters, fans, *etc.*); the open cooperation with all stakeholders linked to the organisation.
- the existence of a reliable judiciary (for States) or disciplinary (for sporting federations) system that grants the parties to the procedure the actual advantage of rights such as the rights of the defence or the right to an effective remedy;
- the transparent adoption of decisions, with a good level of reactivity, since good governance requires institutions to strive to make the necessary decisions within reasonable timeframes;
- provide for the accountability of the decision-makers and the persons responsible for implementing the policy decided by the directing authorities and an efficient management. This includes the submission to quality control checks and, if possible, an external audit system;
- combating corruption and preventing conflicts of interests.

It is admitted today that, concerning States, “good governance”, which is manifested through the quality of institutions, is necessary to accelerate their development.⁵⁵⁰ Since the end of the 1990s, the World Bank also established a clear link between the quality of the governance system of a country and its ability to promote sustainable economic and social development.⁵⁵¹

Responsibility, transparency, and participation are the three fundamental principles of good governance, but they can have slightly different meanings depending on the context in which they are used. For States, the viewpoints diverge especially on the issue of the nature of good governance, *i.e.* whether it is a means to reach a certain goal, like the protection of human rights, or if it is a goal in itself. This issue is tightly linked to another: does good governance include democracy, the rule of law, or the protection of human rights, or is it a separate concept?⁵⁵²

⁵⁵⁰ P. EGOUMÉ, representative of the IMF in Ivory Coast (presentation, 2007) – where, when, link?

⁵⁵¹ Council of Europe, Venice Commission, Study no. 470/2008, “Stocktaking on the Notions of “Good Governance” and “Good Administration”” (8 April 2011).

⁵⁵² Council of Europe, Venice Commission, Study no. 470/2008 (8 April 2011).

Private organisations do not escape this kind of questioning:

“If the governance of (big) companies and that of political organisations irregularly questioned by the market, the media, and public opinion, the governance of associations is less known and even secret. Nonetheless, this tendency develops due to the growing political, economic, and social weight of the French associative sector (...). Often taking the role of co-producers of public policies and companies’ partners (sponsors and patrons), associations, especially the bigger ones, see their governance and performances (economic, social, and societal) more regularly questioned and even contested by it(sic) for issues of democratic life, of an excessive search for profits, and sometimes for issues of malpractice (...).”⁵⁵³

In the sports sector, certain features have a direct impact on the concepts of governance:

- in many cases, the main sporting organisations (sports federations organising events) are regulators (creating all the sports rules, including the disciplinary law) and leading economic agents in their market at the same time. They are generally called on to adopt the norms and decisions that contribute to the regulation of their sport (especially its professional sector) and to the promotion of their own economic and commercial interests. Major international federations are nonetheless private entities engaged in the economic and commercial field, also often established under Swiss law, which allows associations a considerable freedom in terms of internal organisation. Subject to certain national characteristics, a federation acts on its own authority and not under legislative powers delegated to it by the public authorities in the context of a recognised mission of general interest concerning sporting activity.⁵⁵⁴
- sports organisations have goals and carry out actions of very different natures, and that cannot be reduced to a mere financial dimension (number of licensed athletes, sports scores, *etc.*)
- the actors involved in the organisation and management of sport are numerous (clubs, national and international federations, professional leagues, Olympic Movement, States, *etc.*);
- volunteering plays an important role and coexists with elected volunteers, elected employees.

⁵⁵³ E. BAYLE, “La gouvernance des fédérations d’associations chargées d’une mission de service public : le cas des fédérations sportives françaises”, *Revue Politiques et Management Public*, vol. 27, No. 1, 2010, p. 13.

⁵⁵⁴ TPICE, T-193/02 case, *M. Piau v. European Communities Commission*, 26 January 2005.

Many studies highlight the weaknesses of sports organisations in terms of governance.⁵⁵⁵ Their functioning sometimes does in fact reveal deadlock situations, a lack of responsiveness and transparency, and a relative paralysis of the decision-making process. The most frequently discussed problems concern the omnipotence of certain managers as well as the process of their election, the submission of boards to the whims of a few persons, the shelving of new applicants for a seat in managing bodies, the existence of different classes of voters, the manner of appointment of the host cities for major sporting events or an opaque use of resources.

In many of his books and reports, Emmanuel Bayle groups these difficulties into five major pitfalls that affect the system through which federations are directed and controlled:⁵⁵⁶

- ill-defined governance policy and practices;
- professionals formally or informally handling the political leadership of these organisations;
- omnipotence of presidents at times;
- lack of clarity in the managerial delegation;
- risks of conflicts between the top and the base of the pyramid.

Many sports organisations, however, voluntarily wished to adapt their system of governance to their dual nature as regulators and traders. The International Ice Hockey Federation (IIHF) especially adapted its decision-making bodies, making them more operational, and redesigned the voting procedure to give more weight to the largest contributors, without losing the political balance between "small" and "large" federations.⁵⁵⁷

⁵⁵⁵ For example, among writings produced by academics, by independent institutions or by the sporting movement itself, see: M. PIETH, *Reforming FIFA*, Dike, Nomos, June 2014; Transparency International: [http://www.goodgovsport.eu/files/GGGS_WEB/Files/Transperency_INternational__Welcome_to_GG.pdf] and [http://www.transparency.ch/fr/PDF_files/Dossiers/Dossier_Sport_fr.pdf], June 2013); J. ALM (ed.), *Action for Good Governance in International Sports Organisations*, April 2013; J.-L. CHAPPELET, M. MRKONJIC, "Basic Indicators for Better Governance in International Sport (BIGIS): An assessment tool for international sport governing bodies", IDHEAP Working Paper, 1/2013; J.-L. CHAPPELET, M. MRKONJIC, "Existing Governance Principles in Sport: a Review of Public Literature", in: *Action for Good Governance in International Sports Organisations*, Copenhagen, PlaytheGame/Danish Institute for Sports Studies, pp. 222-239, 2013; Basel Institute of Governance, *Gutachten Sportbetrug und Good Governance*, 5 December 2012 – [http://www.baspo.admin.ch/internet/baspo/fr/home/aktuell/dossiers/korruption_illegale_wetten/dokumentation.parsys.43335.downloadList.8499.DownloadFile.tmp/gutachtensportbetrugundgoodgovernance.pdf]; Basic Universal Principles of Good Governance of the Olympic and Sports Movement, Seminar on Autonomy of Olympic and Sport Movement, 11- 12 February 2008; S. ARCIONI, *Modalités de la Gouvernance dans les organisations internationales à but non lucratif : le cas des Fédérations internationales sportives*, 2007; M. WHATELET, "La gouvernance du sport et l'ordre juridique communautaire : le présent et l'avenir", *Cahiers de droit du sport*, 2007, No. 9, pp. 11-26; A.-N. CHAKER, *Good governance in sport. A European survey*, Council of Europe, 2004; [<http://fr.fifa.com/aboutfifa/organisation/footballgovernance/process/structure.html>]; [http://www.irishsportsCouncil.ie/Governing_Bodies/Governance/What-Is-Good-Governance/].

⁵⁵⁶ For example: E. BAYLE, "Governance of the federations of associations tasked with a mission of public service", *Revue Politiques et Management Public*, vol. 27, No. 1, 2010, pp. 11-32.

⁵⁵⁷ Jurisport File 108 – April 2011.

Moreover, urged by public authorities, major international sporting federations will undoubtedly be led to progressively improving their procedures. This was, for example, the case of FIFA.⁵⁵⁸

Currently, beyond the improvements that seem immediately desirable to reconcile the different missions of sports organisations in an increasingly globalised and complex context, it is important to analyse the risks related to governance and likely to affect the integrity of sport.

B. Main Correlations between Sporting Governance and Integrity

Without being restrictive, the table below provides a range of the main risks identified by the Chair on the matter:

RISK	TOOLS
Control of the organisation by organised crime	Procedure of election and/or appointment of managers, rules relating to conflicts of interest
Financial difficulties of the organisation	Management monitoring, transparency, risk anticipation, external audits, <i>etc.</i>
Denial of the situation or fear for the image of the organisation (in case of an "affair")	Anticipating risks, crisis management procedures (with an identified spokesperson), long-term vision and competence of managers, transparency obligations <i>vis-à-vis</i> members of the organisation, <i>etc.</i>
Lack of awareness of the issues of sport integrity	Long-term vision and competence of the leaders, risk anticipation, supervisory board, <i>etc.</i> , adaptation of disciplinary law (for federations and clubs) and criminal law (for States)
Operational difficulties in managing integrity issues (including insufficient reactivity)	Appointment of an 'integrity' officer, acquisition of skills (sports bets, organised crime, corruption, doping, <i>etc.</i>), establishing a strategy, an action plan with appropriate resources, monitoring actions and reports to members of the association, <i>etc.</i>
Insufficient consideration of the interests of the organisation in the long term (sustainability) at the expense of short-term goals	Adaptation of the decision structures to the size and economic stakes of the organisation, long-term vision and competence of managers, respect for the public interest (particularly in cases of coexistence of recreational sport/amateur - sports entertainment/professional)

⁵⁵⁸ See *infra*.

Isolation of the sports organisation <i>vis-à-vis</i> public authorities (inducing a risk of insufficient reaction)	Cooperation and exchange of information in case of an affair. Adaptation of the disciplinary law (for federations and clubs) and criminal law (for States). Adaptation of the concept of sports autonomy in the event of possible disturbance of public policy (which would require State intervention)
Dilution of responsibilities between stakeholders of a given sport on the subject of integrity (inducing a risk of insufficient response)	Division of powers between national and international federations, clubs, etc. Adaptation of the disciplinary law (for federations and clubs) and criminal law (for States)

Faced with the threat of manipulation of sports competitions, some sporting organisations quickly adapted some elements of their governance:

- risk anticipation and creation of an integrity cell (IOC, FIFA, UEFA, ITF etc.);
- increased cooperation with national authorities, including the police. In most seminars organised by IRIS as part of a project funded by the European Commission,⁵⁵⁹ participants from the sporting movement recognised the importance that the State intervene with the sports federations whenever the public policy is at stake.

§ 2 Evaluation of the Instruments Developed by Sports Institutions to Preserve the Integrity of Sport against Manipulation of Sports Competitions

The risks associated with weak governance are even more obvious since they prohibit or delay the adoption of necessary measures in the fight against the manipulation of sports competition. For this reason, it is necessary to operate a of the reactions and initiatives of the sporting institutions faced with problems of manipulation of sports competitions (A), on the global and regional levels (B).

A. Summary of Responses and Initiatives of Sporting Institutions Faced with the Manipulation of Sports Competitions

The risks of manipulation of sporting events are a recent phenomenon that has developed with the rise of the Internet and sports bets, especially illegal ones. While the initiatives of sports institutions were exceptional until 2010, they became more and more numerous since 2013. The sports movement is currently gradually taking stock of this threat, as is shown in particular, through the numerous initiatives in the educational field, which allow, through prevention, to raise the awareness of young athletes and their entourage to the risks it represents (see Part 3 of the Report).

⁵⁵⁹ “Quel réseaux nationaux pour lutter contre la manipulation des compétitions sportives” (June 2013 – June 2014) ?

We will present the initiatives of the IOC (1), those of IFs (2), before making a recap of the stakes linked to governance and suggest several solutions (3).

1. Presentation of IOC Initiatives⁵⁶⁰

a. Concerning the governance of sporting institutions: the Basic Universal Principles of Good Governance of the Olympic and Sports Movement

The Basic Universal Principles of Good Governance of the Olympic and Sports Movement (hereafter “BUPs”) constitute the IOC’s most noteworthy recent initiative in the field of good governance.

Resulting from a seminar organised in 2008, they are structured around 7 topics, divided into 34 criteria, which produce 109 points. They were adopted during the IOC’s 2009 Olympic Congress and became mandatory through the IOC’s 2010 Code of Ethics. It should be noted that a fifth fundamental principle was added to the IOC’s Olympic Charter in 2011, according to which:

“Sports organisations within the Olympic Movement shall have the rights and obligations of autonomy, which include [...] the responsibility for ensuring that principles of good governance be applied”.

Although it remains too early to gauge the results of the BUPs, below is the analysis made by Jean-Loup Chappelet and Michaël Mrkonjic:

“When considering all the governance principles published since 2000 (see appendix 1), it is clear that they are often interdependent, overlapping, not easily actionable and often too numerous to be of real use to measure the level of governance of ISGBs and to help them improve (...). For example, the principle of integrity lacks a precise definition. The principle of equity in the BUPs is applied in several contexts such as the distribution of resources, the organisation of competitions, the bidding process for hosting events, and the participation of athletes in competitions (Romon, 2011)⁵⁶¹. The principles of transparency and accountability overlap or are difficult to separate (e.g. Hood, 2010)⁵⁶². These principles also often confuse governance and management (for instance, efficiency and effectiveness), and few are sport specific (except the principles of solidarity and integrity if they are mentioned). In addition, most of them are not easy to measure (for instance, democracy). It is also noticeable that many of the principles are expressed as recommendations (“should...”) without explaining under what circumstances recommendations become firm obligations. In this vein, Romon (2011)⁵⁶³ shows that there is a lack of emphasis on the prioritisation of the principles, but also on a clear targeting of their recipients”.⁵⁶⁴

⁵⁶⁰ For a global analysis, see C. DURAND, C. ROUVRAIS-CHARRON, “L’éthique sportive internationale”, *ADETEM*, 2006, pp. 61-74.

⁵⁶¹ E. ROMON, “La gouvernance des organisations sportives : une application des Principes universels de base de bonne gouvernance du Mouvement olympique et sportif du CIO”, *IDHEAP*, 2011.

⁵⁶² C. HOOD, “Accountability and Transparency: Siamese Twins, Matching Parts, Awkward Couple?”, *West European Politics*, 2010, 33(5), 989–1009.

⁵⁶³ E. ROMON, *op. cit.*

⁵⁶⁴ J.-L. CHAPPELET, M. MRKONJIC, “Basic Indicators for Better Governance in International Sport (BIBGIS): An assessment tool for international sport governing bodies”, *op. cit.*, p. 8.

b. In the Fight against the Manipulation of Sports Competitions

The IOC is one of the sports organisations which were quickly mobilised to fight against manipulation of sports competitions. Since 2011, Jacques Rogge, then IOC President made the integrity of sport a priority, although it should be recalled that the main mission of the IOC is to ensure the smooth running of the Olympic Games. The IOC thus developed general principles to combat match-fixing while actively representing the sports movement, together with UEFA, in the negotiations on the drafting of the agreement prepared by the Council of Europe on the subject.

i. The Adoption and the Revisions of the Code of Ethics

The IOC's Ethics Commission was created in 1999 by the IOC in order to ensure compliance with the ethical principles of the Olympic Movement.⁵⁶⁵ These principles are set out in the Code of Ethics, whose latest online version was published in 2013.⁵⁶⁶

In his report, Éric BERDOATI states that:

“Les jeux modernes présentent eux aussi une forte dimension éthique. D'ailleurs, la Charte olympique confère au comité international olympique (CIO) la mission d'encourager et de soutenir la promotion de l'éthique et de s'attacher à ce que l'esprit du fair play règne dans le sport et que la violence en soit bannie.

En juillet 1999, la 109^{ème} session du CIO réunie à Séoul a adopté un code d'éthique, reconnu comme le texte de référence par le mouvement olympique et sportif à Copenhague. Depuis lors, plusieurs aménagements lui ont été apportés par la commission exécutive du CIO, afin de répondre aux évolutions du sport ; les dernières en date ont été adoptées le 26 octobre 2010 à Acapulco.

Certes, la mise en œuvre de ces principes dépend principalement des comités olympiques nationaux et des fédérations. Il n'empêche, néanmoins, que les instances olympiques internationales jouent un rôle symbolique crucial en la matière”.⁵⁶⁷

The Ethics Commission regularly updates what the IOC calls "the framework of ethical principles", in particular the Code of Ethics and its implementing regulations, directly inspired by the values and principles upheld by the Olympic Charter.

⁵⁶⁵ [<http://www.olympic.org/fr/commission-dethique>].

⁵⁶⁶ [http://www.olympic.org/Documents/Commissions_PDFfiles/Ethics/code-ethique-interactif_fr_2013.pdf].

⁵⁶⁷ Assemblée Nationale, report No. 4158 du 11 January 2012 made on behalf of the Committee of Cultural affairs and Education on the bill, adopted by the Senate, aiming at reinforcing ethics in sport and the law of athletes.

The Code of Ethics and its implementing regulations should be complied with by the Olympic parties at all times and under all circumstances.

In case of breach of the Olympic ethical rules, the Ethics Committee may recommend any useful measure, such as a reminder of the rules. It can also recommend a sanction, such as those defined by Rule 59 of the Olympic Charter, ranging from a warning to the exclusion from the Olympics. It can also recommend the sanction provided for by Rule 16.3.8. of the Olympic Charter.

The institutional and normative context being established, it should be noted that the IOC's Code of Ethics and its implementation texts are faced with a double constraint, which is sometimes difficult to manage:

"D'une part, l'objet social de l'organisation fait de la protection des valeurs sportives sa fonction première ; l'éthique participe alors à sa construction identitaire. D'autre part, les pressions de l'environnement, ses partenaires et, plus largement, ses parties prenantes, obligent l'organisation sportive à une mise en avant de la dimension éthique de ses activités en termes de communication ; l'éthique joue ainsi un rôle de catalyseur au sein de la stratégie.

Les instances sportives internationales (ISI) comme le CIO (Comité International Olympique) et la FIFA (*Fédération Internationale de Football Association*) peuvent illustrer le double jeu joué par l'éthique. Tout en étant garantes du respect des valeurs sportives, elles évoluent dans un nouveau contexte de commercialisation : droits de retransmissions télévisuelles et numériques, contrat de partenariat/sponsoring, billetterie, etc. Les financements publics et privés se côtoient, malgré la divergence de leur finalité. La montée des enjeux économiques, observée dans le milieu sportif, s'est accélérée depuis le début des années 1980. Ceci accentue la dimension marchande des ISI et accuse la nécessité de leur adaptation à ce contexte nouveau socio-économique [...].

A priori, le CIO et la Fifa devraient adopter une éthique de conviction et être des instigateurs afin de convertir tous les acteurs du monde sportif à un code de conduite. Ils devraient être des évangélistes de l'éthique sportive érigée en mythe. Aux yeux du monde ce positionnement ne devrait pas laisser de place au doute. En effet, ceci sous-tend que le principe moral préside à l'action sans trop s'attacher aux conséquences. Cette forme d'éthique relève d'une certaine philosophie où "penser", "dire" et "faire" sont congruents d'un processus d'apprentissage sociétal en boucle double, fonctionnant à la fois de manière rétroactive et intégrant une remise en cause des principes d'action si le dysfonctionnement perdure [...].

Or, la lecture historique et organique de ces deux instances met au jour la gestion de paradoxes liés à la confrontation de l'exception sportive et des attentes de leurs parties prenantes. Auparavant engagées à satisfaire leurs "*shareholders*" (acteurs économiques du mouvement sportif), ces instances sont aujourd'hui sommées de prendre en compte les attentes de leurs "*stakeholders*" (toutes les parties prenantes sans exception) internes (dirigeants, employés, clubs, *etc.*) et externes (supporters, gouvernements, groupes de pression, media, sponsors, *etc.*) [...]. Ce concept se réfère à la théorie des parties prenantes (TPP) qui est au cœur des travaux de recherche relatifs à l'éthique organisationnelle [...]. La dimension normative de la TPP est ici privilégiée. Elle porte sur l'introduction d'une réflexion éthique dans le management stratégique, considérant la nécessité de concilier les intérêts conflictuels des parties prenantes pour la survie de l'organisation [...].

Plus largement, comme le notent Bayle et Durand (2004 p. 197)⁵⁶⁸, il existe « un décalage grandissant entre éthique et comportement" des instances sportives historiques. Dès lors, la légitimité des instances mondiales du sport ne peut plus s'appuyer sur un simple discours relevant plus d'une idéologie que d'une réalité véritable. Devant la montée des phénomènes de violence dans les stades, de corruption et de train de vie des dirigeants, l'omniprésence de l'argent et la prégnance du dopage, la mise en conformité des actes aux principes avancés comme des boucliers est exigée par le pouvoir politique".⁵⁶⁹

ii. The Establishment of a Joint Inspection Unit since the London Olympics

For certain sports that are not subject to large amounts of sports bets (*e.g.* gymnastics, swimming, field hockey), the risk of manipulation exists, and especially during the Olympic Games and world championships. Numerous bets are indeed organised for this specific occasion.

However, several factors limit the amplitude of these risks:

- When betting operators (physical and online, legal and illegal) offer betting opportunities on sports they are not used to offer, they remain very vigilant on the levels of the stakes. Important bets placed on this type of event should therefore be identified and given special attention. Operators limit the bets placed on such events, simply because they have less experience in evaluating the probabilities;
- The development of corruption generally involves a systematic approach: knowledge of the environment of the sport, recruitment of intermediaries to approach future corrupted stakeholders, analysis of potential financial gains from bets, *etc.* A corrupter will not deploy much energy for a single event where his hope of winning is limited. He would rather focus on a sport which, like football, offers regular games and leads to many high-

⁵⁶⁸ E. BAYLE and C. DURAND, "Éthique sportive et stratégie identitaire des organisations historiques du mouvement sportif", in: F. CARPENTIER (dir.) *Le sport est-il éducatif ?* Rouen University Press, 2004, pp. 185-215.

⁵⁶⁹ C. DURAND, C. ROUVRAIS-CHARRON, "L'éthique sportive internationale", *op. cit.*, p. 62 et pp. 68-70.

stake bets, and where he can "reactivate" the corrupted agents as he pleases. Convincing an archery or swimming champion, for which the Olympics or World Championship Games are the only time he is under a strong media spotlight, to cheat, is not an easy task. Moreover, while the bets placed on these sports remain rare, the potentially corrupt athlete could hardly be "used" in the long run.

- Olympic Games are subject to strict supervision by the IOC, and irregular bets spotted among legal operators could be identified. This is what corrupters try to avoid, although, obviously, this very close surveillance should not constitute a completely hermetic barrier.⁵⁷⁰

In this regard, it is important to mention the IOC's recent (2014) initiative intended to establish an intelligence system. It aims at bringing together all stakeholders involved in the fight against corruption and forms of manipulation related to sports bets. The Integrity Betting Intelligence System (IBIS) collects alerts and data on manipulation through betting in sport. A large number of betting operators and national authorities responsible for the regulation of bets have already signed memoranda of understanding with the IOC. These bodies will be responsible for monitoring betting operations at the Games as well as during other major sporting events and for directly alerting the IBIS of any suspicious activity.

The system became operational during the 2014 Sochi Winter Olympics, where no suspicious operation was reported. The IBIS platform will remain operational between Olympic Games in order for the International Federations (ISFs) to use it during their major events or other multi-sport competitions. If a federation fears that the integrity of one of its competitions was compromised, it can connect to the platform to obtain information on the betting activities.

The IOC is responsible for the functioning of the platform and covers the technical costs.

iii. Other On-Going IOC Initiatives

In January 2014, IOC President Thomas Bach and Secretary General of Interpol, Ronald K. Noble also signed a Memorandum of Understanding. As an independent intergovernmental organisation responsible for coordinating the criminal police authorities around the world, Interpol worked closely with the IOC in the past to protect the Olympic competitions against any form of manipulation, particularly with regard to irregular and illegal bets.

⁵⁷⁰ For an event of similar dimension, which was also closely monitored, the 2014 World Cup in Brazil, the Cameroon (Cameroon/Croatia match), and Ghana (Daily Telegraph and Channel 4's Dispatches investigations) national team was suspected of match fixing. However, Ralf MUTSCHKE, director of the security at FIFA, expressed doubts about the match-fixing accusations targeting Cameroon and asked the magazine Der Spiegel, which was the first to publish these allegations, to submit its evidence, [<http://www.lapresse.ca/sports/soccer/mondial-2014/201407/01/01-4780175-trucage-de-matches-le-cameroun-fera-son-enquete.php>]. Investigative journalist Saihan MOHAMED YUSOF, in a recently published book (*Foul, the inside story of singapore match fixers*), citing a high-ranked unidentified Singapore official, said that a vast operation was planned to fix the World Cup. According to newspaper Ouest-France, referring to the precited book, Singapore police and the anti-corruption agency arrested, in September 2013, fourteen alleged members of a global match-fixing network. This organisation, according to Zaihan MOHAMED YUSOF, "had established a list of corrupted footballers and officials building on matches played abroad in national leagues and international friendlies", [<http://www.ouest-france.fr/mondial-2014-ils-voulaient-truquer-la-coupe-du-monde-2626669>].

This MoU expands the scope of the activities carried out so far by the two organisations and provides for collaboration on security and protection of the integrity of competitions at the Olympic Games and the Olympic Youth Games. This collaboration focuses on the fight against doping, match fixing, irregular/illegal bets and corruption related thereto. Moreover, this MoU mentions joint initiatives that the two organisations and the repressive authorities will take in the field of education and awareness. To follow up on the signing of the MoU, the IOC and Interpol will now develop a strategy for the adoption of concrete measures for the next three years.

2. Presentation of the Initiatives of International Sports Federations

Beyond the IOC, several international sports federations are now considered as having good practices in combating the manipulation of sports competitions. Cricket and Tennis federations were thus pioneers in conducting investigations, even creating an *ad hoc* unit, while UEFA is often cited as the absolute reference in monitoring the market of world sports bets. Gradually, sports disciplines that are less affected by match-fixing also understood the extent of the phenomenon, as demonstrated by the following paragraphs.

a. In the Framework of the Fight against the Manipulation of Sports Competitions

SportAccord, whose mission is to coordinate the common interests of international sports federations (Olympic and non-Olympic), agreed to share its expertise with the Sorbonne - ICSS Research Programme on Ethics and Sport Security. On 1 May 2013, a questionnaire on issues of integrity in sport was sent to 91 members⁵⁷¹ of the association.

25 members of SportAccord had answered the questionnaire on 1 September 2013. Almost one third of these members are Olympic federations:

ASOIF	AIOWF	ARISF	AIMS
Aquatics Archery Basketball Cycling Football Gymnastics Hockey Rugby Tennis	Bobsleigh & Tobogganing	Air Sports Baseball Chess Cricket Floorball Netball Polo Racquetball Sport Climbing	Aikido Darts Draughts Fistball Muaythai Sleddog Sports
(9)	(1)	(9)	(6)

⁵⁷¹ ASOIF (28 international federations of Olympic Summer Games) - AIOWF (7 International Olympic Federations of Winter Games) - ARISF (33 IOC-recognised non-Olympic federations) - AIMS (23 independent members of SportAccord).

The main federations affected by sport integrity issues related to sports bets answered the questionnaire. If we include the issue of doping, however, the rate of response of international federations remains much lower.

i. Classification of Sports on the Basis of Risks of Manipulation

In this context, it does not seem very appropriate to consider the responses of the different federations in an "equivalent" manner. In fact, the stakes are not the same for FIFA, which is faced daily with the problem of match fixing, the Aikido Federation - where the notion of competition is absent - and the Federation of Sleddog Sports. The level of attention and the requirements *vis-à-vis* the manipulations must therefore take into account this classification, even if, assuredly, all federations should be attentive to these issues. The means employed may thus vary according to the federation and the risks it is exposed to. However, on the one hand, this classification is designed to evolve, for instance because transnational organised crime can shift their targets and interests to sports that are thus far less affected and hence less monitored; secondly and consequently, sports institutions should assume they may be affected and put in place adequate preventive and repressive devices before being affected by these threats.

This classification can be organised under three groups:

Group 1: sports federations whose competitions provide betting opportunities and who already had to deal with many cases of manipulation.

Group 2: sports federations with few events providing betting opportunities and who were rarely confronted with manipulation cases.

Group 3: sports federations whose competitions are not used as the basis of online sports and where the issue of the manipulation of events remains a secondary issue for various reasons (this does not mean, however that risks of manipulation do not exist, since every sporting event can potentially be a target of manipulations).

Group 1: High or proven risks of manipulation	Group 2: Low risks of manipulation	Group 3: Very low risks of manipulation
Baseball Basketball Cricket Cycling Darts Football Muaythai Rugby Tennis	Aquatics Archery Bobsleigh & Tobogganing Floorball Gymnastics Hockey Netball	Aikido Air Sports Chess Draughts Fistball Polo Racquetball Sleddog Sports Sport Climbing
(9)	(7)	(9)

ii. The Taking into Account of Sports Integrity and Competition Manipulation in the Statues, Objectives and Regulations of International Federations

Group 1: Significant or established risks of manipulation	Group 2: Low risks of manipulation	Group 3: Very low or absence of risks of manipulation
<p><u>Level 1:</u> established inclusion of integrity, detailed entries in official texts, with code of conduct for the various participants, explicit reference to sporting bets</p> <p>- Cricket, darts, football, rugby, tennis</p> <p><u>Level 2:</u> established inclusion of integrity, entries in official texts, with code of conduct for certain participants</p> <p>- baseball, muaythai</p> <p><u>Level 3:</u> partial inclusion of integrity, with general reference in official texts, on-going improvements</p> <p>- basketball, cycling</p>	<p><u>Level 1:</u> established inclusion of integrity, detailed entries in official texts, with code of conduct for the various participants, explicit reference to sporting bets</p> <p>- archery, floorball, hockey</p> <p><u>Level 2:</u> established inclusion of integrity, entries in official texts, with code of conduct for certain participants</p> <p>- aquatics, netball</p> <p><u>Level 3:</u> partial inclusion of integrity, with general reference in official texts, on-going improvements</p> <p>- bobsleigh & tobogganing, gymnastics</p>	<p><u>Level 1:</u> explicit inclusion of sports ethics and manipulation in official texts</p> <p>-Chess, Draughts</p> <p><u>Level 2:</u> inclusion of sports ethics in official texts with adaptations for the specificities of each federation</p> <p>- air sports , polo, sleddog sports, sport climbing</p> <p><u>Level 3:</u> no consideration of sports ethics in official texts</p> <p>- fistball (faustball), racquetball</p> <p><u>Not adapted to the specificities of the sporting discipline:</u></p> <p>- aikido</p>
(9)	(7)	(9)

Federations that are directly concerned by fixed sporting events have responded by adapting their regulations accordingly (cricket, darts, football, tennis). Others, who have not yet been significantly affected by this scourge, can be cited as an example for the quality of their official documents, each at their own level (rugby and archery). Finally, the phenomena of manipulation of sporting events related to betting are recent – they became apparent between 2005 and 2008, and some federations were not affected by any cases of manipulation, which explains why they haven't taken any concrete measures yet.

Several sports federations minimise the level of risk of manipulation of sporting events of their discipline. The terms used are intended to demonstrate that they have significant resources in place, despite the low number of cases. This attitude remains "traditional" within the sports movement, many leaders - often volunteers - having trouble accepting that the values of their sport can be violated: for them, the beauty of the sport is incompatible with the existence of certain scourges.

Beyond the good understanding of their sport and their ability to get results - medals - the managers of sporting federations and clubs could benefit from training in management and consideration of public policy issues (criminal interference, fraud, corruption, etc.).

iii. The Scope of Sports Regulations and the Level of Penalties Imposed

Group 1: Significant or established risks of manipulation	Group 2: Low risk of manipulation	Group 3: Very low or no risk of manipulation
<p><u>Level 1:</u> Very large scope of regulations concerning manipulation/sports bets and severity of the sanctions is adapted to the nature of the misconduct:</p> <ul style="list-style-type: none"> - baseball, cricket, darts, football, rugby, tennis <p><u>Level 2:</u> Very narrow scope of regulations concerning manipulation/sports bets and the severity of the sanctions is poorly adapted to the nature of the misconduct:</p> <ul style="list-style-type: none"> - basketball, muaythai, cycling 	<p><u>Level 1:</u> Very large scope of regulations concerning manipulation/sports bets and severity of the sanctions is adapted to the nature of the misconduct:</p> <ul style="list-style-type: none"> - archery, floorball, hockey <p><u>Level 2:</u> Very narrow scope of regulations concerning manipulation/sports bets and the severity of the sanctions is poorly adapted to the nature of the misconduct:</p> <ul style="list-style-type: none"> - aquatics, bobsleigh & tobogganing, gymnastics, netball 	<p><u>Not adapted to the specificities of the sporting discipline:</u></p> <ul style="list-style-type: none"> - aikido, air sports, chess, draughts, fistball, polo, racquetball, sleddog sports, sport climbing
(9)	(7)	(9)

Most international sporting federations which are really facing issues related to the manipulation of games and sports bets have transcribed the corresponding elements and penalties into their regulations.

The analysis entails however, a number of observations:

- Football (FIFA), which has one of the most comprehensive regulations, may be cited as one of the best practices. Internationally, this sport does not, however, sanction the concept of "insider trading" yet. This means that an actor of the competition possessing inside information unknown to the general public (e.g. the injury of one of his teammates, the composition of a future selection or even a new contract newly signed) is not sanctioned for its disclosure, including when his purpose is placing sports bets.

This notion of insider trading certainly deserves to be debated and focused on in the future, as it represents a significant vector of conflict of interest.

- As already mentioned, basketball and cycling have not yet fully integrated elements related to the manipulation of games and sports bets. Sanction levels also remain either not clearly defined (the penalty is determined according to the case in basketball) or insufficient (one month to one year suspension in cycling for manipulating the course of an event).
- It is important to consider whether an athlete should be prohibited from betting on competitions in which he participates, or more generally on the sport he plays. Certainly, it may seem strange that a high-level athlete who does not qualify for the Olympics cannot bet on this major event in his favourite sport discipline. However, reality shows that an athlete who enjoys betting, especially because he won substantial sums in the past, will have trouble not pursuing the adventure. He therefore risks developing an addiction to gambling and be led to bet on his own competitions, either directly or through an acquaintance. Several sports organisations (NCAA, English Premier League) have made this observation.⁵⁷²

The precautionary principle would therefore lead to recommending prohibiting athletes from betting on their sport discipline in general.

- The issue of sanctions is undoubtedly one of the most delicate to analyse, simply because there may be a gap between texts and practice. A federation could indeed provide exemplary sanctions in the regulations but rarely apply them – for instance, for fear of damaging the image of their sport.

Consideration should be given to the nature of the commitment of sports federations to enact and enforce penalties for manipulation of sports competitions.

⁵⁷² See [http://fs.ncaa.org/Docs/public/pdf/ncaa_wagering_prelim_may2013.pdf].

iv. Procedures in Cases of Established or Suspected Violations of Sports Ethics (manipulation, sporting bets, doping, etc.)

Group 1	Group 2	Group 3
Significant or established risks of manipulation	Low risks of manipulation	Very low or no risks of manipulation (aïkido)
<p><u>Level 1</u>: clear organisation with well-structured procedures and identified contacts:</p> <p>- Cricket, football, rugby, tennis</p> <p><u>Level 2</u>: clear organisation with relatively well-structured procedures (especially because the role of the stakeholders is not very accurate or not suitable)</p> <p>- baseball, basketball, muaythaï, cycling, darts</p> <p><u>Level 3</u>: no clear organisation</p>	<p><u>Level 1</u>: clear organisation with well-structured procedures and identified contacts:</p> <p>- archery, floorball</p> <p><u>Level 2</u>: clear organisation with relatively well-structured procedures (especially because the role of the stakeholders is not very accurate or not suitable)</p> <p>- aquatics, bobsleigh & tobogganing, gymnastics, hockey</p> <p><u>Level 3</u>: no clear organisation</p> <p>- netball</p>	<p><u>Level 1</u>: clear organisation with well-structured procedures and identified contacts:</p> <p><u>Level 2</u>: clear organisation with relatively well-structured procedures (especially because the role of the stakeholders is not very accurate or not suitable)</p> <p><u>Level 3</u>: organisation not clearly defined or not adapted to the discipline</p> <p>- aïkido, air sports, chess, draughts, fistball, polo, racquetball, sleddog sports, sport climbing</p>
(9)	(7)	(9)

When a sport is actually confronted with cases of manipulation or cases linked to sport integrity, this sport, as a general rule, establishes a quality procedure. Cricket, football, and tennis clearly fall within this framework. It should be noted, however, that rugby or, to a lesser extent, basketball, which have not yet had to deal with very large manipulation cases, seem to constitute good practices in this area. This particularly results, for cricket, football, and tennis, in good cooperation with the national authorities in charge of criminal proceedings related to the manipulation of sporting events.

Some sports organisations indicate that the entity in charge of the investigation is the Ethics Commission or the Disciplinary Commission. Such a body, however, is usually only weakly operational because it meets more or less regularly, even if it is composed of competent persons and has a secretariat. It is therefore imperfectly adapted to the resolution of problems that require a high reactivity, human - or financial – resources, and special expertise.

In other words, if a sports organisation did not establish clearly defined procedures, it is probable that an investigation following a suspicion of manipulation will not be completed. In fact, even when such procedures are optimally organised, facts show that it remains difficult to establish guilt.⁵⁷³

Finally, federations that state that they have never experienced any problems related to the manipulation of matches or sports betting often have poorly defined procedures.

v. Human and Financial Resources Directly Linked to the Protection of the Integrity of Sport

<u>Group 1:</u>	<u>Group 2:</u>	<u>Group 3:</u>
Significant or established risks of manipulation	Low risks of manipulation	Very low or no risks of manipulation
<p><u>Level 1:</u> Dedicated and structured organisation with a substantial budget:</p> <p>- Cricket, football, tennis</p> <p><u>Level 2:</u> Structured but not dedicated organisation:</p> <p>-basketball, cycling, rugby</p> <p><u>Level 3:</u> Mission assigned to an elected committee or equivalent:</p> <p>- Baseball, Muaythai, darts</p>	<p><u>Level 1:</u> Dedicated and structured organisation with a substantial budget:</p> <p><u>Level 2:</u> Structured but not dedicated organisation:</p> <p>- aquatics, floorball</p> <p><u>Level 3:</u> Mission assigned to an elected committee or equivalent:</p> <p>-Archery, bobsleigh& tobogganing, gymnastics, hockey, netball</p>	<p>Subject not adapted to the discipline:</p> <p>Aikido, Air Sports, Chess, Draughts, Fistball, Polo, Racquetball, Sleddog Sports, Sport Climbing</p>
(9)	(7)	(9)

⁵⁷³ See in particular Part 1, Title 2, Chapter 3.

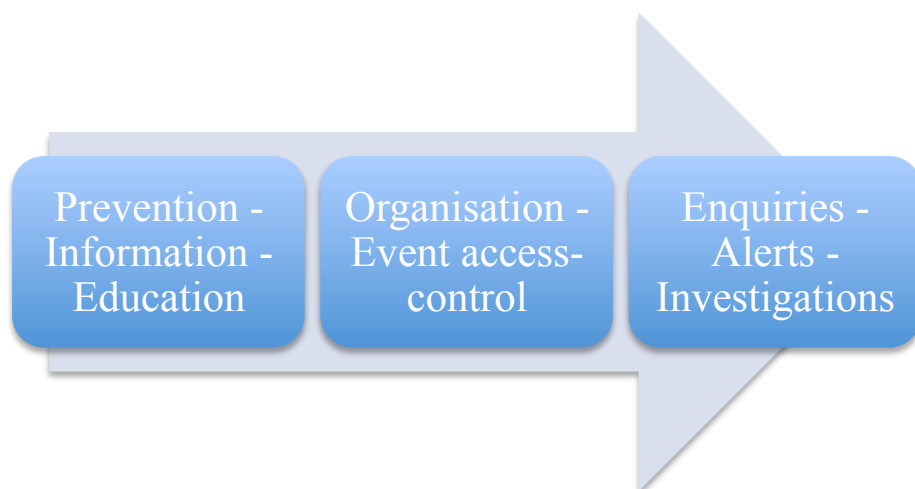
The three disciplines most affected by the issue of manipulation of events (cricket, football, tennis) have established a dedicated structure. Two of them are mainly focused on investigation: ACSU for cricket and TIU for tennis. The third, FIFA's EWS, is primarily responsible for overseeing the international market of sports bets. For football, a consequent supplementary budget was also allocated in the framework of international cooperation with Interpol.⁵⁷⁴

In the other cases, the issue of the integrity of sport is either managed by a specific service - conventionally the legal department -, or managed by an elected person or elected committee. In the latter case, there is obviously a risk of low reactivity due to the fact that these people are not constantly present - and sometimes rarely - in the organisation.

Other than in the large federations, the data show that the sources directly attributed to the protection of sport integrity are insufficient. This brings the issue of the sources of financing of the protection of sport integrity.

vi. Availability of Tools Capable of Protecting Sport Integrity against the Manipulation of Sports Competitions

There are different types of operational tools for combating the manipulation of sports events and preserving the integrity of sport. It is possible to classify them into four categories:



⁵⁷⁴ "INTERPOL and FIFA entered into a joint initiative with two main aims: To educate and train key actors in football on how to recognize, resist and report attempts to corrupt or fix matches; To better prepare law enforcement on how to investigate and cooperate in corruption or match-fixing related cases.", [<http://www.interpol.int/Crime-areas/Integrity-in-Sport/Integrity-in-sport>].

α. Prevention - Information - Education

<p align="center">Group 1:</p> <p align="center">Significant or established risks of manipulation</p>	<p align="center">Group 2:</p> <p align="center">Low risks of manipulation</p>	<p align="center">Group 3:</p> <p align="center">Very low or no risks of manipulation</p>
<p><u>Level 1:</u> thorough actions aimed towards different targets (managers, referees, athletes):</p> <p align="center">- Cricket, Tennis</p> <p><u>Level 2:</u> thorough actions aimed towards certain targets:</p> <p align="center">-Muaythai, Football, Rugby</p> <p><u>Level 3:</u> awareness actions aimed towards different targets (managers, referees, athletes):</p> <p align="center">- Baseball, Cycling (only doping)</p> <p><u>Level 4:</u> contemplated and untested actions</p> <p align="center">- basketball, darts</p>	<p><u>Level 1:</u> thorough actions aimed towards different targets (managers, referees, athletes)</p> <p><u>Level 2:</u> thorough actions aimed towards certain targets:</p> <p align="center">- floorball, gymnastics, hockey</p> <p><u>Level 3:</u> awareness actions aimed towards different targets (managers, referees, athletes):</p> <p><u>Level 4:</u> contemplated and untested actions</p> <p align="center">- aquatics, archery, bobsleigh & tobogganing, netball</p>	<p><u>Subject not adapted to the discipline:</u></p> <p align="center">Aikido, Air Sports, Chess, Draughts, Fistball, Polo, Racquetball, Sleddog Sports, Sport Climbing</p>
<p align="center">(9)</p>	<p align="center">(7)</p>	<p align="center">(9)</p>

Educating the stakeholders - firstly athletes and referees - on the risks related to the integrity of sport (manipulating sports competitions, sports betting, doping, etc.) is an essential element of the preventive apparatus of sports organisations. It is a simple, effective, and directly operational tool. A sports stakeholder approached for fixing a sporting event should know what risks he faces if he aids a corrupter or if he corrupts other persons.

In this regard, cricket and tennis serve as precursors, and their example should be quickly followed by football and rugby. Concerning football, the situation is somewhat more complex: while there is a global programme developed by FIFA and Interpol, each federation or professional league has its own approach to the phenomenon (e.g. Germany, Spain, and France). In terms of prevention, the main tool used by the International Basketball Federation (Athletes' Handbook) does not clearly highlight the risk of fixing sports matches, and further complicates the situation by only addressing illegal bets. The fact that the betting operator, Bwin, which is not legal everywhere it operates, is a major partner of the institution, may partly explain this weakness, potentially linked to a conflict of interests.

B. Organisation and Access Control of Events

Appointing the referees

For certain sporting disciplines, the process of appointing referees – shortly before the match, for example, so as to limit the risk of corruption – is a factor that is likely to reduce the risk of corruption. In this respect, federations such as the ones organising Muay Thai, floorball or racquetball competitions share good practices. Football and tennis, which are the two sports not to have officially addressed this aspect – presumably for confidentiality reasons –, have also implemented protective measures.

Supervising the referees

Some sports mentioned in Group 1 monitor the decisions of their referees systematically (baseball, basketball, Muay Thai, rugby, and tennis). Given the growing risks of manipulation, it is obviously recommended that this discussion continue. Of course, it is necessary to distinguish the monitoring of sports competitions so as to detect *a posteriori* any eventual manipulation and the one intended to avoid real-time refereeing errors.

Recording sporting events

In the survey, several sports federations indicated that they have a video recording procedure of the events they organise, in order to identify suspicious facts if applicable (muaythai, cricket, rugby, tennis, etc.). However, they do not specify how these recordings are used.

Using communication materials during sporting events

The advent of modern sports betting, especially "live betting" (possibility to bet after the kick-off of a sporting event), has attracted new populations to the venues of sports competitions: professional bettors who try to take advantage of inside information (for example the difference between a ball deemed a "fault" in tennis and the official announcement of the point by the referee), "live" information sellers that allow the organisation of illegal bets at the other end of the world, beyond the control of regulators, etc. In tennis, they are called "courtsiders".

Some sports like cricket and tennis are now trying to keep them away from the competition sites, sometimes with the help of the competent police authorities (like in Australia or France). They are now also looking, like the two disciplines above, but also in some cases of Thai boxing or rugby, to prohibit certain means of communication that could be diverted for betting purposes.

The recent case of "court siding"⁵⁷⁵ during the Australian Open in 2014 illustrates this phenomenon and has reignited the debate over the legality of this practice. Courtsiding consists in attending a game in person, and, through an electronic device, relaying the score to bookmakers or bettors up to 10 seconds faster than the official broadcast, conducted in Australia by Enetpulse. For the Australian police, this practice is to be placed in the same category as sports and business corruption. SportingData, the company accused of "courtsiding", was investigated before the "courtsider" in question was acquitted.

Group 1 sports: Summary

Level 1: establishment of a very strict organisation of refereeing and a control of the means of communication during events:

- Muay thaï, cricket, rugby, tennis

Level 2: establishment of an organisation of refereeing and control of the means of communication during the relatively strict events:

- Basketball

Level 3: refereeing organisation to be studied and control of the means of communication during the events under study:

- Baseball, football

Not applicable:

- Cycling, darts.

y. Enquiries, Alerts, and Investigations

Surveillance of the sports betting market and cooperation with the industry (regulators and operators)

Today, only football has a truly efficient enquiry and alert system in this regard. This situation is not abnormal since football alone represents over 60% of sports bets in most countries of the world⁵⁷⁶ and remains the only sport that has a tested statistical database. Tennis, mostly at the national level (in France for instance), developed more or less sophisticated tools.

⁵⁷⁵ [<http://www.theguardian.com/world/2014/mar/06/courtsiding-charge-withdrawn-australian-open>].

⁵⁷⁶ Some sources: annual report of AAMS (Italy), annual report of ARJEL 2012 (France), annual report of UK Gambling Commission 2012, annual report of Sportingbet 2012.

Other sports (basketball, rugby,) are either considering the opportunity to equip themselves in this respect, or beginning to initiate cooperation with operators who already have a monitoring system for bets (basketball). Lastly, it should be noted that certain international sports federations consider that the risks linked to sporting bets should be better regulated, either by imposing limits on authorised betting formulas, or – as suggested by FIFA – by establishing a maximum limit of wagers for the different categories of sports bets.⁵⁷⁷

Reporting suspicious information

For sports organisations to be able to prevent certain risks related to the integrity of sport, and primarily to cases of match fixing, it is important to be able gather information in case of suspicion. However, such tools face, at least today, various hurdles:

- potentially subjective sources and heterogeneous data;
- reluctance by stakeholders to denounce a teammate or even an opponent; sportsmanship, and in some cases "sports omerta", not always allowing such an act, which is reprehensible or at least blameworthy in the eyes of "sport morality";
- Fear of violation of the anonymity and confidentiality of information processing.

Nonetheless, certain international federations have now established tools for gathering information and rumours of suspicions. Most of the time, a telephone line or an Internet address that respects the anonymity of the sender is put in place. Some federations (baseball) have introduced the opportunity to directly alert the Ethics Commission, but such a process essentially seems more risky and less efficient, simply because this type of bodies is not always permanent or anonymous.

Among the sports federations of Group 1 (high risk of manipulation), slightly more than half have established a structured feedback system that ensures confidentiality in relation to cases of match fixing (cricket, football, rugby, tennis) or doping (cycling). Baseball and muay thai have a simplified process (sending an email to the federation or submitting a report to the Ethics Commission). Basketball has not considered such a protective measure to date.

Investigation, cooperation and openness to the outside environment (governments, police, other sports, national federations).

Sports disciplines that are strongly affected by the problem of manipulation of matches have introduced an actual information system more (football) or less (cricket, tennis) open to the outside. Football has chosen to work in complete confidentiality with governments and national police bodies - using, where

⁵⁷⁷ See *infra* Part 3, Title 2, Chapter 2, Section 1.

appropriate, the information provided by a Task Force managed by Interpol⁵⁷⁸ - in order to optimise the results of investigations, but also to create effective links between disciplinary proceedings - sporting movement - and criminal proceedings - national law. Football, a discipline confronted with many cases of manipulation, is well aware of the legal limits of the competence of an international organisation *vis-à-vis* national courts, especially with regard to communication of information related to a judicial investigation.

Cricket and tennis opted for a different strategy: both sports created a powerful structure in terms of investigation, with specific tools and means, sometimes going as far as using telephone tapings.⁵⁷⁹ By managing their own intelligence service, in a way, these sports are less open to the outside and are known for their "cult of confidentiality". This has positive aspects – efficiency in the management of matters related to integrity – but also raises questions on transparency, respect of fundamental rights, and the effective resolution of cases of manipulation.

For the disciplines less concerned for the moment with issues of sport integrity, the subject remains new, but some of them have already started to coordinate actions at the national level (muay thai, darts, rugby, etc.).

Almost all of the international federations are aware of the fact that, since problems of integrity affect public policy or even sometimes the sovereignty of States, the help of the government is essential in this area. However, at the mention of the possibility of creating a structure devoted to the integrity of sport – beyond the World Anti-Doping Agency –, many reluctances appear for various reasons (heterogeneity of the needs of different sports, required budgets, etc.). Like the IOC, it seems that many international sports federations still wish to privilege their autonomy.

Group 1 sports: Summary

Level 1: establishment of a high-level information, alert, and investigation system:

- football, tennis

Level 2: establishment of an average-level information, alert, and investigation system:

- cricket (with an investigation service of a higher level), cycling (for doping), rugby

Level 3: establishment of an information, alert, and investigation system being considered:

- baseball, basketball, muaythai, darts

⁵⁷⁸ [<http://www.interpol.int/News-and-media/News/2013/PR020>].

⁵⁷⁹ For tennis, see the *2014 Tennis Anti-Corruption Programme* and le *Tennis Integrity Protection Programme de la Tennis Integrity Unit*.

b. Concerning the Improvement of Governance

i. The FIFA's Planned Reform

In addition to the initiatives described above, other initiatives in favour of improving governance were initiated by federations, such as FIFA.

Beyond the issues directly related to the integrity of sport, especially football, it is interesting to discuss the planned reform of the governance of FIFA. In fact, FIFA, like the IOC, is regularly questioned for the internal management of the organisation, but also for the procedures for allocating major sporting events such as the World Cup or the Olympics. These criticisms are mainly centered on the decision making process described by some as autocratic, that is to say without real consideration of the aspirations of all the members of the organisation or the associated stakeholders (governments, sponsors, media, *etc.*).

As shown by the second report prepared by the independent commission on governance for the FIFA Executive Committee on 6 February 2013⁵⁸⁰ as well as the final report of the Independent Governance Committee dated 22 April 2014,⁵⁸¹ internal discussions on modernising the governance of FIFA were initiated within this institution in the early 2000s, during the 2002 Seoul Congress.

Subsequently, in 2011, the FIFA Executive Committee, on the basis of a report commissioned to Marc Pieth,⁵⁸² formally ratified a draft reform and established four internal working groups overseen by an independent external body: the independent governance committee (IGC).

The FIFA Executive Committee acknowledged, in its December 2011 meeting, the composition and the independent role of the IGC and FIFA recognised the charter developed by the IGC on 27 January 2012.

In essence, this report recommends the introduction of independent control and audit mechanisms in order to fight against all forms of corruption, to enhance transparency and to better involve stakeholders.

For FIFA, the stakes were high: demonstrating to all of its public and private partners that the famous "autonomy of sport" is always adapted to current stakes, especially concerning the attempts of criminal trespassing in the sports world.

⁵⁸⁰

[https://www.baselgovernance.org/sites/collective.localhost/files/documents/second_report_by_igc_to_fifa_exco_fr_08022013.pdf].

⁵⁸¹

[https://www.baselgovernance.org/sites/collective.localhost/files/documents/final_report_by_igc_to_fifa_exco_fr.pdf].

⁵⁸²

[https://www.baselgovernance.org/sites/collective.localhost/files/documents/igc/first_report_by_igc_to_fifa_exco.pdf]. See also the various documents available on the website of the *Basel Institute on Governance*.

The four working groups were attributed different functions:

- Revision of the Statutes, in view of improving the governance of FIFA;
- Ethics Commission, tasked with revising the Code of Ethics of FIFA and strengthening the powers and independence of the judiciary authorities. Since 2012, the Ethics Commission was divided into two chambers (investigation chamber and adjudication room), each headed by an independent person;
- Transparency and compliance, responsible for examining the general procedure of conflicts of interest, improving internal control mechanisms, increase transparency of the FIFA development programs and commercialisation of the rights of FIFA and the exploration of procedures relating to confidential reports;
- Football 2014 considered the technical aspects of modern football in order to improve the game at all levels.

Notwithstanding these various initiatives, in 2012, the IGC was still concerned that the lack of transparent structures and the culture of nepotism affects the reputation of the organisation and weakens its ability to lead the way to true ethical governance of sport. Therefore, a key recommendation is to perform an integrity check on all the executive members and the various commissions and committees.

The first part of the ICG recommendations was supported by the FIFA Executive Committee and approved at the 62nd Congress of the latter, held in May 2012 in Budapest. The second part was adopted at the following Congress, the 63rd, which met in May 2013 in the Mauritius (item 13.1.1 of the agenda). Three months before, the ICG's second report was published to the attention of the FIFA Executive Committee.⁵⁸³

Shortly thereafter, this reform movement took a new twist after the interview organised in July 2013 between Sepp Blatter and a delegation of the Council of Europe.⁵⁸⁴ This meeting was organized to discuss corruption which affected the FIFA and ongoing reforms to ensure better governance.

The next stages in the process are therefore crucial now: convincing the public opinion and the institutional partners of FIFA that the reform initiated is actually making in depth improvements of the systems of governance of sports organisations of which FIFA is a symbol.

In this regard, the reforms undertaken in Switzerland also seem to have played a role in the latest initiatives initiated by the FIFA.

⁵⁸³ *Op. cit.*

⁵⁸⁴ *AFP alert*, 16 July 2013.

ii. Switzerland's Planned Reform

Following local parliamentary initiatives to amend the Criminal Code in order to include automatic prosecution of private corruption as well as the criminal provisions of the federal loi against unfair competition, the Council of States lodged on 28 June 2011 before the Federal Council a request from the postulate No. 11.3754 so that the latter checks if the legal arsenal of the Confederation was suitable for facing the increasing complexity of issues related to the fight against corruption in sports organisations and match fixing, and if not, to make suggestions to improve these means.⁵⁸⁵ The mandate entrusted to Federal Council, that the latter offered to accept on 24 August 2011, also addressed the issue of whether, and to what extent, members of associations and NGOs - especially those of international sports federations - may be subject to the Swiss criminal law of corruption more generally. The Federal Council's report was filed on 7 November 2012. It seems that the self-regulation systems of federations and clubs, when they exist, are no longer adapted to the growing demands of a global and professionalised sport and that several possibilities should be considered: strengthening international cooperation, toughening criminal provisions on corruption, establishing sporting fraud as a criminal offence, applying new criminal provisions to corporations and adapting criminal procedures to the prosecution of criminal offences.

In addition, the Swiss Federal Council recently published a draft law on gambling. This draft contains penal provisions against the manipulation of competitions. The consultation process is underway.⁵⁸⁶ This new law aims to group within a single law (law on gambling - Ljar), the two laws currently applicable: the law on gambling houses (LMJ) and the law on lotteries and bets (LLP). It is provided that the manipulation of sports competitions linked to sporting bets will be expressly repressed. If they suspect a manipulation, sporting bets operators and sports organisations will be under an obligation to inform the authorities. In addition, the draft provides for the subjection of gambling houses and lottery, sporting bets and the most dangerous skill games operators to the law on money laundering.

3. Summary of Governance Issues and Outline of Solutions

a. Potential Improvements of Good Practices in Combating the Manipulation of Sports Competitions

On the basis of the answers to the questionnaire prepared and circulated by SportAccord, and the other initiatives mentioned above, some good practices can be developed and some recommendations can be made.

⁵⁸⁵ *Fighting against corruption and fixed matches in sport – Report answering postulate 11.3754* submitted on 28 June 2011 by the Science, Education and Cultural Committee of the Council of States (7 December 2012).

⁵⁸⁶ [<http://www.ejpd.admin.ch/content/ejpd/fr/home/dokumentation/mi/2014/2014-04-300.html>].

i. Good Practices

▪ Anticipating Risks

- Among Group 1 sports, rugby is the sport that seems to have developed a variety of structured tools, even though it was only slightly affected so far by integrity issues;
- As for Group 2, floorball, and to a lesser extent, archery, can also serve as examples.

▪ Performance and Diversity of Procedures and Tools

- At the global level, cricket, football, and tennis are indisputably ahead in the fight against the manipulation of competitions. Choosing the best practices of these three sports for each available tool would likely allow designing a kind of ideal system.

▪ Organisation and Monitoring Access to Sporting Events

- Muay Thai, tennis, and cricket may serve as precursors in this highly operational field, where sport integrity is often at stake.

▪ Management of Doping-related Issues

- Cycling, often singled out in this regard, is undoubtedly the sport that has the best tools for fighting against doping. Its shortcomings, if any, are primarily related to circumstantial factors.

▪ Ethics

- Aikido, which, nevertheless, is not a competitive sport, seems to have developed an actual policy based on ethics, education, and more generally value systems based on openness and sharing. The study of its functioning could probably give ideas to other sports.

ii. Potential Improvement Directions

▪ Anticipation

- Some major sports, both at the professional and amateur levels, could probably learn from the practices implemented by a sport like rugby to protect the integrity of their competitions. Regarding baseball, one can only recommend not being stuck in an idealistic discourse according to which this discipline is little affected by integrity issues.

- More generally, it is possible to propose to all Group 2 sports federations to follow the example of floorball, archery, or even hockey and anticipate, via regulations and procedures, risks potentially affecting the integrity of their disciplines.
- Regulation
 - Basketball and cycling should take stock of the issue of sports bets at the international level and in particular question the possibility of betting, which is open to all stakeholders of the competitions (players, referees, managers, other stakeholders), with appropriate penalties for breaches.
- Organisation and Means
 - Several international federations might find an advantage in including their policy of sport integrity in a permanent and well-structured organisation (whether or not within a dedicated service).
- Prevention – Education
 - Prevention and education activities play a key role in combating the manipulation of sports competitions. All the major federations should therefore develop a comprehensive education and prevention policy concerning the manipulation of competitions.
 - Football, well ahead on the international level, should undoubtedly ensure that the national federations relay the messages built in partnership with Interpol to players, trainees, and referees.
- Supervision of Refereeing, Organisation and Limiting Access to Events
 - Some sports could usefully address the problems of monitoring the refereeing conducted in their competitions, but also of managing the access to competition venues. Indeed, it now seems important to be aware of all the persons revolving around sporting events for purposes linked to sports bets and who create risks for the conduct of competitions.

The level of vigilance required in matters of sport integrity from the various international sports federations, but also from national federations and clubs, at a given time, is obviously not the same. Concerning the manipulation of matches and sports bets, football, and to a lesser extent tennis and cricket, are extremely affected. In many countries and on all continents, organised crime now includes football in its activities. It is therefore natural to expect football governing bodies to give this issue maximum attention and develop a comprehensive variety of tools to reduce this scourge. In fact, any flaw in the "football" system is likely to be exploited by criminal organisations.

b. Potential Improvements of the Institutional Governance in the Interest of Combating the Manipulation of Sports Competitions

All these tools designed to combat the manipulation of sports competitions are all the more effective if they are deployed by sports organisations providing guarantees of good institutional governance. This topic has recently emerged in the public debate and was the subject of in-depth work.⁵⁸⁷

Some principles of governance are likely to have an immediate impact on the mechanisms described above.

- *The procedure for electing the directors of sports organisations can provide guard rails against attempted intrusions of organised crime or on the contrary facilitate them.*

For example, electing a president of an international sports federation with the votes of members representing less than 10% of the licensees and of the economic power of the sport would clearly constitute a risk factor - especially if the president was not even supported by his own national federation.

- *the competence of sports institutions in the field of ethics can be optimised or weakened through the election procedure and the functioning of the decision-making bodies;*

On the contrary, a sports federation, whether international or national, having the means to preserve the integrity of sport, could remain powerless against the inaction, denial, or reluctance of an all-powerful president or board of directors who consider this issue as secondary.

- *the managing bodies of a sport organisation can adopt a proactive and preventive strategy instead of a reactive one;*

It is clear that risk management remains, in terms of anticipation, the only way to effectively manage the issues related to the integrity of sport. But as we have seen, for various reasons related to the history and values of sport, this principle has yet to become the general rule in the sporting world.

- *The future of the sporting discipline in the long term - see the concept of "sustainable development" - can either be taken into account by the leaders of the organisation or neglected.*

Financial constraints, short-term management, the historical weight of a sponsor or conflicts of interests are sometimes likely to limit the scope of strategic visions.

⁵⁸⁷ See Play the Game/Danish Institute for Sports Studies, *Action for Good Governance in International Sports Organisations, Final Report*, April 2013, Jens Alm (ed.), p. 240, available at: [<http://www.playthegame.org>].

- *The reliability of the analysis or legal advice ahead of the political decision-making is crucial to the effectiveness and legitimacy of the prevention and enforcement devices to be implemented.*

The under-estimation of certain legal constraints may expose sports institutions to unexpected disputes; their over-estimation may instead paralyse the institution's actions.

- *The accountability policy of the institution can stifle its ability to act or, on the contrary, allow it to adapt more quickly to both the threats to sport integrity and the expectations of its members, public authorities, and the public opinion.*

Under penalty of not being able to properly fulfil their missions, sports institutions must determine precisely, for each question, whom/what to take into account and to whom/on what, they should report.⁵⁸⁸ Since the manipulation of sports competitions affects third parties, sporting institutions certainly have the obligation to provide accounts of the situation and of their reaction, to the public authorities (or to other stakeholders such as betting operators or sponsors).

- *The autonomy of the sporting movement pushed to the point of self-assessment of performances in terms of governance presents virtues, in particular defining the mechanisms best adapted to the specificities of the discipline in question, but also risks (complacency, overestimation of the performances, underestimation of deficiencies...).*

Sharing best practices and resorting to outside expertise (that could lead to a ranking) or to peer review mechanisms could sustain the will of the sports institutions to renew their governance and encourage a sound emulation between them.⁵⁸⁹

To enable sports organisations to fully exercise their functions while enjoying the confidence of the public and of public authorities, the Parliamentary Assembly of the Council of Europe adopted a resolution entitled "Good governance and ethics in sport" that specifically identifies in its appendix ("Guidelines on Good Governance and Ethics in Sport") the rules and institutions that sports organisations should adopt. Some are likely to have an impact on the effectiveness of the fight against the manipulation of sports competitions:

- "1. Federations, associations, professional leagues and other sports organisations should include in their codes of sports ethics the provisions needed to prevent criminal associations from infiltrating the management bodies of sports companies or authorities. The purchase of sports clubs using capital of unknown origin should be prevented by making it compulsory for clubs to seek information about potential owners.

⁵⁸⁸ See B. HOULIHAN, "AGGIS: Accountability and Good Governance", 11 January 2013, available at [<http://www.playthegame.org>].

⁵⁸⁹ See the indicator proposed by J.-L. CHAPPELET and M. MRKONJC, "Basic Indicators for Better Governance in International Sport (BIBGIS): An Assessment Tool for International Sport Governing Bodies", IDHEAP Working Paper, 1/2013, available at: [http://www.idheap.ch/idheap.nsf/view/D6156F1EF87ACB07C1257B3900538D87/\\$File/IDHEAP_Working_Paper_1-2013.pdf](http://www.idheap.ch/idheap.nsf/view/D6156F1EF87ACB07C1257B3900538D87/$File/IDHEAP_Working_Paper_1-2013.pdf).

2. The Basic Universal Principles of Good Governance of the Olympic and Sports Movement, drawn up by the International Olympic Committee (IOC) in 2008, should be complied with by all sports organisations.

3. Within sports federations, it is necessary to introduce supervisory mechanisms achieving a new balance in the powers of their presidents and ensuring that presidents are accountable to members' assemblies.

4. In this context, the term of office for which presidents of federations are elected should be limited (for example a four-year term, renewable only once). In addition, within sports federations, multiple candidates should be encouraged to stand for election as president, as should female candidates at every level.

5. The statutes of sports federations should prevent any form of conflict of interest by prohibiting individuals from holding senior offices within those federations if, at the same time, they hold senior posts in a club.

6. The governance mechanisms of sports federations should be such as to involve athletes in the major decisions relating to the regulation of their sport. In this respect, encouragement could be given to the representation of players' and athletes' trade unions and to the presence of former athletes of acknowledged integrity on federation committees.

7. It would be necessary to improve, within all sports federations, the provisions concerning the committees responsible for examining candidatures for the hosting of major international sports events. Strict rules on eligibility and on these committees' election and operating arrangements should be drawn up in order to prevent and punish any conflicts of interest or acts of self-interest among members, and strict checks should be provided for in order to avoid any attempted bribery or the exercise of improper influence on voting members' final decision. The possibility of including outside observers on such committees without the right to vote should be considered.

8. Sports associations and federations at every level (regional, national, continental and international) should publish annually (on their websites and in their activity reports) details of their income and expenditure and the remuneration of their senior executives and elected managers."⁵⁹⁰

Both the implementation of these recommendations of structural order and the fight against the manipulation of sports competitions in itself require, evidently, a clarification of the scope of the autonomy of sports institutions and sharing of responsibilities between public authorities and the sporting movement.⁵⁹¹

⁵⁹⁰ Parliamentary Assembly of the Council of Europe, Resolution 1875 (2012), 15 April 2012.

⁵⁹¹ See the unequivocal terms of F. ROCHEBLOINE's report to the Parliamentary Assembly of the Council of Europe, "Good governance and ethics in sport", Doc. 12889, 5 April 2012; see the more measured recommendations of the "Report on corruption in sport" adopted by the Swiss Federal Council on November 7, 2012 See also *infra*, Chapter 3 "Sharing responsibilities between sporting institutions and public authorities in the face of the manipulation of sports competitions."

B. Regional Particularities: UEFA, CONMEBOL, and CONCACAF Attempts at Raising Awareness and Adaptation

Tasked with the governance of football in Europe and the Americas, UEFA, CONMEBOL and CONCACAF have begun to acquire the tools needed to combat corruption. The first of these institutions has already experimented mechanisms to fight against corruption in sport in the last few years (1). The second has adopted normative reforms and set up new bodies (2). The third also created new bodies and is working to strengthen international partnerships in this area (3).

1. UEFA

a. Financial Fair-Play According to the Rules of the UEFA

For the 2004/2005 season, UEFA had introduced a licence system for clubs wishing to participate in its competitions (UEFA Champions League and UEFA Europa League). This was to ensure that the clubs involved had the financial resources necessary to compete in the upcoming season and that they did not free ride at the expense of other clubs (due to unpaid transfer fees), of their employees, including players (because of unpaid wages), or State authorities (due to unpaid taxes and social contributions).

This system, however, was quickly perceived as not being strict enough to ensure a reasonable club management over the medium and long term. In addition, although the overall revenue for European top division clubs increased steadily, reaching more than 13 billion Euros in 2011 (an increase of 24% over the last four years), expenses were increasing too, with particularly a 34% increase in paid wages, during the same period. This resulted in a massive increase in the accumulated deficit of the clubs involved, which rose from 0.5 billion Euros in 2007 to 1.7 billion Euros in 2011. About 55% of clubs were making losses. Few of them were investing for the long term, for example in the construction of stadiums and training centres. The general tendency was an increasingly irregular payment of debts.

Consequently, competition between the clubs was distorted, since those operating with their own means were no longer able to compete with those relying on credit. The continuity of competitions was no longer sufficiently guaranteed. The non-payment or delayed payment of the salaries of players and coaching staff threatened the integrity of competitions: without receiving their salaries, players and coaches became more vulnerable to approaches favouring the manipulation of competitions.⁵⁹²

⁵⁹² On the effect of the non-payment of salaries on integrity of the competitions, see particularly the "FIFPro Black Book Eastern Europe", available at [<http://www.fifpro.org/images/documents-pdf/BLACK-BOOK.pdf%5D>].

UEFA therefore decided to react and adopted, on 18 May 2012, after extensive consultations with the various stakeholders in European football, the UEFA Club Licensing and Financial Fair Play Regulations (RFPF).⁵⁹³ These regulations aim to increase financial control over the clubs interested in participating in European competitions. They should help better protect the integrity and continuity of competitions, improve the economic and financial capacity of clubs, increase their transparency and credibility, introduce more discipline and rationality in their financial management, and protect the long-term viability of European club football, all the while ensuring fair competition. More specifically, the aim is to encourage clubs to operate according to their own income (not according to random injections of funds by potential patrons),⁵⁹⁴ invest in the long term (especially in infrastructure and training of young players), and to protect certain categories of club creditors. Compared to the old licencing system, the new regulations are characterised by a medium and long-term vision of the finances of clubs instead of an assessment of the ability of the clubs to participate in the upcoming season.⁵⁹⁵

For the implementation of the FFPR, UEFA also adopted procedural rules governing the UEFA Club Financial Control Body.⁵⁹⁶

α. Preliminary Note

A detailed examination of the regulations that entered into force on 1 June 2012 (74 articles and several appendices, representing a total of 86 pages, for the UEFA Club Licensing and Financial Fair Play Regulations only) goes beyond the scope of the following developments. These developments will focus on the most important elements related to the scope of application of the new provisions, the requirements concerning financial equilibrium, the absence of payment arrears, the prospective financial information, the disciplinary sanctions, and the applicable procedure.

β. Scope of Application

The regulations apply to all clubs wishing to participate in a European competition, except for those whose budget is so low – less than 5 million Euros – for which special control is perhaps less justified, and those that have a special authorisation (Art. 57 FFPR).

⁵⁹³

[http://fr.uefa.org/MultimediaFiles/Download/Tech/uefaorg/General/01/80/54/11/1805411_DOWNLOAD.pdf].

⁵⁹⁴ However, it should be noted that more and more clubs are funded by patrons who, despite the uncertain origin of the funds they invest, allow some clubs to live in accordance with their new ways while destabilising championships...

⁵⁹⁵ For a review of the procedure for granting licences to clubs, see, starting from 2007, the annual benchmarking report of the UEFA clubs licensing procedure.

⁵⁹⁶ RIC, 2014 edition:

[http://fr.uefa.com/MultimediaFiles/Download/Tech/uefaorg/General/01/85/85/26/1858526_DOWNLOAD.pdf].

The first step for the clubs concerned is to obtain a licence from their national association. The regulations provide a number of rules relating, for example, to the proceedings before the national association, the requirements for the infrastructure of clubs (administration, training facilities, stadiums for the UEFA club competitions, medical monitoring of the players, security, management staff, youth development programs), and legal and financial items (legal structure of clubs, financial statements, *etc.*) (Art. FFPR 4-52).

It is only afterwards that the clubs fall within the scope of supervision exercised by UEFA itself. The following Paragraphs will only deal with the rules applied in the proceedings before UEFA.

y. Requirements related to Financial Equilibrium

The regulations do not require clubs to continually make profits, but they should not accumulate losses and should have a certain balance over a period of three years (Article 59 FFPR), subject to certain expenditures that are not taken into consideration.

Article 58 Paragraph 1 FFPR defines the income and expenditures that are determining in the calculations related to the financial balance as:

“Relevant income is defined as revenue from gate receipts, broadcasting rights, sponsorship and advertising, commercial activities and other operating income, plus either profit on disposal of player registrations or income from disposal of player registrations, excess proceeds on disposal of tangible fixed assets and finance income. It does not include any non-monetary items or certain income from non-football operations.”

A special case in terms of revenues concerns the contributions of shareholders and/or other persons linked to the club, or payments made by them to improve the financial capacity of the club. Although these persons often qualify these operations as investments, it must be noted that in most cases, these contributions are a form of patronage, to the extent that they are rarely, if ever, repaid and in the case of shareholders, only rarely increase the value of their shares: this is basically to provide additional income to the clubs, mainly for the payment of transfer indemnities and salaries, in order to improve or at least maintain the competitiveness of the team. In other words, patrons do not make investments in the usual sense of the word, but their contributions allow clubs to spend more than what the income from their activities allows them to. In order to avoid that clubs rely too heavily on such contributions, which are random by definition, UEFA particularly provides that they cannot compensate for losses greater than 45 million Euros for the monitoring period of the 2013/14 and 2014/15 seasons and 30 million Euros for the monitoring period of the 2015/16, 2016/17 and 2017/18 seasons. In the future, the UEFA Executive Committee must decide on an even lower amount when the time comes (Art. 61FFPR). This effectively means that UEFA does not include in the calculations related to the financial stability of the clubs, concerned possible excess funds allocated by patrons. Clubs that currently depend heavily on private patronage, such as Chelsea FC, Paris Saint-Germain and AS Monaco, will therefore have to find other ways to balance their books.

To circumvent these rules, clubs may be tempted to dissimulate the contributions of patrons in overpriced sponsorship contracts. For example, the club and the sponsor may enter into an agreement whereby the sponsor provides the club with 200 million Euros for advertisement on the players' jerseys, or disproportionately pays for the team's publicity appearances. UEFA does not want to leave the door open to such abuses and has therefore provided, in Article 58 Paragraph 4 FFPR, that "relevant income and expenses from related parties must be adjusted to reflect the fair value of any such transactions." In other words, the UEFA only takes into account what it sees as the real economic value of the service, depending on the market. For its competent bodies, the difficulty lies in determining the "fair value" of a service. For example, one can certainly doubt that 200 million Euros represent the real value of advertising on jerseys, depending on the economic value of this service for the advertiser, but it is obviously difficult to determine whether the fair price would be 20, 30, 50, or 100 million, depending on inflation, which affects such contracts. On May 16, the value of the contract concluded by the owner of PSG, QSI (Qatar Sport Investment) with the Qatar Tourism Authority (QTA) was readjusted by the competent organ of UEFA, from 200 to 100 million Euros. While UEFA does not prohibit the owner of a club from signing a contract with a company with which it has ties - in this case, QSI and QTA depend on the State of Qatar - it reserves the right to review the value of the contract down if it considers that it is not consistent with market prices.⁵⁹⁷

Paragraph 2 of Article 58 FFPR defines the determining expenditures as:

"sales, employee benefits expenses and other operating expenses, plus either amortisation or costs of acquiring player registrations, finance costs and dividends. It does not include depreciation/impairment of tangible fixed assets, amortisation/impairment of intangible fixed assets (other than player registrations), expenditure on youth development activities, expenditure on community development activities, any other non-monetary items, finance costs directly attributable to the construction of tangible fixed assets, tax expenses or certain expenses from non-football operations."

Again, the costs are estimated by UEFA for their real economic value, as defined in Article 58 Paragraph 4 FFPR. Therefore, the bodies of the UEFA will reassess grants of patrons of benefits at a much lower rate than their real value, such as the patron selling the club jerseys at the price of one Euro per item, and the club making big profits in reselling these jerseys to individuals.

In case of deficient overall result regarding the financial balance - revenues taken into considerations, minus related expenses - for the monitoring period, the licensee can demonstrate that the overall deficit is reduced by any surplus resulting from the sum of the results of the financial equilibrium of the previous two seasons (Art. 60 FFPR). Nonetheless, a difference of 5 million Euros is tolerated without the club violating the requirement for financial stability (Art. 61 FFPR). If the difference exceeds this amount, measures - in particular disciplinary measures - can be taken by the competent bodies.

⁵⁹⁷ On the regulation agreements concluded in May and June 2014 with nine clubs, see [<http://fr.uefa.org/protecting-the-game/club-licensing-and-financial-fair-play/news/newsid=2106919.html>] also, for individual agreements, [<http://www.uefa.org/disciplinary/club-financial-controlling-body/cases/index.html>].

Based on the above, it is perfectly possible for a club to sustain losses while meeting the regulatory criteria. However, these losses must be due to infrastructure expenditures, development of the youth sector, or other particular reasons. This is why the new rules do not require clubs to have balanced accounts.

δ. Absence of Payment Arrears

To meet the requirements of financial fair play, a club must not, at certain key dates, have payment arrears to certain types of creditors.

Articles 65 and 66 FFPR provide that the licensee must prove that on 30 June of the year in which the UEFA clubs competitions begin, it has no payment arrears to football clubs as a result of transfer activities that have taken place up to that date, to its staff (professional players and administrative, technical, medical and security staff; see Article 50 Paragraph 3 FFPR), or to social or fiscal administrations. A grace period is, however, provided until 30 September (Art. 65 Paragraph 8 and Art. 66 Paragraph 6 FFPR).

Some struggling clubs try to challenge arrears, in principle or on their amount, or even concerning their due date. In this regard, UEFA accepts not taking the corresponding amounts into consideration if the club proves it has obtained an extension of the deadline for payment or has taken adequate steps to pay its debt, making it likely that the debt may not be due. Mere inaction toward a creditor is not enough, nor are purely dilatory tactics.

The implementation of enhanced provisions on late payments has had a deterrent effect, in that the arrears of clubs, recognised by UEFA, declined to 27.1 million Euros on 30 June 2012 (47% lower than 30 June 2011) and even 12.8 million Euros on 30 September 2012 (41% less than 30 September 2011).

ε. Prospective Financial Information

Article 64 FFPR provides that clubs must prepare and submit to UEFA prospective financial information, according to requirements that depend on the compliance of their situation with some indicators.

This information should include a budgeted profit and loss account, a budgeted cash flow statement, a budgeted balance sheet (in these three cases: with comparative annual figures), explanatory notes, including realistic assumptions, risks, and a comparison of the budget to actual figures, as well as a compliance plan including the calculations regarding the financial balance for the next period.

ζ. Disciplinary Sanctions

Disciplinary sanctions may be imposed on clubs that do not meet the criteria of financial fair play.

Disciplinary measures are provided in Article 29 RIC and range from warnings to disqualification from competitions in progress and/or exclusion from future competitions, and may also include fines, deduction of points, prohibition on registering new players in UEFA competitions, restriction on the number of players that a club may register for participation in UEFA competitions, and withholding revenues earned from a UEFA competition. These disciplinary measures may be combined (Article 29 Paragraph 3 RIC). A suspension may be imposed in addition to these sanctions (Article 30 RIC).⁵⁹⁸

η. Competent Bodies and Procedure

The cases are entrusted to the UEFA Club Financial Control Body (CFCB) (Articles 4-10 RIC). It is divided into an Investigatory Chamber whose mission is to examine the documents produced, take evidence, and decide on the next steps of the procedure (Articles 12-18 RIC) and an Adjudicatory Chamber which, after a procedure that particularly includes a hearing, decides, if applicable, the disciplinary action to be applied (Articles 19-34 RIC).

The reasoned decisions of the Adjudicatory Chamber are published five days after their communication to the defendant, who may, however, request that a decision be amended before publication so as to protect confidential information and personal data (Article 33 Paragraphs 2 and 3 RIC).

These decisions may not be subject to internal appeal to UEFA, but may be appealed before the Court of Arbitration for Sport (Article 34 RIC).

θ. Final Remarks⁵⁹⁹

With the rules that entered into force on 1 June 2012, UEFA intends to meet the challenge raised by the increasing costs of clubs and abysmal losses registered by them and ensure the continuity and regularity of its competitions. The practical application of these rules causes difficult problems, particularly with regard to the assessment of the fair value of the services provided to persons close to the club in exchange for substantial financial contributions. To date, the penalties imposed by the Adjudicatory Chamber of the CFCB were against relatively modest clubs, mainly from Central and Eastern Europe. Certainly, it is in this region where the financial situation of the clubs is probably the most difficult, because of local economic circumstances, but certain figures concerning the finances of the most prestigious clubs suggest that these could or should also ultimately find it hard to meet the criteria of financial fair play.

⁵⁹⁸ For examples of sanctions, see in particular: [<http://fr.uefa.org/mediaservices/mediareleases/newsid=1954550.htm>], as well as the sanctions imposed late 2013: [<http://fr.uefa.org/mediaservices/mediareleases/newsid=2039924.html>].

⁵⁹⁹ See for a recent review: C. DURAND, N. DERMIT, "La régulation du sport professionnel en Europe : le fair play financier de l'UEFA, annonciateur d'une révolution culturelle?", *International Review on Sport and Violence*, No. 7, 2013, pp. 74-89 et B. DRUT, "Les règles du fair play financier dans l'UEFA : quelles conséquences pour le football européen?", *International Review on Sport and Violence*, No. 7, 2013, pp. 89-96.

The financial fair play rules allow avoiding that clubs postpone the payment of the salaries of their players and their management for too long, which helps prevent a major risk of manipulation of sports competitions. The severe penalties that were provided - which are sometimes also applied by the CFCB - should deter clubs from leaving their players and coaches without any income. However, it must be noted that UEFA rules only apply to clubs qualified for its events, which are almost always first division clubs and also clubs that are successful in their respective championships, whereas currently, the manipulation of competitions often affects teams from lower divisions or relatively weak teams (with, of course, notable exceptions). These teams are not monitored by the UEFA and the licensing system established by national associations is not always the same as the one established by the continental federation. Although, for example, the Swiss Football League applies the same rules as UEFA to its professional clubs, and the English FA has implemented a very similar system, this is not the case, for example, in France.⁶⁰⁰ Moreover, salary arrears are continuously monitored, according to the system of UEFA, but only until 31 March of each year with respect to licensing by national associations and until 30 June and 30 September for the oversight of UEFA itself, leaving the opportunity for clubs to defer the payment of salaries for several months, without incurring federative penalties.

A solution to these problems could be found in Article 8 of the Swiss Football League licensing regulations. Under these provisions, applicable to all professional clubs, these clubs must report to the league, each month, the payment of salaries as well as the corresponding social security contributions and taxes. In case of late payments, clubs must explain the reasons. Each licensee also has the obligation to immediately notify the licensing manager of the league, as soon as the situation has seriously deteriorated since obtaining the license, in such a way that its existence or competition are in danger. The licensing manager has the power to demand, at any time, financial information from the clubs. There are penalties for clubs that do not meet their obligations or that show inexplicable delays in payments. The extension of a system of this kind to all clubs in professional leagues would be likely to promote a regular payment of wages, with a positive impact on the integrity of competitions.

b. Adaptation of the Disciplinary Regulations

Combining national federations from 54 countries and territories, UEFA is responsible for the governance of European football.

For several years, it has made combating the manipulation of competitions one of its top priorities. Various measures have been taken to this effect.

The UEFA Disciplinary Regulations⁶⁰¹ was adapted several times to meet current needs. In its current version, Article 12 relating to the integrity of matches and competitions and match-fixing provides as follows:

⁶⁰⁰ Which the UEFA president publicly regretted, on 29 January 2014: [<http://www.slate.fr/sports/82861/platini-tacle-thiriez-fair-play-financier>].

⁶⁰¹ [http://fr.uefa.org/MultimediaFiles/Download/Tech/uefaorg/General/01/95/84/22/1958422_DOWNLOAD.pdf].

"1. All persons bound by UEFA's rules and regulations must refrain from any behaviour that damages or could damage the integrity of matches and competitions and must cooperate fully with UEFA at all times in its efforts to combat such behaviour

2. The integrity of matches and competitions is violated, for example, by anyone:

a) who acts in a manner that is likely to exert an unlawful or undue influence on the course and/or result of a match or competition with a view to gaining an advantage for himself or a third party;

b) who participates directly or indirectly in betting or similar activities relating to competition matches or who has a direct or indirect financial interest in such activities;

c) who uses or provides others with information which is not publicly available, which is obtained through his position in football, and which damages or could damage the integrity of a match or competition;;

d) who does not immediately and voluntarily inform UEFA if approached in connection with activities aimed at influencing in an unlawful or undue manner the course and/or result of a match or competition;

e) who does not immediately and voluntarily report to UEFA any behaviour he is aware of that may fall within the scope of this article."

Violations of this provision are punishable by disciplinary action, up to a lifetime ban from performing any football-linked activity against an individual, or exclusion from competitions in progress and/or future competitions against the offending clubs (Art. 6 RD). They are not subject to statutes of limitation and may therefore be prosecuted without time limitations (Art. 10 RD). In the procedural rules, it is particularly provided that persons whose testimony would be likely to put them or their close entourage in danger may testify anonymously, subject certain formalities (Art. 40 RD).

The decision to initiate proceedings is taken by the UEFA administration, *ex officio* or upon request, including requests from disciplinary inspectors, who constitute an independent body (Art. 48 RD). Once the investigation is complete, the file is submitted to the UEFA Control and Disciplinary Body (Art. 48 *et seq.* RD), whose decisions can be appealed before the Appellate Body (Art. 53 *et seq.* RD), and again, if necessary, to the Court of Arbitration for Sport (Art. 58 Paragraph 1 RD, 62 and 63 of the UEFA Statutes).

UEFA established, in 2011, a network of integrity officers for each national association. These persons are in charge of relations with UEFA, but also, in their respective countries and territories, contacts with the criminal and disciplinary authorities, preventive action, *etc.*

Concerning the measures taken for the detection and prosecution of cases of manipulation, it is worth mentioning that UEFA entered into a contract with the Swiss company SportRadar, for the monitoring of betting activities on all competitions organised by UEFA, as well as meetings of the first and second divisions and the national cups of the 54 member federations (some of them have entered into complementary contracts with the same company in order to also cover lower division matches). The contract was renegotiated in 2011. Agreements have been signed with some betting operators who undertook to provide, upon request, the data of customers who bet significant amounts on suspicious matches, in order for the data to be transmitted, if necessary, to the relevant criminal and disciplinary authorities. A hotline also allows any person to provide anonymous information to UEFA, through an intermediary ensuring the confidentiality of data, on cases of fraud, by phone or via email; a report form is available on a dedicated website.⁶⁰² UEFA also pursues a policy of engagement with international bodies responsible for combating corruption (Interpol, Europol, and Eurojust).

Specifically, the UEFA disciplinary bodies regularly punish the perpetrators of manipulations, the most recent example being the life ban imposed on 14 February 2014 on a Moldovan official found guilty of attempting to manipulate a European Women's Under-17 league match.⁶⁰³

2. South American Football Confederation (CONMEBOL)

Combining the national federations of 10 countries in South America, CONMEBOL is one of the six international confederations of football worldwide (AFC in Asia, UEFA in Europe, CAF in Africa, OFC in Oceania, and CONCACAF in North America, Central America and the Caribbean).

The Statutes of CONMEBOL were amended in February 2012 to allow the creation of two disciplinary bodies - a Discipline Tribunal and Court of Appeals - thus changing the organisational structure of the Confederation (Article 61 of the Statutes). These bodies are competent to sanction national associations, clubs, officials,⁶⁰⁴ match officials,⁶⁰⁵ players, players' agents, and the organisers of matches in case of breach of the Statutes, the rules of play, regulations, decisions, orders, or instructions adopted by CONMEBOL or FIFA (Article 58).

For this purpose, the disciplinary bodies must implement the provisions of the Disciplinary Regulations of CONMEBOL, adopted on 20 December 2012.

According to Article 5 of the Disciplinary Regulations (hereafter the Regulations), the aforementioned individuals and entities must act in accordance with the principles of loyalty, integrity, and fair play. Are considered violations of those principles, among other behaviours:

⁶⁰² [<https://uefa.integrityline.org/>].

⁶⁰³ [<http://fr.uefa.org/disciplinary/news/newsid=2055171.html>].

⁶⁰⁴ Any person carrying out a football activity (executive, administrative, medical, sporting, or any other activity) within an association or club, except the players.

⁶⁰⁵ All referees acting in a match, the match commissioner, the referee inspector, the security officer, and any other person appointed by clubs, associations, CONMEBOL, or FIFA and having functions relating to the game.

- active or passive participation or attempt of participation in bribes and any other acts of corruption (Paragraph 2 a);
- influencing or attempting to influence the course and/or outcome of a game through acts constituting a violation of the statutory objectives of CONMEBOL, with intent to obtain an unlawful benefit for oneself or for a third party (Paragraph 2 k);
- direct or indirect participation in betting or any other form of gambling related to competitions organised by CONMEBOL, or having a direct or indirect financial interest in such activities (Paragraph 2 m).

Article 7 of the Regulations, relating to limitation periods of the offences, establishes a time limit of twenty years in cases of corruption. The Regulations do not provide a specific limitation period for offences relating to betting. The general time limit of 5 years, applicable to all offences for which a specific time limit was not set, is thus applicable to this type of offence.

The authority to initiate disciplinary proceedings belongs to a disciplinary unit within the Executive Committee of the Confederation. This unit transmits the necessary information to the Disciplinary Tribunal and is also responsible for the execution of the decisions of the disciplinary bodies (Article 71 of the Disciplinary Regulations).

The decisions confirmed by the CONMEBOL Appeals Chamber can be appealed before the Court of Arbitration for Sport (CAS) (Article 127 of the Disciplinary Regulations - Article 63 of the Statutes).

This normative reform, aiming to endow the CONMEBOL with the statutory means to punish acts of corruption, was also accompanied by the deployment of more specific mechanisms of prevention. Thus, in November 2013, South America hosted a seminar on sport integrity organised by FIFA and Interpol in Colombia. This seminar, dedicated to the problem of manipulation of football matches, brought together representatives of football clubs, police authorities, and the regulator of gambling activities in this country.⁶⁰⁶

3. Confederation of North, Central American and Caribbean Association (CONCACAF)

CONCACAF is the confederation responsible for the governance of football in the region of North America, Central America and the Caribbean. Football federations of Guyana, Suriname and French Guiana are also part of CONCACAF despite the geographical localisation of these territories in South America.

⁶⁰⁶ See [<http://www.conmebol.com/en/content/colombia-fifa-exposes-damage-can-result-illegal-betting>].

Of the 40 Member States within the Confederation, French Guiana, Guadeloupe, Martinique, and Saint-Martin have the status of associate members who participate in competitions organised by CONCACAF but not those organised by FIFA.

In 2011, Jack Warner, president of CONCACAF since 1990 and member of the executive committee of FIFA since 1983, was suspended by the Ethics Committee of FIFA. After several months of suspension, Mr Warner resigned from both FIFA and CONCACAF amid a corruption scandal undermining many of the most important leaders of world football.⁶⁰⁷

Jeffrey Webb⁶⁰⁸ and Enrique Sanz de Santamaría, respectively elected in 2012 as the new President and the new Secretary General of CONCACAF, have been actively engaged in combating corruption within the Confederation. As a result of this involvement, in June of the same year, the Executive Committee decided to set up an Ethics Committee, an Integrity Committee, as well as an Audit and Compliance Committee. This last committee was tasked with conducting a comprehensive audit of the finances of CONCACAF.

For the same purpose, CONCACAF strengthened its relationship with Interpol. The Confederation hosted two seminars organised by Interpol and FIFA with the theme of integrity in sport. The first, organised for Mexico and the Central American countries, was held in Guatemala in August 2012; the second, held in New York in January 2013 for the United States of America and Canada, entitled “Tackling Match Fixing and Corruption in Soccer”, welcomed the participation of representatives of FIFA’s Early Warning System. A third seminar was organised for the Caribbean States in Panama in April 2013.

During a visit to Interpol headquarters in February 2013, the Secretary of the CONCACAF asserted once again his goal to combat corruption by relying both on preventive measures and on the investigation and prosecution of potential cases of manipulation of matches in the region. In this context, Mr Sanz met with Interpol Secretary General to discuss the possibility of closer cooperation between the two organisations in the fight against the manipulation of matches and other threats to sport. Furthermore, regarding preventive measures, the Confederation implemented a series of trainings offered to various actors in the field of football.

At the beginning of 2013, CONCACAF announced that it was preparing a set of reforms to harmonise the Confederation's normative framework with that of the FIFA. In fact, the Statutes of CONCACAF, whose current version dates back to 2006, did not include any provisions explicitly prohibiting corrupt practices. The Confederation has therefore planned to fully address the issues linked to good governance, audit, and the reform of the Statutes at the Extraordinary Congress which was held in Panama in late April 2013.

⁶⁰⁷ See [<http://www.theguardian.com/football/2011/jun/20/fifa-jack-warner-resigns>].

⁶⁰⁸ Jeffrey Webb is also the Deputy Chairman of the Internal Audit Committee of FIFA and is part of the Transparency Committee of the same organisation.

This event was an opportunity for the Ethics Committee, in particular, to present to the Executive Committee of the CONCACAF the final report of the investigation into allegations of fraud and corruption concerning Jack Warner and Chuck Blazer. Having found multiple violations of the standards of FIFA and CONCACAF,⁶⁰⁹ as well as laws in force in the United States,⁶¹⁰⁶¹¹ the report also highlighted the viewpoint of the CONCACAF on the application of standards allowing the punishment of acts of corruption committed by members of the confederation.

As the Ethics Committee writes about the case of Warner and Blazer:

"Since 2006, the Statutes of CONCACAF explicitly mentioned among the objectives of the organisation, "To ensure that the bodies and Officials of CONCACAF and its Members observe the Statutes, regulations, directives, decisions and Code of Ethics of FIFA in their activities." (CONCACAF Statutes (2006), Art. 2(7)). Jack Warner and Chuck Blazer were both subject to the provisions of the Code of Ethics of FIFA, both as leaders of CONCACAF and as long-term members of the Executive Committee of FIFA."

Thus, if one is to follow the reasoning of the Ethics Committee, it could be considered that even if the Statutes of CONCACAF contain no explicit reference to corruption in connection with betting, a reference to FIFA standards on this subject is always possible, and particularly to its Code of Ethics. This reference might also be justified by the application of Article 7 of the Statutes of CONCACAF which underscores the obligation of members of the Confederation⁶¹² to respect the statutes, regulations, and any other standard adopted by CONCACAF or FIFA.

This might explain why,⁶¹³ despite the intention initially displayed by CONCACAF, no new standards were adopted during 2013 in order to bring into line the Confederation's normative framework with that of the FIFA concerning corruption in sport.

Unlike the normative framework, changes have occurred within the governing bodies of CONCACAF. Laila Mintas was thus appointed on 18 October 2013 as Director of Sport Integrity of CONCACAF, and took office on 15 November. She is in charge of the creation and implementation of systems and processes to prevent, detect, investigate, and punish the manipulation of sports competitions. Ms Mintas is a specialist in this area, best known for her role as a former Head of Legal and International Development for FIFA's Early Warning System.

⁶⁰⁹ Investigative report presented by the Ethics Committee to the Executive Committee of CONCACAF 18 April 2013, pp. 100-115; pp. 116-122.

⁶¹⁰ Investigative report presented by the Ethics Committee to the Executive Committee of CONCACAF 18 April 2013, pp. 116-117.

⁶¹¹ In the case of Jack Warner, having renounced all ties with FIFA and CONCACAF prevented the imposition of disciplinary sanctions. Because although the Ethics Code allows authorities to continue the disciplinary proceedings, once the suspect is no longer in office (Article 56 of the FIFA Ethics Code), the application of disciplinary sanctions remains difficult in practice. In the case of Blazer, still a member of the Executive Council of FIFA, an initial 90-day suspension was ordered by FIFA in May 2013. Currently, the FIFA investigation against him remains paralysed and no sanctions have been imposed by CONCACAF.

⁶¹² According to Article 1 of the Statutes, members are national associations belonging to the confederation.

⁶¹³ It would seem difficult that this interpretation could constitute the basis for applying the Code of Ethics to players of the CONCACAF competitions. However, it is possible that the standards of the national federations to which they belong will fill this gap.

Under her management, CONCACAF has implemented a range of measures to protect integrity in its competitions. These measures particularly include the distribution of an Integrity Declaration that must be signed by the players and officials participating in the Confederation's competitions and distribution of explanatory documents about the dangers associated with the manipulation of matches, the procedure to expose potential manipulations, and the way to react to the propositions of the manipulators.⁶¹⁴

These measures were welcomed by members of CONCACAF. Among them, the Caribbean Football Union (CFU) has announced the application of the same measures in the competitions it organises, starting with the CFU Cup that started in March 2014.⁶¹⁵

C. Recommendations

All the elements gathered and analysed as part of this research allow us to give a number of recommendations in matters of governance to protect sport integrity. Some disciplines have already clearly embarked on the path of reform, and it is important to salute their courage. Others have yet to decide to "start their revolution", which ultimately means emerging from a schizophrenic attitude, with the intent of inspiring on the one hand, and tracking down the faults in spectator sports on the other hand. The future of high-level sport as we know it seems to be at this price.

The seven recommendations below take into account the overall research, aim at anticipating the risks presented above, and suggest going beyond what has been done here and there.

Their goal is to consolidate the prerogatives of the sporting movement by granting it more responsibilities, while giving it the legal means to fulfil them. Moreover, when the public policy and the sovereignty of a State may be questioned because of criminal activities linked to sport, these recommendations are intended to provide sports organisations with the ability to rely effectively on the operational support of States.⁶¹⁶

⁶¹⁴ These measures were implemented for the first time at the Under-20 Women's World Cup, conducted in January 2014 in the Cayman Islands.

⁶¹⁵ See [<http://www.cfufotball.org/index.php/latest-news/9366-cfu-to-adopt-integrity-measures-for-all-competitions>].

⁶¹⁶ See Part 2, Title 3, Chapter 3, "The Division of Responsibilities between Sports Institutions and Public Authorities in the Face of the Manipulation of Sports Competitions".

Recommendation 1: ensuring the sport integrity of leaders (regardless of the legal form of the structure: non-profit association or commercial company or equivalent).

Targets: States/international sports organisation

Tools:

- providing very clear measures of ineligibility as a result of certain ethical breaches (to be determined and adjusted according to the purpose of the organisation);
- extending the possibility of an additional penalty⁶¹⁷ for leaders of non-profit organisations, and even more so if they have a mission of general interest;
- extending the measures explained in the draft 4th European *Anti-Money Laundering Directive*⁶¹⁸ to professional sports (in order to know the identity of the real owners, whether companies or individuals, of sporting structures managing professional activities, whether non-profit or commercial companies);
- establishing, like UEFA or the Swiss Football League for example, rules on conflicts of interest for the leaders of sporting structures

For example:

- prohibition to have direct or indirect control of several sports entities participating in the same championship;
 - prohibition of a sports official to manage, directly or indirectly, an operator that organises bets for the competitions concerned
 - prohibition of a sports official or a member of his family to practice commercial activities in connection with the subject of the mandate.
- Including, in the statutes of international and national sports organisations, the obligation for candidates for a position in governing bodies, to provide an extract of their criminal record to the bodies competent concerning the organisation of elections.

⁶¹⁷ For certain criminal offenses under common law, the courts can provide the extension of the sentence to the prohibition to lead, for example, a commercial company

⁶¹⁸ See [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0045:FIN:EN:PDF>].

Recommendation 2: subjecting sports organisations of a certain size to the same rules (legal structure, management control and external audit, transparency, money laundering, etc.) as the commercial companies located in their jurisdiction.

Target: States

Tools: incorporate into national legislation obligations for sports organisations exceeding a certain number of criteria (e.g. payroll, turnover, number of employees).

Recommendation 3: limiting the financial risks for sports organisations that remunerate athletes (e.g. professional football clubs, organisers of tennis tournaments).

Target: national and international sports organisations.

Tools:

- establishing a monitoring system for the management of the organisations that remunerate athletes on the international and national levels (with real sanctions - sports and financial - for breaches). Including the following elements, from the financial fair play rules adopted by UEFA in 2009:⁶¹⁹
 - improving profit and loss accounts of professional organisations;
 - gradual deleveraging;
 - requirement of financial stability;
 - assurances on payment deadlines throughout the season *vis-à-vis* athletes, but also other third parties - football clubs in cases of transfer of players, for example (this is a key element so that athletes are paid in a timely manner);
 - submission of a multi-annual budget (taking into account future obligations of the organisation).

- exploring the possibility, on a case by case basis, for each sport and each country, to regulate economic competition between the clubs, in order to maximise the benefits of competition, but also to avoid the domination of a small number of private individuals over a championship. The contribution of American professional leagues in this respect may prove advantageous. More generally, the following elements, for instance, deserve to be analysed:
 - promoting solidarity mechanisms between clubs (e.g. collective management of certain rights, particularly mutualisation of audio visual ownership rights);

⁶¹⁹ [<http://fr.uefa.org/footballfirst/protectingthegame/financialfairplay/index.html>]. See also *supra* Part 1, Title 1, Chapter 1, Section 2, § 4; Part 2, Title 2, Chapter 1, Section 2, § 1, G.

- limiting turnover or annual payrolls of the clubs in a given championship (or narrowing the gap between the most and least wealthy clubs).

Recommendation 4: adapting the functioning of governing bodies of sports federations and leagues to the issue of sport integrity.

Target: national and international sports organisations.

Tools: promoting the establishment of one governing body (executive bureau, managing committee, board of directors) with the following "ideal" characteristics (stemming from the doctrine expressed by Carver,⁶²⁰ an American academic who worked in 1997 and 2001 on the principles and methods to improve the governance of non-profit organisations):

- small (for example: 8 to 12 people), but including no less than 5 persons;
- where members are mostly independent (*i.e.* with no direct interest, for example as club president, in certain decisions);
- where at least one member has a recognised expertise (philosophical or operational) in matters of ethics;
- where at least one member has a recognised (philosophical or operational) expertise in matters of combating crime and/or the manipulation of matches and/or sports betting;
- where at least one member has a recognised expertise in matters of doping;
- that meets regularly (*e.g.* once a month);
- where decisions are taken collectively, without excessive power given to the president;
- that has determined clear rules on delegation between elected and operational employees;
- that has validated a sporting and financial strategy, explicitly including the "integrity" dimension, as part of a multiannual vision, a predefined action assessment process.

Recommendation 5: for every sports organisation, establishing a map of risks - primarily integrity risks - within the framework of a long-term vision and implementing procedures for managing incidents.

Target: national and international sports organisations

Tools:

- identifying the persons in charge (*e.g.*: an elected leader, who would also chair the Ethics Commission, and an integrity officer, giving them a clear mission and appropriate resources (especially financial) according to the importance of the subject;

⁶²⁰ L. CARVER, (2001), "Carver's Policy Governance Model in Nonprofit Organizations", *The Canadian Journal Governance – Revue internationale*, Vol. 2. nos. 1, pp. 30-48, [www.carvergovernance.com].

- communicating about risks and incidents in an open and transparent manner with all internal and external stakeholders. This implies having previously created a network adapted to the mission, with persons clearly identified with governments and international sports authorities, who could provide expertise and support in times of crisis;
- determining in advance a process of crisis management (creation of a small cell, definition of adequate 24/7 means of communication, pre-assignments of tasks, relations with external stakeholders: government, police, justice, WADA, *etc.*, information exchange mechanism when dealing with both disciplinary and criminal cases, *etc.*);
- appointing a spokesperson in charge of speaking in a transparent and responsive manner on behalf of the organisation in the event of a crisis (*e.g.* cases of doping, match fixing).

Recommendation 6: registering all notions relating to integrity in the statutes and regulations of national and international sports federations and leagues.

Target: national and international sports organisations

Tools:

- include, in particular, the following elements:
 - primacy of integrity but also of the public interest in the mission of the organisation, taking into account all the categories of the public: amateur members (importance of the development of sporting practice for the biggest number and respect for the health of members), professional athletes, fans, *etc.*;
 - rules on conflicts of interest: prohibition of betting on one's own competitions or sport, prohibition of disclosing inside information, obligation to report an approach or event involving sport integrity, prohibition of holding shares in a sports betting operator, determination of rules concerning the sponsoring of sports organisations (federations, clubs) by betting operators, *etc.*;
 - deterrent sanctions in case of breach of sport integrity - and primarily in cases of active or passive corruption or doping;
 - specific rules linked to managing access to sporting events - including limiting the risks associated with sports betting -, to refereeing - designation and surveillance -, *etc.* ;
 - Ethical elements linked to the designation of countries or cities in charge of organising major events.

Recommendation 7: in order to reduce the risk of manipulation of competitions, establishing a set of tools appropriate to the level of risk faced by the sports organisation.

Target: national and international sports organisations

Recommended minimal range of tools:

As noted above, football and aikido are not exposed to the same risks and do not have the same needs in the fight against the manipulation of competitions, and even more so because there is not competition in Aikido. The following table is intended to determine the needs according to the level of risk. This may vary based on three criteria: the sports discipline (tennis is currently more exposed than archery), country (some Asian countries are particularly affected by the scourge) and time (organised crime may have to modify its behaviour and targets).

Tools	LEVEL OF RISK			
	Highest Level of Risk	Significant Level of Risk	Moderate Level of Risk	Low-level of Risk
Elected leader expert in “ethics/integrity”	Necessary	Desirable	Low Priority	Low Priority
Operational manager in charge of integrity	Necessary	Necessary	Desirable	Low Priority
Integrity Unit	Necessary	Desirable (at least one person)	Low Priority	Low Priority
“Integrity” awareness - managers	Necessary	Necessary	Desirable	Desirable
“Integrity” awareness – athletes and referees	Necessary	Necessary	Desirable	Desirable (education)
Acquisition of skills in matters of sports betting	Necessary	Desirable	Desirable	Low Priority
Acquisition of knowledge in matters of organised crime	Necessary	Desirable	Low Priority	Low Priority
Prohibition of betting for stakeholders	Necessary	Necessary	Necessary	Desirable
Prohibition of disclosing sensitive information	Necessary	Necessary	Desirable	Desirable
Obligation to report any approach/corruption	Necessary	Necessary	Necessary	Necessary
Severe sanction in case of manipulation	Necessary	Necessary	Necessary	Necessary

Policy of designation and surveillance of referees	Necessary	Desirable	Desirable	Low Priority
Control of access to competitions and means of communication	Necessary	Desirable	Low Priority	Low Priority
Cooperation with the sports betting industry	Necessary	Desirable	Low Priority	Low Priority
Monitoring of the sports betting market	Desirable	Desirable (only major events)	Low Priority	Low Priority
Internal unit of information and investigation	Necessary	Low Priority	Low Priority	Low Priority
Anonymous and confidential feedback	Desirable	Desirable	Low Priority	Low Priority

Conclusion of Section 3

Undoubtedly, some progress has been made towards better governance by sports institutions. However, they have still to be measured using a field survey and recommendations made for improvements. This is what has been undertaken as part of this report.

Despite this general tendency towards improvement, the result is a considerable disparity between the federations, and a lack of correlation between offences against integrity and reactions to these offences: some federations do not wait to be victims before reacting, while others continue to deny reality. However, examples of good practice exist, as well as some basic principles to follow, in order to establish the foundation for good governance.

The seven recommendations proposed above, which are varyingly easy to implement, are the foundation on which any efforts to improve governance should rely.

Conclusion of Chapter 1

The historical perspective of the understanding by sports institutions, of the issues related to the preservation of the integrity of competitions, and that of building a sports law and order, which carried out the transformation of the values promoted by the sports movement, into principles or rules of law, as well as highlighting the effects of better governance on the progress in the fight against manipulation of competitions, painted a varied landscape and enabled a balance which shows, primarily, that sports institutions cannot face the challenge of the integrity of sport alone. Mobilising public authorities seems indispensable today, and for some, the first driver on which to act.

Chapter 2 - Public Authorities in the Face of the Challenge of Manipulations of Sports Competitions

The issue of manipulating sports competitions is currently unquestionably an international public interest issue on the agenda of international regional or universal organisations or agencies (**Section 1**) such as UNESCO - through the MINEPS in particular -, UNODC, which cooperates with the International Olympic Committee and even Interpol, but also of regional organisations, be it the European Union, concerned as much by the manipulation of sports competitions as by the regulation of sports bets, or the Council of Europe, which was behind the idea and process of developing a Convention on the manipulation of sports competitions, open to European and non-European States.

Sustained by the advocacy of NGOs and legitimised by the continuing revelation of new cases of manipulation of sports competitions, the interest in the challenge to the sport integrity and public order of which States are the guarantors is not weakening. Its chief merit could be to persuade States that, on the one hand, the manipulation of sports competitions cannot be prevented and sanctioned only by sports institutions, and on the other hand, the need to combat illegal betting is not the prerogative of States which have chosen to allow betting, but is as much of a shared responsibility as is the fight against money laundering.

However, international engagement hardly went, until recently, beyond the adoption of statements of principle or occasional operations that have drawn attention either to petty practices that may, however, become commonplace in sport and ruin its social virtues (see the case of French Handball), or practices that would fall under transnational organised crime (as in the *Calcioscommesse* affair). Even if the Convention of the Council of Europe on the manipulation of sports competitions adopted on 9 July 2014 represents a significant progress, the technical and sometimes multipartite instruments of a coordinated fight against the manipulation of sports competitions have yet to be adopted then completed with operational tools.

This international agenda has already had an impact on national agendas: several States have initiated the process of revising their legal devices in order to better regulate the market of sports betting, better combat illegal betting, and/or better combat the manipulation of sports competitions (**Section 2**).

While it is important to have no illusions about the outcome of some debates that have become as ritual as the manipulation of sports competitions itself, advancing the tools put in place by leading States in the fight against these abuses deserves the utmost attention, to enlighten the tools of the States that are less informed or less endowed, and are only beginning to become aware of the threat of this form of corruption in sport.

In any event, given the transnational character of sports competitions, sports betting and the manipulation of sports competitions, even the best national system will not be sufficient if it is not properly articulated with the devices of sports institutions and the mechanisms of international cooperation.

Section 1 - The Universal Awareness of the Stakes of the Manipulation of Sports Competitions

The universal awareness of the stakes of manipulation of sports competitions begins with the establishment of the manipulation of sports competitions as a universal public interest (§ 1). This issue is then broken down into actions judged by public authorities as priority actions depending on the severity of the stakes which they are intended to face (§ 2).

§ 1. Establishment of the Manipulation of Sports Competitions as an Issue of Universal Public Interest

The Council of Europe Convention on the manipulation of sports competitions (B) is to date the most successful attempt at making the manipulation of sports competitions an issue of universal public interest, going beyond the sectorial contributions of other international organisations (A).

A. Sectorial Contributions (UN, UNESCO, UNODC, UNICRI, World Bank, FATF, Interpol)

1. In the United Nations System

Sport is regularly present in the agenda of the United Nations,⁶²¹ and especially the General Assembly at the approach of the Olympics. However, it is in the framework of a special initiative, the Global Compact, that the most innovative and most accurate suggestions in terms of sporting integrity were made within the United Nations.

The Global Compact,⁶²² launched in 2000, has already taken a step in the direction of the fight against the manipulation of competitions through the tenth principle on the fight against corruption. Indeed, the working group on the tenth principle has established a taskforce on sports sponsorship comprising representatives of large companies (Eni, Petrobras, Coca-Cola...), non-governmental organisations active in the fight against corruption (Transparency International...), universities (Humboldt-Viadrina school of governance...), and international organisations (UNODC). This team developed in 2013 the Practical Guide for companies for Fighting Corruption in Sport Sponsorship and Sport Related Hospitality.⁶²³

⁶²¹ For an overview of the UN's initiatives in this regard, see: [<http://www.un.org/french/themes/sport/index.shtml>].

⁶²² For a description see [<https://www.unglobalcompact.org/>]; for an analysis, see H. ASCENSIO, "La France, le Pacte mondial et le rôle des entreprises", in: G. CAHIN, F. POIRAT, S. SZUREK (dir.), *La France et les organisations internationales*, Pedone, Paris, 2014, pp. 327-336 and *infra* Part 3, Title 3, Chapter 3.

⁶²³ *Fighting Corruption in Sport Sponsorship and Hospitality. A practical Guide for companies*, 2013, available on the Compact's website [www.unglobalcompact.org].

This guide is presented as an inducing rather than binding comprehensive repertoire of best practices that all companies carrying out these activities are encouraged to implement regardless of the legal and regulatory framework to which they are otherwise subject.⁶²⁴ It is based on the idea that these activities are virtuous both for the company - which finds therein the opportunity to strengthen its image, create an emotional connection with its products and services, and enter new markets - and the sporting movement - which finds therein an important source of revenue to improve performances. But these virtues are preserved only as long as these activities are not tainted by corruption *lato sensu*. Corruption may nestle into the relationship between the sponsor and the sports entity (corruption to obtain a sponsorship agreement, corruption through a sponsorship agreement or an invitation to a sporting event), but also in the sport itself, whether as part of the competition (doping, manipulation...) or of its organisation (corruption in procurement activities, allocation of competitions).⁶²⁵

The Guide is not only meant to prevent sponsoring from increasing the risk of corruption in sport. It intends to use it as leverage to combat corruption in sport in general.⁶²⁶ Indeed, an operation of sponsorship or PR tainted by either of these forms of corruption may be counter-productive. That is why the Guide calls on sponsors to be mindful of these risks when developing and implementing a sponsorship relation.⁶²⁷ Emphasis is put on the business logic: it is of the utmost importance to prevent corruption in sport from having adverse repercussions on the sponsor. But this originally commercial logic has an influence on the sporting movement. On the one hand, sponsors are encouraged to evaluate the risks of corruption related to sporting events, to impose on sports entities obligations to eliminate or mitigate these risks, possibly with provisions involving contractual penalties that may take the form of a termination of the sponsorship agreement or of financial penalties. On the other hand, the sports entities themselves are encouraged to participate in the fight against corruption by enacting rules that "will not only reduce costs and avoid potential liabilities [but also] make sport entities more attractive as a sponsorship target."⁶²⁸ This justifies the proposal, besides the Guide itself, of establishing a Code of Conduct for sports entities, whose first principle states that the entity "adopts and implements a zero-tolerance approach to corruption, unfair competition and sporting fraud, especially doping, match-fixing and age-fraud."

Such initiatives can undoubtedly contribute to the fight against the manipulation of competitions by using a market approach to lead sports organisations to the adoption of good practices in order to access sponsorship deals. It seeks to hold accountable each of the stakeholders and mobilise all the stakeholders who are likely to have an influence in this area. However, the approach is met with some reservations. First, this privatisation (from the side of the sponsor) and bilateralisation (between the sports entity and each potential sponsor) of the obligations in this area could be resented, especially by the sporting movement, which, as will be seen, is ultimately the greatest lacuna of the Taskforce, even if a first Draft Guide was subject to a wide consultation process. On the other hand, the success of this initiative depends on the structure of the sponsorship market. Indeed, the latter is specific to each sport, or even each sporting event.

⁶²⁴ *Id.*, pp. 6-7.

⁶²⁵ *Id.*, p. 11.

⁶²⁶ See also on the role of the sponsor linked to the manipulation, *supra* Part 3, Title 2, Chapter 2.

⁶²⁷ Aforementioned Guide, pp. 12 -13.

⁶²⁸ *Id.*, pp. 12-13.

The guide is not unaware of this and even considers the possibility of an imbalance in the relationship between sponsors and sports bodies in favour of the latter (like in the Football World Cup and the Olympics for example) when it calls on the former to coordinate their actions in order to influence the direction of the latter.⁶²⁹ The effective implementation of the Guide therefore depends on the goodwill of the stakeholders and their ability to influence their partners. These elements vary depending on the sports considered.

Therefore, like the Global Compact in general, the Practical Guide for companies to fight corruption linked to sports sponsorship and hospitality should be considered a useful supplementary tool, but not the only solution to the problem of combating manipulation.

Among the specialised institutions of the United Nations system, UNESCO has broadest mandate on sport in general, as evidenced by the work of MINEPS (International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport). UNESCO is already very involved in the protection of sport integrity, particularly since the adoption of the UNESCO Convention on the fight against doping.⁶³⁰ The Declaration and its appendices, adopted at the fifth MINEPS in Berlin on 30 May 2013,⁶³¹ are of a direct interest in the fight against the manipulation of sports competitions (points 23 ss.).

A follow-up process of the Declaration of MINEPS was engaged at UNESCO:

“1. By 37C/ Resolution 38, the General Assembly, at its 37th session in Novembre 2013, (i) endorsed the commitments, recommendations and appeals included in the Declaration of Berlin, (ii) invited Member States to implement these recommendations and appeals, (iii) requested the Director-General to ensure a lead role for UNESCO in the follow-up process of MINEPS V by using the Declaration of Berlin as a key reference for future activities within the framework of UNESCO’s sport and anti-doping programme, avoiding at the same time any additional financial obligations on the regular budget, and (iv) encouraged CIGEPS to support the follow-up process of the Declaration of Berlin and the monitoring of its implementation.”⁶³²

Theme III is more particularly devoted to the fight against all forms of corruption in sport:

“Theme III/ Preserving the Integrity of Sport: (9) Fight against the manipulation of sport competitions brought on by unregulated betting, organized crime and corruption; (10) Fight against doping; (11) Good governance in sport.” The need to start devoting resources for point 11 can, however, be discussed.

UNESCO has already initiated a process of confection of indices in the perspective of being able to have a global synthesis on the implementation of the goals of the MINEPS, while offering States, in a collaborative logic, legal assistance to those that need it.

⁶²⁹ *Id.*, p. 32.

⁶³⁰ See *infra* Part 3, Title 3, Chapter 3, Section 1, § 1, B.

⁶³¹ See [<http://www.unesco.org/new/fr/social-and-human-sciences/themes/physical-education-and-sport/mineps-2013/declaration/>].

⁶³² Intergovernmental Committee for Physical Education and Sport, Follow-up to the Fifth International Conference of Ministers and Senior Officials responsible for Physical Education and Sport (MINEPS V).

However, sport integrity has become an issue which concerns public order in its entirety, which justifies the mobilisation of other institutions or programmes of the United Nations. This is especially true for expert bodies in the fight against corruption and crime, UNODC and UNICRI. The mission of the first is to ensure the promotion of the UN Convention on Corruption and the UN Convention against Organised Transnational Crime. In this perspective, the UNODC initiated a wide reflection on the means to impose respect for the rules it conveys during sporting events.⁶³³ Its investment before the sporting movement is a lot bigger and does not only revolve around the issue of corruption but its long-time links with the IOC have recently been tightened in order to fight more effectively against this deviation.⁶³⁴

Fighting against the manipulation of sports competitions linked to organised crime is not foreign either to the fields of competence of UNICRI which has already developed an expertise and partnerships with States and international organisations in view of securing major sporting events that can be targets of organised crime groups.⁶³⁵

Even the World Bank is interested in major sporting events (MISE, Major International Sports Events) to the extent they can contribute to development if indeed their allocation and organisation meet strict criteria (good governance, sustainability, etc.). It concluded in February 2013, a cooperation agreement with the ICSS on the promotion of the principle of integrity in sport and reduced risk of corruption and fraud in sport., but also for organisations such as the World Bank, can contribute if their contribution and their organisation meet stringent criteria.

2. Outside the United Nations System

FATF and Interpol are also mobilised.

Interpol, whose primary mission is to promote international police cooperation, included the fight against the manipulation of sports competitions on its agenda to the extent that it is closely related to the activities of transnational criminal networks.⁶³⁶ The actions of this organisation are primarily the establishment, on the one hand, of educational and training programmes applicable to all stakeholders in the fight against the manipulation of sports competitions (athletes, referees, officials of sports organisations, officials of States tasked with fighting against criminal activities in connection with sporting events) and on the other hand, police cooperation arrangements designed to secure the holding of major sporting events.

⁶³³ See the September 2013 report *The United Nations Convention against Corruption. A Strategy for Safeguarding against Corruption in Major Public Events*.

⁶³⁴ The IOC and the UNODC have concluded in this sense a Memorandum of Agreement on 20 May 2011 (see IOC Observer Office to the United Nations, *IOC Newsletter*, July 2011). UNODC and the IOC have thus presented a common report in July 2013 *Criminalization Approaches to Combat Match-Fixing and Illegal/Irregular Betting: a Global Perspective. Comparative Study on the Applicability of Criminal Law Provisions Concerning Match-Fixing and Illegal/Irregular Betting*, whose main suggestions are examined in this report (*infra* Part 3, Title 3, Chapter 3).

⁶³⁵ Economic and Social Council, Commission on Crime Prevention and Criminal Justice, Note by the Secretary-General transmitting the report of the Board of Trustees of the United Nations Interregional Crime and Justice Research Institute, E/CN.15/2014/18, 7 March 2014.

⁶³⁶ See *infra* § 2.

Interpol's action strategy is based on establishing cooperation instruments with sports organisations⁶³⁷ or public authorities.⁶³⁸ In this second case, the establishment of operations called "SOGA" has already led to the dismantling of several criminal networks involved in Asia in operations of manipulation of major sporting events.⁶³⁹ The deployment of specialised investigators, as part of the working group on match fixing, also aims at facilitating the exchange of information and experience between police authorities and to develop common strategies of combating criminal networks involved in this type of manipulation.⁶⁴⁰

The same observations can be made *mutatis mutandis* at the regional level to the actions undertaken by Europol, in collaboration with national police forces as well as Interpol.⁶⁴¹

The involvement of the FATF in the fight against manipulation of sports competitions is currently modest, and if this involvement is confirmed, it would be destined to lead to actions of a different nature, given the essentially regulatory role of this organisation that is expressed through the recommendations it addresses to States.⁶⁴² As sports bets represent an unparalleled opportunity for money laundering, the risks related to sports have recently been on the agenda of the FATF. The latter, however, was only interested for the moment in the risks relating to football; its recent work in this area - the Money Laundering through the Football Sector report issued in July 2009 - is limited to drawing the attention of States on the seriousness of this phenomenon still largely unknown.

The involvement of these various international bodies in the fight against manipulation of sports competitions or, more broadly, in the fight against corruption in sport, attests that the goals indeed pertain to a real universal public interest. The commitment of each of these institutions, with States and sports organisations, does not however have any scope except in their respective specific area of expertise (fight against corruption, fight against transnational organised crime, fight against money laundering...). In addition, not all of them have a legislative power in this area. Some may not go beyond studies, technical assistance, recommendations, and others only have operational functions. Therefore, important as it may be, their contribution does not allow dealing with the whole issue of manipulation of sports competitions, whether or not linked to sports betting, in the same legally binding instrument.

⁶³⁷ See *infra* Part 3, Title 3, Chapter 3, Section, 2, § 3 on the common initiative with FIFA. More recently, the organisation has also concluded with CONCACAF a Memorandum of Agreement aiming at facilitating the exchange of information, resources and experiences and at coordinating educational programs for athletes, referees and officials of sports organisations (See Interpol's press release, "CONCACAF Signs Agreement with Interpol to Combat Match-fixing", 12 May 2014, [<http://www.interpol.int/en/Internet/Crime-areas/Integrity-in-Sport/Integrity-in-sport>]).

⁶³⁸ Interpol offers to train officers of law enforcement through Interpol Major Event Support Teams (IMEST). Such a team was deployed in Brazil, for example, on the occasion of the organisation of the FIFA World Cup 2014 (see Interpol's press release "INTERPOL training to help law enforcement protect integrity of 2014 FIFA World Cup", 10 June 2014).

⁶³⁹ To date, five operations of this type were carried out by public authorities, with the support of Interpol. On the most recent operation, see Interpol's press release, "Illegal Gambling Networks Across Asia Targeted in Interpol – Led Operation", 18 July 2014.

⁶⁴⁰ Information available on Interpol's website at the following address: [<http://www.interpol.int/en/Internet/Crime-areas/Integrity-in-Sport/Integrity-in-sport>].

⁶⁴¹ See for the modes of intervention the details on the website of Europol (February 2013): [<https://www.europol.europa.eu/content/results-largest-football-match-fixing-investigation-europe>].

⁶⁴² See *infra* Part 3, Title 3, Chapter 2, Section 1, § 2, B, 2.

Indeed, it seems necessary that an international agreement binding on States give a clear and workable definition of the manipulation of sports competitions, require parties to combat illegal and irregular betting and make the manipulation a criminal offence under their respective legal systems, and can serve as a basis for international judicial cooperation.

Different procedures are possible to achieve such a result. In any case, although an inter-State agreement constitutes an essential part of an international regime of combating manipulation of sports competitions, other instruments are to be associated with it.

The idea of an additional protocol (such as a convention on combating corruption) that relates specifically to the manipulation of sports competitions was considered without eventually being implemented. The disadvantage of this formula could be in its unsuitability for understanding the problem of the regulation of sports bets which is currently central as it was shown above.

It is this task that the Council of Europe took on through the Enlarged Partial Agreement on Sport.

B. The Synthetic Contribution of the Council of Europe through the Convention against the Manipulation of Sports Competitions

The Council of Europe has historically played an important role in the development of an international sports law and the orientation of public policies with regard to sports in Europe since the 1970s. Without forgetting its initiatives in regards to combating doping, it has been playing a pioneering role in combating the manipulation of sports competitions for several years, especially thanks to the establishment of the Enlarged Partial Agreement on Sport (EPAS) in 2007,⁶⁴³ whose task is to develop norms to respond to the current issues that arise in sports at the international level.⁶⁴⁴

Contrary to its customs and despite its *a priori* regional vocation, the work of the Council of Europe is a major contribution to the establishment of the manipulation of sports competitions as a matter of universal, not regional public interest. This is particularly the case of the Convention against manipulation of sports competitions, which was adopted on 9 July 2014. The aim was, since the start of the process, to allow non-European States to adhere to the Convention against the manipulation of sports competitions and go beyond the purely European perceptions and challenges, often overdetermined by political and legal issues of the European Union and its member States.

⁶⁴³ Résolution CM/RES(2007)8.

⁶⁴⁴ The EPAS welcomes members and non-members of the Council of Europe, such as Israel and Morocco. According to its Statute, indeed: "2.1 Any Member State Council of Europe or any other Contracting Party to the European Cultural Convention may join the Enlarged Partial Agreement by notice to that effect to the Secretary General of the Council Europe. 2.2 The Committee of Ministers, in its composition restricted to representatives of Member States of the Enlarged Partial Agreement, may, by the majority stipulated in Article 20.d of the Statute of the Council of Europe invite any other non-member State of the Council of Europe to join the Enlarged Partial Agreement after consultation with the non-member States already participating. A non-member state receives such an invitation shall notify the Secretary General its intention to join the EPAS".

The work of the Council of Europe is based on two observations: first, the increasing scandals of arranged competitions seriously tarnish the image of sport.⁶⁴⁵ On the other hand, international conventions in force on corruption and organised crime are insufficient to apprehend these specific behaviours. A multi-party and synthetic approach for the adoption of a binding instrument of transversal scope seems necessary.

1. A Multi-Party and Synthetic Approach

a. Progress and Completion of the Works

The first significant impetus to the development of a conventional framework concerning the fight against manipulation of sports competitions was given by the work of the 11th Council of Europe Conference of Ministers responsible for Sport, held in Athens (Greece) on 11-12 December 2008. In this context was adopted Resolution No. 1 on ethics in sport by which ministers "[a]cknowledge that there is a problem of corruption, match fixing and illegal betting in sport and invite sports organisations to investigate the situation and, where appropriate, identify the problems" and tasked EPAS with "to draw up a new draft recommendation to states on corruption, match fixing and illegal betting which could form the basis of a possible new convention on these subjects to help achieve increased integrity controls and a 'fair return' to sport for grassroots funding as regards betting."⁶⁴⁶ A first study by Transparency International and the Czech Republic for the account of the EPAS provided a measure of the problem of corruption in sport, including in particular the phenomenon of match fixing.⁶⁴⁷

These early efforts were continued and amplified during the proceedings of the 18th Council of Europe Informal Conference of Ministers responsible for Sport, held in Baku (Azerbaijan) on 22 September 2010 and resulted in the adoption of Resolution No. 1 on promotion of the integrity of sport against the manipulations of results (match-fixing).⁶⁴⁸ Within the framework of EPAS, a study on the provisions of international legal instruments establishing corruption in sport as a criminal offense clearly shows the shortcomings of these instruments and reveals the need for the adoption of a new international instrument specifically devoted to combating manipulation of sports competitions.⁶⁴⁹ The Recommendation against manipulation of sports results, adopted by the Committee of Ministers of the Council of Europe on 28 September 2011,⁶⁵⁰ serves as a milestone for the future. It sets not only the guidelines for handling the problem of match-fixing, but also invites the EPAS "to carry out a feasibility study, in co-operation with the other concerned bodies, on the basis of this recommendation, on a possible international legal instrument that covers all aspects of prevention and the combat against the manipulation of sports results."

⁶⁴⁵ Resolution 1602 (2008) of the Council of Europe's Parliamentary Assembly on the need to preserve the European sporting model.

⁶⁴⁶ For the adopted texts see CM(2009)25 add, 17 March 2009.

⁶⁴⁷ *La corruption dans le sport : une réalité*, EPAS (2008) INF10rev, 12 October 2008.

⁶⁴⁸ IM18 (2010) 7, 4 October 2010.

⁶⁴⁹ EPAS (2011) 23, 28 March 2011

⁶⁵⁰ CM/Rec(2011)10, on promotion of the integrity of sport against manipulation of results, notably match-fixing.

It is based on this feasibility study, which analyses all the aspects of the phenomenon, that a future conventional instrument will apprehend and lay down a number of basic principles, that the 12th Council of Europe Conference of Ministers responsible for Sport held on 15 March 2012 in Belgrade (Serbia), called EPAS, in coordination with other competent institutions,⁶⁵¹ "to launch the negotiation of a possible new international convention against manipulation of sports results and notably match-fixing, that could establish an appropriate framework of commitment and co-operation to fight this scourge."⁶⁵²

The Convention against manipulation of sports competitions (CETS No. 215), first international legal instrument specifically dedicated to the fight against manipulation of sports competitions, is the result of slightly more than two years of negotiations. After being forwarded to the Parliamentary Assembly of the Council of Europe for review in March 2014, it was adopted on 9 July 2014 by the Committee of Ministers and then opened for signature on 18 September 2014, in Magglingen (Switzerland) on the occasion of the 13th Council of Europe Conference of the Ministers of Sport, and signed the same day by 15 States.⁶⁵³ It will enter into force after being ratified by five States; it is open for signature by non-Member States of the Council of Europe in accordance with Article 32.

b. Principles and Difficulties of Negotiation

In order to develop norms that are accepted by common agreement by all the stakeholders, the Council of Europe's favoured option within the framework of the Enlarged Partial Agreement on Sport was to involve in the discussions government authorities, sports organisations, and betting operators and hear other stakeholders also interested by the problem of match-fixing (representatives of athletes or of the civil society).

Multistakeholders Negotiation typically has the advantage of enhancing the acceptability and effectiveness of the instrument adopted insofar as the ultimate recipients of the standards contained therein influenced their formation and have informally appropriated them under development. It increases the chances that private stakeholders, which the Convention does not address directly, adopt self-regulatory instruments, either to supplement the national implementing measures, or without waiting for them, especially in States that delay accession.

But this technique is not without disadvantages, insofar as it offers private stakeholders the opportunity to claim the recognition of the status of equal partners, which is not self-evident while they remain subject to State power, and insofar as it promotes the formation of alliances between States and some stakeholders who can give each other an unexpected power of influence on the negotiation.

⁶⁵¹ The preparatory work for the Convention also benefited from the expertise of the European Committee on Crime Problems (CDPC) and the Group of States against Corruption (GRECO).

⁶⁵² MSL12 (2012) 8, 15 March 2012, Resolution No. 1, International co-operation on promotion of the integrity of sport against the manipulation of results (match-fixing).

⁶⁵³ The first Signatory States are Armenia, Azerbaijan, Bulgaria, Denmark, Finland, Georgia, Germany, Greece, Lithuania, Montenegro, Norway, the Netherlands, the Russian Federation, Serbia and Switzerland (on 1 November 2014).

In substance, the choice was made to include, in a single instrument, the prevention of the manipulation of sports competitions and its repression, the fight against the manipulation of competitions not involving sporting bets, and a stronger regulation of sports bets when they carry a risk of manipulation for the sport, the adoption of national measures, and the national and international cooperation between States, but also with other key stakeholders.

The difficulties in reaching an agreement on the distribution of powers between the States to regulate sports bets to the extent required in the fight against the manipulation of sports competitions were undeniable. The differing views of the States on the right way of dealing with the transnational market of sports bets constituted one of the causes of these difficulties. However, a convention that only targets the repression, essentially criminal, of the manipulation of sports competitions almost missed its target: it was shown that the manipulation of sports competitions is thriving, in part, due to the opacity of the transnational market of sports bets.

Furthermore, the definition of the manipulation of sports competitions and the inclusion in the Draft Convention of a clear obligation to criminalise it under national laws were not easily achieved.

Overall, however, the Convention lays the groundwork for a comprehensive and coordinated policy against the manipulation of sports competitions that mobilises all the means available to the States - in addition to those that only belong to sports institutions. The commitment made by the States to establish national platforms for the exchange and easy communication of information is emblematic of the changes that should be introduced in institutions and practices in order for the fight against manipulation of sports competitions to be effective.

2. The Contribution of the Sorbonne-ICSS Research Programme on Ethics and Sport Security

The Sorbonne-ICSS Research Programme was officially invited by the Council of Europe to follow the preparatory work of the Convention and to submit to the drafting group analytical notes as well as detailed comments on the successive versions of the Convention. Some of these notes and comments, which refer to positions taken by States or other entities participating in the negotiations, cannot be reproduced for reasons of confidentiality or courtesy. The notes made public are reproduced below.

a. First General Comments on the Draft Convention, 15 April 2013

**COMMENTS ON THE DRAFT CONVENTION ON THE MANIPULATION OF SPORTS
COMPETITIONS PREPARED WITHIN THE FRAMEWORK OF EPAS (COUNCIL OF EUROPE) -
VERSION 2.1. (EPAS (2013) 16REV)
15 APRIL 2013**

The *Sorbonne-ICSS Research Programme on Ethics and Sport Security* is honoured to bring to the attention of the members of the Drafting Group comments on the Draft Convention on the manipulation of sports competitions in response to an official invitation kindly extended to it.

1. The Sorbonne-ICSS Research Programme on Ethics and Sport Security welcomes the on-going work within the EPAS and the orientations reflected in the document under review.

It particularly supports certain key choices.

- 1.1. The choice of a scope of application that encompasses all forms of manipulation of sports competitions, not only those linked to sports betting, although these forms are undoubtedly preponderant.**
- 1.2. The correlative choice of an object that includes not only the essential regulation of sports betting, currently very uneven across States, but also the coordinated fight against the manipulation of sports competitions.**
- 1.3. The choice of a Convention which is open to the Member States of the Council of Europe as well as to non-Member States and which, since the development stage, addresses the concerns of the plurality of the States constituting the international community.**
In this regard, it is important to salute the obligation applicable to the States Parties to the Convention to "establish a legal framework for the betting market and monitor its implementation" and, a necessary corollary, to designate "the relevant authority or authorities in charge" of these functions (Art. 13), while allowing each State to freely choose the type of organisation of the betting market which best complies with its traditions and legal model (prohibition, monopoly, regulated opening).
- 1.4. The choice of a Convention which, since its development stage, closely involves States, sport organisations, and regulatory authorities in the field of betting activities (or organisations of regulators), since it is true that an effective fight against the manipulation of sports competitions requires a resolute cooperation between all these stakeholders who are have an interest in preserving sport integrity and a pooling of public resources with those of the private stakeholders.**

In this regard, it is important to welcome and encourage the cooperation of betting operators who understand the interest of preserving sports competitions against manipulations and of protecting both the sport and the public order against the penetration of transnational organised crime and the development of practices such as corruption or money laundering.

- 1.5. The choice to include in the Convention a key provision on criminalising the manipulation of sports competitions (Art. 16), provided, however, that some of these manipulations come exclusively under sporting but mostly disciplinary sanctions.
2. The Sorbonne-ICSS Research Programme on Ethics and Sport Security wishes, however, to draw the attention of the members of the Drafting Committee on certain provisions which it deems deserving of further discussion.
- 2.1. *The Definitions of the Manipulation of Sports Competitions.*

The Convention retains in fact several meanings of "the manipulation of sports competitions"; their still imperfect coordination could complicate the interpretation and therefore the implementation of the Convention by the competent national authorities and the sporting movement.

2.1.1. In the current state of affairs, the manipulation of sports competitions is first defined in Article 4⁶⁵⁴ as follows: "Manipulation of sports competitions' means an intentional arrangement, act, or omission involving the irregular modification of the course or outcome of a sports competition, to obtain an unlawful advantage for oneself or others, [influenced by an interest that is not exclusively related to sports]."

This definition is without prejudice to the criminal offenses set out in Chapter III of this Convention."

In the commentary of Article 26, it is stated that it should be "explained that the cases of manipulation which are not covered by criminal provisions (Art. 16-20) fall under the jurisdiction of the sporting movement." An example is proposed in the review, but no generic definition is given.

⁶⁵⁴ The Sorbonne-ICSS Research Programme has noted that Articles 1-4 were only submitted for information but it takes the liberty to return to Article 4, which is actually not severable from the substantive provisions.

Without imposing on the States a definition of the manipulation of sports competitions considered a criminal offense, Article 16 contains elements of (re)definition, for the purposes of penal repression, of the manipulation of sports competitions, in the form of two options B1 and B2.

2.1.2. The Sorbonne-ICSS Research Programme believes it useful to note several points.

. The definition in Article 4, § 1, which should guide the wording and interpretation of all the other provisions, does not seem, in its current state, sufficiently clear or able to cover all the hypotheses of manipulation of sports competitions, regardless of their purpose or benefits sought.

. The Drafting Committee considers that a distinction should be made between acts of manipulation of sports competitions whose sanction falls under the exclusive jurisdiction of sports organisations, and acts that are, on the contrary, subject to concurrent sanctions (sports, disciplinary, criminal, and even administrative, in addition to the obligation to pay damages). This distinction should appear early on in the text of the Convention. But this issue is only mentioned in the commentary of Article 26 § 3 of the Draft. Provided that it is ensured that such a distinction will not hinder the effective repression of acts of manipulation that initially seem isolated or venial, and therefore are only covered under the disciplinary field, but at a later stage, when placed in perspective (fraudulent pacts or systematic arrangements for example), could come under the criminal field, the acts of manipulation whose punishment is under the exclusive jurisdiction of the sporting movement should be defined in a generic form.

. Under the current state of affairs, the phrase "Each Party shall adopt such legislative or other measures as may be necessary to establish as criminal offences under its domestic law the conduct [...]" provided in Article 16 induces uncertainty regarding the intention of the authors: this aims to allow the States Parties not to criminalise the manipulation of sports competitions, or to establish an obligation of criminalisation while allowing the States Parties to choose to introduce the offence in their criminal legislation in accordance with the description given by the Convention, while respecting their internal procedures?

Since the first hypothesis seems to have to be excluded on principle in order to conduct an effective fight against the manipulation of sports competitions, Article 16 should clearly establish the obligation of States Parties to bring the offence under their domestic law and enrich it with a paragraph inspired by Article 11 § 6 of the UN Convention against Transnational Organised Crime: "Nothing contained in this

Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.”

. In any event, much more precise indications should be given to the States in Article 16 on the penal definition of the “manipulation of sports competitions” offence, taking into account the definition, to be refined, in Article 4 and ensuring, first, that the States are not encouraged to assume that the existing national provisions (relating to fraud, corruption, or duress for example) are sufficient, and secondly, that all forms of manipulation of sports competitions under the criminal offence are covered, regardless of their perpetrators.

This is the requirement of an effective and well-coordinated fight between the States and the sporting movement in accordance with their respective areas of competence.

2.2. *Interstate and Transnational Co-operation*

It is essential that a maximum number of States be able to accede to this Convention. Given the diversity of national models of regulation of sports betting, the conditions of co-operation should be carefully defined.

2.2.1. *Co-operation between States Parties with different systems of regulation of sports bets*

First, it is necessary to clearly guarantee their freedom of choice, and then to clarify, further than currently provided in Article 13, § 2, c, , the obligation to transmit information (content and methods), through national platforms, between a State party hosting a sporting event and a State Party where bets are made on this event, regardless of their respective models of regulation, and finally, to provide that a State Party cannot avoid any of its obligations to co-operate on the grounds that the State Party requesting its co-operation (criminal or otherwise) has opted for a different model of regulation of sporting bets.

2.2.2. *Co-operation between betting operators and sports organisations (or national platforms) when they are under the jurisdiction of States that have opted for a different model of regulation of sporting bets.*

It should be noted that this obligation applies between a betting operator providing and recording bets on the territory of a State Party and the concerned sports organisations (or the national platform of the State hosting the event, Party to the Convention), regardless of the respective models of regulation of the States concerned.

2.3. Self-Regulation

Self-regulation by private stakeholders of their activities, whether spontaneous or encouraged by States Parties, is an essential complement of the instruments of domestic, national, and international regulation.

2.3.1. It should be noted that the necessary self-regulatory rules to be adopted by betting operators and/or their umbrella organisations are aimed at specifying the implementation of the national or international rules established by States (art. 14, § 3) or by sports organisations in their respective areas of jurisdiction.

. The prohibition of high-risk betting seems to be under the jurisdiction of States Parties rather than the field of pure self-regulation by betting operators (compare art. 14, § 1 and Art. 14, § 3). This could also be true of the other provisions of paragraph 3 of Article 14.

. If it is wise to specify in the text of the Convention that the definition of high-risk betting can only be done in close consultation between the competent national authorities, the sporting movement, and betting operators, then the terms retained in Article 34, § 1, *i* should be discussed (*infra*).

2.3.2. It should be provided that States may require private stakeholders, particularly betting operators, to report on their initiatives and practices regarding the prevention of the manipulation of sports competitions linked to sports betting. Contrary to what is suggested in the commentary of article 14, § 3, the obligation to provide accounts imposed on national authorities is not inherent in self-regulation and must be clearly stated.

2.3.3. In this respect, it is important to specify, more than is done in Article 15 of the Draft Convention, all kinds of measures, including criminal, that the States Parties are invited to or should adopt to criminalise illegal betting operators and legal betting operators who (intentionally) allow irregular betting or who do not fulfil their obligations pursuant to the applicable national law or in accordance with the standards set by the relevant sports organisations, including those related to the communication of information and co-operation with the relevant sports organisations and national authorities.

In this regard, it should be noted that Article 16 of the Preliminary Draft Convention against the manipulation of sports results (EPAS (2012) 27rev 4 September 2012) was worded in more specific terms that ensured effective control of cybercrime linked to the manipulation of sports competitions or to illegal or irregular betting than Article 23 of the current Draft.

It would be appropriate, in this regard, to recall in the text of the Convention that the States may condition the issuance or renewal of a licence to a betting operator to the respect not only of the national law, including the provisions relating to the communication of information by the betting operators to sports organisations and/or national platforms and/or other relevant national authorities, but also of the rules and best practices developed within the organisations federating betting operators and within the relevant sports organisations.

2.4. *National Platforms*

The creation of national platforms dedicated to the monitoring of bets, the collection of information provided by betting operators and sports organisations, the reporting of facts likely to be of criminal nature, and the exchange of information with other national platforms (art. 13, § 3) can only help to strengthen the fight against the manipulation of sports competitions at the national level and facilitate a co-ordinated fight between all the stakeholders concerned with the manipulations that often have a transnational character.

. Perhaps the Draft Convention would benefit if these structures are defined earlier in the text and if the authorities with whom they should co-operate at the national level (police and judicial authorities, fiscal administration, services or cells responsible for combating corruption and money laundering in particular) are better specified.

. Also, since a national platform does not seem intended to be directly reached by a foreign judicial authority, it could be clarified that a national judicial authority that receives a request for information or assistance from a foreign judicial authority acts promptly to solicit the relevant information from the national platform.

2.5. *Collecting and Sharing Information*

2.5.1. This is an essential device for the fight against the manipulation of sports competitions. The collection, preservation, and communication of information must be surrounded by stringent safeguards to ensure, on the one hand, the protection of the fundamental rights of those concerned at any time (from the collection of data to its transmission and use), and on the other hand, the security of databases and systems of information communication, without compromising the effectiveness of the device of information exchange. Universal minimum guarantees in terms of fundamental rights undoubtedly need to be specified in the Convention (particularly in articles A(8), § 8 (option A), 13, § 2, *d* and 14, § 3, *f*).

2.5.2. It is equally appropriate to precisely define the conditions under which all or some information may be shared by the relevant national authorities, including the national platforms, with sports organisations.

. This implies, on the one hand, the definition of guarantees to be provided by sports organisations to benefit from the transmission of information (see *infra*, 3, note to be included) for their own operation, their intended use of the information, and the conditions for its preservation.

. It implies, on the other hand, the determination of the information strictly necessary to sports organisations for the conduct of disciplinary proceedings. All the information held by national authorities, and particularly criminal authorities, do not necessarily have to be communicated to sports organisations.

. Finally, it should be considered that the solicited State (as necessary via its platform) can refuse to provide the information requested in the event that such transmission would jeopardise the conduct of on-going criminal proceedings.

2.6. *Rules for the Prevention of Conflicts of Interest.*

2.6.1. Situations where betting operators sponsor or hold shares in a sports entity create a conflict of interest (at least in appearance) and may seem contrary to the principle of sports ethics put forth by the Preamble of the Draft Convention.

2.6.2. Several provisions of the Draft Convention aim at avoiding these conflicts of interest as much as possible; but it would undoubtedly be appropriate to first clearly define in the Draft the sports entities that, like clubs, participate in sports competitions or organise them without being sports organisations themselves (the latter being defined in Article 4 § 4).

2.6.3. Also, it would be appropriate to clarify the conditions under which a betting operator can sponsor a sports organisation or the entities defined above or become a shareholder of such an entity.

Article 11 § 4 allows sports organisations to accept as sponsors approved betting operators, but does not precisely define the authority competent to issue the licence (for example: What is a recognised licence under "international" legal provisions? national provisions? which ones?).

Similarly, Article 14, § 2 encourages States to adopt measures to prevent both the holding of betting operators of a majority interest in the companies of a sports organisation and vice versa. However, this criterion is not very explicit and is very circumstantial. It might be more usefully clarified that the shares held must not allow the shareholder to exercise a controlling influence on the decisions made by the company of the sports organisation or by the operator.

Moreover, sufficiently clear provisions eliminating the risk that conflicts of interest arise as a result of major participations and interests in sports clubs seem to be missing.

2.6.4. In any event, even with these clarifications, safeguards against conflicts of interest remain quite ineffective. It may be appropriate to open a discussion on the compatibility with sports ethics of the offer by a betting operator of products on a competition that involves a sports entity in which it holds shares or that it sponsors. The situation where an operator directly sponsors a sports competition should also be considered.

2.7. *Monitoring Mechanisms.*

2.7.1. It is of the utmost importance to have a mechanism to monitor the implementation of the Convention. However, the clarity of the linkage between the different mechanisms discussed and their functions is not yet fully ensured.

2.7.2. Three mechanisms seem to be proposed: the Convention Committee, the expanded Convention Committee, better known as the International Forum for Integrity in Sport, and possibly a permanent international body for combating the manipulation of sports competitions, whose creation would be considered by the said Forum.

2.7.3. The main function of the Convention Committee would be monitoring the implementation of the provisions of the Convention on the basis of national assessment reports, by requesting, in a privileged manner, information from international sports organisations, networks of betting regulators, and umbrella organisations of betting operators (current language of Art. 35, § 1a), or monitoring the implementation of the Convention on the model of peer-review, or possibly cross peer-review, which would not prohibit in any way soliciting as many non-State sources as necessary.

This form of alternative monitoring would allow better distinguishing the strictly interstate Convention Committee from the International Forum for integrity in sport, and balancing the obligations of States Parties, sport organisations, and betting operators.

2.7.4. As for the International Forum for Integrity in Sport, it should establish itself as a body that includes all stakeholders in the fight against the manipulation of sports competitions.

These stakeholders may optionally be associated in a national tripartite delegation as provided in Article 37, § 6, but it could be at the expense of the autonomy of the sporting movement and at may encounter difficulties in designating representatives of betting operators in each national delegation.

They could instead form a tripartite body (national delegations, representatives of sports organisations, representatives of betting operators) whose functions include monitoring the compliance of sports organisations and betting operators with all the rules relating to the fight against the manipulation of sports competitions.

2.8. *Territorial Scope of Application*

While it is quite ordinary to reserve to States acceding to an international treaty the right to designate, when they express their consent to be bound, "the territory or territories to which this Convention shall apply," it is perhaps not appropriate to mention it here (Art. 41 of the Draft).

Indeed, on the one hand, combating the manipulation of sports competitions can only be truly effective if there remain no territories over which the regulation of sports betting would be less stringent than what the Convention prescribes.

On the other hand, it would be all the more effective if States Parties endeavour to rationalise their systems of prevention and repression (see the creation of national platforms) and optimise the international co-operation mechanisms, in accordance, as necessary, with Article 44 of the Draft Convention which judiciously preserves the present balance of interests.

2.9. *Relationship between the Draft Convention and Other Applicable Treaties or Agreements (Art. 42 and 43).*

Conventions often provide how their provisions should interact with the provisions of other international instruments that may apply simultaneously.

The wording of Article 42 § 1 of the Draft, require, however, a few observations.

. On the one hand, because it only applies to multilateral international conventions, this clause excludes bilateral or regional conventions, even though such instruments may be relevant, and in fact are considered later in the text (although the Council of Europe's Criminal Law Convention on Corruption and Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime are not mentioned here, they might be applicable to certain aspects of the manipulation of sports competitions; see also Article (B) 17, § 1, followed by a simple invitation to include the manipulation of sports competitions in the context of "prevention" of money laundering, which could be made more intransigent).

. On the other hand, the clause applies to "multilateral international conventions concerning particular matters". However, this wording could lead to interpretation problems because combating the manipulation of sports competitions is itself, by definition, a particular matter. It is certainly preferable to use, instead, the terms "international conventions containing special rules" or "special rules of international law", more common in international law. In any event, the inclusion of such a provision in the Convention could jeopardise its effective implementation as the identification of the terms "special rules" or "particular matters" is subject to the discretion of their interpreters. It might be better to retain a wording emphasising the priority of the rule which ensures the most effective prevention or suppression (e.g., "this Convention shall not be deemed incompatible with the provisions of international conventions containing special rules and enabling a more effective prevention or suppression of the manipulation of sports competitions"). Article 42 § 3 seems to contain an indication to that effect. This provision should undoubtedly be combined and harmonised with Article 43 § 2.

2.10. *Application of Disciplinary Sanctions*

2.10.1. Certain provisions of the Draft Convention suggest that imposing disciplinary sanctions would be "entrusted" by the States Parties to sports organisations (Art. 26 § 2 and Art. 29) and, conversely, that States Parties may have a role to play in the implementation of disciplinary sanctions (Art. 26 § 3).

2.10.2. These provisions should certainly be clarified because, with the power of sports organisations to impose disciplinary sanctions being an undisputed result of the autonomy of the *lex sportiva*, the power of States Parties is only to ensure the effectiveness of the disciplinary punishment of the manipulation of sports competitions.

If this was indeed the intention of the drafters, the concrete measures that could be adopted by States Parties for that purpose in their respective legal systems should be specified. In terms of the role to be given to the International Forum for integrity in sport in monitoring the practices of sports organisations, see our analyses *supra*, 2.7.3 *in fine*.

2.10.3. In addition, the possible effects of disciplinary sanctions in national legal systems, particularly in national courts, should be considered separately and quite explicitly. Recognition of these decisions by States Parties (Art. 29, § 2) should take into account that a State may object if it considers that the disciplinary proceedings did not comply with the general principles of law applicable in this area (see *infra* 2.10.4).

2.10.4. With regard to possible overlap between disciplinary and criminal proceedings that may be initiated in cases of manipulation covered by both the regulations of sports organisations and criminal law, it would be appropriate to specify the principles that should govern the disciplinary proceedings so as to avoid conflicting decisions (*e.g.*, criminal punishment without disciplinary proceedings even being initiated). The interest of States Parties and the credit of sports organisations are concerned.

References to internationally recognised general principles of law and to the respect of fundamental rights of persons under suspicion (Art. 26, § 4) should be clarified to apply more particularly to the rules of evidence and the rights of defence.

3. The Sorbonne-ICSS Research Programme on Ethics and Sport Security, favouring a systemic reading of the Draft Convention, began reflecting on some of the articles that were not discussed for the moment, but that are essential to the coherence and the effective application of this instrument, especially those which, through definitions, define the contours the scope of application *ratione personae* and *ratione materiae* of several of its provisions, particularly Article 4, § 2a, b, c and d (with crucial details on the law applicable to bets) and Article 4, § 3a, b, c (stakeholders of the competition). It would be pleased, in due course, to submit comments on these provisions.

In accordance with the request that was officially addressed to it by the EPAS, the Sorbonne-ICSS Research Programme on Ethics and Sport Security will shortly submit three notes concerning respectively:

- 1) The provisions of the Draft Convention relating to criminal enforcement,
- 2) The rules adopted or being adopted by sports federations,
- 3) The criteria to be met by international sports federations to be eligible for exchanging information with the judicial authorities.

b. Note on the Criminal Provisions of the Draft Convention, 12 June 2013

NOTE ON CERTAIN ASPECTS OF CRIMINAL PROVISIONS OF THE DRAFT CONVENTION OF THE COUNCIL OF EUROPE (EPAS) ON THE MANIPULATION OF SPORTS COMPETITIONS 12 JUNE 2013

The *Sorbonne-ICSS Research Programme on Ethics and Sport Security* brings to the attention of the members of the Council of Europe - EPAS, at their request, this preliminary note, the purpose of which is to analyse certain aspects of the penal provisions contained in the current Draft Convention on the manipulation of sports competitions [EPAS (2013) 16 rev, 27 March 2013]. It will discuss the following issues:

- I. The specific criminalisation of the manipulation of sports competitions.
- II. The constituent elements of the main criminal offences.
- III. The modalities of commission of the main criminal offences.
- IV. Connected criminal offences.
- V. Criminal jurisdiction
- VI. Criminal sanctions.

I. The Specific Criminalisation of the Manipulation of Sports Competitions

The mandatory criminalisation of the manipulation of sports competitions should be the backbone of the EPAS Convention under development.

This is because neither national laws, with certain exceptions, nor the international instruments (particularly against corruption) allow tackling the phenomenon in its specificity and as a whole.

Concerning national laws, most States do not have a specific legislation on the manipulation of sports competitions, and can therefore only rely on their existing normative system, which is generally deficient in matters of corruption and fraud. Indeed, these concepts do not necessarily cover the same offences, although the coverage of the various forms of manipulation is very floating in reality according to the laws in question. Moreover, even the few States that have established a specific legal framework in this area fail to tackle the phenomenon in a uniform manner and under all its forms. Thus, and to stick to two examples, the specific offence of manipulation of sports competitions sanctioned by the Russian legislation (Article 184 of the Criminal Code) applies only to the most serious forms of this phenomenon, those related to corruption (of referees, coaches, and other organisers and participants in sports competitions) and to professional sport, leaving the actual fraudulent behaviours immune to criminal sanctions. However, the South African legislation appears to address the phenomenon in its entirety. What is particularly interesting is the fact that the offence of manipulation, although contained in the South African law against corruption (section 15), also covers

cases that are purely fraudulent and thus unrelated to any act of corruption.⁶⁵⁵ However, even when there are specific provisions concerning the manipulation and regardless of their scope, there is concern that they will remain ignored in practice. This is evidenced by the Russian example, where no conviction has been imposed on the basis of Article 184 of the Criminal Code, mainly for lack of evidence, even though the manipulation of football matches seemed, in several cases, beyond doubt.⁶⁵⁶

As for international instruments, those intended to apply indirectly, or crossways, to the manipulation of sports competitions are proving to be of substantially limited applicability. This observation is especially true with regard to the United Nations Convention against Corruption of 31 October 2003 (which entered into force on 14 December 2005 and ratified to date by 165 States) and the Council of Europe Criminal Law Convention on Corruption (opened for signature on 27 January 1999, entered into force on 1 July 2002, and ratified to date by 43 States). In fact:

1) the applicability of provisions relating to corruption in the public sector and to sports corruption remains uncertain, as sport and its stakeholders fall in principle under the scope of private law;⁶⁵⁷

2) the criminalisation of acts of corruption in the private sector is optional for the Parties;

3) even if a Party opts for criminalisation, the provisions relating to corruption in the private sector do not cover all forms of manipulation. For example, purely fraudulent manipulations - such as a person (referee or third party) betting on a competition that he/she is about to manipulate without resorting to acts of corruption - are beyond the scope of these instruments. Furthermore, the United Nations Convention against Transnational Organised Crime of 15 November 2000 and the Council of Europe Convention on Cybercrime of 2001 are only applicable to certain aspects of the phenomenon of manipulation of sports competitions. However, these two instruments could certainly be a source of inspiration for the work of the Drafting Committee on particular points (*infra* III and IV).

Given this situation, the adoption of an international instrument requiring the Parties to establish the manipulation of sports competitions in all its forms as a criminal offence proves to be necessary to ensure an effective fight against this phenomenon.

⁶⁵⁵ See the presentation of Drago KOS of a number of legislations, *Global Criminalisation of Match-Fixing, Comparative Study on Applicability of Criminal Law Provisions Concerning Match-Fixing and Illegal/Irregular Betting*, in December 2012, esp. p. 157, p. 163 and pp. 222-239.

⁶⁵⁶ This report is combined with the Report, see *infra*, this Chapter, Section 2.

⁶⁵⁷ See the report by Y. YAMOVA, pp. 15 *et seq.* directed to The Sorbonne-ICSS Research Programme on Ethics and Sport Security. The same also applies to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 21 November 1997 (entered into force on February 15, 1999 and ratified to date by 36 States) and the Inter-American Convention against Corruption of 29 March 1996 (entered into force on March 6, 1997 and ratified to date by 33 States), which only considers corruption in the public domain.

In accordance with the principles of international criminal law as they result from similar conventional instruments, the criminalisation method is at the discretion of the Parties whose national law provides only the legal basis for the suppression of the different offences. In particular, a national law may, without referring to the international instrument, reproduce the content of the conventional norm specifying the elements of the offence and prescribe the applicable penal sanction (incorporation). It can even simply refer to the said conventional norm and criminalise its transgression (incorporation by reference).

However, the path of mandatory criminalisation is perhaps not the only one capable of ensuring an effective fight against the manipulation of sports competitions. Therefore, a choice exists between:

1) on the one hand, the harmonisation of the national laws of the Parties through uniform conventional provisions that are sufficiently precise on the components of the various offences, and that the parties are required to incorporate or refer to in their respective criminal laws;

2) on the other hand, the establishment of an obligation for Parties to ensure, in any criminal sense whatsoever, the effective criminalisation and repression of the various forms of manipulation, and in particular, to ensure that all offences listed in the Convention are fully covered by their penal codes.

In the current state of the Draft, however, the criminalisation of the manipulation of sports competitions remains remarkably random. Although the device of penal option A [*i.e.* Articles A(16) to A(20) mentioned in some provisions of the Draft] does not appear in the annotated version, it is nevertheless true that preference for the second part of the aforementioned alternative is discreetly reflected in Article B(16), part of penal option B. This article, vaguely entitled “Legislative or Other Measures”, merely provides that:

“Each Party shall adopt the necessary legislative or other measures to establish the manipulation of sports competitions as a criminal offence under its domestic law”.

However, this wording raises a number of questions about its true scope. For instance, it does not say quite clearly whether the Convention conveys a real obligation for Parties to criminalise, in one way or another, the various acts constituting a manipulation of competitions. In other words, it is questionable whether this wording allows Parties to be content with their existing laws on corruption, fraud, or duress, which, as noted above, appear largely insufficient for the purposes of criminalisation of the manipulation of sports competitions, as they can target different offences in different countries. Nonetheless, these questions concerning the scope of Article 16(B) are explained, it seems, by the choice of the Drafting Committee to only retain a minimal definition of the concept of manipulation of sports competitions and of its various elements as discussed in the following developments.

Moreover, the chosen wording does not allow knowing exactly whether the Parties can choose not to criminalise certain acts or knowing precisely their obligations in terms of law enforcement. In this regard, Article 27 may seem artificially separated from article B (16) and incompatible with it as there is mention therein of “effective, proportionate, and dissuasive sanctions and measures” - which may suggest that States have an effective obligation to sanction - and of the “seriousness of the criminal offences referred to or described in this Convention”, without the possibility of knowing whether this concerns all the offences considered or only facts including “elements of duress, corruption, or fraud” mentioned in one of the options of wording of Article B (16).

II. The Elements of the Main Criminal Offences

The numerous international instruments that require the Parties to take legislative or other necessary measures to “criminalise” or “establish as a criminal offence” a particular behaviour, contain most times very detailed provisions on the elements constituting the offence as does, for example, the Council of Europe’s Criminal Law Convention on Corruption (Sections 2 and 3 for guidance). This is not the case with the current Draft of the EPAS Convention, whose Article 4 defines the “manipulation of sports competitions” as “an intentional arrangement, act, or omission aimed at an improper alteration of the result or the course of a sports competition, with a view to obtaining an undue advantage for oneself or for others, [influenced by a non-exclusive sporting interest],” before adding that “This definition is without prejudice to the criminal offences provided in Chapter III of this Convention”.

This definition gives rise to several questions.

First of all, agreeing on the “improper” nature of the alteration of the course or the result of a sporting event may prove delicate, especially since this term is not defined. The same applies also to the “undue” nature of the advantage that the perpetrator of the manipulation seeks. In addition, defining a “non-exclusive sporting interest” is also needed since it seems to depend on the determination of the criminal or non-criminal nature of the various acts constituting the manipulation, and hence also the choice of applicable penalties (criminal and/or disciplinary in particular) within the logic of the current Draft (see *infra* VI). Finally, it is unclear whether the term “arrangement” allows criminalising the mere agreement to organise a manipulation of a sports competition, without an actual implementation of this manipulation.

For its part, Article B (16) merely provides a choice in terms of defining the offence. Parties must ensure that the manipulation can be punished as a criminal offence [provided that the facts include elements of duress, corruption, or fraud] (option B1) or [provided that it was committed with the fraudulent or criminal intention to obtain without right, an economic benefit for oneself or for others] (option B2). Obviously, like the general definition of Article 4, the two options of Article B (16), the juxtaposition thereof not being very understandable, are not sufficient to establish in a clear way the constituent elements of the different offences, in that they seem

to ultimately refer to the existing criminal system in the various parts relating to fraud, corruption, or duress in particular. As it is worded, Article B (16) is apparently designed to achieve the purpose of the second part of the aforementioned, more flexible alternative (see *supra*, I), which consists in imposing an obligation on Parties to ensure the effective criminalisation and prosecution of the various forms of manipulation and to ensure that all offences listed in the Convention are fully covered by their criminal laws. Indeed, irrespective of the required legislative harmonisation, this obligation would require, for its implementation, some additional details on the constituent elements of the offences to be covered by national criminal laws.

The first part of the alternative (see *supra*, I), *i.e.* precisely the one consisting in a mandatory normative harmonisation on the subject of the manipulation of sports competitions, is still to be considered. While it is true that it is not favoured by the present Draft, if it were to be ultimately adopted, the Convention would certainly gain in clarity not only by unequivocally establishing the obligation for Parties to establish as a *specific* criminal offence in their respective domestic laws the manipulation of sports competitions, but also, and especially, by defining, in a detailed manner, the constituent elements of the different forms of manipulation. In particular, Articles 4 and B(16) should, on the one hand, provide details on the *actus reus* (the objective or physical element of the offence), possibly the characteristics of the perpetrators of the offence, and the *mens rea* in the broad sense (subjective or mental element, *i.e.*, besides the intent to commit the offence, the concrete goal that the perpetrator seeks) and, on the other hand, clarify, if necessary, the link between the different criminal behaviours and sports betting.

The elements contained in options B1 and B2 could especially be integrated into clear and precise definitions of the various offences likely to be committed and that must be criminalised by the legislations of the Parties. A brief classification shows that several behaviours could be incriminated:

- 1) The manipulation of a sports competition by stakeholders of the competition (the latter defined in Article 4 § 3 of the Draft which, however does not specifically mention referees) in order to obtain a financial or another type of advantage, whether or not related to betting. This is a particular kind of fraud, whose victims are, for example, according to the case, either the team affected by the manipulation or good faith bettors.
- 2) The manipulation of a sports competition as a result of acts of active or passive corruption of the stakeholders of the competition by a third party, whether linked to betting or to obtain other benefits. The third party is obviously not part of the circle of stakeholders in the competition. It is most often a person involved in the activities of a transnational organised criminal group. In this case, the criminal sanction should be imposed on both the corrupted agent (stakeholder in the competition who is likely to be sanctioned on the disciplinary level, especially if he/she is an athlete) and the corrupting third party. In addition, it is considered a composite offence to a certain degree when sporting bets are involved: the corruption and the placing of (now) irregular bets because of the manipulation of the competition go hand in hand.

- 3) The manipulation of a competition through acts of duress targeting stakeholders of the competition by a third party in connection with betting or in order to obtain other benefits. This is also a composite offence if bets are involved: duress and irregular betting go hand in hand here. In this case, however, unlike the previous case, the stakeholder of the competition should not be punished.

These behaviours are certainly likely to constitute, at least *in abstracto*, cases of fraud, duress, or corruption under any national legislation. If harmonisation is retained, their specificity should certainly be established in the Convention through detailed provisions to avoid giving the Parties the impression that their national laws could be enough to combat the problem, which is not usually the case as we have already noted (see *supra*, I).

III. The Methods of Commission of the Main Criminal Offences

Paradoxically, while the current draft does not sufficiently define the major criminal offences resulting from the manipulation of sports competitions, it is, nonetheless, slightly more explicit about what could be called, for ease of reference, the 'methods' of commission of these offences.

Article B (18) is very important in this regard. It requires Parties to adopt legislative or other measures as may be necessary to ensure that legal entities can be held liable for such offences. This provision thus establishes, besides the criminal liability of individuals involved in acts of manipulation of sports competitions, the criminal liability (apart from the administrative or civil one, if any) of the legal entities in the framework of which the natural persons were acting.

Yet, it would certainly be desirable to determine with more clarity the different legal entities that may be punished, especially since their somehow "indirect" involvement in the commission of acts of manipulation can take several forms: is it simply a club whose leader was involved in the organisation of a manipulation, a betting operator, or a sports organisation? It is also necessary to harmonise any details as to the exact nature of criminally liable legal persons with an effort to clarify the definition in Article 4 § 3, of the stakeholders in the competition, particularly "officials".

However, the Draft only contains a very abstract reference to cybercrime, which is nonetheless a method of commission of the main criminal offences when these are linked to online sports betting. Without forgetting that a reference to the 2001 Convention of the Council of Europe on Cybercrime was removed from the Preamble of the Draft, it should be noted that, according to Article 23 of the Draft, inserted in Chapter IV relating to criminal jurisdiction, procedural law, and repression: "Each Party shall adopt such legislative or other measures as may be necessary to ensure that the relevant provisions on Cybercrime are applicable "to criminal offences set forth in accordance with this Convention". This wording seems to assume that the parties already have, which is far from established, or that they should have specific legislation on cybercrime applicable to the offences

set forth in the Draft Convention. However, it could be considered that the provision merely requires Parties to apply their respective laws, even those that are not specifically aimed at cybercrime, in order to punish cybercrime when it is related to the manipulation of sports competitions.

In any case, it seems desirable that the Drafting Committee:

1) insert a specific reference to the Convention on Cybercrime (opened for signature on 23 November 2001, entered into force on 1 July 2004, and ratified to date by 39 States), particularly Articles 7 and 8 relating respectively to cyber falsification and, especially, fraud;

or

2) use the Convention on Cybercrime as a source of inspiration to establish a more developed normative framework controlling the commission of the principal offence on the Internet; in other words, when the manipulation (whether the act of a stakeholder in the competition or of a third party) is linked to online betting. While in the current Draft, rules on the activities of betting operators contained in particular in Articles 13-15 (part of Chapter II entitled "Prevention, Co-operation, and Other Measures") seem to escape the criminal aspect of the Convention, this should be different for third parties, especially members of a transnational organised group who fraudulently place online bets on a competition in connection to which they organised the manipulation by duress or corruption.

IV. Related Criminal Offences

In an equally paradoxical way, under the vague wording employed in Article B (16), which is supposed to state the main offences, the current Draft requires Parties to "establish as criminal offences": 1) "complicity, when committed intentionally, to the perpetration of any of the offences [set forth in Article (B) 16] of this Convention" [Article B (19)]; 2) "the acts mentioned in the Council of Europe's Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds of Crime (ETS No. 141 [1990]), Article 6, paragraphs 1 and 2, under the conditions specified therein, when the principal offence consists of any of the offences set forth in article (B) 16 [in Articles (A) 16 to (A) 20] of this Convention." Thus, while an obligation to specifically criminalise the manipulation of sports competitions as a principal offence does not seem to explicitly weigh on the Parties (*supra*, I and II), the situation is different with the related offences of complicity and money laundering, which are behaviours that must be criminalised.

Irrespective of this inconsistency, it is necessary that the Convention contain more detailed provisions on the acts that would fall under the idea of complicity, which is not defined, since the manipulation of sports competitions is very often the result of transnational criminal networks using sophisticated techniques of laundering the proceeds of crime.

The current Draft simply contains a vague reference in the preamble where the signatories declare their “concern about the involvement of organised crime in the manipulation of sports competitions, especially considering its trans-boundary nature” without addressing this issue in a specific way.

In this regard, until a more detailed definition is given to the principal offences, it seems desirable to reinforce related offences by taking into consideration the role of organised crime in this area. The Drafting Committee could particularly be guided on this issue by the United Nations Convention against Transnational Organised Crime of 15 November 2000 (effective 29 September 2003 and ratified to date by 174 States) that applies pursuant to Article 3 § thereof “unless otherwise specified, to the prevention, investigation, and prosecution of: a) the offences established in accordance with Articles 5, 6, 8, and 23 of this Convention; and b) serious crimes as defined in Article 2 of this Convention; when these offences are transnational in nature and an organised criminal group is involved in their commission.” The offences established in Articles 5, 6, 8, and 23 and that the Parties must criminalise in their national legal systems are:

- Participation in the activities of an organised criminal group (Article 5).
- Laundering of proceeds of crime (Article 6).
- Corruption (Article 8).
- Obstruction of justice (Article 23).

In the framework of the preparatory work of the EPAS Convention, it is thus desirable to develop a standard system covering, in addition to money laundering, as is already the case thanks to the obligation of the Parties to criminalise the acts listed in the Convention of the Council of Europe of 1990, acts of participation in the activities of a transnational organised criminal group in the field of the manipulation of competitions. The Drafting Committee could be guided on this issue by Article 5 by the 2000 UN Convention, requiring the Parties, *inter alia*, to establish as criminal offences “the active participation of a person with knowledge of either the aim and general criminal activity of an organised criminal group or its intention to commit the offences in question: a. in criminal activities of the organised criminal group; b. in other activities of the organised criminal group with the knowledge that his/her participation will contribute to the implementation of the abovementioned criminal purpose.”

That said, if the Drafting Committee opts for the inclusion of more detailed provisions in this area, it must also specify the trigger for the applicability of the provisions relating to organised crime to the predicate offences that will be provided in the future Convention (*i.e.* other than the participation in the activities of a criminal group or the laundering of the proceeds of crime in the area of manipulation of sports competitions). The term “serious crimes” within the meaning of Article 2 b) of the UN Convention of 2003 refers to “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” (Article 2, b). Similarly, it seems essential to determine, in the future Convention, from which point – according to the criminal penalty chosen – the manipulation of a sports competition by an organised criminal group may be

considered as a serious crime. However, unless Parties are required to establish sanctions that have specific features, which is not the case in the current Draft, the applicability of any device of the future Convention that relates to organised crime will inevitably depend on national legislations that can offer very unequal solutions based on what Parties consider to be “serious” and given the diversity of behaviours that can or should (if compulsory criminalisation is used) be criminalised in the context of the manipulation of sports competitions .

V. Criminal Jurisdiction

Article 21 of the Draft requires Parties to extend their jurisdiction to any criminal offence established in accordance with the Convention if the offence is committed on their territory (§ 1 a), by one of their nationals (§ 1 d), by a person who has their habitual residence in their territory (§ 1, e, but this is subject to § 3 allowing parties not to accept this jurisdictional ground or to apply it differently), and when the alleged offender is present on its territory and cannot be extradited because of his nationality (§ 7). However, it remains optional for parties to establish their passive personal jurisdiction (§ 2).

From a general point of view, it should be noted that the provisions on criminal jurisdiction require, for their effective implementation, a more precise definition of the elements of the various offences, which is however not yet the case (*supra* I and II). Indeed, the obligation of the Parties to establish their criminal jurisdiction over persons guilty of behaviours that are not clearly criminalised by the Convention would be devoid of practical effect, especially if they feel that these behaviours are already covered *in abstracto* in their national law, *i.e.* including the relevant provisions on criminal jurisdiction. A specific criminalisation in the logic of legislative harmonisation, or at least a clarification on the behaviours that national legislations should, in any criminal sense, cover, would therefore make clearer the regime of criminal jurisdiction, especially mandatory criminal jurisdiction, established by the Convention. That said, it would also be desirable to further adapt this device specifically to the manipulation of sports competitions.

First, given the fact that this is a phenomenon generally closely linked to organised crime, one possibility would be to include in the Draft a provision similar to that of Article 15 § 2 c) of the United Nations Convention against Transnational Organised Crime. This article makes it possible for Parties to establish their jurisdiction in respect of certain offences provided in this instrument when they are “committed outside of [their] territory with a view to the commission of a serious crime within [their] territory”. Extraterritorial jurisdiction is optional, but it helps, if it is effectively expressed in the future Convention, to extend the criminal jurisdiction of a State party in at least two cases:

- 1) on the one hand, acts of complicity committed by a person abroad, secondarily to the main criminal offence of manipulation committed within the territory of one of the Parties;

2) on the other hand, and more importantly, acts of co-offenders who participate from abroad in the commission of the criminal offence on the territory of one of the Parties.

In this way, the complexity of the phenomenon may thus be understood, certainly in part, in terms of criminal jurisdiction, given that the components of a manipulation of a sports competition can, and did in practice, occur in several States, making it difficult to locate the commission of this "complex" offence (e.g. corruption of a referee who will manipulate a game on the territory of State A, by a person located in the territory of State B, and depositing money into the bank account of the referee located on the territory of State C, for another person to place online bets from the territory of State D, on a website under the jurisdiction of State E, etc.).

In addition, even though the requirement of double criminality in active personal jurisdiction was not used (Article 21, § 4), the ability of the Parties to establish their passive personal jurisdiction against offences committed "against one of [their] nationals or a person who has a habitual residence on [their] territory" (Article 21 § 2), may raise some difficulties. Indeed, although this provision does not use this term (but the current Draft does in Article 30 §§ 1 and 2), this jurisdiction is based on the identification of the "victims" of the manipulation of sports competitions. This identification nevertheless remains delicate as the complexity of the phenomenon makes its appearance again here. Who are the victims of the manipulation? The opposing clubs, good faith bettors, the national and international sports organisations, or even the fans? To dispel these doubts, it seems necessary that this provision drop the term "offence against" and clearly specify the type of "harm" that the various categories of persons, including legal persons, must have undergone because of the manipulation.

VI. Criminal Sanctions

The penal provisions contained in Chapter III of the EPAS Draft Convention also occupy an uncertain position compared to the rest of this instrument. They seem not to apply to the behaviours that Parties should prevent under Chapter II to ensure the integrity of betting (Article 13) and to prevent conflicts of interest in the activities of betting operators (Article 14). They are, *a fortiori*, not applicable in terms of the self-regulation rules that the Parties urge national sports organisations to adopt [Article 8 (A)]. That said, the articulation of criminal sanctions with other types of sanctions, especially disciplinary or administrative, should be further clarified.

Article 26 of the Draft, at the beginning of Chapter V relating to sanctions, merely explains that "liability for the manipulation of sports competitions may be criminal, civil, or administrative. It is completed by a disciplinary responsibility, which falls under the jurisdiction of sports organisations". The commentary on this provision indicates that it should "explain that the cases of manipulation which are not covered by criminal law provisions (Articles 16-20) are within the jurisdiction of the sporting movement" by giving as an example of the latter category "tactical behaviours".

However, for lack of a clear definition, in the current Draft, of the elements of the principal criminal offences and related administrative and disciplinary offences, it is not easy to determine whether a certain behaviour should or should not be criminalised, and hence if it should only be subject to disciplinary sanctions imposed by sports organisations, or administrative sanctions. This uncertainty particularly concerns the stakeholders of the sporting event whose exact liability is not defined by the current Draft. Apparently leaving it to the Parties to proceed with the establishment of offences and corresponding criminal sanctions, the Draft therefore fulfils a modest role, since the status of a large number of behaviours that may be committed by persons directly or indirectly involved in the manipulation of sporting events remains highly uncertain.

An example that perfectly illustrates this concern is that of the obligation not to disclose inside information which is defined in Article 4 § 5 of the Draft as “any non-public information relating to a competition, an event, an athlete or a sport, that a person possesses by virtue of his/her position in relation to the athletes, the sport, or the competition” and which “includes, but is not limited to, factual information about competitors, conditions, strategies, or any other aspect of the competition or event” [...]. Article 14 § 1 of the Draft simply refers to the measures that Parties must take in this area to “prevent [...] the misuse of inside information by the owners, managers, and employees of betting operators”. However, no criminal sanctions for the misuse of this information is expressly provided for in respect of such persons (since operators and their bodies are beyond the reach of the criminal aspect of the Draft), although it is likely that the penalty, if any, imposed on the operator itself as a legal person must be administrative in nature and consist for example in the withdrawal of its licence.

But what is more problematic is the fact that the misuse of inside information by other persons, such as stakeholders of the competition, is not addressed. It is thus necessary to clarify whether it is appropriate to establish as a criminal offence, for example, the act of a person involved in the management and activities of a club, or any other person who may be in possession of sensitive information on the status of the team, of selling this information to third parties or using it to place bets, etc. This task is important because the financial benefit intended by the author of this behaviour can be significant and hence justify a criminal penalty as well as a disciplinary sanction. Similar observations can also be made with regard to the obligation to report offences provided for by the Convention, to criminal authorities, which only concerns, in the current Draft, other public authorities and officials of the Parties (Article 22 § 1 a), excluding not only betting operators, but also stakeholders of the competition (see note on the exchange of information).

Insofar as the choice of penalty should normally follow the characteristics of the sanctioned behaviour, the Convention would be more explicit if it could determine in a precise way the different behaviours of stakeholders of the competition and provide guidance on applicable and adequate sanctions, while also specifying the hypotheses of aggregate liability (criminal, administrative, civil, and/or disciplinary). The clarification of these points proves to be a *sine qua non* condition for the viability of the punitive aspect of the Draft Convention in general.

c. Note on the Exchange of Information, 12 June 2013

This note is reproduced with some modifications in the Report in Part 3, Title 3, Chapter 3, Section 2, § 4 "Principles applicable to the exchange of information"

d. Second General Commentary on the Draft Convention, 25 September 2013

NOTE ON VERSION 3.0 (30 AUGUST 2013) OF THE DRAFT CONVENTION OF THE COUNCIL OF EUROPE (EPAS) AGAINST THE MANIPULATION OF SPORTS COMPETITIONS

The Sorbonne-ICSS Research Programme on Ethics and Sport Security submits to the attention of the Council of Europe-EPAS, at their request, the present note which aims to analyse certain aspects of the provisions contained in the current Draft Convention against the Manipulation of Sports Competitions in Version 3.0 of 30 August 2013 [EPAS (2013) 30 August 2013, 16rev3 draft Convention - Bilingual Version 3 0b3.doc].

Attached to this note is the text of the Draft Convention which contains in red:

1. in the right column, a number of commentaries,
2. corrections to the text itself (typographical errors and/or formulations to review imperatively).

This note will address the following questions:

- 1. THE DEFINITIONS IN ARTICLE 3**
- 2. THE CRIMINAL PROVISIONS**

THE DEFINITIONS IN ARTICLE 3

1.1. Sports Competition (Article 3.1.)

1.1.1. Verification of the inclusiveness of the list in Annex 4 (in progress) and Article 3.2 (in progress).

1.1.2. Proposed definition: "'Sports competition" shall mean any sporting confrontation between at least two competitors within the rules recognised by a sports organisation, to compare the performances of the participants, and subject to the hazard or uncertainty inherent in any competition".

1.1.3. Commentary

It seems important that the hazard, which gives the game its interest and allows the operation of sports betting, appear in the definition of the competition;

1.2. Manipulation of Sports Competitions

1.2.1. Proposed definition: "Manipulation of sports competitions" shall mean an intentional arrangement, act, or omission altering the course and/or results (partial or final) of a sports competition normally subjected, in the context of the rules governing it, to hazard or uncertainty inherent in such a confrontation, when this alteration aims to obtain for oneself or for others an unlawful advantage, whether of a sporting nature or not."

1.2.2. Commentary

- a) it seems important that not only final results but also partial results be considered;
- b) obtaining a benefit for oneself or for others should appear in the generic definition with the understanding that such unlawful or undue benefit may be contrary to sports regulations and/or national law;
- c) cases of manipulation that are only subject to disciplinary sanctions and those that may also be subject to criminal sanction should be considered;
- d) it should be specified only in comment that this definition does not itself define the scope of criminal offences but that the definition of criminal offences should be coordinated with it.

1.3. Sports Betting (Article 3.4)

1.3.1. Proposed definition: "sports betting" shall mean any wagering of a stake of monetary value in the expectation of monetary gains based wholly or partly on hazard or uncertainty about the occurrence of one or more observable facts relating to either the course of a sports competition (or one or more of its components) or its result (or results)."

1.3.2. Commentary

- a) this wording avoids terms such as "placement of a bet of monetary value" or "allowing consumers to win a prize of monetary value",

- b) this wording seems well coordinated with that of sports competitions (see the emphasis on hazard or uncertainty).

1.4. Legal (Article 3.4.a) and Illegal (Article 3.4.b) Sporting Bets

1.4.1. Proposed definition: ““legal betting” shall mean any sports betting activity whose type and the operator are allowed under the applicable of the jurisdiction where the consumer is located.”

1.4.2. Proposed definition: ““illegal betting” shall mean any sports betting activity whose type and the operator are not allowed under the applicable law of the jurisdiction where the consumer is located.”

1.4.3. Commentary

- a) Subject to verification, it seems that the submission of bets to the legislative competence of the State having jurisdiction over the consumer is a reasonable solution that reduces the risk of conflicts of jurisdiction;
- b) the need to avoid any reference to the territory (as there remains one in the current version of Article 3.4.b);
- c) that the concept of jurisdiction is less familiar in the countries of Romano-Germanic legal tradition.

1.5. Irregular or Suspicious Sporting Bets

1.5.1. Proposed definition: ““irregular betting” shall mean any activity of sports betting with any kind of irregularity except that which characterises illegal betting.”

1.5.2. Proposed definition: ““suspicious betting” shall mean any activity of sports betting with anomalies in the bet or competition to which it refers.”

1.5.3. Commentary

The definition of irregular bets as used today is partly tautological. Are irregular bets that present irregularities.

As for those that do not present irregularities, they have anomalies. Indeed, a bet with anomalies should be considered suspicious until evidence has been presented that such anomalies are constitutive of irregularity or characterise an illegality.

In addition, the definition of suspicious bets, as used today, partially covers that of irregular bets.

Furthermore, it seems undesirable to leave it to the Conventional Committee to establish the criteria for the characterisation of irregular betting and suspicious betting, contrary to what is suggested by the commentary.

CRIMINAL PROVISIONS

- 2.1. The text of the Convention, with its new Article 14, still bears the mark of hesitation, which was not removed by the Franco-German compromise, between establishing the manipulation of sports competitions as a criminal offence and "inviting" or "forcing" Parties to suppress the manipulation of sports competitions in whatever way they see fit. Consequently, there are some discrepancies between the relative vagueness of the definition laid down in Article 14 and other penal provisions which are much more accurate, even though they may only cover connected offences.

It seems that the expression used in Article 14.1 "allows *criminalising* the manipulation of sports competitions..." is not very common in the repressive conventions.

Despite the criticisms that could be made concerning Article 14 in its detail or to other provisions in Chapter IV, the new version reinforces the obligation for the Parties to organise the penal repression of the manipulation of sports competitions (or some of its forms).

Taking out Article 14 and the following articles would reduce the object of the Convention to the prevention of the manipulation of sports competitions, necessary but not sufficient in itself. However, it should, in this regard, be ensured that Article 23, by offering an alternative between criminal, civil, or administrative liability, does not contradict Articles 14 and 24 combined.

- 2.2. Several options are available to negotiators.

Either continue, on the basis of the elements of definition found in Article 14, to develop a comprehensive definition of the offence of "manipulation of sports competitions", with a possible addition of a clause stating that the offence may be introduced under different meanings in domestic law provided that the same facts are covered.

Or, as suggested by the DAJ (Directorate of Legal Affairs in France), notwithstanding a degree of precision that may be lower than that usually reached in criminal conventions, the wording of Article 14 is in line with the usage, and the Parties “establish as a criminal offence” the manipulation of sports competitions (as defined in Article 3) as soon as the facts include elements of duress, corruption or fraud, provided that the terms “duress”, “corruption” and “fraud” are precisely defined.

Or, the wording of Article 14 is amended to require the parties to “ensure that their domestic law allows the criminal punishment of the manipulation of sports competitions when the facts include elements of duress, corruption, or fraud.”

If a clear choice is made, it will be necessary to ensure the harmonisation of the terms used throughout the Convention with this option (currently, many expressions suggest that Article 14 establishes the manipulation of sports competitions as an offence, which is not exactly its purpose).

In the last two cases, but particularly if the manipulation of sports competitions is immediately established as an offence, it would be inconvenient that the definition of the elements that transform an act of manipulation of sports competitions into a criminal offence (*i.e.* Duress, corruption, fraud) is relegated to the “commentaries” of uncertain legal status - to say the least.

Yet, it is necessary to make sure the Parties are not tempted to consider that the presence of the offences “duress”, “fraud”, or “corruption” in their domestic law exempts them from ensuring that the existing systems allow a sufficient repression of the manipulation of sports competitions as envisaged in the Convention. In other words, it is necessary that the Parties be bound by the definition of these elements.

This is all the more important because, without a clearly established criminal offence, a possible reference to the UN Convention on Transnational Organised Crime would lose any real purpose as a specific regime provided for in the future EPAS convention.

- 2.3. The definition of “elements of duress” could specify against whom the duress, force, or threat may be used, in particular to emphasise that athletes can be victims of these acts (and thus be driven to contribute to the manipulation without obtaining any benefit). In the definition of “corruption”, perhaps it should be specified whether the advantage is “unfair” in terms of sports regulations (and/or) of rules of national law (to be coordinated carefully with the definition in Article 3). In defining “elements of fraud”, the qualification of “patrimonial” injury may be unnecessarily restrictive.

It could also be questioned how the offender, or rather, the offenders in most cases, should be identified, given the diversity of ways of participating in the commission of the often complex offence of manipulating sports competitions.

2.4. In addition to the necessary adjustments to Article 14, which is a central provision, the criminal provisions of the Convention can still be improved by:

- a greater emphasis on the repression of transnational organised crime in connection with the manipulation of sports competitions, and, either the adoption of an instrument inspired by the UN Convention on Transnational Organised Crime or a reference to that instrument (options to consider in more detail); if the same logic as the United Nations Convention is to be adopted, it would be necessary for States not only to establish the manipulation of sports competitions (and its various forms) as a criminal offence, but to also establish penalties whose applicability, according to the severity of the behaviours they penalise, can trigger the applicability of the Convention; otherwise, the applicability of this instrument would depend in fact or in law on the national legislations which can have very unequal solutions concerning the gravity of the manipulation;

- a broadening of the matters referred to in Article 16 on the basis of the United Nations Convention against Transnational Organised Crime (organising, directing, facilitating, counselling, participating as an accomplice, attempting to commit, association or conspiracy to commit...);

- a clearer mention – in the text and/or the comments – of the criminal prosecution of irregular betting (e.g. in the case where the bettor has knowledge of the manipulation without taking part in it himself and bets accordingly).

- removing Article 17 in view of the diversity of the underlying national concepts of the criminal liability of legal persons;

- clarifying the provisions regarding penalties that are rather confusing (see the annotated Convention provision by provision⁶⁵⁸).

⁶⁵⁸ This document cannot be reproduced.

3. The Essential Adoption of Complementary Instruments

Regardless of its merits, it would be unrealistic to think that a single international convention, albeit universal, like the Council of Europe's Convention, could, on its own, register the commitments of all the stakeholders in the fight against the manipulation of sports competitions.

In addition, the close links between prevention and repression - since the prevention of the manipulation of sports competitions is partly achieved through the repression of illegal and irregular bets - the complementary responsibilities of the sports movement and States call for the adoption of a coordinated set of instruments incorporating:

- undertakings by States to prevent and fight against the manipulation of sports competitions, whether or not related to sports bets (international agreement);
- undertakings made by the international sports institutions to prevent and suppress the manipulation of competitions (binding declaration for sports institutions, possibly included in the relevant IOC instruments);
- a harmonisation instrument for substantive disciplinary rules applicable to the manipulation of competitions (guidelines of a disciplinary code adopted by sports institutions by adhering to the declaration in their disciplinary instruments);
- subsidiary undertakings made by betting operators, in particular concerning voluntary cooperation with sports institutions (code of conduct and model agreement to be concluded with sports institutions);
- standards, classifications, and technical rules essential to the coordinated action of the various stakeholders;
- agreements (MoUs, *etc.*) concluded between relevant international organisations (UNESCO, Council of Europe, Interpol, UNODC, *etc.*) or between them and other stakeholders (governments, sports organisations).

The Council of Europe's Convention, which is essentially the first of these instruments, can be supplemented by instruments, which are more technical by not necessarily binding, elaborated in the framework of the monitoring body, and if applicable, after consulting the private stakeholders.⁶⁵⁹

⁶⁵⁹ See in particular Articles 29 *et seq.* of the Convention on the Manipulation of Sports Competitions and its commentaries.

§ 2. Unequal Regional Mobilisation

From Latin America⁶⁶⁰ to the Commonwealth,⁶⁶¹ regional mobilisation is being organised to combat the manipulation of sports competitions. Reflection is particularly advanced in the European Union, notwithstanding differences of opinion between Member States and between European institutions and Member States, not on the need to preserve sport integrity and its values, but on the ways to achieve this and the appropriate policy for the regulation of sports betting.

However, in Asia, there does not seem to be any specific intergovernmental initiatives concerning the fight against manipulation of sports competitions (*i.e.* outside of issues of international police cooperation and initiatives of the Asian Football Confederation in collaboration with FIFA and INTERPOL). For its part, the Association of Southeast Asian Nations (ASEAN) is also interested in the organisation of sports competitions (for example through sports associations like ASEAN Football Federation which is a member of the Asian Football Confederation), but it has not developed a specific action against manipulation competitions or illegal bets.

Reflection is particularly advanced in the European Union, notwithstanding differences of opinion among Member States but also between Member States and EU institutions, not on the need to preserve the integrity of sport and its values, but on the means to achieve it and the appropriate policy on regulating sports bets.

Recently, the European Union relatively seized the issue of the manipulation of sports competitions, situated at the intersection of many of its concerns, which may sometimes prove contradictory.

The EU was first confronted with this issue in terms of sports bets, which is both one of the causes of manipulation and one of the symptoms that allow detecting it. In fact, the betting sector, just like all gambling games, comes under the scope of application of the EU law on free movement of services (Article 56 TFEU) and the freedom of establishment (Article 49 TFEU).⁶⁶² Certainly, States retain the ability to regulate this sector for reasons related to the preservation of public order or for the protection of the health of consumers.

But this regulation should not be used to impede the free provision of services, which is why the EU is concerned about the national legal frameworks.⁶⁶³

⁶⁶⁰ See *supra* Part 2, Title 3, Chapter 1, Section 3, § 2.

⁶⁶¹ The meeting of Commonwealth Sports Ministers, on the occasion of the 20th Commonwealth Games was for example an opportunity for the exchange of best practices: "*Policy tools and guidebooks published by the Commonwealth Secretariat will be presented at the Meeting, including The Commonwealth Guide to Advancing Development through Sport. Barbados, Rwanda and Sri Lanka are among those countries already using these guidelines to develop national action plans. The ministers will also consider recommendations while in Glasgow from the Commonwealth Advisory Body on Sport (CABOS), a 14-member group of sport experts from across the Commonwealth, which is headed by Louise Martin, Chair of Sport Scotland. In addition, the ministers will hear from the Commonwealth Youth Sport for Development and Peace working group (CYSDP)*" (GhanaWeb, [<http://www.ghanaweb.com/GhanaHomePage/SportsArchive/artikel.php?ID=317786>], 20 July 2014).

⁶⁶² For further developments on this issue, see *supra* Part 1, Title 1, Chapter 1, Section 2, "Legal Framework of Sports Markets".

⁶⁶³ See especially CJEU, 30 June 2011, C-212/08, *Zeturf*, admitting, under certain conditions related to the will to fight against crime and fraud, maintaining a monopoly on horse betting.

But the EU also focuses more directly on the manipulation of sports competitions under Article 165 TFEU, which provides that it must "contribute to the promotion of European sporting issues" and particularly "developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen."

The European Parliament was the first to include this issue on the agenda of the European Union by adopting, as of 2009, a series of resolutions on the integrity of online gambling in which it particularly "calls on the Member States to ensure that sports competition organisers, betting operators and regulators cooperate on measures to tackle the risks related to illegal betting behaviour and match-fixing in sport and explore the establishment of a workable, equitable and sustainable regulatory framework to protect the integrity of sports."⁶⁶⁴ It subsequently adopted resolutions specifically on match-fixing and corruption in sport, calling on the Commission to "develop a coordinated approach to combat match-fixing and organised crime" and encouraging Member States to effectively repress manipulation and cooperate to detect it.⁶⁶⁵

For its part, the Commission tackled the problem of manipulation of sports competitions, since the publication of its *White Paper on Sport* in 2007⁶⁶⁶ and in its subsequent communications on sport,⁶⁶⁷ which led to conducting a study on the penal provisions applicable in the Member States to the manipulation of sport in 2012, but also on corruption and online gambling. While the main purpose of this communication entitled "Towards a comprehensive European framework on online gambling" is to ensure "compliance of national regulatory frameworks with the EU law," it also aims at "safeguarding the integrity of sport and combat match-fixing."⁶⁶⁸ As such, the Commission plans to adopt a "recommendation on good practices in the field of prevention and fight against match-fixing related to bets" and has funded projects to prevent manipulation in the framework of its "European partnerships in the field of sport."

Already present in the work plan of the EU to promote sport for 2011-2014, "combating match-fixing" must remain a priority for Member States and the Commission for the period of 2014-2017.⁶⁶⁹

Lastly, given the implications for the EU of the manipulation of competitions, it has participated, albeit belatedly, in the negotiation of the Council of Europe Convention against the manipulation of competitions. The EU Council thus adopted on 10 June 2013 a decision authorizing the Commission to negotiate "on behalf of the European Union," "on the matters falling within the Union's competence."⁶⁷⁰

Once again, it is the link between the regulation of bets and the fight against manipulation that seems to have prompted the EU to act. But the intersection of the objectives promoted by the EU, between freedom to provide gambling services and the fight against manipulation, may blur its speech on the subject.

⁶⁶⁴ Resolution 2008/2215 on 10 March 2009. See also Resolution 2012/2322 on 10 September 2013.

⁶⁶⁵ Resolution 2013/2567 on 14 March 2013.

⁶⁶⁶ SEC (2007) 935, 11 July 2007.

⁶⁶⁷ "Developing the European Dimension in Sport", communication of 18 January 2011, COM2011(12) final, p. 3.

⁶⁶⁸ COM(2012) 596 final, p. 16.

⁶⁶⁹ European Union Work Plan for Sport (2014-2017). Resolution 2014/C 183/03, 14 June 2013.

⁶⁷⁰ Decision 2013/304/EU.

The multitude of initiatives in progress should not dissimulate two difficulties, which are by no means specific to the fight against this threat to sport integrity. The first is the risk of inefficiency that could result from a lack of coordination between universal organisations and the concerned regional organisations; it lies less in the contradiction of standards, which is always possible, than in the time-consuming duplication of the processes of regulation or control, likely to divert time and resources that would be more usefully spent on field action. The second is the process of institutional adaptation which is, in some areas, an essential prerequisite to combating the manipulation of sports competitions, as evidenced by the case of Africa.

The SCSA and the New African Sport Architecture

The SCSA: Creation and Crisis

The Supreme Council for Sport in Africa (SCSA), originally known as the *Comité permanent du sport africain* (CPSA) was created on 14 December 1966 following the first All-Africa Games which were held in 1965 in Brazzaville (Democratic Republic of Congo). In 1977, this organisation became one of the specialised agencies of the Organisation of African Unity (OAU).

Since its creation, the SCSA has allocated a significant portion of its resources to campaigns denouncing apartheid and the participation of colonial regimes in international sporting events, devoting less attention to its functions of promotion of sport, organisation of the All-Africa Games, and maintenance of relationships with other organisations that are active in the field of sports.

In 1999, the SCSA adopted a Code of Ethics of the African sporting movement. It did not contain specific provisions dealing with the manipulation of sports competitions linked to betting. Only one of the principles of the Code referred to the prohibition of any kind of cheating (Principle II. Probity).

The transformation of the OAU into the African Union (AU) led to significant changes. Since 1999, the organisation has sought to develop the tools necessary to carry out its mission to promote the integration and development of Africa. In the field of sport, the circumstances preceding the advent of the African Union remained, however, unchanged, because although the SCSA retained its place among the agencies of the African Union, neither its structure nor its scope was substantially amended. This failure of the SCSA in the performance of its duties as the main decision-making body of the African sports policy has led most Member States to question the importance of their participation in the Council, and several of them to cease paying their contributions and to suspend their attendance of the meetings of the organisation.

In this context, even the most iconic work of SCSA, which was the organisation of the All-Africa Games, appears to have been abandoned due to a lack of clear rules and insufficient funding.

The Response of the African Union: the Conference of Ministers of Sport in Africa

The paralysis caused by the financial crisis, the lack of meetings, and the low support for host countries of the All-Africa Games by the SCSA did not go unnoticed within the African Union. Starting in 2006, several measures were taken by the organisation of integration of the African continent in order to remedy this situation.⁶⁷¹ Thus, a division dedicated to sport was created within the Department of Social Affairs of the African Commission.

In addition, recognising the need for the establishment of a body capable of ensuring the leadership and harmonisation of the sports policy of the continent, the General Assembly of the African Union asked the Commission to convene a conference bringing together the Ministers of Sports of the Member States.⁶⁷²

This conference was held in Addis Ababa (Ethiopia) in June 2007. At the end of the discussions, participant Ministers called for, *inter alia*, the institutionalisation of the Conference as an organ of the AU⁶⁷³ and the preparation of a Draft Action Plan on sport for this organisation.⁶⁷⁴

The Conference also requested the Commission to facilitate the establishment of a committee composed of members of its office, the Commission itself, and representatives of the Association of National Olympic Committees of Africa (ANOCA), the Association of African Sports Confederations (AASC), and the SCSA. This Committee was tasked with examining the options for the reform of SCSA and propose “a harmonised system in the form of a Draft Memorandum of Understanding on the strengthening of relations between African governments, national sporting movements, and international federations.”⁶⁷⁵

Most of these requests were approved by the Executive Council of the African Union.⁶⁷⁶ The Conference of Ministers of Sport (CAMS) has been institutionalised and its office was responsible for overseeing the implementation of the projects set forth in the Addis Ababa Declaration of 8 June 2007.

The Council also asked the Commission to prepare an Action Plan on sport for the African Union. The plan, entitled “Strategic framework of the African Union for the Sustainable Development of Sports in Africa” was presented by the AU Commission in 2008. It sets specific goals for the development of sport in Africa for the 2008-2018 period. Although the plan calls for the promotion of ethical values⁶⁷⁷ and makes recommendations in this area,⁶⁷⁸ the document contains no reference to the manipulation of sports competitions.

⁶⁷¹ F. C.DIKOME, *Le service public du sport en Afrique noire: l'exemple du Cameroun*, L'Harmattan, 2012, p. 56.

⁶⁷² African Union, Doc. Assembly/AU/2 (VII) document.

⁶⁷³ Addis Ababa Declaration of the First Session of the African Union Conference of Ministers of Sport, Addis Ababa (Ethiopia), 4-8 June 2007, § 2, p. 2.

⁶⁷⁴ Addis Ababa Declaration of the First Session of the African Union Conference of Ministers of Sport, Addis Ababa (Ethiopia), 4-8 June 2007, § 9, p. 2.

⁶⁷⁵ Addis Ababa Declaration of the First Session of the African Union Conference of Ministers of Sport, Addis Ababa (Ethiopia), 4-8 June 2007, § 10, pp. 2-3.

⁶⁷⁶ African Union, Document DOC.EX.CL/353 (XI).

⁶⁷⁷ Its main purpose is indeed “To promote participation and excellence, build capacity and promote ethics and values for sport in Africa” (Sport Policy Framework for Africa 2008-2018, § 13, p. 12).

⁶⁷⁸ “A safe, fair and ethical environment through coordinated action will characterize sport by government and non-government institutions. A common ethical basis for sport will be articulated, including principles, standards and a framework of ethical behaviour. These standards and principles will deal with fair play, doping harassment and abuse, violence, health and safety, and procedural fairness [...]” (Sport Policy Framework for Africa 2008-2018, § 39, p. 22).

In application of the Addis Ababa Declaration, the AU Commission has also been designated to coordinate the work of a committee set up to study the restructuring of the SCSA and analyse the relationships between governments, national sporting movements, and international federations.

The report prepared by this committee was submitted to the Ministers at the second session of the CAMS held in Accra (Ghana) in October 2008. After discussion, the Conference decided to dissolve the SCSA. It was foreseen that a report on the legal, financial, and operational aspects required for the transition and transfer of the functions of the SCSA to the AU Commission would be analysed at the third session of the Conference.

The New African Sports Architecture

The third session of the CAMS was held in October 2009 in Abuja (Nigeria) on “Africa and the opportunities offered to it by sport.” One objective of the Conference was the appointment of bodies able to direct the African policy on sport following the dissolution of the SCSA. In this context, following a proposal by the CAMS, the Executive Council of the African Union decided to set up a new structure called “African Sports Architecture”(ASA). The CAMS was appointed at the top of this structure, as the body responsible for harmonising African sports policy. It was also envisaged that the CAMS Office, the Sport Advisory Board,⁶⁷⁹ and other technical committees would assist the CAMS as part of the ASA.

The third session of the CAMS decided that the dissolution of the SCSA would be completed after the 2011 All-Africa Games in Mozambique. To this end, the Council of the AU urged Member States to pay their arrears, to allow the SCSA to meet its financial obligations before being dissolved. It was also decided that the Commission should fully participate in the SCSA dissolution program.⁶⁸⁰

The fourth session of the CAMS was held in October 2011 in Addis Ababa (Ethiopia) on “Consolidating Africa’s Renaissance through Sport”. Again, the definition of the ASA was one of the main topics of the Conference. The composition of this structure was laid down in a report by the AU Commission addressed to the CAMS. This document advocated the establishment of a secretariat to which three technical committees would be attached: a committee for development,⁶⁸¹ a committee for finance and audit, and a committee for the All-Africa Games. The Commission also recommended the integration of African sports organisations (including ANOCA and AASC) in different organs of the ASA and the clear and thorough exposition of the functions and objectives assigned to each of the components of this new structure.

Among the decisions adopted by CAMS at its fourth meeting is also a new request for the dissolution of the SCSA to take place in January 2012, at the end of the Extraordinary Session of the General Assembly, to allow the transfer of the organisation of the All-Africa Games.⁶⁸²

⁶⁷⁹ The Sport Advisory Board was established in 2003 by decision of the Executive Council of the AU to mobilise the African sporting movement in the campaign to eradicate HIV/AIDS and doping, environmental protection and eradication of poverty. EX.CL/Dec. 62 (III).

⁶⁸⁰ Executive Council of the African Union, Doc. EX.CL/543(XVI).

⁶⁸¹ This technical committee should address issues such as the participation of women in sport, Paralympic sport, medical help, doping, and the use of sport as a tool for development and peace.

⁶⁸² Executive Council of the African Union, Doc. EX.CL/Dec. 680(XX).

This change "seems like a normal process, because the SCSA can only be managed by a sports structure affiliated with the International Olympic Committee (IOC) and not a government structure".⁶⁸³ For the African Union, the transfer was all the more necessary in that it would obtain the support of the IOC for the All-Africa Games. This competition could thus become a qualifying stage before the Olympics which, moreover, would increase the interest of high-level athletes in the All-Africa Games and should help ensure its financial autonomy.⁶⁸⁴

The belated dissolution of the SCSA and the establishment of the ASA

Despite the resolution of the African Union, determined to renew the institutions responsible for the governance of sport in Africa, the dissolution of the SCSA was, for a long time, the main obstacle to this process.

Indeed, the General Assembly scheduled for January 2012 did not occur since the organisation rejected the offer of Nigeria to host the extraordinary session designed for this purpose.⁶⁸⁵ In March of the same year, at a SCSA meeting held in Eritrea, the lack of a quorum prevented the adoption of a final decision on dissolution. A few months later, after the SCSA meeting held in Nigeria in November 2012, Member States agreed to reconsider the matter and await instructions from the respective Heads of State, thus postponing the decision once again.

Aware of the paralysis caused by this situation,⁶⁸⁶ the African Union decided to put an end to the legal existence of the SCSA at the fifth session of the AU Conference of Sports Ministers held in July 2013 in Abidjan (Ivory Coast). As one of the objectives of this Conference, held around the theme "Using sport as a factor in achieving national development programs", was indeed to serve "as a forum for discussion of practical measures and steps towards the implementation of the new African Sport Architecture",⁶⁸⁷ Sport Ministers of the AU took the opportunity to hold an extraordinary session of the General Assembly of the SCSA and proceed to its dissolution⁶⁸⁸.

The ministers also decided to set up a transition committee to oversee the dissolution and transfer the functions of the SCSA to the Commission of the African Union.⁶⁸⁹ This decision finally enabled the entry into force of the Protocol stipulating that the organisation of the All-Africa Games should be undertaken jointly by the Member States, the ANOCA, the AASC, and the AU.

⁶⁸³ F.C. DIKOME, *op. cit.*, p. 56.

⁶⁸⁴ The next edition of the All-Africa Games will be held in 2015 in Congo.

⁶⁸⁵ Matrix of the implementation of the decisions of the Fourth Session of the AU Conference of Sports Ministers (CAMS4) presented at the Fifth Ordinary Session, 22-26 July 2013 in Abidjan (Ivory Coast), p. 2.

⁶⁸⁶ According to the Commission of the African Union: "Legally speaking, without the final act of dissolution of the SCSA, the main decisions of the 4th African Union Conference of Sports Ministers (CAMS4) cannot be implemented. Also, the African Union Commission (AUC), the Association of National Olympic Committees of Africa (ANOCA), and the Association of African Sports Confederations (AASC) must wait until the dissolution of the SCSA before taking ownership, management and organisation the All-Africa Games respectively" (Letter of the Commission of the African Union dated 8 June 2012).

⁶⁸⁷ African Union Conference of Sports Ministers, Fifth Ordinary Session, 22-26 July 2013 in Abidjan (Ivory Coast), "Using sport as a factor in achieving national development programs", Draft Guideline, document SA9611, § 5, p. 1.

⁶⁸⁸ African Union Conference of Sports Ministers, Fifth Ordinary Session, 22-26 July 2013 in Abidjan (Ivory Coast), "Using sport as a factor in achieving national development programs", Draft Guideline, document CAMS5/MIN/Rpt(V), § 30, p. 12.

⁶⁸⁹ *Idem*.

Since the existence of the SCSA was the main obstacle to the creation of some of the bodies making up the ASA,⁶⁹⁰ its dissolution finally allowed the Ministers in the CAMS to prepare an action plan to accelerate the establishment of the ASA⁶⁹¹ to allow it to take care of the implementation of the AU Strategic Framework for the Sustainable Development of Sports in Africa (2008-2018).⁶⁹² Among the functions that must be performed in this context by the ASA: restructuring development areas of Sport based on the five AU regions, supporting anti-doping organisations and programs, formulating strategies to ensure the participation of women, youth, and persons with disabilities in sporting events and sports administration, implementing strategies to integrate sport into broader areas of human capital development, especially health, education, science, and culture, as well as any other measures to promote the training of athletes, sport, and development through sport⁶⁹³.

§ 3. Stakes and Priorities of the Fight against the Manipulation of Sports Competitions for Public Authorities

When viewed as an international public interest issue, the fight against the manipulation of sports competitions was subdivided by the authorities, in various ways, into different priorities in accordance with issues regarded as important. Two priorities now appear essential for States, whose level of involvement is also very variable: the protection of public order,⁶⁹⁴ threatened by various elements, including organised crime and money laundering (**A**), and the preservation of ethics and the values of sport (**B**).

A. Protecting Public Order, Fighting against Transnational Organised Crime and Money Laundering

National public policies are directly threatened by the manipulation of sports competitions, especially when linked to the manipulation of sports bets (**1**). When States became aware of the stakes and priorities of the fight against the manipulation of sports competitions, the correlation between the measures taken and the results observed are undeniable (**2**).

1. Threats to Public Order

Today, sports bets generate significant risks to sport integrity since their evolution provides manipulators with numerous and very lucrative betting opportunities which are either weakly regulated or not regulated.

⁶⁹⁰ "Regrettably, the establishment of a new Architecture and the dissolution of the SCSA was not done in line with the timeframe set by the CAMS and Executive Council due to lack of cooperation from the SCSA Secretariat General", (Fifth ordinary session, 22-26 July 2013 in Abidjan (Ivory Coast), "Using sport as a factor in achieving national development programmes", Report of the chairperson of the AU Commission on the implementation of the decisions of the 4th session of the AU Conference of Ministers of Sport, Addis-Ababa (Ethiopia), 17-21 October 2011, Document CAMS5/MIN/2(V), § 3, p.1).

⁶⁹¹ To this end, it was provided that the specialised technical office of African Sport Architecture will be based in Cameroon (*idem*, § 12, p. 4.).

⁶⁹² See: African Union Conference of Sports Ministers, Fifth Ordinary Session, 22-26 July 2013 in Abidjan (Ivory Coast), Declaration of Abidjan, 26 July 2013, § 1, p. 2.

⁶⁹³ *Idem*, § 1, pp. 2-3.

⁶⁹⁴ See *supra* Chapter 1, Section 2, § 1, A, 1.

a. Illegal Bets

Among the factors to be taken into consideration, the importance of illegal bets is worth mentioning, since they involve a very significant underground economy, links between organised crime and sport, and a difficulty to detect suspicious odds fluctuations. The uncontrollable nature of bets in Asia provides discrete opportunities for wagers, beyond the monitoring of local and foreign authorities. The co-existence of legal, illegal and partially illegal operators creates a very complex situation for many regulators, leads partially illegal operators to be wary of measures that could be implemented to promote sport integrity (they fear measures that could affect their profitability) and to conflicts of interest (illegal operators finance professional sports to gain legitimacy). The strong growth of live-betting requires, in practice, important means for tracking market fluctuations and detect possible manipulations in real-time. The rise of countries seeking to attract betting operators with attractive tax policies and lax regulations also offers spaces which are favourable for criminals attracted by sports betting havens, as was already the case with tax havens.

b. Betting Formulas Attracting Criminals

In response to the development of new information and communication technologies (NICT), as well as the amplification of competition and the constant change of the offer, a growing sophistication of the types and forms of bets was observed during the last decade, and along with it, new opportunities for cheaters, as well as new risk areas for regulators to take into account. It was shown under Title 1 of this part that a sporting event can constitute a basis for multiple forms of bets. The risk proper to a given sporting event increases with the corresponding liquidity (total volume of bets on the various formulas linked to a sporting event), which is the result of the aggregation of several formulas and types of bets, hence the expression: one event, several formulas, one liquidity. The difference in the danger level (the "manipulability") that may exist between different types and forms of bets warrants for considering each of them individually, rather than considering "bets" in general. In particular, with a view to protecting public policy as well as the interests of stakeholders, it is desirable to adapt any restrictions to the specific dangers of each type and form of bets.

c. The Volumes of Bets Placed on a Sporting Event, the Main Attractiveness Factor for Criminals

In fact, betting formulas that are most favoured by bettors, such as the 1x2 (betting on the winner of a match) or handicap bet, where the liquidity level is at its highest, are the most attractive for criminals, who can bet large amounts with lower risks of being detected: the benefits of manipulating these competitions are increased. Today, live bets make up 70% of the activity of numerous operators and should be paid particular attention. Closely linked to the development of online bets, live betting increases the value of information: with the same privileged information, one can, *a priori*, make larger profits than through normal bets.

Lacking a sufficient level of liquidity, certain betting formulas (bets regarding events in the game that do not have a direct influence on the result of a competition – spot fixing) do not present, for the time being, any major risks. However, some recent cases (such as the case of football in the United Kingdom) have shown that players had accepted sums of money in order to get expelled. The risk of individual fraud is more significant than the risk of organised crime, especially since an individual alone can easily manipulate a game event. Although these products contributed to the transformation of traditional betting markets, their liquidity levels limit, for the time being, their attractiveness for cheaters, and therefore their danger for sports.

d. The Severability of the Sporting Result from the Betting Result Represents a Major Risk Factor

Binary betting formulas (handicap, over/under) present a relatively higher risk factor, since they allow dissociating the sporting result from the betting result. In addition, access to the now globalised market of Asian and American consumers who favour handicap and over/under bets, will certainly increase liquidity to a level that is sufficient to ensure the profitability of criminal operations: the evaluation of the relative risk factor of these betting formulas should take these phenomena into consideration.

e. Money Laundering Opportunities

In addition, modern sports bets offer numerous money laundering opportunities. Established mainly in tax havens, which have also become gambling havens, sports betting businesses regularly offer their services via the internet without possessing the required authorisations in the country of residence of their clients. Since illegal betting does not generally constitute a criminal offence, dirty money can easily be transferred, as winnings, from an offshore player's account to a banking account in a reputable country. Online operators carry the bulk of the risk, because of the high rate of return to players, new methods of payment encouraging anonymity, the absence of verification of the identity of bettors, and the illegal offer found everywhere.

The combined effects of the globalisation of sports markets (and their international dissemination in particular through the internet) and betting markets clearly contributed to the increase in opportunities of manipulation of sports competitions for criminal organisations.

2. Mobilisation and Results: an Undeniable Correlation

Regardless of the regulation model and tax level chosen by a country, it is very difficult today to eliminate illegal bets. This comes from the fact that, on a technical level, it is difficult to block all illegal sites, as well as the payments of illegal financial transactions linked to bets. In addition, numerous countries have not yet clearly defined the legal contours of internet screening, since internet is a very young medium.

Lastly, combating illegal bets is not generally included in the list of priorities of governments, who primarily target issues such as terrorism.

However, countries that understood the dangers of illegal bets obtained significant results although, as is the case in combating doping, the complete eradication of illegal bets is not feasible. By contrast, prevention initiatives taken towards bettors, targeting offenders, cooperating with financial institutions as well as targeted police action allow a noticeable decrease in the amount of illegal bets.

B. The Preservation of the Ethics and Values of Sport

In the fight against the manipulation of sports competitions, the preservation of public policy is consistent with the preservation of the ethics and values of sports (1). A corollary issue arises from this consideration: the governance of sporting bodies (2). The protection of the ethics and values of sport, on the one hand, and the governance of sport institutions, on the other hand, do not constitute major issues for sports stakeholders alone;⁶⁹⁵ since public authorities, spurred by movements in favour of sport integrity and understanding the rationality of the stakeholders, got involved in these issues.

1. The Affirmation of a Priority Concern: Preserving the Value of Ethical Excellence in Sport

The various measures implemented by public authorities would not be effective if the value of ethical excellence in sport is not reaffirmed and minimally internalised by all stakeholders. The manipulation of sports competitions is unacceptable in view of ethical requirements. In fact, according to a humanistic approach, sport is not enclosed in “values” that are proper to it, and is in correlation with general values that affect humanity (such as education, the quality of human achievements, health, the compliance with standards, fundamental rights or personal development).

However, promoting these values is difficult, and poses the question of whether there are specific conditions for their acceptance in the sporting sector. An ethical approach to sports consists in identifying conflicts of values and understanding how a reference to value judgments constitutes a part of the practices, rules and institutions. Sports are in fact rooted in the notion of “play”, in other words, in free activities practiced for the sake of practicing them and for the satisfaction they provide. However, competition is the main source of the need for a sports ethics code, since it involves recognition and rewards (financial and political) that are associated with opportunities of violating rules and the insufficient adoption of value references deemed as important.

⁶⁹⁵ See *supra* Chapter 1.

Beyond cultural differences, sport is regarded as contributing to the human good. The ethical approach to sport highlights this contribution, in particular to health, to the search for excellence through the use of human capacities, to the appreciation of competitors despite rivalries, to the search of equity, to learning to respect common rules. In addition, since sports activities form a part of social, political and economic transactions which are at the core of living in a society, this makes them important for community life. The support lent to sports by the public creates expectations in terms of justification and reinforces ethical expectations.

However, the support provided by the public is currently debated, and criticising the “values of sports” contributes to fighting certain myths by confronting the practices, the material and institutional situation of sports with actual practices. This criticism suggests advancements in the elaboration and realisation of values of reference.

Although preserving the value of ethical excellence in sport is an essential and sometimes stated goal, it is not certain that the results, essentially normative, which testify to the existence of a principle of integrity of sports competitions help to achieve this goal.⁶⁹⁶

In any case, the concern of preserving the value of ethical excellence in sport is expressed in the pursuit of an improved governance of sports institutions.

2. The Emergence of a Corollary Concern: The Governance of Sports Institutions

Without reiterating the findings of the discussion of the results of the field survey presented above, it should be noted that flaws in the governance of sports institutions could directly or indirectly increase their vulnerability to manipulations of sports competitions. Directly, by not protecting them against risks of corrupting agents gaining a power of influence in some of their bodies of management or on some of their members. Indirectly, by preventing them from either initiating the fight against the manipulation of sports competitions, through a lack of sufficient reactivity for example, or from conducting an effective fight, because of a lack of legitimacy for example.

An analysis of risks linked to the governance of sports organisations that are likely to affect sports integrity allowed the identification of the following risk factors:

- Control of the organisation by organised crime;
- Financial difficulties of the organisation;
- Denying a situation or fear for the organisation’s image in the event of a scandal;
- Lack of interest in sports integrity issues;

⁶⁹⁶ On the issue of the difference between the unanimity surrounding integrity as an ethical value and the difficulty in identifying it and legally implementing it, see *Intégrité des compétitions sportives*, Juris Corpus, Droit & économie du sport, 2014, Dalloz, Juris Éditions.

- Operational difficulties in the management of integrity issues (including a lack of responsiveness)
- Favouring short-term objectives to the long-term interests of the organisation;
- Isolation of the sports organisation from the public authorities (thus inducing a risk of insufficient reaction);
- Dilution of responsibilities between the stakeholders of a given sport on the subject of integrity (causing a risk of inadequate reaction).

As is the case with public authorities and other private organisations, sporting institutions are currently confronted with a requirement of good governance that is based on three pillars: responsibility, transparency and participation. These principles provide a series of more concrete requirements (legitimacy of the organisation's managers, the development of a strategic perspective, the taking into account the views of all the members of the institutions as well as external stakeholders, the existence of appeal mechanisms, the transparency of the decisionmaking process, the responsibility of decisionmakers, combating corruption and conflicts of interests, complying with the fundamental rights and economic liberties of private persons, *etc.*).

However, certain specificities of the sporting movement have a direct impact on its governance. The main sporting institutions are at the same time regulators and principal economic agents on the market. They are generally concerned with adopting norms and decisions that, at the same time contribute to the regulation of their sport and to the advancement of their own economic and commercial interests. In addition, sports organisations have very different objectives and yield very different figures (financial results, number of licensees, sporting results, *etc.*).

Several studies have already underlined the flaws in the governance of sports institutions in general or of one or another of these institutions. Their functioning – this discussion will be limited to the aspects that could hinder the fight against the manipulation of sports competitions – sometimes shows deadlock situations, a lack of responsiveness, transparency and a certain paralysis in the decisionmaking process.

Whether spontaneously or through external pressure, certain sporting institutions showed their will to adapt their systems of governance to the evolution of their functions and to the requirements of the public opinion and public authorities. These initiatives span from the adoption, in 2008, of the Basic Universal Principles of Good Governance of the Olympic and Sports Movement by the IOC, to UEFA's rules on financial fair play that were enacted on 1 June 2012 for example. The first instrument illustrates the type of rules of governance that can indirectly contribute to the fight against the manipulation of sports competitions: the targeted measures are only effective if they are coupled with sound institutional structures. The second instrument shows measures of good governance aimed at neutralising a precise factor capable of encouraging the manipulation of sports competitions. The rules on financial fair play are designed to avoid late payments of salaries by clubs to their players, which contributes to preventing a major risk of fraud.

On the basis of the analyses found in the Report and the recommendations given (for example, in resolution 1875 (2012) adopted on 25 April 2012 by the Parliamentary Assembly of the Council of Europe), several measures that should allow the anticipation of the risks mentioned above can be suggested:

- The integrity of sporting directors should be guaranteed: the competence of sports institutions in the field of ethics can be optimised or weakened through the election procedure and the functioning of the decisionmaking bodies;
- The managing bodies of a sport organisation should adopt a proactive and preventive strategy instead of a reactive one;
- The financial risks of sporting structures that can be required to remunerate athletes should be managed;
- The operations of the managing bodies of sporting federations and leagues should be adapted to sports integrity;
- For each sports organisation, a classification of risks – primarily integrity risks – should be established, in a long term perspective accompanied by a procedure for managing incidents;
- For each sports organisation, the establishment of an integrity committee endowed with real powers should be rendered mandatory;
- All mentions relating to integrity should be included in the statutes and regulations of national and international sporting federations – leagues.

The following general observations can also be made:

- The reliability of the analysis or of the legal advice sought before making policy decisions is crucial for the effectiveness and the legitimacy of the prevention and repression devices to be used; the under-estimation of certain legal constraints can expose sports institutions to unexpected disputes; their over-estimation can, on the contrary, paralyse the institution;
- In order to be able to adequately fulfil their objectives, sporting institutions should specifically determine, for each issue, whom/what to take into account and to whom/on what they should report: since the manipulation of sports competitions affects third parties, sporting institutions certainly have an obligation to provide accounts of the situation and of their reactions to the public authorities (or even to the other stakeholders);
- Sharing best practices and resorting to outside expertise (that could lead to a ranking) or to peer review mechanisms could sustain the will of the sports institutions to renew their governance and encourage a sound emulation between them.

Good governance does not constitute, for sports institutions, a trend they are doomed to follow. It is a critical issue: the quality of cooperation with public authorities, in particular in terms of information sharing will depend on the quality of the cooperation with public authorities.

Conclusion of Section 1

The analysis of the stakes and priorities in the fight against the manipulation of sports competitions showed that the issue of values was inseparable from the measures taken by public authorities in their quest to preserve public order and fight against transnational organised crime and money laundering.

The impact of the international agenda on the national agenda also reflects this intertwining.

Section 2. Impact of the International Agenda on National Agendas

According to a classic movement in the international system, modifications of national legislations preceded the formation of an above-described international agenda (§ 1), which incited new States to review the existing devices or fill the observed regulatory gaps (§ 2).

§ 1. The Role of Precursor of Certain States

Awareness on the need to combat the manipulation of sports competitions did not appear everywhere at the same time. Some legislators have not yet reacted to the current evolution, while others are reacting rather slowly. In some cases, legislations were rapidly adopted, but soon proved insufficient. In others, States preferred to act in a slower but more comprehensive manner.

Below are a few examples of States that have either rapidly enacted legislation against manipulation of sports competitions, or enacted comprehensive, integrated and particularly thorough devices. This is obviously not a matter of giving good and bad points, but rather drawing attention to the differentiated development of legislation in the field considered.

A. Italy

Italy, regularly affected by match-fixing scandals in connection with illegal bets, particularly in the 1980s,⁶⁹⁷ was one of the first to adopt legal provisions specifically intended to suppress the manipulation of sports competitions.

The Law of 13 December 1989 No. 401 (Law 401/1989) defined an offence of sporting fraud in Article 1 para. 1, which punishes "any person who offers or promises to provide money or any other benefit to a participant in a sports competition organised by the federations recognised by CONI or UNIRE (equestrian sports) or any other sports organisation recognised by the State and by member associations, for the purpose of achieving a different result from that which would have been obtained following the proper conduct of the competition, or performs any other form of fraudulent act to achieve a such a result." The second paragraph of the same provision applies to persons participating in the competition.

⁶⁹⁷ See *supra* Part 1, Title 1, Chapter 2 for a presentation of the *Calcioscommesse* affair.

The definition of the offence is very broad and focuses primarily on the corruptor, often outside the sports world, which makes the offence even if his proposal is not accepted and so fraud is not actually realised. For the corruptor, the mere unilateral promise is enough to qualify as offence. The second paragraph refers to cases where the offer of fraud is accepted by a participant in a sports competition. Of course, the mere fact of receiving an offer of fraud is in principle insufficient to incriminate the recipient who would not have responded.

In cases where the offence of sporting fraud is not applicable, for example for sporting events organised by other federations as those required by Law no. 401/1989 or for acts that cannot be qualified based on this law, it is sometimes possible to use the concept of fraud (in Italian, *truffa*) provided for in Article 640 of the Italian Penal Code. This provision applies to "any person who, by artifice or conspiracy, induces someone into error and assigns, to himself or to others, an unfair advantage at the expense of others." When facts could be characterised as both sporting fraud and fraud, the first qualification wins, according to the principle of specialty.

The Italian legislation on sports bets is also a result of the legislative response to a scandal that rocked the world of Italian football in the 1980s. Article 4 of the Law no. 401/1989 prohibits the unlawful management of betting and gambling activities, rightly regarded as damaging to the State finances, through their interference with a public monopoly, and as offering a field privileged to organised crime. The first part of Article 4 para. 1 refers to the activities of illegal bets in areas where there is a government monopoly, and therefore are severely repressed, while the second, erecting a simple offense, punishes illegal betting and gambling activities less severely in areas where such a public monopoly does not exist.

Despite its innovative nature at the time of its development, the Law of 13 December 1989 could not anticipate the subsequent evolution of the phenomenon of sports bets, especially since the development of Internet and internationalisation of bets. Italy thus adopted different standards since the entry into force of the Law No. 401/1989, provisions aimed at combating the illegal practice of sports bets, particularly to protect the tax revenue of the State. The new standards were enacted in a context of multiplication and stratification of texts sometimes difficult to reconcile. One can mention, among the more general texts, Articles 718 and the following articles of the Criminal Code (Art 718: "Practice of gambling: Whoever, in a public place or a place open to the public or in a private club of any kind whatsoever, organises a gambling game or assist in its organisation, shall be punished by imprisonment for a term of between three months and one year and a fine of more than 206 euros..."; Art. 720: "Participation in gambling: Whoever, in a public place or a place open to the public or a private club of any kind whatsoever, and except as provided in Art. 718, is caught participating in a gambling game shall be punished by imprisonment for a period not exceeding six months or a fine of less than 516 euros..."), and Articles 88 and 110 of the Consolidated Text of Public Safety Laws (TULPS) of 18 June 1931, No. 773 (TULPS, Art. 88: "The licence for the organisation of bets can be granted exclusively to dealers or persons

authorised by the Ministries or other institutions authorised by law to organise and manage bets, and to individuals designated by dealers or other authorised persons"; Art. 110 organises and oversees the site which hosts the gambling games, providing in particular an obligation to inform, and strongly oversees the use of slot machines).

It may also be noted that the Law of 13 December 1989 organises the transmission of information between sports authorities and the judiciary authorities. Sports authorities are indeed subject to an obligation to transmit information relating to possible offences. Thus Article 3 of the Law no. 401/1989 specifies that: "The presidents of sports federations affiliated to CONI, the presidents of the disciplinary bodies of the entities and associations mentioned in the first paragraph of Art. 1, which in the course of or because of their functions are informed of the crimes defined in Art. 1 (fraud in sports competition), are obliged to report, under the laws in force, to the judicial authority." In this regard, the 1989 law merely expands an existing obligation. However, the provision of information from State judicial authorities, particularly criminal courts, to sports federations is more problematic. The 1989 Act recognises the possibility, for the bodies of the sports courts, to use the probationary material gathered in the criminal context. Thus, Article 2 para. 3 provides: "The sporting disciplinary bodies, for the sole purpose of exercising their jurisdiction, may request copies of the proceedings of the criminal trial [...]." In practice, it is assumed that this possibility also exists for the results of telephone tapping (see Article 270 of the Code of Criminal Procedure and Article 1 of Law No. 280 of 17 October 2003, the sporting judge considered that the tapping carried out as part of a criminal investigation can also be used in the procedures of sporting justice, TNAS, 2/02/2010, *Per lasca/FIP*; the State judge seems to have the same opinion, TAR Lazio, sez. III ter, 19 March 2008).

The Italian government is currently planning to tighten sanctions against athletes guilty of manipulation of competitions or other forms of sporting fraud. The Interior Minister stated on this subject: "We want to say that the State has lost patience with those who want to destroy football." Under the new legislation, the one who gives or receives money to alter the outcome of a sporting event may be sentenced to a term between two and six years in prison.⁶⁹⁸

B. France

The Law of 12 May 2010 on opening to competition and regulation of the sector of gambling and online gambling regulated the offer of online sports bets that developed despite the monopoly established by the French State.⁶⁹⁹ The major and sensitive issue of gambling required the intervention of the State, the establishment of supervision and regulation to ensure the requirements of the public and social order such as the fight against addiction and protection of youth and vulnerable people in particular. This law's main objective is the creation of a legal framework, accompanied by means allowing its imposition and tools to fight against illegal websites.

⁶⁹⁸ "New Laws for Hooligans and Match-fixing", 8 August 2014, Football Italia [<http://www.football-italia.net/53670/new-laws-hooligans-and-match-fixing>].

⁶⁹⁹ See *infra* Part 3, Title 1, Chapter 3, Section 2, § §§1.

To this end, it created an independent administrative authority, the Authority of Regulation of Online Gambling *ARJEL (Autorité de Régulation des Jeux en Ligne)*, which aims to regulate this sector to prevent excessive or pathological gambling and protect minors, ensure the integrity, reliability and transparency of gaming operations, prevent fraudulent or criminal activities, money laundering, and the financing of terrorism and ensure the balanced and equitable development of the different types of games to prevent the economic destabilisation of the sectors concerned.

The French Parliament chose to strongly regulate the sector of gambling and online gambling and allow only certain games and bets (horseracing bets in their mutual form, mutual sporting bets or bets in fixed odds, bets closed before the competition and live bets and, for the *jeux de cercle*, poker only). It also enacted a number of regulations designed to prevent gambling addiction, ranging from the establishment of moderators of games enabling players to limit their bets and allow their player account to display the balance of this account, through a national assistance helpline for compulsive gamblers. The bets can only relate to the competition categories and types of outcomes defined by ARJEL, after consultation with the relevant sports federations. The law provides for criminal penalties applicable to unlicensed operators working for the public located in France. The President of ARJEL may inform the President of the Tribunal of First Instance in Paris, in summary jurisdiction, for the purposes of ordering the blocking of access to this site by web hosts and Internet service providers, and its delisting from search engines and directories, if an unauthorised operator did not comply with the French law following a formal notice of ARJEL. The Law establishes a procedure for blocking financial flows from and/or to an operator prosecuted by ARJEL. The Law of 1 February 2012 for strengthening the ethics and rights of athletes clarified and reinforced the device.

This law created two criminal offenses criminalising corruption in sport, active and passive, by adding to the Criminal Code Articles 445-1-1 445-2-1, which provide that penalties for corruption may also be pronounced against "any person promising or offering, without right, at any time, directly or indirectly, gifts, presents or any other advantages, for himself or for another person, a stakeholder in a sporting event giving rise to sports bets, so that he modifies, by performance or non-performance the normal and fair conduct for this event", and against "any stakeholder in a sports competition giving rise to sports bets who, in view of modifying or changing the result of sports bets, solicits any gifts, presents, or advantages, for himself or for another person, so that he modifies, by performance or non-performance, the normal and fair conduct for this event." These definitions have been the subject of many discussions.⁷⁰⁰

C. Belgium

The Belgian government has signed all international conventions on the subject of combating corruption, including the United Nations Convention of 31 October 2003 and both criminal and civil Conventions on Corruption of the Council of Europe, respectively dated 15 May 2003 and 04 November 1999.

⁷⁰⁰ See *supra* Part 1, Title 2, Chapter 2.

The provisions of these conventions have been incorporated into the Belgian Penal Code, Article 246 and the following regarding the corruption of persons exercising a public function and Article 504bis and the following on the general offense of private corruption. The latter is already punishable since 1999.

Articles 504 *bis* and 504 *ter* of the Belgian Penal Code apply in particular to cases of corruption in sport. The first states: "§ 1. Constitutes passive private corruption the act for a person holding the position of administrator or manager of a corporation, agent or employee of a person or entity, of soliciting or accepting, directly or by interposition of people, an offer, promise or advantage of any kind for himself or for a third party for performance or non-performance of an act within his position or facilitated by his position, without knowledge and authorisation, as appropriate, of the Board of Directors or the General Assembly, the principal or employer. § 2. Constitutes active private corruption the act of offering, directly or by interposition of people, a person holding the position of administrator or manager of a corporation, agent or employee of a person or entity, an offer, promise or advantage of any kind for himself or for a third party for performance or non-performance of an act within his position or facilitated by his position, without knowledge and authorisation, as appropriate, of the Board of Directors or the General Assembly, the principal or employer."

Belgian criminal courts are generally competent to prosecute in Belgium any offense committed on this territory, as well as to prosecute any Belgian person or any person whose main residence is in Belgium who, outside the Belgian territory, was guilty of an act considered a crime or offence by Belgian law, as is the case on corruption. This possibility respects the principle of dual criminality, in the sense that it is necessary that this crime or offence under Belgian law also be suppressed by the law of the country where the offence was actually committed.

In addition, any foreigner may be prosecuted in Belgium for acts committed outside Belgian territory, in cases of crimes against Belgian nationals, and provided that the fact is considered a punishable offence whose maximum exceeds five years of imprisonment, by virtue of the legislation of the country where it was committed.

As for bets, the Belgian legislature was a pioneer by adopting the Act of 7 May 1999 on games of chance, gambling establishments and the protection of players. Games of chance are in principle prohibited. However, to the extent that the total prohibition led to a proliferation of illegal gambling, the choice fell on a policy channeling through licensing. This is why the Commission on Games of chance was established by the Act of 7 May 1999. This Commission grants different types of licenses for the operation of games of chance, which enables it to ensure a good supervision of these games.⁷⁰¹ A law of 10 January 2010 made some amendments to the original legislation. It entered into force on 1 January 2011.

⁷⁰¹ See *infra* Part 3, Title 1, Chapter 3, Section 2, § 3.

Some websites which have a license from the Gambling Commission can offer games of chance online. The unlicensed offer of games is criminally punishable. Bettors can only participate in gambling on these websites. If they bet on illegal websites, they are subject to criminal prosecution, as participants. If the prosecution decides not to institute proceedings or does not respond to the facts within six months, the Commission may impose administrative fines on both organisers and bettors.

The legislation on games of chance provides a "white list", which is a list of all the authorised websites that offer online games of chance or bets and which are currently 51. A "blacklist", published at www.gamingcommission.be includes websites that illegally offer online games of chance and/or bets. There are currently 82. To build this list, the Commission may use information from citizens, operators and the police.

For perpetrators of offences, which are the operators of illegal sites, those who facilitate their operations, those who advertise for these sites and bettors themselves, are provided relatively severe penalties, up to 5 years of imprisonment as well as fines. It also allows the blocking of access to websites on the "blacklist", which is decided by the office of the Senior Crown prosecutor. This is done by blocking access to the sites and redirection to a "stop" page.

§ 2. An Acceleration of Legislative Reforms Regarding Manipulation of Sports Competitions and Sports Bets

In recent years, or even months, many governments and parliaments became aware of the magnitude of the problems raised by the manipulation of sports competitions and by sports bets, and of the negative - potential and proven - impact of these phenomena on crime, sport and society in general. This led them to take legislative initiatives in view of reforms intended to combat the manipulation of competitions more effectively and/or regulate the practices of operators of sports bets more firmly.

A. Some Examples

1. Australia

Match-fixing in sport has risen in prominence in recent years in Australia. There have been two recent high profile cases. The first of these, match-fixing in the National Rugby League (NRL), occurred in New South Wales (NSW) in 2010 prior to the introduction of specific match-fixing legislation. Therefore the charges proceeded under general criminal law provisions for dishonesty. The second of these, match-fixing in the Victorian Premier League (soccer), occurred in 2013 after Victoria had introduced specific match-fixing legislation into its Crimes Act 1958 (Vic).

Criminal law is primarily a state and territory responsibility. Some specific match-fixing legislation has been introduced in 2012 and 2013. However, some Australian jurisdictions currently rely on traditional criminal law provisions. In February 2011, the Australian Sport and Recreation Ministers' Council agreed that it was a priority for all Australian governments to protect the integrity of Australian sport from the threat of match-fixing. On 10 June 2011, the National Policy on Match-Fixing in Sport (National Policy) was endorsed by all governments. The objective of the National Policy is to 'maximise public confidence in the integrity of sport and to ensure a level playing field'. The framework principles for the National Policy are a nationally consistent approach to deter and deal with match-fixing in Australia through criminal offences, information sharing, a national code of conduct for sport, and to support the leadership of international efforts to combat corruption in sport. The first key element of the National Policy was for nationally consistent criminal offences to be legislated to address match-fixing. The requirement for specific legislation was to provide an effective deterrent, including sufficient penalties. However, the obligation to introduce specific legislation did not apply if a jurisdiction had offences already in place.

In accordance with the National Policy, each State and Territory, with the exceptions of Queensland and Western Australia, have introduced new specific match-fixing legislation. Queensland and Western Australia appear to have at first formed the view that their existing legislation is sufficient to deal with match-fixing behavior.

On 5 January 2011, the State of NSW referred the issue of the coverage of the criminal law in relation to cheating at gambling to its Law Reform Commission for investigation and report. This was in response to the NRL match-fixing incident arising in the preceding months (although the court cases were yet to be decided) as well as incidents overseas. In August 2011, the Cheating at Gambling report was published. The Consultation Paper 12 identified a number of existing laws of NSW that might potentially be invoked in relation to cheating at gambling on sporting events. These included the common law offence of cheating and the common law offence of conspiracy to defraud, and statutory offences under the Crimes Act 1900 (NSW) and the Unlawful Gambling Act 1998 (NSW). The statutory offence under the Crimes Act of 'dishonestly obtaining a financial advantage by deception' was successfully used in the NRL match-fixing case later in 2011, but not against those not on the field in separate cases decided in May 2012 and June 2013. These general criminal provisions were considered inadequate to deal with many aspects of match-fixing. Therefore the Cheating at Gambling report contained a Draft Bill to introduce new offences to the Crimes Act 1900 (NSW) to specifically criminalise match-fixing. The draft criminal provisions and their justification in the Cheating at Gambling report were the basis for the subsequent match-fixing legislation in New South Wales and other jurisdictions in Australia.

The new match-fixing legislation applying in NSW is contained in Part 4ACA of the Crimes Act 1900 (NSW). The legislation establishes five offences relating to match fixing, namely it is an offence to: (i) Engage in conduct that corrupts a betting outcome of an event; (ii) Facilitate conduct that corrupts a betting outcome of an event; (iii) Encourage another person to conceal from any appropriate authority conduct or an agreement about conduct that corrupts a betting outcome of an event; (iv) Use corrupt conduct information for betting purposes; and (v) Use inside information for betting purposes. The maximum penalty for each offence is 10 years' imprisonment, except the offence of using inside information, which carries a maximum penalty of two years' imprisonment.

In South Australia, the legislation mirrors the match-fixing legislation in NSW, in particular there are the same five offences with the same penalties. In the Australian Capital Territory, the legislation does not include the facilitation or concealment offences of conduct that corrupts a betting outcome of an event. In the Northern Territory, the legislation provides for a maximum penalty of seven years imprisonment rather than 10 years. In Victoria, the one substantive difference to the match-fixing legislation of NSW is that there is no offence relating to 'inside information'. This represents an important difference in approach from a policy viewpoint. In effect, in the case of people who are subject to the disciplinary powers of sport (usually people who are contractually bound), the legislation leaves sanctions to the sports authorities. In the case of people not so bound, there is no recourse.

One significant characteristic of the match-fixing offences is that they catch more than just conduct that directly corrupts a betting outcome of an event. They also cover the activities of those who encourage or organise conduct that corrupts a betting outcome but who do not also engage in that conduct. The match-fixing offences eliminate the requirement to prove participation in the actual fixing of the match in order to attract a criminal sanction. Similarly, the activities of those who seek to profit from the use of information about match-fixing are now exposed to criminal sanction.

The new match-fixing legislation in Victoria has proven effective in the VPL case, although it avoided the close judicial scrutiny and explanation which might have occurred had the accused contested the charges by pleading not guilty. However, in as much as any comment can be made, the provisions were substantial enough to discourage the two players from taking that course.

Moreover, the territories of Queensland and Western Australia seem to have returned to their original position and are now considering new legislation, in coordination with other provinces, against manipulations related to sports bets.⁷⁰²

⁷⁰² I. RANSOM, "Australian Sports Need Access to Police Intelligence – Speed", 18 March 2014, Reuters [<http://www.chicagotribune.com/sports/sns-rt-uk-corruption-australia-20140318,0,5792619.story>].

Recently, the government of NSW sent a bill aiming to optimize the fight against the manipulation of sports competitions to Parliament (Racing Administration Amendment (Sports Betting National Operational Model) Bill 2014). Its purpose is to allow betting operators to conclude agreements with sports federations about measures to prevent such manipulations, but also to investigate and prosecute them.⁷⁰³

2. New Zealand

The manipulation of sports competitions should be specifically criminalised, as a criminal offence punishable by up to seven years in prison, according to a law - the Crimes (Match-fixing) Amendment Bill - which has already passed a first reading in Parliament, by a unanimous vote.

The law should come into force at the beginning of 2015, allowing for its timely application during the Cricket World Cup and the U-20 Football World Cup scheduled to take place in this country. It will establish the manipulation of sports competitions as a form of cheating within the meaning of the Crimes Act, which already makes it an offense to make a profit or to cause damage through cheating.⁷⁰⁴ Currently, only disciplinary sanctions are available against the athletes and officials concerned. Criminal prosecution may be initiated against the perpetrators if any step in the process of manipulation - a discussion, a transaction or the competition itself - took place in New Zealand, but also against the player who deposits his earnings from bets in an account in a New Zealand bank.⁷⁰⁵

The new legislation was prepared after extensive consultation with government agencies and sports organisations.⁷⁰⁶

3. India

The Ministry of Youth and Sports prepared a draft bill for the prevention of the manipulation of competitions and other unethical practices in sport (Prevention of Sporting Fraud Bill).

The draft bill criminalises sporting fraud, which it defines as any manipulation of a sporting result (regardless of its impact or outcome), the failure by an athlete to act according to his true potential, and the disclosure of confidential information likely to influence the outcome of a competition.

⁷⁰³ J. MILLER, "New South Wales match fixing reform Bill", 28 May 2014, JD *supra* [<http://www.jdsupra.com/legalnews/new-south-wales-match-fixing-reform-bill-75240/>]. The same legislation will allow the government to determine whether betting activities are acceptable, depending on the sport considered. It will also provide the means to better monitor bets on non-professional sports ("New Legislation to Target Match-Fixing in Sport", 20 March 2014, Indusage [http://www.indusage.com.au/new-legislation-to-target-match-fixing-in-sport/?utm_source=rss&utm_medium=rss&utm_campaign=new-legislation-to-target-match-fixing-in-sport#]).

⁷⁰⁴ "Seven-year sentence to be introduced for match-fixing in New Zealand", 31 juillet 2014, Australian Associated Press [<http://www.theguardian.com/sport/2014/jul/31/seven-year-sentence-for-match-fixing-in-new-zealand>].

⁷⁰⁵ I. DAVISON, "Tough Match-Fixing Penalties on Cards Under New Law", 21 mai 2014, The New Zealand Herald [http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11258532].

⁷⁰⁶ A. GOURDIE, "Govt to crackdown on match-fixing", 2 mai 2014, 3 News [<http://www.3news.co.nz/Govt-to-crackdown-on-match-fixing/tabid/415/articleID/342535/Default.aspx>].

The sanctions are imprisonment of up to five years and a fine equal to the profit made by the perpetrator of the fraud. This draft bill still needs to be approved by Parliament.⁷⁰⁷

The Indian Ministry of Interior has also announced the creation within the Central Bureau of Investigation, of a special unit for sport integrity, whose jurisdiction extends to the national territory and which is tasked with investigating fraud cases in sport, including the manipulation of competitions, doping, illegal bets and other offences related thereto, as well as the role of organised crime in these phenomena.⁷⁰⁸

4. Russia

The Russian Federation's Penal Code contains a rule relating to criminal liability for offences committed affecting the integrity and fairness of sports competitions. This is Article 184, revised on 23 July 2013⁷⁰⁹ and entitled "The Illicit Manipulation of the Results of Official Sports Competitions and Commercial Competitions." This provision mainly deals with the corruption of athletes, referees and coaches of sports teams, and other organisers and participants in official sports competitions, as well as forcing them to manipulate or to make an arrangement with one or more of the persons mentioned above for purposes of manipulation. It also criminalises the illicit taking (passive corruption) of money, securities or other property by athletes, coaches or other participants in an official athletic competition, if these goods were given to them in exchange of obtaining from them the manipulation of the outcome of a sporting competition. It criminalises agreements for manipulating results. This is obviously to protect the normal organisation and course of official competitions. Penalties are increased when the offenses are committed by organised criminal groups.

According to Law No. 329-FZ of 4 December 2007 on physical culture and sport, an official sporting event is a competition organised by a sporting association recognised by the Russian Federation in accordance with the procedure prescribed by the law and which is binding on athletes bound by an employment or other contract, and whose main goal is the realisation of profits and the distribution of profits between the organisers and the participants in that competition. However, this provision applies not only to professional athletes and sports competitions in which these athletes participate, but also applies to amateur athletes and competitions in which the latter are involved.

⁷⁰⁷ "Legislative Agenda for the New Sports Minister", 27 mai 2014, Sportskeeda [<http://www.sportskeeda.com/general-sports/legislative-agenda-new-sports-minister-india/>].

⁷⁰⁸ "Home Ministry Confirms Setting Up of Sports Integrity Unit", 12 août 2014, Times of India [<http://timesofindia.indiatimes.com/Sports/More-sports/Others/Home-ministry-confirms-setting-up-of-Sports-Integrity-Unit/articleshow/40126568.cms>]. Indian authorities had solicited the IOC's know-how, to help them in the preparation of their draft bills ("India Seeks IOC's Help To Draft Anti Match-fixing Law", 24 February 2014, Bernama [<http://www.bernama.com/bernama/v7/wn/newsworld.php?id=1016881>]. Sur la situation en Inde, see also D. MAHAPATRA, "MCOCA Type Law Needed to Deal with Corruption in Sports: Panel", 11 February 2014, Times of India [http://articles.timesofindia.indiatimes.com/2014-02-11/news/47234765_1_anti-corruption-mcoca-nilay-dutta] and "Working Hard on Anti-Sports Fraud Bill: Sports Minister", 11 February 2014, Zee News India [http://zeenews.india.com/sports/others/working-hard-on-anti-sports-fraud-bill-sports-minister_780338.html].

⁷⁰⁹ By Law no. 198-FZ of 23 July 2013 on the introduction of amendments in the federal law on physical culture and sport and in other legislative acts in order to prevent the illicit manipulation of the results of official sports competitions.

The promise and the payment of compensation to participants for winning a competition as well as the granting of goods in order to create better conditions for training and preparation of sports competitions cannot be considered as acts of corruption. According to Russian lawyers, it is in fact necessary to distinguish situations in which the person who received remuneration or the promise of remuneration seeks to influence the outcome of sports competitions through illicit means (match-fixing, for example) from the situation in which such compensation encourages the person to achieve the best results during a sports competition through lawful means (training, the development of physical abilities, *etc.*). This latter situation is called "the stimulation athletes or coaches" and is not considered illegal.

The penalties provided for in Article 184 of the Penal Code consider four different situations:

1) Paragraph 1 (simple active corruption):

1.1) this paragraph concerns judges and referees, athletes, team managers, other participants or organisers of sports competitions;

1.2) they may be punished:

(a) either by a fine of 300,000 to 500,000 Roubles (about 5500-9200 Euros)

(b) by a sentence of forced labour of up to 4 years, which may be accompanied by a ban from holding certain positions or engaging in certain types of activities for up to 3 years

(c) or by a sentence of imprisonment of up to four years, to which may be added a fine of up to 50,000 Roubles (around 920 Euros), possibly accompanied by a prohibition from holding certain positions or engaging in certain types of activities for up to 3 years;

2) Paragraph 2 (active corruption by an organised criminal group):

2.1) if the offense was committed by an organised criminal group

2.2) offenders may be punished:

(a) either by a fine of 500,000 to 1,000,000 Roubles (9,200 to 18,400 Euros),

(b) by a sentence of forced labour of up to 5 years, which may be accompanied by a ban from holding certain positions or engaging in certain types of activities up to 3 years,

(c) or by a sentence of imprisonment of up to 7 years, possibly accompanied by a ban from holding certain positions or engaging in certain types of activities for up to 3 years;

3) Section 3 (passive corruption of athletes, coaches and team managers):

3.1) this paragraph affects athletes, coaches and team managers;

3.2) they may be punished:

(a) either by a fine of 300,000 to 500,000 Roubles (5500 to 9200 Euros),

(b) a sentence of hard labour of up to 4 years, which may be accompanied by a ban from holding certain positions or engaging in certain types of activity for up to 3 years,

(c) by a sentence of imprisonment of up to four years, to which may be added a fine of up to 50,000 Roubles (around 920 Euros), possibly accompanied by a prohibition to hold certain positions or engage in certain types of activities for up to 3 years;

4) Paragraph 4 (passive corruption of judges, referees and organisers of sports competitions):

4.1) this paragraph affects judges, referees and organisers of sporting events);

4.2) they may be punished:

(a) either by a fine of 500,000 to 1,000,000 Roubles (9,200 to 18,400 Euros),

(b) a sentence of hard labour for up to 5 years, which may be accompanied by a ban from holding certain positions or engaging in certain types of activity for up to 3 years,

(c) or by a sentence of imprisonment of up to 7 years, possibly accompanied by a ban from holding certain positions or engaging in certain types of activity for up to 3 years.

In 2010, the legislator had already amended Article 184 of the Penal Code by introducing conditions for exemption from criminal liability for certain acts covered by this provision. The 2013 revision did not change concerning these possibilities of exemption which can still be found at the end of Section 184.

This exemption can benefit persons who voluntarily denounced an act of corruption to a competent body, allowing the initiation criminal investigations and individuals who were the victims of extortion. In practice, Article 184 is not effectively implemented, apparently because of the difficulty in proving the corruption and the lack of guidance to law enforcement agencies on this issue.

In 2013, several amendments introduced by a technical law affecting several legislative texts, whether or not codified, modified *inter alia*, the Penal Code, the Administrative Code and the law on physical culture and sports (including Article 16, para. 6 (7)). For example, they require the federal sports organisations to take measures to ensure the prevention of the illegal manipulation of the results of official sports competitions and to fight against this manipulation. In case of failure to fulfill this obligation, sports organisations may be excluded from the register of sports organisations at the federal level, by decision of the Ministry of Sport and Physical Culture. Other amendments extend the obligations of betting operators, including the identification of their customers.

5. The United States of America

In the United States of America, criminal law jurisdiction is shared between the States and the Federal Government, the exclusive jurisdiction of Federal courts being limited to a number of specific offences. Under Federal law, the 2006 "United States Code" (hereinafter: USC) sanctions in particular the manipulation of competitions. The offence of "bribery in sporting contests" is in fact punishable under 18 USC Section 224, which defines the offence as "carrying into effect, Attempt to carry into effect, or conspires with Any --other person to carry into effect, any, scheme in commerce to influence, in Any Way, Any sporting contest by bribery, with knowledge that the purpose of Such scheme is influenced by bribery That to contest." This legislation applies subsidiarily to any standards established by States (18 USC Section 224 / b). The term "scheme in commerce" means that the law applies to acts committed wholly or partly through the use of "interstate or foreign commerce" transport or communication methods. As for the term "sporting contest", it is defined as any competition, in any sport, between individual competitors or teams of competitors (regardless of the amateur or professional status of competitors), which is publicly announced beforehand ("any contest in Any sport, entre Individual contestants or teams of contestants (without regard to the amateur or professional status of the contestants Therein), the occurrence of All which is Publicly announced Before Its occurrence"). The offence is punishable by a fine, by imprisonment of up to five years, or a cumulation of both.

On the lower level, one may mention the 2011 Penal Law of the State of New York (hereinafter: NY PL), which contains various provisions concerning the manipulation of sports competitions, active corruption ("sports bribing", Article 180.40), passive corruption ("sports bribe receiving", Article 180.45) the manipulation of a sports competition ("tampering with a sports contest", Articles 180.50 and 180.51) and acts affecting the integrity of a system of pari-mutuel bets ("impairing the integrity of a pari-mutuel betting system", Articles 180.52 and 180.53).

A sports contest is any professional or amateur competition that can be viewed by the public ("any professional or amateur sports or athletic game or contest viewed by the public"). The "sports participant" is "any person who participates or expects to participate in a sports contest as a player, contestant or member of a team, or as a coach, manager, trainer or other person directly associated with a player, contestant or team". A "sports official" is "any person who participates or expects to participate in a sports contest as a player, contestant or member of a team, or as a coach, manager, trainer or other person directly associated with a player, contestant or team". Acts of participation are defined quite broadly (Article 20 NY PL: the law applies to any person who "solicits, requests or commands; importunes or intentionally aids such person to engage in such conduct"). The sanctions provided for include, for example, imprisonment of up to seven years and a fine for active corruption (Articles 70 and 80 NY PL), and imprisonment of up to four years and a fine for passive corruption (Articles 70 and 80 NY PL). The manipulation of a sports competition is sanctioned specifically by Articles 180.50 and 180.51 NYPL ("tampering with a sports contest"). According to this provision, "a person is guilty of tampering with a sports contest when, with intent to influence the outcome of a sports contest, he tampers with any sports participant, sports official or with any animal or equipment or other thing involved in the conduct or operation of a sports contest in a manner contrary to the rules and usages purporting to govern such a contest ". The penalties are imprisonment for a maximum period of one year and a fine (Articles 70 and 80 NY PL). The first degree offence, punishable under Article NY PL 180.51, concerns horse races subject to pari-mutuel bets. The sanction for this offence is slightly more severe.

Recently, a member of Congress proposed the implementation of an "Internet Gambling Control Act," banning all online games, including poker, sports bets and State lotteries, but with the exception of horseracing bets.⁷¹⁰

6. Greece

Law No. 2725-1999, published in the Official Journal on 17 June 1999, and which concerns the regulation of amateur and professional sports, attempted, for the first time, to fight against the phenomenon of match-fixing. Article 132, entitled "Active and passive corruption with the aim to manipulate" covered the manipulation of the outcome of a sporting event in any collective or individual sport. It criminalised acts of active and passive corruption aimed at manipulating the outcome of a sporting event to the benefit or detriment of any club or association (§§ 1 and 2 respectively). Article 132 aggravated the sentence imposed if the corruption produced profits, in the form of an effective manipulation of the outcome (§ 3).

⁷¹⁰ B. SOLOMON, "Anti-Internet Gambling Bill To Be Introduced By End Of March", 20 mars 2014, Online Poker.net [<http://www.onlinepoker.net/poker-news/poker-law-industry-news/antiinternet-gambling-bill-introduced-march/22690>].

When this law proved to be ineffective, the Greek legislator responded by adopting Law No. 4049-2012, published in the official journal on 23 February, 2012, which replaces Article 132 of the previous law with article 13, which deals with “the criminal repression of match fixing”. This new provision is more comprehensive and severe. Henceforth, manipulation itself is sanctioned. According to § 1 of Article 13, “any person who takes part in illegal acts in order to modify the course, form, or outcome of any sports competition, whether individual or collective, is sanctioned with at least 1 year imprisonment and a fine ranging from 100,000 to 500,000 Euros”. §§ 2 and 3 relate respectively to acts of active and passive corruption committed to the same end, while providing for much heavier sanctions than those provided for in the 1999 law (imprisonment of at least 2 years and a fine ranging from 200,000 to 1 million Euros). In the event that the aim sought by the perpetrators is achieved or if the competition whose outcome was manipulated is on the list of bets managed by domestic or foreign operators, the perpetrator is sanctioned with a maximum of ten years of imprisonment (§ 4). In order to make the disclosure of facts easier, the new law allows the exemption from criminal liability of a person who notifies the appropriate authorities in order to prevent the commission of the acts listed in §§ 1-4 or who contributes substantially to the repression of such acts. In the same vein, the prosecutor may refrain from prosecuting such person or, if that person has already been convicted for any of these acts, the court could mitigate his sentence. In exceptional circumstances, and taking into account all the facts, including the extent of participation of the person concerned in the commission of such acts and their contribution to their revelation or repression, the court may order a stay of execution of sentence for a period ranging from 3 to 10 years (§ 5). In terms of education, the new law vests the competent authorities with enhanced means of investigation applicable to organised criminal groups and provides for measures to protect witnesses (§ 6).

The bets monitoring authority in Greece recently noted that the legal betting market fell by 37% during the past five years. As a result, the Greek legislator is considering new measures for combating illegal bets.⁷¹¹

7. The European Union

The European Parliament adopted a resolution on the European dimensions of sports (2012)4, through which it “urges Member States to take all necessary measures in order to prevent and sanction any illegal activity that is harmful to sport integrity, and to establish such activity as an offence, especially when it is related to betting activities”.⁷¹²

In December 2012, the European Parliament’s CULT committee organised a public hearing addressing two topics: fighting against match-fixing and financial fair play.

⁷¹¹ S. STRADBROOKE, “Cyprus, Greece Planning New Measures to Combat unauthorized gambling”, 1st July 2014, CalvinAyre.com [<http://calvinayre.com/2014/07/01/business/cyprus-greece-new-measures-combat-unauthorized-gambling/>].

⁷¹² The European Parliament resolution of 2 February 2012, on the European dimensions of sports (2011/2087(INI)), paragraph 84.

In March 2013, the Parliament adopted a resolution (P7_TA-PROV(2013)0098) on fixed matches and corruption in sports. This resolution calls on the committee to strongly encourage Member States to explicitly include match fixing in the national criminal law, to provide for appropriate and common minimum sanctions and to make sure that existing shortcomings are addressed in such a way as to fully respect fundamental rights.

8. Switzerland

On 30 April 2014, the Federal Council tabled for consultation a draft law on gambling, which would reinforce the prevention of gambling addiction, money laundering through bets and the manipulation of sports competitions. In particular, the law on the promotion of sports must expressly punish the manipulation of competitions related to sporting bets. Sporting bets operators and sports organisations are required to inform the authorities if they suspect a manipulation. Moreover, the draft law provides for subjecting casinos and lottery operators as well as sporting bets and games of skill, which are potentially the most dangerous, to the law on money laundering.⁷¹³

In the explanations that accompany the draft,⁷¹⁴ the Federal Council explained that the new offence of manipulation of competitions constitutes a corruption offence. Given the legal right to protect, namely fair play in sports, it seems preferable to link the offence to the manipulation of a sporting event rather than establishing a link with the Penal Code's article relating to fraud (Art. 146 CP) and to extend the implementation of these provisions in this regard. The criminal provisions aim to protect the integrity of sports, and not the financial interests of sports organisations and betting operators.

All persons who exercise, in the context of a sports competition, a function that allows them to influence its course can be the perpetrators of such an offence. One can think of the competitors (athletes), referees and their assistants, coaches and their assistants and the entire supervisory staff (depending on the type of sports, for example, a sports technician or veterinarian) as well as other persons. Just as interrupting the game for the purpose of manipulation could be caused by technical problems (e.g. failure of projectors, handling sports equipments, turning on the sprinklers), the technicians of operators are subject to the new provisions. However, this will not be the case for spectators and for potential troublemakers. Only competitions for which bets are offered will be concerned. Acts of corruption committed around the competition and which do not directly influence it are also not covered by these provisions.

The term sports competitions within the meaning of these provisions covers all regulated competitions, *i.e.* governed by the rules of an organisation of amateur or professional sports. Competitions are all the sporting events organised by an international, national or regional organisation, or by a local branch of the latter, or which are held in accordance with the rules set by an international or national sports association, regardless of the legal status of the organiser.

⁷¹³ [<http://www.ejpd.admin.ch/ejpd/fr/home/aktuell/news/2014/2014-04-300.html>].

⁷¹⁴ [<https://www.bj.admin.ch/dam/data/bj/wirtschaft/gesetzgebung/geldspielinitiative/vn-ber-f.pdf>].

The purpose of the act must be to distort the course of the competition since it would be highly restrictive to limit it to the outcome of the competition. A punishable act would consist of agreeing in advance on facts of the competition (for example: substituting a player, not being offensive, pretending to make bad choices) which are not based on sporting reasons but precisely on this agreement and on the promise of an undue advantage. It does not matter whether the behaviour in question complies with the rules of the game or contradicts them. Protection does not concern the rules of the game.

Fraud related to bets continues to be prosecuted under Article 146 (fraud) or 147 of the Penal Code (fraudulent use of a computer). There is perfect competition since many legal rights have been violated.

The place of commission of the act determines whether the Swiss criminal prosecution authorities have jurisdiction. The offence of corruption shall be deemed committed at the place where the corruptor makes his offer, at the place where the agreement is concluded, or at the place where the undue advantage is given. It does not matter where the sports competition takes place. Therefore, the provisions do not only protect gambling activities that takes place outside of Switzerland. *A contrario*, if the corruption agreement related to a competition taking place in Switzerland is concluded abroad and the granting of the advantage also takes place abroad, the applicable law will not be Swiss law, but rather the law of the country in which the offence was committed. Sports tend to become international and as shown by recent cases, the success of the prosecution often depends on international cooperation. This implies that the offence be investigated in the State requesting legal assistance as well as in the State granting it. The creation of a specific offence of corruption in connection with the manipulation of competitions follows the legal developments encountered in other countries and is the basis of international cooperation in criminal matters in this area. According to the Federal Council, this is the only way to effectively prosecute cross-border corruption agreements.

C. Other Recent Initiatives

Examples of other recent initiatives can be found hereafter:

- The government of Singapore published a draft bill restricting online bets in a rather strict measure. This draft, expected to enter into force in 2015, would restrict online bets in three different ways, either by blocking access to websites, either by prohibiting advertising for online gambling, or by preventing payments to and from the sites in question. The goal of these restrictions is to put an end to networks of manipulators of events related to sporting bets and to protect the young public and the persons addicted to gambling from easy access to online bets.⁷¹⁵

⁷¹⁵ "Sports Betting, Friends and Foes", 10 September 2014, CS Monitor [<http://www.csmonitor.com/Commentary/the-monitors-view/2014/0910/Sports-betting-friends-and-foes>].

- Irish authorities are preparing a new legislation on bets, which should reinforce the protection of sport integrity. The discussions also focus on the tax rate to be chosen, as well as issues related to the taxation of legal betting companies operating offshore.⁷¹⁶
- The Youth and Sports Committee of the Parliament of Salvador decided on a consultation for a revision of Article 87 of the general law on sports. This would establish the manipulation of sports competitions as a specifically and severely punishable offence. As part of the consultation, it will also examine the possibility of establishing a national committee in charge of investigating and imposing sanctions in relation to offences in this area.⁷¹⁷
- Cyprus plans to confer extended powers to its police authorities in order to combat illegal bets. The new legislation allows the police to close down sites offering illegal bets without having to obtain authorisation or approval from a judge. It sanctions illegal operators with imprisonment for up to five years and fines up to 300,000 Euros.⁷¹⁸ The Cypriot parliament is also concerned about the fact that many police investigations in cases of manipulations have reached a dead end and have not led to indictments. Members of Parliament are considering legislative initiatives to resolve this situation.⁷¹⁹
- In Portugal, the parliament is looking into a draft bill to regulate online bets. This draft provides for significantly taxing operators, which leads the latter to voice their objections.⁷²⁰
- Cambodia, which generally prohibits sporting bets, although they are occasionally allowed in casinos, plans to regulate the online betting market, as part of a new legislation for casinos, which could introduce a licence system.⁷²¹
- The Canadian legislation does not expressly punish the manipulation of sports competitions, which is certainly not entirely covered by existing laws, especially those concerning corruption and fraud. Observers consider that a draft bill that legalises certain forms

⁷¹⁶ B. O'CONNOR, "Brian O'Connor's Tipping Point: Legislative Structures Urgently Needed to Tackle Integrity Issues", 4 August 2014, The Irish Times [<http://www.irishtimes.com/sport/brian-o-connor-s-tipping-point-legislative-structures-urgently-needed-to-tackle-integrity-issues-1.1886378?page=2>].

⁷¹⁷ B. LOPEZ, "A Forum to Discuss Match-Fixing", 9 July 2014, La Prensa Grafica [<http://www.laprensagrafica.com/2014/07/09/un-foro-para-hablar-de-amaos>].

⁷¹⁸ S. STRADBROOKE, "Cyprus, Greece Planning New Measures to Combat Unauthorized Gambling", July 1st 2014, CalvinAyre.com [<http://calvinayre.com/2014/07/01/business/cyprus-greece-new-measures-combat-unauthorized-gambling/>].

⁷¹⁹ "Stop cheating", 20 June 2014, Incyprus [<http://incyprus.philenews.com/en-gb/Top-Stories-News/4342/42259/stop-cheating>].

⁷²⁰ "RGA Voices Concerns over Draft Portuguese Online Gambling Law", 4 July 2014, iGamingBusiness [<http://www.igamingbusiness.com/news/rga-voices-concerns-over-draft-portuguese-online-gambling-law>].

⁷²¹ S. STRADBOOKE, "Cambodia Considers Regulated Online Sports Betting as it Revises Gaming Laws", 24 June 2014, CalvinAyre [<http://calvinayre.com/2014/06/24/business/cambodia-considers-regulated-online-sports-betting-as-it-revises-gaming-laws/>].

of sporting bets (“Bill C-290”) could be a step in the right direction to protect the integrity of sports. However, major sports organisations such as the Major League Baseball and the National College Athletic Association have expressed their opposition to this liberalisation.⁷²²

- In June of 2014, the Gibraltar Betting and Gaming Association (GBGA) wrote to the UK government and to the Gambling Commission to inform them of its intention to oppose the implementation of the Gambling (Licensing and Advertising) Act 2014, which had been subject to royal approval a few weeks earlier. According to the new legislation, all online betting operators active in the UK market must obtain a licence from the “Gambling Commission” in order to conduct transactions with British clients and advertise their services on the territory in question. Licensed operators, regardless of their geographical location, are subject to the obligation to report suspicious movements to the “Gambling Commission”, in order to contribute to combating illegal activities and corruption in sports.⁷²³ However, regarding the criminal prosecution of the manipulation of competitions, representatives of British sports organisations argue that the current legislation is insufficient to punish some of its forms, due to the absence of specific legal provisions, and they also questioned the sports Minister on this subject. This could lead to further legislative efforts.⁷²⁴
- Faced with an illegal betting market estimated by the authorities at 10 Billion dollars, Jamaica amended its Betting, Gaming and Lotteries Act in order to grant additional powers to the national authority for the regulation of bets.⁷²⁵
- The German administration waited for the conclusion of the Council of Europe’s Convention on the Manipulation of Sports Competitions before taking action, but the Ministry of Justice of Bavaria has already submitted a draft law sanctioning, by imprisonment of up to five years, any professional athlete involved in such manipulations.⁷²⁶

⁷²² B. MACKIN, “Canada Needs Law to Battle Sports Match-Fixing, Canadian Gaming Summit attendees told”, 27 June 2014, BIV [<http://www.biv.com/article/20140627/BIV0120/307019978-1/BIV0100/weekend-read-canada-needslaw->].

⁷²³ “Gibraltar Body to Challenge New UK Gambling Act”, 19 June 2014, IGamingBusiness [<http://www.igamingbusiness.com/news/gibraltar-body-challenge-new-uk-gambling-act>].

⁷²⁴ B. RUMSBY, «Sport and Recreation Alliance Calls on Government to Criminalise Match-fixing», 4 June 2014, The Telegraph [<http://www.telegraph.co.uk/sport/football/10876238/Sport-and-Recreation-Alliance-calls-on-Government-to-criminalise-match-fixing.html>].

⁷²⁵ D. LUTON, “No more bad bets - Government Amends Laws to Stifle Illegal Gaming”, 28 May 2014, The Gleaner [<http://jamaica-gleaner.com/gleaner/20140528/lead/lead1.html>].

⁷²⁶ S. UERSFELD, “Germany stepping up war on doping”, 18 March 2014, ESPN FC [http://espnfc.com/news/story/_/id/1755002/germany-step-doping-match-fixing-laws].

- The government of Sri Lanka requested the legal department of the Ministry of Sports to elaborate a draft bill related to the manipulation of sports competitions.⁷²⁷

Conclusion of Section 2

States have adapted their legislation to the threat of the manipulation of sports competitions at different rates and, substantively, in more or less complete manner

There are reasons behind these differences, including the reluctance of some countries to introduce a new provision specifically dedicated to sports fraud in their criminal legislation. These countries consider, in particular, that certain offenses which are already provided for in their legislation, although more general, are sufficient to cover the various forms that the manipulation of sports competitions is likely to take.

This is obviously a mistake, as was shown in Title 2 of Part 1 and as will be shown below in Title 2 of Part 3. This is why some of the countries that are most affected, although they responded quickly and appropriately with regard to the scope of the newly created offence of sporting fraud, resorted in some cases to combining it with more traditional offences such as fraud or active or passive corruption.

Beyond these issues of legal strategy, we note that States often chose to provide for tough sanctions as well as the possibility of combining several different types of sanctions, marking their commitment to defend public order and the values embodied by the preservation of the integrity of sporting competitions.

Conclusion of Chapter 2

The diagnosis outlined in the introduction of this chapter is largely confirmed: the manipulation of sports competitions cannot be prevented and punished only by sports institutions, and the fight against illegal be left to the States that chose to authorise bets. This fight should be shared in the same way, for example, as the fight against money laundering.

Therefore it is important to applaud the recent advances, including the adoption of the Council of Europe's Convention on the Manipulation of Sports Competitions. However, it is also important to accept the proposals made at the beginning of this chapter and note that the technical and sometimes multi-party instruments of a coordinated fight against the manipulation of sports competitions should still be adopted and complemented with operational tools.

⁷²⁷ "Sri Lankan government to formulate laws to curb match fixing", 21 February 2014, ColomboPage.

However, the latest changes in national legislations allow considering that the progress to be achieved at the international level did not delay efforts made by certain countries to better prevent and punish the manipulation of sports competitions, in all its forms, and to regulate or better regulate a market for sports bets that is still weakly regulated at the international level.

Both the division of responsibilities between sports organisations and public authorities should be clearly established and effective

Chapter 3. The Sharing of Responsibilities between Sports Institutions and Public Authorities in the Fight against the Manipulation of Sports Competitions

The sporting world was initially built as a very poorly regulated social and cultural space. Specifically, sports activities have developed, and their practice was gradually organised and institutionalised in a field in which, for a long time, States did not want to develop specific rules, because of neglect or lack of necessity. The reason behind the organisation of the sporting movement, rather than a matter of autonomy, is a matter of political independence from the State. This does not imply the separation between sports law (see *infra*) and the domestic legal systems, internally or internationally. But due to the initial lack of State involvement in sports, the claims around the concept of autonomy grew until it was understood by some actors in the sporting movement as purely and simply meaning that sports escape the authority of State law.

Such a claim is difficult to accept to the extent that it postulates that there is a part of social activities which, in essence, are outside the jurisdiction of the States⁷²⁸ and the application of the “general law”.⁷²⁹ It must be remembered on the contrary that “the law is present here, like in any social phenomenon”; it “governs all relations, and sport would be the sole manifestation in the world that would curiously escape the mastery of the law [of the State]”.⁷³⁰ In fact, contradicting an alleged complete autonomy of the sporting movement, since the democratisation of sport and given its growing influence on society, States have largely entered the field of sports. Internally, whether in the few States of interventionist tradition or in the States of liberal tradition, there are many regulations that promote and thus govern, even though it may be a *minima*, sports activities as conduits for health, education, or integration into society.⁷³¹

⁷²⁸ See in an attempt to put the autonomy of the sporting movement to the test of the international principle of the plenary jurisdiction of a State and demonstrate that sport cannot escape entirely, originally, and definitively the sphere of competence of the State: É. LAGRANGE, “L’État et les puissances privées. Digressions sur la compétence plénière de l’État et l’autonomie du mouvement sportif”, in: *Les limites du droit international – essai en l’honneur de Joe Verhoeven/ The limits of international law – essays in honour of Joe Verhoeven*, Bruylant, December 2014.

⁷²⁹ The term is used here in a somewhat diverted meaning from its usual meaning, to describe the law of national origin (the law being mainly issued by States) and to highlight the exorbitant, exceptional, nature of the law issued by the sports organisations themselves.

⁷³⁰ M. BEDJAOUÏ, “Droit et sport : une harmonie nécessaire pour un couple singulier », Final Report of the « Droit et sport » Conference organised in Lausanne by the Court of Arbitration for Sport on 13 and 14 September 1993, available on the following website: [<http://library.la84.org/OlympicInformationCenter/RevueOlympique/1993/orf313/ORF313v.pdf>] (last accessed July 2014).

⁷³¹ At the European level see A.-N. CHAKER, *Études des législations nationales relatives au sport en Europe*, 1999, 154 p. and C. MIÈGE, J. JAPPERT (eds.), *L’organisation du sport dans les États membres de l’Union européenne, Sport et Citoyenneté* Report, 2013, 212 p.

Similarly, many States have developed sport funding programmes that condition the granting of certain subsidies to the compliance with rules of good governance and participation of the beneficiary organisations to the public policies of governments.⁷³² Internationally, some instruments, even if they are far less numerous⁷³³ and not always binding, also attest to the willingness of States to apprehend the transnational dimension of sports activities, to encourage them but also to regulate them when they are likely to lead to violations of international public policy (due to the development of transnational organised crime and corruption for example).⁷³⁴

The societal challenges of sport and its increasing interactions with other social activities decidedly entail that sports activities necessarily fall within the scope of powers that States decide to exercise effectively. The abuses in sport, such as doping, which became a public health concern, and the manipulation of sports competitions, capable of threatening public policy, especially when linked to sports betting, accentuate the importance of the articulation of skills between sports organisations and States.

Thus, the idea that sport would be excluded from public life, as a “reserved” competence of sports organisations, does not correspond to reality. However, the States themselves admit the idea that the sporting movement has some autonomy. But this does not mean a hermetic separation between two spheres (public, sports) or indifference of the public authorities towards the stakes of sport in itself and for the whole society. The scope of the “principle” of the autonomy of the sporting movement can be better understood through the study of its origin, scope, and nature (**Section 1**) before being considered more concretely, in the perspective of the fight against the manipulation of sports competitions, as a relative subsidiary autonomy that is conditioned by the compliance with standards applicable to any form of power over persons (**Section 2**).

Section 1: Origin, Scope, and Nature of the “Principle” of the Autonomy of the Sporting Movement

The “principle” of the autonomy of the sporting movement is primarily a regulating principle of the structural political relations between the sporting movement and public authorities. In this regard, it is a principle of political origin (§ 1). It is, in addition, a legal principle that establishes the possession of the sporting movement of the power of self-regulation as well as the power to monitor the observance of the standards produced (§ 3), but which sometimes does not cover the scope sought (§ 2).

⁷³² In addition to the abovementioned reports for the European States, see J.-L. CHAPPELET, *L'autonomie du sport en Europe*, Council of Europe, 2010, 112.

⁷³³ One example is the International Convention against Apartheid in Sports, adopted on 10 December 1985, the Anti-Doping Convention of the Council of Europe adopted on 16 September 1989, and the UNESCO International Convention against Doping in Sport, adopted on 19 October 2005. It is possible to also consider sports activities in the instruments of international law which, albeit not specifically targeting them, duly take them into account. Such is the case in the Convention on the Elimination of All Forms of Discrimination against Women adopted on 18 December 1979.

⁷³⁴ A. WAX, “Public International Sports Law: A “Forgotten” Discipline?”, in: R. SIEKMANN, J. SOEK (eds.), *Lex Sportiva: What is Sports Law?*, Springer, 2012, pp. 287-298.

This legal principle is, like the first, accepted by States in a movement of self-restraint and not of reverence before an inherent and plenary autonomy of sport (§ 4).

§ 1. Political Origins of the “Principle”

The first clue of a certain claim of autonomy by the sporting movement towards States is found in the discourse of Pierre de Coubertin, for whom the political neutrality of the Olympic project was the key to its survival. The Games of the First Olympiad, which took place in Athens in 1896 had in fact caused such an exaltation of nationalism that it seemed essential to keep the State away from the organisation of these events.⁷³⁵ However, it was only in 1949 that the word “autonomy” appeared in the Olympic Charter, as an expected requirement from national Olympic committees in respect of national public authorities.⁷³⁶

This concept of autonomy, later relayed very widely in the statutory acts of the other sports organisations, is essentially political in nature and was originally designed as a rampart against State interference, likely to affect the Olympic philosophy. It involves an autonomy of the internal functioning of sport organisations which implies, first and foremost, the possibility to choose the leaders of these organisations, without the interference of States.

The same original concern of protection against the influence of the States led the first sports institutions to disregard conformity to the forms provided by national laws, favouring free association to formalisation, and even sometimes thinking that they can escape the national jurisdictions under the excuse that they have no legal personality. Caught by the principle of legal reality, they had to be convinced that although they “can be established freely, and even through freedoms guaranteed by the rule of law, they are rooted, whether they like it or not, in the legal order of the place where they are located.”⁷³⁷

§ 2. Extension of the Claimed Autonomy

However, the principle of political autonomy later turned into a much broader concept than the primary neutrality, a concept that places sports organisations completely outside the influence of State law. It is important to note that sports organisations sought to give the concept of autonomy a richer legal content when they were reminded by the States, at the internal and international levels, that their activities could not escape the rule of law. Claims of autonomy of the sporting movement then moved to the field of self-regulatory capability. Having the power to enact and enforce rules for sports activities,⁷³⁸ and working in their sphere of influence, sports organisations claimed to not only have an original autonomy but also the ability to legitimately fend off the assaults of what they considered a foreign and intrusive State law.

⁷³⁵ See Part 2, Title 3, Chapter 1, Section 1, “History of Sports Institutions and Sports Ethics”.

⁷³⁶ J.-L. CHAPPELET, *op. cit.*, p. 11.

⁷³⁷ Information and quotations from F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, Leiden, Boston, Martinus Nijhoff Publishers, 2007, pp. 425 ss., p. 430.

⁷³⁸ See *infra* Part 2, Title 3, Chapter 3, Section 1, B, “Autonomy in terms of standards”.

Structurally, this normative autonomy is based on solid pillars. First, discipline is not incidental to the purpose of sports institutions; it is the very essence of sport.⁷³⁹ Secondly, the sporting movement was very early on established as a real institution, seen as a social organisation that achieves the common goals of its members through bodies having a certain authority over the group.⁷⁴⁰ It is significant in this regard that the International Olympic Committee and the first international sports federations were constituted, internationally, before the establishment of the first interstate international organisations.⁷⁴¹ The sporting movement, based on a pyramidal structure in which the exercise of exclusive responsibilities is governed by a strict hierarchy – is now deeply integrated, so that the law emanating from sports organisations has a certain indisputable effectiveness.⁷⁴² Thirdly, and most importantly, the sporting movement is based on a real legal system that it created.⁷⁴³ Indeed, this is because, faced with an unsatisfied need of regulation which, because of the transnational nature of sports competitions, could hardly be satisfied by States acting alone or through associations, sports organisations succeeded in organising themselves in a model close to the State model and to interstate relations in order to meet this need.⁷⁴⁴

The efforts deployed by sports organisations to convince that a growing autonomy was necessary as sports competitions increased in size and sophistication focused, and still do, on the virtues of this autonomy: only self-regulation, free of any influence of State law, would be able to guarantee the preservation of the values of sport, its characteristics, and the integrity of competitions and to promote “a philosophy of life, exalting and combining in a balanced whole the qualities of body, will and mind”(fundamental principles of Olympism).⁷⁴⁵ Ultimately, autonomy as seen by the sporting movement would be to “isolate” it from public authority.

In order to realise the nature and extent of the claims made by sports organisations, reference may be made to the Independent European Sport Review, commissioned by UEFA (The Union of European Football Associations) and made by J.-L. Arnaut in 2006 (hereinafter: “the Arnaut report”⁷⁴⁶).

⁷³⁹ See É. LAGRANGE, “L’État et les puissances privées. Digressions sur la compétence plénière de l’État et l’autonomie du mouvement sportif”, *op. cit.*

⁷⁴⁰ Definition taken from the theory of institution of Maurice HAURIQU and repeated by Santi ROMANO in: *L’ordre juridique*, Paris, Dalloz, 2002, 2nd edition (edition of the French translation of the book by the author *Orinamento giuridico*, originally published in 1918), p. 21.

⁷⁴¹ In the XIXth century, when the organisation of the sporting movement on the international level began, there were, in terms of inter-State relations, only a few administrative unions and the River Commissions, but no international organisation with a wider jurisdiction (it was not until 1920 and the creation of the League of Nations, forerunner of the United Nations, that an international organisation vested with competences that affect the most sensitive matters of international relations was created).

⁷⁴² See *infra* and not. Part 3, Title 2, Chapter 1, § 2.

⁷⁴³ See *infra* Part 2, Title 3, Chapter 3, Section 1, B, “Autonomy in terms of standards”.

⁷⁴⁴ P. CLASTRES, *Jeux olympiques. Un siècle de passions*, Les quatre chemins, Paris, 2008, pp. 63 *et seq.*

⁷⁴⁵ IOC, *Virtual Olympic Congress*, Juin 2009, IOC Administration NOC Relations Department Contribution (3.3.1.1.), IOC, Lausanne, cité par J.-L. CHAPPELET, *op. cit.*, p. 14.

⁷⁴⁶ The report is available online at the following web address [http://www.ethicsandsport.com/public/uploads/files/documentatie/Independent%20European%20Sport%20Review%202006%20Full_Report_EN.pdf].

It focuses in part on the numerous concerns that were caused by the precedents of the European Court of Justice (ECJ) and the Court of Justice of the European Union (CJEU), especially after the Bosman decision of 15 December 1995.⁷⁴⁷ The “Arnaut report” states, in a very questionable manner,⁷⁴⁸ that the submission of sports activities to the law of the European Union is a source of legal uncertainty and insecurity. Specifically, the report stresses that “the potential application of EU law has resulted in a situation where it has become increasingly difficult for the sports authorities to judge when they are acting legally or not », and also that « there needs to be a clearer delineation as to those matters where sports bodies may act autonomously and with a legitimate and wide margin of discretion, without fear of their decisions being undermined by the application of European Community law”.⁷⁴⁹

Moreover, according to this report, there are two categories of sports standards. The first category combines the rules that fall under the “natural sphere of competence” of sports organisations and should therefore be excluded from the scope of Community/EU law. They are rules relating to the proper functioning and integrity of sports competitions (including the rules on doping), the structure of competitions, the scheduling of the competitions, the obligation for clubs to make their employees available to national teams for free, transfers of players, shared ownership of clubs and their good governance.⁷⁵⁰ Some of these rules may however directly conflict with certain European standards. The second category of standards combines those that the report does not qualify as purely sporting standards and that are linked to the commercial aspects of sports activities, such as the rules applicable to television broadcasting rights for sporting events or the rules relating to the use of intellectual property rights. For these rules, although the report acknowledges that they must fall within the scope of Community law and may therefore be subject to verification of compatibility with it, the author also considers that “the specific nature and features of football still need to be taken into account so that the law can be applied intelligently in this area and in accordance with the underlying (legitimate) characteristics and concerns of sport.”⁷⁵¹

§ 3. Manifestation of the Claim to Legal Autonomy

Regardless of its ideological or political rhetorical uses, “the autonomy of the sporting movement” is a phrase that adequately illustrates the self-regulation performed by the sporting movement. This self-regulation is expressed in two main ways: the “autonomous production” of standards that apply to the sporting movement and the “autonomous monitoring” of the compliance with these standards of the movement itself.⁷⁵²

⁷⁴⁷ See *supra* in Part 1, Title 1, Chapter, “Sports, a Globalised Economic Activity” and especially Section 2, “Establishing a Legal Framework for Sports Markets.”

⁷⁴⁸ See the report of Mr. WHATELET (hereinafter “Wathelet Report”), commissioned by the ASSER International Sports Law Centre, *La gouvernance du sport et l'ordre juridique communautaire : le présent et l'avenir*, which is extremely critical of the “Arnaut Report”. The report is available at the following Internet address:
[http://www.asser.nl/default.aspx?site_id=11&level1=13914&level2=13931&level3&textid=36190].

⁷⁴⁹ Respectively p. 30 and p. 31 of the Report.

⁷⁵⁰ Pp. 31 *et seq.* of the report.

⁷⁵¹ P. 55 of the report.

⁷⁵² F. LATTY, *La lex sportiva...*, *op. cit.*, p. 444.

A sports legal system was thus formed (A.). Concretely, this means that the sporting movement is autonomous in terms of standards (B.) and in terms of the resolution of disputes (C.), which allows it to have a quite specific legal system. Autonomy is still derogatory in nature during the organisation of major sporting events (D.), when the sporting movement has a clear ascendancy over States, placed in competition to be nominated hosts of these major events.

A. Establishment of a “Sports Legal System”

The power of the sporting movement to create standards whose respect is enforced by mechanisms of its own is the main vector of its autonomy.⁷⁵³ The sporting movement is indeed organised as a true, private legal system, separate from the legal system emanating from public authorities, but necessarily articulated with it.

From the perspective of legal theory, the emergence of such systems is viewed in two very different ways. For some, the acceptance of such a legal pluralism⁷⁵⁴ is opposed by the most classically State-centred legal conceptions that consider the State – the public power – as the only body with the power to create laws and punish their violations. For others, it is perfectly conceivable that an organised social body other than the State can establish its own law and ensure compliance with it without always needing the State’s intervention.⁷⁵⁵

From the perspective of legal sociology, it is clear that some social bodies, once they are more or less organised, are able to develop, within the freedom accorded to them by the State, rules whose function is to regulate the behaviours of their members. It is, for example, the characteristic of associations that can adopt, under the freedom of association, which necessarily provides some autonomy, their own rules, but in a context defined by the State. This also applies to private disciplinary systems or even the world of business, in which managers have significant private powers.⁷⁵⁶

⁷⁵³ In this sense M.J. BELOFF, “Is There A *Lex Sportiva*?”, in: *Lex Sportiva: What is Sports Law?*, *op. cit.*, p. 77; K. FOSTER, “Is There a Global Sports Law?”, *Ent. L.*, 2003, p. 2.

⁷⁵⁴ This will be understood as the coexistence of (public or private) legal systems that are autonomous from each other.

⁷⁵⁵ This theory has been defended particularly by Santi ROMANO, who closely studied the Italian law which allows a great deal of autonomy to private individuals. See S. ROMANO, *L'ordre juridique*, *op. cit.* See also, within the context of the works of S. Romano, applied to sports law, W. CESARINI-SFORZA, *Il diritto dei privati*, Giuffrè, 1963, p. 126 and M.S. GIANNINI, *Sulla pluralità degli ordinamenti giuridici* (1950), in: *Id.*, *Scritti, volume terzo 1949-1954*, Milano, 2003, pp. 403 *et seq.*

⁷⁵⁶ On the notion of private power, see E. GAILLARD, *Le pouvoir en droit privé*, Economica, Paris, 1985, 250 p. and F. OST, M. VAN DE KERCHOVE, *De la pyramide au réseau ? Pour une théorie dialectique du droit*, Saint-Louis University Press, Brussels, 2002, pp. 108 *et seq.* On the implementation of this concept to the case of sports organisations, see *infra* Part 3, Title 3, Chapter 3, Section 2.

In other cases, it is thanks to a very discreet presence of the State in regulating some areas – religion⁷⁵⁷ – or because of the existence of a right deemed insufficient or non-existent – in the field of international commercial relations⁷⁵⁸ – that private regulatory systems were able to impose themselves alongside and sometimes against the State. Sports institutions have benefited from the combination of two factors to build a legal order: the very discreet presence of the public authority and their associative form.

B. Autonomy in terms of Standards

The self-regulatory authority granted to the sporting movement is believed to have given birth to a real *lex sportiva*, the definition (1.) and the substance (2.) thereof will be provided below.

1. Definition of the *Lex Sportiva*

The autonomy of the sporting movement is reflected in the development of the *lex sportiva*. The *lex sportiva*, which many have tried to compare to the *lex mercatoria*, the comparison not resisting the historical conditions of the formation of these standards, their particularity, or even their connection with State law,⁷⁵⁹ probably appears like one of the most sophisticated legal systems.⁷⁶⁰ Having become commonly used, at least among experts, the term *lex sportiva* covers a set of standards whose scope is uncertain,⁷⁶¹ and that even the Court of Arbitration for Sport (CAS) did not try to question.⁷⁶² The existence of rules common to the sporting movement as a whole or at least to one sporting discipline that apply at the transnational level allows to consider a set of universal norms imposed on sports organisations and their members besides, and sometimes against the State law applicable to sports activities⁷⁶³ and international sports law.

⁷⁵⁷ On the existence of real “religious legal systems”, see P. GANNAGE, “La coexistence des droits confessionnels et des droits laïcisés dans les relations privées internationales”, *RCADI*, 1979, vol. 164, pp. 343-415.

⁷⁵⁸ On the recognition of a true mercantile legal order, see B. GOLDMAN, “Nouvelles réflexions sur la *lex mercatoria*” in: *Études de droit international en l’honneur de Pierre Lalive*, Bâle, Francfort-on-Main, Helbing and Lichtenhahn, 1993, pp. 241-255; P. KAHN, “Droit international économique, droit international du développement, *lex mercatoria*: concept juridique unique ou pluralité des ordres juridiques?”, in: *Mélanges Goldman*, Paris, Litec, 1982, pp. 97-107; F. OSMAN, *Les principes généraux de la lex mercatoria. Contribution à l’étude d’un ordre juridique anational*, Paris, LGDJ, 1992, pp. 257 et seq., A. PELLET, “La *lex mercatoria*, “tiers ordre juridique”? Remarques ingénues d’un internationaliste de droit public”, in: *Mélanges Kahn*, Paris, Litec, 2000, pp. 53-74.

⁷⁵⁹ L. CASINI, “The Making of a *Lex Sportiva* by the Court of Arbitration for Sport”, in: *Lex Sportiva: What is Sports Law?*, op. cit., p. 158; K. FOSTER, “Is There a Global Sports Law?”, op. cit., p. 50; B. KOLEV, “*Lex Sportiva* and *Lex Mercatoria*”, in: *Lex Sportiva: What is Sports Law?*, op. cit., pp. 223-233; A. RÖTHEL, “*Lex mercatoria*, *lex sportiva*, *lex technica* – Private Rechtsetzung jenseits des Nationalstaates?”, *Juristische Zeitschrift*, 15/16/2007, pp. 755-763.

⁷⁶⁰ See F. LATTY, *La lex sportiva*, op. cit. From the same author, “Les règles applicables aux relations sportives transnationales. Le regard de l’internationaliste publiciste”, in: M. FORTEAU (eds.), *La fragmentation du droit applicable aux relations internationales. Regards croisés d’internationalistes privatistes et publicistes*, Paris, Pedone, 2011, p. 225; F. RIGAUX, “Le droit disciplinaire du sport”, *RTDH*, 1995, pp. 295 et seq.

⁷⁶¹ An author enumerates at least eight doctrinal understandings of the *lex sportiva*. K. FOSTER, “*Lex Sportiva*: Transnational Law in Action”, in: *Lex Sportiva: What is Sports Law?*, op. cit., pp. 238-240.

⁷⁶² CAS 2005/C/976 & 986, *FIFA c. WADA*: “the Panel is not prepared to take refuge in such uncertain concepts as that of a *lex sportiva*, as has been advocated by various authors. The exact content and the boundaries of the concept of a *lex sportiva* are still far too vague and uncertain to enable it to be used to determine the specific rights and obligations of sports associations towards athletes”.

⁷⁶³ T. DAVIS, “What is Sports Law?”, in: *Lex Sportiva: What is Sports Law?*, op. cit., pp. 1-34.

The following criteria of identification of the *lex sportiva* shall be used.

a) *Lex sportiva* consists of rules of transnational scope, some authors also preferring the term “*global sport law*”.⁷⁶⁴ Are therefore excluded from the *lex sportiva* those sports rules not intended to be imposed beyond the area of competence of a national federation or other sports organisation of the same or of an even smaller scope.

b) The standards of the *lex sportiva* are all of private origin and are therefore only a part of the global sports law. They emanate from sports organisations operating at the transnational level: the International Olympic Committee and the international federations. It is necessary to also add the CAS precedents, which significantly enriches the sports corpus of standards.⁷⁶⁵ Some authors limit the *lex sportiva* to CAS precedents,⁷⁶⁶ but it must be considered instead that the latter consolidates the sports law and works to strengthen the sports legal system, borrowing from the model of the rule of law the general principles – those of legality, equality, non-retroactivity of the rule of law, the intelligibility of standards, or legal certainty⁷⁶⁷ – on which any legal system is based. As it is necessary to also add the standards issued by the World Anti-Doping Agency, in particular the World Anti-Doping Code and the international standards that complement it,⁷⁶⁸ it must be admitted that the *lex sportiva* can also arise from joint institutions where States can be represented.

c) Finally, if international agreements concluded by the States should be excluded from the *lex sportiva*,⁷⁶⁹ which does not stop some of their standards from being imposed on sports organisations.⁷⁷⁰ Therefore saying that the *lex sportiva* is a “Stateless” law would be excessively radical.

⁷⁶⁴ K. FOSTER, “Is There a Global Sports Law?”, in: *Lex Sportiva: What is Sports Law?*, *op. cit.*, p. 37.

⁷⁶⁵ In the AEK award of 20 August 1999, the CAS says “all sporting institutions, and in particular all international federations, must abide by general principles of law. Due to the transnational nature of sporting competitions, the effects of the conduct and deeds of international federations are felt in a sporting community throughout various countries. Therefore, the substantive and procedural rules to be respected by international federations cannot be reduced only to its own statutes and regulations and to the laws of the country where the federation is incorporated or of the country where its headquarters are. Sports law has developed and consolidated along the years, particularly through the arbitral settlement of disputes, a set of unwritten legal principles - a sort of *lex mercatoria* for sports or, so to speak, a *lex ludica* - to which national and international sports federations must conform, regardless of the presence of such principles within their own statutes and regulations or within any applicable national law, provided that they do not conflict with any national «public policy” (“ordre public”) provision applicable to a given case. Certainly, general principles of law drawn from a comparative or common denominator reading of various domestic legal systems and, in particular, the prohibition of arbitrary or unreasonable rules and measures can be deemed to be part of such *lex ludica*” (§ 156)

⁷⁶⁶ J.A.R. NAFZIGER, “Lex Sportiva”, in: *Lex Sportiva: What is Sports Law?*, *op. cit.*, p. 54; A. ERBSEN, “The Substance and Illusion of Lex Sportiva”, in: *Lex Sportiva: What is Sports Law?*, *op. cit.*, p. 92.

⁷⁶⁷ See the commentary of J. GUILLAUME, “CAS: guardian of the legality of sports law”, under CAS. – 5 March 2013 - Award No. 2012/A/3027, *M. Jacques Bernard Daniel Anouma v/ Confédération Africaine de Football (CAF)*, in: *JDI*, 2014, No. 1, *chronique des sentences arbitrales du TAS*.

⁷⁶⁸ The Code and international standards are available on the WADA’s website: [<http://www.wada-ama.org>].

⁷⁶⁹ See, however *contra* L. CASINI, “The Making of a *Lex Sportiva* by the Court of Arbitration for Sport”, *op. cit.*, p. 151

⁷⁷⁰ On the fundamental rights under these international conventions, see *infra* Part 3, Title 3, Chapter 3, Section 2.

2. Substance of the *Lex Sportiva*

Assuming that the *lex sportiva* consists of all the norms of transnational scope created by the stakeholders of the sporting movement, the task of identifying these standards is not complete since it is still necessary to define their content. In this regard, the recurring question is whether the rules belong to the category of legal rules of *lex sportiva*. Some believe that, because of their extreme technicality and their nature as inherent to the sports discipline which make them escape any external rationality,⁷⁷¹ the rules cannot be qualified as legal rules. CAS precedent is consistent in this regard. It distinguishes the *technical rules of the sport* and the *rules of sports law*, the court only accepting jurisdiction to assess the latter:

“According to well-established jurisprudence of the CAS, “CAS arbitrators do not review the determination made on the playing field by judges, referees, umpires, or other officials who are charged with applying what is sometimes called ‘rules of the game’”. In other words, CAS arbitrators should not interfere with the application of the rules governing the play of the particular game - this is to be left to field officials, who are specifically trained to officiate the particular sport and are best placed (being on-site) to settle any questions. CAS arbitrators are not, unlike on-field judges, selected for their expertise in officiating the sport concerned. This position is consistent with traditional doctrine and judicial practice which have always stated that rules of the game, in the strict sense of the term, should not be subject to the control of judges.”⁷⁷²

The CAS therefore refuses to review, in principle, the decisions made by the referees on the playing field. Yet in another award of 1 August 1996, in the *Mendy v. AIBA* case,⁷⁷³ the arbitral tribunal did not fail to note the existence of a new trend, especially initiated by the Swiss specialist doctrine,⁷⁷⁴ aimed at abolishing the distinction between the rules of the sports discipline and the rules of sports law, where the application of the rules of the sports discipline (at least the ones considered as such) causes significant financial and economic consequences or may affect personal rights.⁷⁷⁵ Indeed, in this case, where the issue was the disqualification of an athlete at the Olympics, the CAS arbitral tribunal had no trouble recognising that this decision constituted a violation of personal rights and could lead to significant economic consequences. Therefore, it accepted jurisdiction to exercise control on the legality of the decision.⁷⁷⁶

Outside the CAS precedent, the wide variety of practices of State judges does not allow to draw clear conclusions in terms of apprehending the rules of sport. However, some tightening on the part of certain jurisdictions is also noticed.

⁷⁷¹ P. JESTAZ also emphasises that the rules of the sports discipline are arbitrarily decided: why run 100 metres instead of 75 metres? P. JESTAZ, “Baffles on a baffle. (Reflections on the nature of the sporting rule)”, *Revue juridique et économique du sport*, 1990, pp. 3-8.

⁷⁷² CAS 2012/A/2731, *Brazilian Olympic Committee & Brazilian Taekwondo Confederation & Márcio Wenceslau Ferreira v. World Taekwondo Federation & Comité Olímpico. - Mexicano & Federación Mexicana de Taekwondo & Damian Alejandro Villa Valadez*, 13 July 2012, § 104, award reproduced in: *JDI*, 2014, No. 1, chronique des sentences arbitrales du TAS.

⁷⁷³ CAS OG 96/006, *M. v. AIBA*, 1 August 1996, *Rec. CAS I*, pp. 427 *et seq* and *JDI*, 2001, pp. 268 *et seq.* (obs. G. SIMON).

⁷⁷⁴ G. SIMON, *JDI*, 2001, p. 280, obs. under the award *M. v. AIBA*.

⁷⁷⁵ Item 8 of the reasons stated in the award.

⁷⁷⁶ See the analysis of G. SIMON, *JDI*, 2001, p. 280.

For example, although the Swiss Federal Court refuses, traditionally, to control the legality of the rules of the game, in a decision dated 6 December 1994, it acknowledges that “the distinction between rules of the game and rules of law is irrelevant in the case of infringement of the personal rights.”⁷⁷⁷ In particular, the ECJ, after seemingly recognising an exception for “purely sporting” rules – which are not necessarily identical to the technical rules of the game⁷⁷⁸ – consolidated its precedent on the principle that any rule created by sports organisations, regardless of its purpose, is likely to come within the scope of the EU treaties, as it can have economic consequences.⁷⁷⁹

It is therefore uncertain whether it is possible to isolate the rules of the game so that they have a systematic judicial immunity, even if for them, it can be assumed that judges must only exercise a minimal review, in view of the wide margin of discretion of sports organisations to establish them.⁷⁸⁰ The fact remains that the review must be exercised, since these rules are of a legal nature themselves.⁷⁸¹

The *rules of sports law* – alongside the *rules of the law of sport* emanating from States on the national and international levels – thus encompass all at once the rules of the game, the rules for the organisation of sports competitions, the rules of affiliation to sports organisations, the operating rules of sports organisations, and the substantive and procedural disciplinary rules.⁷⁸²

These various standards may have a self-normative scope, *i.e.* only applicable to the organisation itself, or a hetero-normative scope, *i.e.* the norms are applied to the members of the organisation. These standards are formed following a normative process that is unique to sports organisations. They have a real juridical status and are binding on their recipients; they can be invoked before the internal disciplinary bodies of sports organisations, before arbitral tribunals, and even before ordinary State courts.⁷⁸³ Some have a transnational, or even truly universal or “global” scope;⁷⁸⁴ finally, their respect is ensured thanks to their *de facto* self-enforceability that results from the closed nature of the institutional architecture of sports, which often does not require recourse to public power.⁷⁸⁵

⁷⁷⁷ ATF 120 II 369, No. 67

⁷⁷⁸ Including, according to the conception of the CAS, the rules relating to ethics and integrity in sport. See CAS 98/2000, *AEK Athens & Slavia Prague c. UEFA*, award of 20 August 1999, § 188.

⁷⁷⁹ See *supra* Part 1, Title 1, Chapter 1, Section 2, “Establishing a Legal Framework for Sports Markets”.

⁷⁸⁰ It is the same type of correlation in the intensity of the review by judges on the acts of public authority and the discretion with which these acts were adopted: the higher the degree of discretion of the public authorities, the less intensive the review. However, in the presence of a decision taken on the basis of circumscribed powers, the review of judges narrows.

⁷⁸¹ P. JESTAZ, *op. cit.*, pp. 3-8; M. MAISONNEUVE, *L'arbitrage des litiges sportifs*, LGDJ, Paris, 2011, pp. 1 *et seq.*

⁷⁸² See the classification by M. BOUDOT, who borrows the well-known distinction of H. HART between primary and secondary rules and who associates to it the idea of rules of internal order, created by the sports community itself, and rules of external order, issued by the domestic legal systems. “Sport et hiérarchie des normes. *Lex sportiva europea*”, *Les Cahiers de droit du sport*, 2013, pp. 17-24.

⁷⁸³ Thus, it is not uncommon to request a State court to review the compliance of a decision of a sports organisation with its own statutory rules. See F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, pp. 450 *et seq.*

⁷⁸⁴ CAS 92/80, *Beeuswaert v. FIBA*, *Rec. CAS I*, p. 292.

⁷⁸⁵ F. RIGAUX, “Sport Disciplinary Law”, *op. cit.*, pp. 309-310.

C. Autonomy in Terms of Dispute Settlement

The autonomy of the sporting movement is reinforced by the fact that sports organisations have their own judge. Specifically, sports institutions clearly claim having the power to establish means of settling disputes that are exclusive to the jurisdiction of national courts and entrusting the organs of dispute settlement with the task of interpreting and applying the rules of sports law on the one hand, and providing the rules of “non-sports” law applicable when necessary on the other hand, depending on their own assessment of the objective constraints exerted on the sporting movement.

On the first issue, arbitration was favoured in the field of sport.⁷⁸⁶ This is a method of settling disputes that was made available by the State itself, in a space of freedom that it must first define.⁷⁸⁷ The use of the private justice system is not equivalent to the use of “special courts” that would act without regard to the idea of justice which is, in principle, related to the State, holding a monopoly in terms of the justice system. However, the complexity of the dispute settlement procedures which are used by sports organisations and the interweaving of different degrees of control sometimes facilitate disregarding State courts.⁷⁸⁸

On the second issue, more specifically in the context of arbitrations conducted under the auspices of the CAS, some arbitral tribunals do not hesitate to develop a hierarchy of norms between sports standards and State standards, favouring the first.⁷⁸⁹ This is especially true in case of conflict between standards of national law and standards adopted by an international federation. In a decision dated 19 December 2006, in the *International Cycling Union (UCI) v. L. and Real Federación Española de Ciclismo (RFEC)* case, the CAS Stated, in what may seem as a kind of warning to governments:

“Admittedly, it is theoretically conceivable that the State may impose its national decisions even on international competitions being held on its territory in contempt of international authority. Such behaviour would however go against all the efforts aimed at combating doping at the international level, and could lead to the exclusion of the State concerned from the organisation of international competitions. It would be surprising that a State would wish to place itself in such a situation [...]”⁷⁹⁰

⁷⁸⁶ See *infra*, Part 3, Title 2, Chapter 1, Section 1, § 2, “External Monitoring on the Exercise of the Disciplinary Powers of Sports Organisations”.

⁷⁸⁷ A reference to the internal law of States is needed to know the arbitral subjects and the conditions in which an arbitration could take place.

⁷⁸⁸ See *infra*, Part 3, Title 2, Chapter 1, Section 1, § 2, “External Monitoring on the Exercise of the Disciplinary Powers of Sports Organisations”.

⁷⁸⁹ In reality, jurisprudence is far from coherent on this subject. See F. LATTY, “Transnational Sports Law”, in: *Lex Sportiva: What is Sports Law?*, *op. cit.*, p. 278 and from the same author “Les règles applicables aux relations sportives transnationales. Le regard de l’internationaliste publiciste”, *op. cit.*, p. 89; M.J. MITTEN, “Judicial Review of Olympic and International Sports Arbitration Awards: Trends and Observations”, *Pepperdine Dispute Resolution Law Journal*, 2010, pp. 62 *et seq.* The apparent contradiction between a sports standard and a State standard is very frequently eluded by affirming the complementarity of both legal systems. See for example CAS No. 2006/A/1119, *Union cycliste internationale (UCI) v. L. et Real Federación Española de Ciclismo (RFEC)*, award of 19 December 2006: “[t]he authority of States and international sports authority are not in competition; on the contrary, their roles are complementary. The State authority is limited to monitoring the conduct of its individuals, while the international federation manages competitions under its jurisdiction [...]”.

⁷⁹⁰ TAS 2006/A/1120.

Because of the need to ensure equal treatment between competitors and the effectiveness of measures adopted at the transnational level by the international federations, the CAS is inclined to give precedence to the decisions of these international federations over conflicting decisions of national public bodies.⁷⁹¹

However, it seems that the attitude of the CAS is more cautious about the rules of law of the European Union, which are nevertheless not immediately applicable before it.⁷⁹² In an award dated 11 January 2013, the Arbitral Tribunal verified the compatibility of the FIFA Regulation on the Status and Transfer of Players with the Community principle of free movement of workers, finding that taking foreign standards into account could be necessary “when justified by sufficient interest.”⁷⁹³ This caution can probably be explained in terms of the now abundant precedent of the ECJ which does not hesitate to monitor the compliance of sports rules with the provisions on economic freedoms laid down in the Treaties.⁷⁹⁴ A kind of pressure thus seems to weigh on the CAS, which is aware that there is a law outside the sporting movement that is difficult to escape.

Demands for the autonomy of sports organisations in the field of dispute settlement can sometimes lead to real reactions of distrust of State justice and to a policy of deterrence regarding athletes who wish to resort to the ordinary courts. In France for example, some federations imposed on their licensees who wish to challenge the decision of a disciplinary committee, the payment in advance of appeal rights.⁷⁹⁵ Similarly, some high-level French basketball clubs decided to render ineffective the decision of the Council of State dated 23 June 1989⁷⁹⁶ which, in accordance with Article 80 of the Nationality Code, censured a Regulation of the French Federation of Basketball establishing a quota for foreign players, including naturalised players, who are possibly part of the line-up in professional events. One can also mention the case of UEFA, which initially and because of insurmountable practical short-notice problems that it encountered during the execution of the decision, decided not to proceed with an order of temporary measures made by a judge of the Vaud District Court, which ordered it to reinstate in a competition a club that had been excluded by a disciplinary decision.⁷⁹⁷

⁷⁹¹ If there is a conflict between a standard of domestic law and sports standard of a national federation, the primacy given to the second is not systematic. The CAS arbitration tribunals may use techniques of international law and find out which State standard or sports standard is the most appropriate, that is to say, the one “most especially made to govern the relationship” involved and offer a solution to the dispute (see É. LOQUIN, *JDI*, 2008, No. 1, *chronique des sentences arbitrales du TAS*, p. 286). But it is clear that this approach often gives priority to the rules of sports federations.

⁷⁹² The “Whatelet report” states that if a number of international federations, starting with FIFA and UEFA, consistently advocate recourse to CAS whose headquarters are in Lausanne, it is to avoid the application of the law of the European Union.

⁷⁹³ CAS No. 2012/A2862, *Girondins de Bordeaux v. FIFA*, award of 11 January 2013, § 102, in: *JDI*, 2014, No. 1, *chronique des sentences arbitrales du TAS*, obs. É. LOQUIN (added italic). In another case, the arbitration also referred to the principle of proportionality, as interpreted by the jurisprudence of the ECJ (CAS 2010/A/2268, *I. v. Fédération internationale de l'automobile*, 15 September 2011, § 56).

⁷⁹⁴ So in the case of *I. v. Fédération internationale de l'automobile* mentioned in the previous note, it can be assumed that the arbitration referred to Community jurisprudence in consideration of the *Meca-Medina* decision that appreciates the proportionality of the sanctions imposed in a doping case with regard to the economic freedoms of the athletes involved.

⁷⁹⁵ *RJES*, No. 42, Page 57, “Question des lecteur”. Similarly, penalties not provided for in the texts were sometimes imposed under the guise of recourse to the vague notion of punishment of general interest. See C. AMSON, *Droit du sport*, Vuibert, coll. “Dyna’Sup Droit”, 2010, No. 193, p. 93.

⁷⁹⁶ *Bunoz*, req. No. 101.894

⁷⁹⁷ See Civil Court in the Canton of Vaud, Order for superprovisional measures of 13 September 2011, in the case CM11.0337, *Y. SA v. UEFA*.

Finally, still on the subject of UEFA, one can recall the consequences of the *OM-VA* case: while the president of a Marseille club had referred to the Tribunal of Berne to challenge the sanction adopted by UEFA against the club for corruption, and while the Swiss courts had accepted jurisdiction, the European federation and FIFA had imposed intense pressure on the French football authorities, including threatening the withdrawal of their 1998 World Cup to force them to stop the trial.⁷⁹⁸

D. Derogatory Regime during the Organisation of Major Sporting Events

Insofar as the *lex olympica* might conflict with the law of the State hosting the Olympic Games (e.g. regarding access of athletes to the national territory, the protection of the Olympic "brand", or the free movement of goods or capitals necessary for the organisation of the Games), the Olympic Charter goes as far as providing that the national government of the country of any applicant city must submit to the IOC a legally binding instrument, by which the government guarantees and undertakes that the country and its public authorities will comply with and respect the Olympic Charter. Despite the intrusiveness to their sovereignty – at least apparent – of such a provision, laid down in a text of private law and included in the agreement with the host city, the competition for the right to organise the Olympics is so fierce that States do not hesitate to meet IOC requirements in this area. The plan created by the IOC or even FIFA, which does not directly involve public international law but rather Swiss private law, the law of the place of the headquarters of the IOC and FIFA, has only recently been the subject of discussion and even disputes, in preservation of the democratic debate, regarding the powers of the legislature or the hierarchy of rules in the rule of law (e.g. the UK for the FIFA World Cup, Bavaria for the Olympic Winter Games).⁷⁹⁹

The Olympic Charter also defines the term "dispute". Rule 59 of the Charter indeed excludes recourse to State courts, by providing that any dispute arising during, or in connection with, the Olympic Games shall be submitted exclusively to the CAS.⁸⁰⁰ Olympic law devotes a closed private justice system, which in principle excludes any involvement of national courts. While it is possible to consider an appeal against a decision of the CAS, it is made before the Swiss Federal Tribunal, whose control of legality is limited to the violation of public order.⁸⁰¹

⁷⁹⁸ On this case see J.-L. CHAPPELET, *op. cit.*, pp. 26-27; F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, *op. cit.*, p. 458. F. LATTY also mentions the case of the President of the Spanish Club Deportivo de la Coruna convicted by the disciplinary committee of FIFA and ordered to pay a fine of 100,000 Swiss Francs and an 18-month suspension for challenging a federal sanction to an ordinary court while the articles of association in force at that time prohibited it.

⁷⁹⁹ See for example C. EICHLER, "Das Ende des Wintermärchens", *Frankfurter Allgemeine Zeitung*, 11.11.2013.

⁸⁰⁰ F. LATTY, "Les Jeux olympiques et le droit international", *Annuaire français de relations internationales*, volume X, 2009, pp. 954-964.

⁸⁰¹ See *infra* Part 3, Title 2, Chapter 1, Section 1, § 3, "External Monitoring on the Exercise of the Disciplinary Powers of Sports Organisations".

§ 4. Nature of the “Principle” of Autonomy of the Sporting Movement Deduced from its Acceptance by Public Authorities

While the manifestations of claim and exercise of an autonomous power by the sporting movement are many, the nature of the “principle” constantly invoked by those concerned can only be understood *in fine* through the reactions of public authorities. However, despite a significant exogenous recognition of the concept (A), it appears that the autonomy of the sporting movement can only operate as long as the States agree to self-restraint regarding sports (B). As a result, sports law is necessarily subject to the rules of the national legal systems (C).

A. Recurring Mentions of the “Principle”

The autonomy of the sporting movement is the subject of an exogenous recognition as evidenced by multiple actions. The principle mentioned can be found in many intergovernmental and Community instruments.⁸⁰² Within the framework of the European Union, the 2000 Declaration of the European Council in Nice referred to it,⁸⁰³ as well as, more recently, the *Resolution of the Council and of the Representatives of the Governments of the Member States on a European Union Work Plan for Sport 2011-2014* dated 1 June 2011.⁸⁰⁴ This document, which follows the European Commission *White Paper on Sport*,⁸⁰⁵ focuses on the societal role, the economic dimension, and the organisation of sport in Europe. It also refers to the particularity of sport, considered from two angles: first, the specific nature of sports activities and the rules that apply to them, such as separate competitions for men and women, a limited number of participants, the need to ensure the uncertainty of the results, or the preservation of a competitive balance between clubs taking part in the same competition; then the specific nature of sport structures, including the autonomy and diversity of sports organisations, the pyramidal structure of competitions, the mechanisms of solidarity, the organisation of sports on a national basis, or the principle of a single federation per sport. In fact, the rules resulting in the restriction of competition, which often prove inherent to the organisation of a competition, do not constitute a breach of Community law, insofar as their effects are proportionate to the real sport interest sought.

⁸⁰² See J.-L. CHAPPELET, *L'autonomie du sport en Europe*, *op. cit.*, pp. 16-17.

⁸⁰³ “The European Council stresses its support for the autonomy of sports organisations and their right to organise themselves through appropriate associative structures. It acknowledges that sports organisations, in compliance with national and Community legislation and on the basis of democratic and transparent operations, the mission to organise and promote their sports discipline, particularly regarding the specifically sporting rules, the constitution of national teams, in the manner they believe best reflects their objectives” (Conclusions of the Presidency, 7-10 December 2000, Addendum IV, pt. 7).

⁸⁰⁴ Resolution 2011. C162/01.

⁸⁰⁵ *White paper on sport*, European Commission, 11 July 2007.

In the context of the work of the Council of Europe, the principle mentioned in the European Sports Charter adopted in 1992⁸⁰⁶ is found in a resolution of the Parliamentary Assembly of the Council of Europe in 2008⁸⁰⁷ and reiterated in the Recommendation of the Committee of Ministers of the Council of Europe on the principles of good governance in sport.⁸⁰⁸ The principle was defined in the *Recommendation of the Committee of Ministers to Member States on the principle of the autonomy of sport in Europe* adopted on 2 February 2011,⁸⁰⁹ as follows:

“the autonomy of sport is, within the framework of national, European and international law, the possibility for non-governmental non-profit-making sports organisations to:

- establish, amend and interpret the “rules of the game” appropriate to their sport, freely, without undue political or economic influence;
- choose their leaders democratically, without interference by States or third parties;
- obtain adequate funds from public or other sources, without disproportionate obligations;
- use these funds to achieve objectives and carry out activities chosen without severe external constraints;
- co-operate with public authorities to clarify the interpretation of the applicable legal framework in order to prevent legal uncertainty and contribute, in consultation with public authorities, to the preparation of sports rules, such as competition rules or club rules of sports NGOs, which are legitimate and proportionate to the achievement of these objectives.”

Finally, the Draft Convention on the Manipulation of Sports Competitions, developed within the Enlarged Partial Agreement on Sport (EPAS) and adopted by the delegates of the Member States of the Council of Europe on 9 July 2014, acknowledges that “in accordance with the principle of the autonomy of sport, sports organisations are responsible for sport and have self-regulatory and disciplinary responsibilities in the fight against manipulation of sports competitions.”⁸¹⁰

⁸⁰⁶ Article 3: “Voluntary sports organisations have the right to establish autonomous decision-making processes within the law. Both governments and sports organisations shall recognise the need for a mutual respect of their decisions”. The European Sports Charter specifies that “the role of the public authorities is primarily complementary to the action of the sports movement. Therefore, close co-operation with non-governmental sports organisations is essential in order to ensure the fulfilment of the aims of this Charter, including where necessary the establishment of machinery for the development and co-ordination of sport.” (text annexed to the Recommendation No. R (92) 13 rev. of the Committee of Ministers of Member States on the revised European Sports Charter).

⁸⁰⁷ Resolution 1602 (2008): “The independent nature of sport and sports bodies must be supported and protected, and their autonomy to organise the sport for which they are responsible should be recognised. The federation must continue to be the key form of sporting organisation, providing a guarantee of cohesion and participatory democracy.”

⁸⁰⁸ Recommendation Rec (2005)8 of the Committee of Ministers to Member States on the principles of good governance in sport, “the successful implementation by sports non-governmental organisations of effective good governance policies in their organisations would help to strengthen their self-governance and autonomy in matters concerning sport and would further strengthen their position in relation to public authorities based on mutual respect and trust.”

⁸⁰⁹ Resolution CM/Rec/2011/3.

⁸¹⁰ EPAS (2014) 16Rev.

At the national level, the instruments of national law expressly refer to the autonomy of the sporting movement, without always clearly defining its nature and scope.⁸¹¹

More generally, the autonomy of the sporting movement is often at the heart of the political discourse of both international institutions and States interested in sports.⁸¹²

Could this repeated acknowledgment make of a principle of political origin a legal principle? One can clearly doubt that⁸¹³ for at least two reasons. The first is that most of the international instruments that refer to it lack the binding force and therefore do not seek to make the autonomy legally enforceable. The second relates to the vagueness of the concept which, though sometimes established as a “principle”, has not been precisely defined so far. It is also significant that even though the European institutions were receptive of the concept, it is toned down in the Treaty on the Functioning of the European Union that integrates the sports subject in Community policies, with the recognition of *the particularities of sport*.⁸¹⁴ Similarly, none of the international agreements which are directly related to sports and are currently in force explicitly mention the principle.⁸¹⁵

B. Self-Restraint of Public Authorities instead of Autonomy Originating from the Sporting Movement

The most extensive manifestations of the autonomy of the sporting movement are mainly the result of a balance of forces favourable to sports organisations.⁸¹⁶ But considering that the sporting movement would have a natural and original field of intervention of which, correlatively, the State should be deprived, would contradict the principle of the fullness of State jurisdiction that admits no controversy.⁸¹⁷ As noted by one commentator alerted by the sometimes excessive demands of the sporting movement,

“[the] judicial power of the sporting movement [although the Statement could be extended to all the powers thereof] should not be regarded as having a first or original autonomy, but rather [...] as having an autonomy that is derived, granted, and delegated by the territorial sovereign power. Sports orders are certainly free: but this freedom is always monitored by the State.”⁸¹⁸

⁸¹¹ See the results of the survey conducted at the initiative of the EPAS with Member States of the Council of Europe (J.-L. CHAPPELET, *L'autonomie du sport en Europe*, *op. cit.*, p. 33).

⁸¹² See the results of the survey conducted by the EPAS, *L'autonomie du sport en Europe*, *op. cit.*, pp. 32-33.

⁸¹³ See É. LAGRANGE, “L'État et les puissances privées. Digressions sur la compétence plénière de l'État et l'autonomie du mouvement sportif”, *op. cit.*

⁸¹⁴ Article 165 of the TFEU: “The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.” The White Paper on Sport of the European Commission in 2007 stated likewise.

⁸¹⁵ This refers to the Convention against Apartheid in Sports and the Conventions of UNESCO and the Council of Europe on doping.

⁸¹⁶ Thus reactions of defiance concerning the jurisdiction of State courts in the context of sports activities or the primacy of the Olympic Law consented to by host countries of the Olympiads mentioned above.

⁸¹⁷ É. LAGRANGE, “L'État et les puissances privées. Digressions sur la compétence plénière de l'État et l'autonomie du mouvement sportif”, in: *Mélanges en l'honneur du Professeur Joe Verhoeven*, forthcoming, 2014-2015.

⁸¹⁸ M. BEDJAOUÏ, “Droit et sport : une harmonie nécessaire pour un couple singulier”, *op. cit.*

Instead, it must be admitted that the autonomy of sports organisations is not different, *in nature*, from that of many other institutions in charge of organising cultural and social activities, in particular on the basis of the freedom of association.

Yet, one can observe some *self-restraint* by public authorities with regard to sports institutions, which goes beyond the degree of autonomy granted to other associative entities acting in other fields of activity. But this does not mean that the “principle” of the autonomy of the sporting movement is, for the State, a legal principle that would restrict its freedom to act. Rather, it is a recognised political principle or social need, operating as, if not a consensual, at least a conventional justification of the relative abstention of the State in this field, in contrast to other sectors of activity.

Considering the general legal framework in which sports organisations fit, it appears that while some States, such as France and the States of Southern and Eastern Europe, impose on sports organisations a relatively narrow legislative and regulatory framework, especially in disciplinary matters,⁸¹⁹ most of the other States, such as the United Kingdom and many of the States of Northern and Western Europe, retain a much less interventionist approach to sport.⁸²⁰ In the first case, sport is seen as a public service; some tasks being delegated to licenced or recognised federations, whose degree of autonomy is then limited to the field defined by law and/or the delegating authority.⁸²¹ In the second case, autonomy is legal and the State not only leaves the sports organisations to organise and manage themselves, but even leaves them sometimes the task of regulating the entire conduct of the sport, including fundamental issues of public interest such as child protection, corruption and anti-doping.⁸²²

Regarding national courts, it appears that they too can practice self-restraint with regard to sporting rules, regardless of the option chosen by the legislature. Like the Swiss Federal Court in the Gundel decision in 1993, many judges consider that “the application of the rules of the game [...] is not suitable in principle to legal review.”⁸²³ However, the scope of such self-restraint is not without some difficulties. In many cases it is difficult to clearly distinguish between the rules of the game and other sporting rules. Moreover, as previously noted, both the CAS precedent and the SFC underwent some inflections regarding rules deemed as purely sporting rules, which either have significant financial and economic implications or may violate personal rights.⁸²⁴ It must therefore be deduced from this ambivalence that:

⁸¹⁹ A. LEWIS, J. TAYLOR, *Sport: Law and Practice*, 2nd Edition, Tottel Publising, 2008, A1.7 *et seq.*, pp. 4-5; *Lamy Droit du sport*, 612.60.

⁸²⁰ A. LEWIS, J. TAYLOR, *op. cit.*, A1.11, p. 6.

⁸²¹ A. LEWIS, J. TAYLOR, *op. cit.*, A1.7 *et seq.*; *Lamy Droit du sport*, 126.65.

⁸²² A. LEWIS, J. TAYLOR, *op. cit.*, A1.13, p. 6; see also D. OSWALD, *Associations, fondations et autres formes de personnes morales au service du sport*, p. 136; for more general considerations on the autonomy of the *lex sportiva*, see F. LATTY, *La lex sportiva. Recherche sur le droit transnational*, pp. 415 *et seq.*

⁸²³ Swiss Federal Court, 15 March 1993, *G. v. FEI et TAS*, ATF 118 II 15. The French judge, for example, only has a minimal control with respect to these purely sporting rules, even in the context of the decisions of federations delegating public service. See CE, 25 janvier 1991, *Vigier*, *AJDA*, 1991, p. 389. For its part, the High Court of Australia refused, in a decision taken in 2000, to exercise any control over the sporting rules. ([2000] 173 ALR 665, *Agar c. Hyde*, cited by K. FOSTER, “Is There a Global Sports Law?”, *op. cit.*, p. 40. On the ambivalent attitude of other tribunals, see M.J. MITTEN and H. OPIE, “Sports Law”: Implications for the Development of International”, in: *Lex Sportiva: What is Sports Law?*, *op. cit.*, pp. 195 *et seq.*

⁸²⁴ See *supra* Part 2, Title 3, Chapter 3, Section 1, § 3, B. 2, “The substance of the *lex sportiva*”.

1. certain rules of the sports discipline, such as those determining the distance of a running race or the technical rules of football or rugby, are obviously exempt from the scope of any legal review, if only because they respond to a logic that is unique to sporting events and that escapes all legal rationality;

2. on the other hand, as soon as such a rule has financial or economic consequences or may violate certain personal rights (right to practice the profession of choice, freedom of movement, freedom to provide services...), it is liable to be exposed to external judicial control, the judge or arbitrator only reviewing its legality within the limits of the aspects of this rule that interfere with the subjective rights or interests of its recipient.

Despite some statements to that effect, it is difficult to accept that certain rules - the rules of the game or the rules of the sports discipline, whose definitions may vary - are systematically exempt from legal review. The reason is that it is impossible to determine, in general, the criteria for the identification of the rules that would benefit from an absolute jurisdictional immunity, as it is in terms of their effects in a given situation, not in terms of their assessment *in abstracto*, that one can determine whether or not they are subject to external control.

Intermediate Conclusion

The principle of autonomy is recognised by States as a principle for rationalising the respective intervention of public authorities and sports authorities; it can neither be opposed to the State as a principle that legally and definitively limits its own jurisdiction, nor mean a total independence of the sporting movement toward public power.

C. Submission of the Sports Law to the National Legal Systems

Sports law, as a legal order of a private nature, is inextricably linked to State law.⁸²⁵ Moreover, it necessarily proceeds from it. Sports organisations, whether national or international, can indeed only be built in the statutory framework provided by the State.⁸²⁶

The IOC itself was not able to avoid the limits imposed by the inter-State system: as a Swiss private association, it repeatedly tried to obtain a status more appropriate for its global dimension and its universal mission.

⁸²⁵ J. HELSON, G. ERVYN, J. VANDEN EYNDE, *La procédure disciplinaire au sein des fédérations sportives de la Communauté française. Pistes de réflexion*, July 2007, p. 5. Document available at: [http://vdelegal.be/wa_files/La_20proc_C3_A9dure_20disciplinaire_20au_20sein_20des_20f_C3_A9d_C3_A9rations_20sportives_20de_20la_.pdf].

⁸²⁶ Originally, however, the first sports organisations were formed spontaneously, without any reference to State law. It is essentially with the consolidation of the right of associations - which provides in many States an important part of autonomy to groups formed in this way - that sports organisations, in order to receive legal recognition, had to conform to these statutes. See F. LATTY, *La lex sportiva ...*, *op. cit.*, pp. 425-426. The nature of the agreement concluded on 1 November 2000 between Switzerland and the IOC remains up to discussion.

But Switzerland has always rejected the possibility of signing a headquarters agreement, like it did with other private organisations, such as the International Committee of the Red Cross, which deprives it of a real international legal personality.⁸²⁷

Sports organisations are also necessarily subject to the influence of certain areas of the law applicable in the territory of their State of residence. As evidenced for example by the *Bosman* decision of the Belgian courts in 1992, “[t]he sports organisations can no longer benefit from their autonomy, if a conflict exists between the standards they issue and those of State law, the activity in question entering the scope of the State public policy.”⁸²⁸ Labour law, tax law, contract law, criminal law, or the law of intellectual property are thus imposed on those private entities, on the principle of equality before the law.⁸²⁹ Of course, sports activities, and the framework within which they are conducted, present many differences. But this particularism, which other types of activities could also have, does not justify the legal insularity that is claimed by the sporting movement. That said, it is true that *sport*, considered very generally, covers a multitude of situations and activities whose aspects are not all necessarily subject in the same way to the influence of common law. This is evidenced by the law applicable respectively to the sport discipline itself (1), to sport as an economic activity (2) and to sport in its social dimension (3). However, as soon as the activities within the sporting movement are likely to offend the fundamental rights, these rights become an irreducible restraint to the autonomy of the sporting movement (4).

1. Sport as a Discipline in itself

Regarding the real “trades” of sports organisations, including physical performance, self-improvement, and competition as such, it is clear that, regardless of the liberal or interventionist culture of the State of territoriality, utmost discretion is recognised to sports organisations. It is especially at the transnational level, when it comes to harmonising the practices to allow international matches.⁸³⁰

2. Sport as an Economic Activity

Sport also has an economic dimension that relates in particular to professional sports. Historically, the sporting movement did not conceive its organisation and rules for professional practice (also long excluded and even prohibited because of its founding values) and even less so for activities on the basis of which an extremely powerful industry could develop.

⁸²⁷ See F. LATTY, *La lex sportiva ...*, *op. cit.*, pp. 433-435. An agreement relating to the status of the IOC in Switzerland was concluded on 1 November 2000, between the IOC and the Swiss Federal Council. As the agreement specifies, it is not a headquarters agreement that allows the IOC to enjoy immunities. The agreement recognises however a specific and privileged status to the IOC by exempting it from direct federal, cantonal, and communal taxes, ensuring the free disposal of its funds, developing certain obligations weighing on IOC collaborators, or even facilitating access to the Swiss territory of its collaborators. The nature of this agreement remains subject to disputes.

⁸²⁸ Civil Court of Liège, 11 June 1992, *Bosman*, J.T. 1993, p. 284.

⁸²⁹ J. HELSON, G. ERVYN, J. VANDEN EYNDE, *op. cit.*, p. 6.

⁸³⁰ See *supra* the developments on normative autonomy and the notion of *lex sportiva*.

Autonomy in the heart of the discourse of sports organisations, often defended by invoking its alleged founding and original character, was not initially considered in the light of such changes and therefore did not aim to extend the influence of the ordinary laws on the most trivial aspects of sport (employment law relations, commercial contracts...). It is from the perspective of reducing the sport to an economic activity like any other that the most radical trivialisation of sports activities took place under the influence of the law of the European Union. It is known that the Bosman decision of 15 December 1995, during which European judges considered that the rules on the transfer of players and composition of national teams of FIFA entered the scope of economic freedoms guaranteed by the European treaties, was seen as a real intrusion.⁸³¹ However, the submission to the law of national origin is not always viewed with suspicion by the sporting movement. Against the excesses and illegalities of player transfers or the occult activities of some sports agents, some believe that the application of Community/EU law could allow a rationalisation of practices and a better protection of the players.⁸³²

3. The Social Dimension of Sport

The second dimension of sport that immediately reveals the limits of the autonomy of the sporting movement is the social dimension, which is constantly growing. Mass sport considered for its social, health, educational, or even environmental virtues is, in many cases, entirely absorbed by the public policies of States. Some of them, such as Canada, a pioneer in this field, and the Scandinavian countries, although reputedly extremely liberal, followed by some others such as France, develop these sectors without any involvement of the sporting movement.⁸³³ Others will involve the sporting movement, but within a framework managed by public authorities, under the supervision of the Ministries of Health, Education, or Culture.⁸³⁴ This development attests that *sport* can escape, in part, the influence of sports organisations, the latter not having any area of competence reserved for them. This obviously depends on the definition that is retained for sports activities and on the distinction that can be made between competitive sports, mass sports, amateur sports, professional sports, and spectator sports as well as purely sporting, commercial, or other aspects of such activities.

⁸³¹ J.-L. CHAPPELET, *L'autonomie du sport en Europe*, *op. cit.*, p. 7. See also the information report of the Senate, *Plus vite, plus haut, plus fort ? L'union européenne et le sport professionnel*, European Affairs Committee, No. 379, 2013, pp. 30-31.

⁸³² See on transfers of players, the statement of the Vice President of the International Federation of Professional Footballers, P. PIAT, in an interview with the weekly magazine France Football in June 2013: "Football is currently in a legal no man's land. Everyone stands at this level. CAS and FIFA are complicit. The European Commission told FIFA in its complaints to change its regulations. FIFA established a protected period which actually is not a law, but a sort of gentleman's agreement. And when the CAS starts managing this type of problem, it uses Swiss law to break the deadlock. It's a mad story! Football uses Swiss law for provisions that were incorporated by Community law ...". On the activities of sports agents, see French Senate, «10 proposals for a more ethical sport, » Conclusions of the work of the working group on the ethics of sports, in June 2013.

⁸³³ For an overview of public policies in these areas by the Member States of the European Union, see C. MIÈGE, J. JAPPERT (dir.), *L'organisation du sport dans les États membres de l'Union européenne*, *op. cit.*

⁸³⁴ See the overview provided in the aforementioned report of C. MIÈGE, J. JAPPERT.

But the boundaries are uncertain between these categories, changing depending on the State;⁸³⁵ therefore it is clear that no sports activity can ever completely escape the State law.

4. Submission to Fundamental Rights

Finally, the submission of the sporting movement to national law is most evident, all dimensions of sport combined, with regard to the respect of fundamental human rights, as enshrined, in most cases, by the constitutions of the States or by international conventions. This submission is of particular importance for two main reasons. The first is that the sporting movement is a place of realisation of certain basic rights, such as the freedom to practice the profession of choice, freedom of association, the right to equality, and the right to non-discrimination on the basis of gender, race, religion, political opinion, or national or social origin. Some commentators believe that the right to practice the sport of choice could be considered as such as a fundamental right under certain legally binding international instruments that do not, however, establish it explicitly.⁸³⁶ The second reason is that the sporting movement is also a place of power within which some acts may be adopted, that violate individual freedoms, especially when it comes to combating certain abuses in sport by means of particularly intrusive investigations or using heavy disciplinary sanctions.

Admittedly, the direct submission of sports organisations to the respect of human rights was debated, insofar as they were established originally to limit the interference of the *public authorities* in the sphere of the freedom of individuals. With regard to the evolution of the object and purpose of the protection of fundamental rights, there is no doubt, however, that the bodies of the sporting movement, as soon as they adopt actions that may undermine the fulfilment of a fundamental right, become subjected to the respect of human rights.⁸³⁷ This is evidenced by the numerous questions that have been raised regarding the compliance of the devices of the fight against doping implemented under the World Anti-Doping Code – particularly the global positioning system (Whereabouts) imposed on some athletes and the ADAMS (Anti-Doping Administration and Management System) information exchange system – with certain fundamental rights – such as freedom of movement and the right to the respect of privacy.⁸³⁸

⁸³⁵ The report prepared under the direction of C. MIÈGE, J. JAPPERT shows that within the Member States of the European Union, government involvement is more or less strong depending on whether it is a competitive sport - where intervention often comes down to financial support - or mass sport, more integrated into the social, educational, health and environmental policies. But no clear distinction is made between the two categories of sports activities. Sports programmes in some schools and universities show in particular how the two categories may overlap.

⁸³⁶ See in particular. J.-P. MARGUENAUD, "Sport et Convention européenne des droits de l'homme : les garanties substantielles", *Revue juridique et économique du sport*, 2003, pp. 11 *et seq.* See also K. MBAYE, "Droits de l'homme et olympisme", in *Liber Amicorum Karel Vasak : les droits de l'homme à l'aube du XXI^e siècle*, Bruylant, Bruxelles, 1999, pp. 1071-1089. Sports law on the other hand is enshrined in several international instruments, without mandatory scope. See Article 4 of the Fundamental Principles of Olympism of the Charter of Olympism; International Charter of Physical Education and Sport, adopted by UNESCO 21 November 1978. For some commentators, the right or freedom to practice a sport activity could even be considered, as social aspirations gradually change, as a human right in the sense of some binding protection instruments.

⁸³⁷ This question is examined further *infra* Part 3, Title 3, Chapter 3, Section 2: "Common Principles to be Respected by All Stakeholders." It must be referred to in order to understand in more detail the process for submitting sports organisations to respect for human rights and the consequences that this submission implies in terms of the tools of the fight against the manipulation of sports competitions.

Disputes on this subject debated before some national jurisdictions,⁸³⁹ and even before the European Court of Human Rights confirm this.⁸⁴⁰ It is clear that measures to combat the manipulation of sports competitions and measures against doping are equally exposed to this risk of contradicting the fundamental rights of the person. However, no argument based on the specific nature of sport could justify a disproportionate violation of these fundamental rights.⁸⁴¹ Therefore, they constitute an essential restriction of the autonomy of the sporting movement. This cannot be otherwise, given the fact that public authorities are themselves subject to the respect of these rights.

Conclusion of Section 1

Given the foregoing, the following conclusions can be drawn:

1) The principle of autonomy, although recognised by States as a principle for rationalising the respective intervention of public authorities and sports authorities, cannot mean total independence of the latter from the former.

2) Taking into account the particularity of sports standards, in the control of compatibility with the rules of Community/EU law, as with any other rule of (inter)State origin, is undoubtedly one of the mechanisms that can enable effective conciliation.⁸⁴²

⁸³⁸ See in particular the legal opinions that the WADA has sought from experts at the time of the adoption of the World Anti-Doping Code, its subsequent revisions or the adoption of the International Standard for the Protection of Personal Data. G. KAUFMANN-KOHLER, A. RIGOZZI, G. MALINVERNI, *Legal Opinion on the Conformity of Certain Provisions of the Draft World Anti-Doping Code with Commonly Accepted Principles of International Law*, 26 February 2003; C. ROUILLER, *Avis de droit sur la compatibilité de l'article 10.2 du Code mondial antidopage avec les principes fondamentaux du droit national suisse*, octobre 2005; A. RIGOZZI, *Avis de droit sur la conformité de l'exclusion des sportifs d'équipe des entraînements organisés pendant leur période de suspension avec le droit national suisse, incluant les principes généraux de proportionnalité et de traitement égal*, juillet 2008; G. KAUFMANN-KOHLER, A. RIGOZZI, *Legal Opinion on the Conformity of Article 10.6 of the 2007 Draft World Anti-Doping Code with the Fundamental Rights of Athletes*, Novembre 2007; COVINGTON & BURLING LLP, *Avis de droit sur la compatibilité d'ADAMS avec les lois européennes de protection des données*, novembre 2008; AUGUST & DEBOUZY AVOCATS, *Avis relatif au Standard international de protection des renseignements personnels dans le cadre de la lutte contre le dopage*, mars 2009; *Legal Opinion on the European Article 29 Working Party's first opinion on the Draft International Standard on the Protection of Privacy and Personal Informations*, août 2008. J.-P. COSTA, *Avis de droit sur la version provisoire du Code mondial antidopage 2015*, June 2013. These opinions, and those listed in the note below, are available on the WADA website at the following address: [<http://www.wada-ama.org/fr/Programme-mondial-antidopage/Juridique-articles-jurisprudence-et-lois-nationales/Avis-consultatif-et-avis-de-droit-sur-le-Code>].

⁸³⁹ Among the most emblematic cases of the questioning of the "Whereabouts" device are those that involved the two tennis players Yanina Wickmayer and Xavier Malisse before the Belgian courts. After being convicted by the Flemish anti-doping tribunal to a one-year suspension for missing their localisation obligation three times and for a period of eighteen months, both athletes referred to the Belgian courts to challenge the sanctions. The conformity of the device with human rights was clearly called into question by the Court of First Instance of Brussels (judgment of 14 December 2009) and the Council of State (judgment of 14 July 2010). It is on the basis of the incompatibility of operating procedures of the Disciplinary Commission for elite athletes that originally consisted of sanctions with the procedural safeguards of Article 6.1 of the ECHR (right to a fair trial) that this contradiction was highlighted.

⁸⁴⁰ See in particular the complaint of the National Federation of Sports Unions (FNASS) against France, filed in July 2011 and seeking to challenge in the light of Article 8 of the Convention (right to the respect of privacy) and 2 of Protocol 4 (freedom of movement), the provisions of the Code of Sport which transpose into French law certain rules laid down by the World Anti-Doping Code. Request No. 48151/11.

⁸⁴¹ This issue is further developed *infra* Part 3, Title 3, Chapter 3, Section 2: "Common Principles to be Respected by All Stakeholders."

⁸⁴² See *infra* "Development of a Concept of "Responsible Autonomy" to Ensure the Convergence of the Work of Public Authorities and Sports Authorities."

3) However, the claim of an *exception* for sports⁸⁴³ should be rejected. More precisely, autonomy, as it is understood in the sense of a total legal « franchise »⁸⁴⁴, is inconceivable, regardless of the varyingly interventionist culture of the State in question, with regard to the sporting movement, and the extent of that autonomy can only be precisely defined, when in contact with the rules of law of national origin, which manage the space in which it can be applied.

4) Once the fundamental rights of a person are constrained by a number of measures taken by sports organisations, the respect of these rights becomes an irreducible restraint of the autonomy of the sporting movement, just as it also restrains the action of public authorities.

5) Ultimately, the principle of the autonomy of the sporting movement is an illustration of the principle of subsidiarity, which enables the most capable entity to be entrusted with meeting the goals effectively - because it has more expertise or because it is more directly related to the recipients of the standards to be adopted, for example - with the relevant skills. But the principle of subsidiarity also implies flexibility in the allocation of responsibilities, depending on their purpose and stakes (see *infra*, section 2), and especially a joint action by the competent authorities.

Section 2: Definition of the Autonomy of the Sporting Movement is in the Context of Combating the Manipulation of Sports Competitions

It is important to keep in mind the conclusions drawn from the study of the origin, nature, and scope of the autonomy of the sporting movement when addressing the issue of the fair distribution of responsibilities between the sporting movement and public authorities, in the context of combating the manipulation of sports competitions. This combat is indeed very closely related to the protection of public order. It is related, first, to the public policy understood as the maintenance of good order and fundamental values, the protection thereof lies respectively with the sporting movement, concerned with the protection of the good conduct of the competitions and the integrity of sport, and then with public authorities, concerned with combating corruption in general and the integrity of sport in particular. From this point of view, it appears that the components of sporting public policy, and of national and international public policy, objectively coincide to a large extent.

Therefore, the fight against the manipulation of sports competition highlights the complementarity of the responsibilities of the “sports authority” and the “public authority” (§ 1). In order for this complementarity to be valued for the better, each authority must consider the common issues in the fight against the manipulation of sports competitions. The definition of a concept of “responsible autonomy” can ensure this convergence of the work of public authorities and sports authorities to rationalise the exercise of the powers of the latter (§ 2).

⁸⁴³ In the sense that sport escapes by nature the application of the common law.

⁸⁴⁴ Expression borrowed from M. BEDJAOUÏ, *op. cit.*

§ 1. Convergence of the Essential Interests of the Sporting Movement and Public Authorities Regarding the Protection of the Integrity of Sport

It is clear from the preceding chapters that sports institutions, like public authorities, whether national or international, have become aware, albeit in varying degrees, of the threat that the manipulation of sports competition represents for both of them. The preservation and promotion of the integrity of sport in general is a challenge for public policies (A). The relatively autonomous nature of the sporting movement is bound to be affected, without, however, the autonomy itself being threatened, because the responsibilities of the public authorities and sports institutions should be considered as complementary rather than rival (B).

A. Protection of the Good Sporting Order and the Good National and International Public Policy

As previously noted, profound changes have tightened the grip of public standards on sports standards as today, interactions between the interests of sports organisations, those of society and those of the State (the general interest) are increasingly numerous.⁸⁴⁵

More importantly, the abuses that we observe today in sport, very closely affect the essential interests protected by the State. On the one hand, the model expected to be set by sports and athletes⁸⁴⁶ turns into a display of systemic corruption, whether this term is understood in its legal or moral sense. Moreover, these abuses endanger either the effectiveness of public policy, or the core values of political and economic liberalism. This is the case of doping, which raises concerns about public health, prompting States to tackle the problem alongside sports organisations within the framework of the World Anti-Doping Agency (WADA).⁸⁴⁷ This is also the case of corruption in sports, which is often only one link in a chain of organised crime posing a threat to public order, distorting sports markets, and threatening the integrity of national political systems, due to the porosity of sports and politics in some societies.⁸⁴⁸

B. The Complementarity of the Responsibilities of the Sporting Movement and the Public Authorities

Regarding combating the manipulation of sports competitions, sports interests go far beyond the single issue of the sincerity of sports competitions, and the problem demands a concerted action by public authorities and sports organisations.⁸⁴⁹

⁸⁴⁵ See *supra* Part 2, Title 3, Chapter 3, Section 1, 1, § 4, C. 3, and in particular the developments on "the societal dimension of sport."

⁸⁴⁶ See Part 2, Title 2, Chapters 1 and 2.

⁸⁴⁷ On the development of the World Anti-Doping Code, F. LATTY talks about "co-regulation". See *Lex sportiva ...*, *op. cit.*, p. 393 *infra*, Part 3, Title 3, Chapter 3, Section 1, § 1.

⁸⁴⁸ See in particular the introduction of the Part 1 of the report and *passim* the developments that establish the link between the manipulation of sports competitions, organised transnational crime networks, and money laundering.

⁸⁴⁹ The most recent European initiatives, including the Commission Communication of 23 December 2012 towards a comprehensive European framework for online gambling and the Nicosia Declaration of 20 September 2012 on the fight against the manipulation of sports competition, only confirm the erasure of the distinction between sports stakes and State stakes.

The interweaving of issues and interests must therefore be transformed into legal terms, and their impact on the autonomy of the sporting movement clarified. This autonomy can be taken for granted within the following limits, in accordance with the subsidiarity principle controlling the relationship between sports institutions and public authorities, regarded as *institutions with the power to regulate and the power to sanction*: recognition of the autonomy of sport in relation to political power, the power of self-regulation of the sports discipline itself (which includes the organisation of the sports discipline and competitions as such, but excludes economic relations that are grafted onto them), and the institutional autonomy of the sporting movement as a requirement for the exercise of the power of self-regulation.⁸⁵⁰

The *implementation* of the rules of law applicable to the same fact, when it seriously disturbs the public policy placed under the protection of the public authority, and the public policy placed under the protection of sports institutions, must be based on the following principles:

1) The power of the final say is held by the public authorities in that it is the guardian of public policy in the whole society. They can thus simultaneously give precedence to their interests over those of the sporting movement, and impose on sports institutions - through encouragement, incentives, conditionality policies, obligations and accountabilities,⁸⁵¹ or sanctions - the adoption of the measures it deems essential for the absorption of the threat to the public order, without, however, violating the autonomy of the sporting movement beyond what is necessary for the preservation of public order.

2) As a normal consequence of the principle of plenitude of its jurisdiction, the State may define for itself the principles of action, the primary rules, and the secondary rules it considers appropriate for the protection of the public policy.

3) However, since sports institutions and public authorities both have levers of their own (in terms of access to different types of information, for example on the facts contradicting the ethics of sports and national laws) and irreducible powers (the State cannot substitute the disciplinary sporting power just like disciplinary proceedings cannot exclude criminal proceedings), their actions must be presumed complementary and coordinated, structurally and in each particular case.

4) In terms of prevention through education and awareness, the actions of the sporting movement and public authorities can - *a priori* without great difficulty - either add up or replace each other, according to the model that will be deemed most efficient.

⁸⁵⁰ See É. LAGRANGE, "L'État et les puissances privées. Digressions sur la compétence plénière de l'État et l'autonomie du mouvement sportif", in: *Mélanges en l'honneur du Professeur Joe Verhoeven*, forecoming, 2014-2015.

⁸⁵¹ Or obligation to account for the actions taken or the use of public funds.

5) In terms of prevention through regulation, control, monitoring, and especially repression (mainly disciplinary and/or penal), it is important to define more precisely, on the basis of a typology of cases of manipulation of sports competitions (according to the protagonists, severity, the existence of a link with sporting bets, *etc.*), if combating the manipulation of sports competitions falls solely upon the sporting movement (whether or not associated with betting operators), or on the sporting movement and the public authorities (in terms of the regulation of the market of sports bets), or with the sporting movement and the public authorities through the coordinated accumulation of penal and disciplinary actions in the same case (although all the protagonists are not necessarily liable for both types of sanctions).

6) In the latter case, it is important to regulate *in fine* the practicalities of a tight collaboration between the sporting movement and public authorities, in order to avoid that the action of one, be adversely affected by the initiatives of the other, symbolically, practically, or legally (e.g. if the information provided by the public authority to a sports institution are "leaked", if the discordance of penal and disciplinary actions undermines the legitimacy of the sanction, if the total of penal and disciplinary sanctions seems out of proportion with the gravity of the facts...).⁸⁵²

Clearly, the methods of articulation of the powers and actions of the sporting movement and the public authorities cannot be defined in every detail of specific rules. In part, it is necessary to refer, on the one hand, to the general principles that guide and govern public action, and on the other hand, to the prudence of the stakeholders.

§ 2. Development of a Concept of "Responsible Autonomy" to Ensure the Convergence of the Action of Public Authorities and Sports Authorities

The effective complementarity of the respective responsibilities of public authorities and sports authorities is only conceivable once each adapts its actions to the particularities of combating the manipulation of sports competitions.

From the perspective of the public authority, this adaptation effort - which cannot, of course, mean a waiver of compliance with the most basic principles of the rule of law - essentially involves recognition, when required, of a certain "particularity of sport". As previously seen, this recognition can manifest itself in many ways.

Thus, the judges, as they also do in other fields, can modulate or lessen the severity of the instruments they apply, by distinctions or restrictions specific to sports.⁸⁵³

⁸⁵² On these issues, see *infra* Part 3, Title 3, Chapter 3, Section 2, "The Common Principles to All Stakeholders." It may be noted now that what may shock the public opinion and have an effect of delegitimation can be of a perfect legal rectitude.

⁸⁵³ J.-P. KARAQUILLO, "Les normes des communautés sportives et le droit étatique", *Dalloz*, 1990, pp. 83 *et seq.*

For example, in Community/EU law, the trivialisation of sports rules is counterbalanced by precedent that proves sensitive to the particularities of sport.⁸⁵⁴ In the presence of “rules arising from a need, inherent to the organisation of the competition,”⁸⁵⁵ rules of a “purely sporting nature”, or rules “closely linked to sport as such,”⁸⁵⁶ the ECJ/CJEU shows a circumstantial tolerance towards the restrictive effects of such rules. Similarly, in the field of protection of human rights, taking into account this particularity may require a certain adaptation of the basic guarantees relating to the respect of human beings, to the objectives and especially to the means available to sports organisations in order to preserve what gives authenticity to their activity. The task is obviously not simple, since it requires finding the right balance between the principle of universality of human rights and the maintenance of a difference in sports, but the principle of proportionality, which plays a cardinal role in assessing the severity of violations of human rights, can specifically enable this balance.⁸⁵⁷

This approach does not correspond to anything other than a manifestation of the principle of subsidiarity as it means recognising a “margin of appreciation”⁸⁵⁸ to sports organisations, which in some cases are the most capable of identifying the means that would be in the best interests of their sport.

From the perspective of the sports authority, adaptation efforts - or more accurately efforts to conform their action to the challenges raised by the manipulation of sports competitions - are of a different nature. They involve a deeper study of the concept of autonomy of the sporting movement, as has already been widely put into perspective in the foregoing. The autonomy claimed by and acknowledged to the sporting movement as the actual power at the origin of a real legal system (*supra*) necessarily entails *responsibilities*, in the sense, first, of *competences*, some of which will be obligatory (*e.g.* the effective and proportionate sanction in cases of manipulation of sports competitions), then of *the obligation to account for* the action taken, the means employed, and the results obtained,⁸⁵⁹ and finally, if applicable, of *the obligation to bear the adverse consequences of the shortcomings* of sports institutions concerning their legal obligations.

In short, the autonomy of the sporting movement, which comes from the self-restraint of the States (of law) towards its institutions, must in turn be *rationalised and subject to the rules of law rigorously identified*. Increased legal constraint on sports institutions results, firstly, from their submission to national law (*supra*), then, from the impossibility to currently create or allow the creation of national, international, transnational, or hybrid institutions that would fall outside the scope of the fundamental rules that structure the national legal systems, or worse,

⁸⁵⁴ F. LATTY, “Les règles applicables aux relations sportives transnationales...”, *op. cit.*, pp. 91-92.

⁸⁵⁵ ECJ, 11 April 2000, *Deliège*, C-51/96 et C-191/97 joint cases, *Rec.* 2000, p. I-2549, pt. 69.

⁸⁵⁶ TPICE, 30 September 2004, *Meca-Medina and Majcen*, T-313/02 case, pt. 47.

⁸⁵⁷ See *infra* Part 3, Title 3, Chapter 3, Section 2, “Common Principles for All Stakeholders.”

⁸⁵⁸ The term is used here to refer to the margin of appreciation which the European Court of Human Rights recognises to Member States of the Council of Europe in the implementation of the ECHR.

⁸⁵⁹ Or a narrow interpretation of the concept of accountability. Refer to the Report of the International Law Association (2004).

would be designed to circumvent these rules,⁸⁶⁰ and finally, from the need for sports institutions to build their power in the matters with which they are affiliated on a legitimacy of the legal-rational kind (M. Weber).

In this respect, a greater awareness on the part of some States and of the sporting movement itself has been observed. The report of the Swiss Federal Council on combating the corruption and match-fixing in sport presented on 7 November 2012 illustrates the first case. While Switzerland is ruled by tradition it is extremely liberal with regard to the sporting movement, the Federal Council has been alerted by the many abuses of sports organisations located on the Swiss territory. Thus it notes that:

“[i]f it turns out that they are not willing to take reasonable measures to combat corruption and therefore protect the positive values of sport that are significant to the society and the image of Switzerland, the privileges which they enjoy [which are essentially fiscal privileges] might no longer be justified.”⁸⁶¹

A recent stance by the IOC President illustrates the second case. As an extension of the instruments adopted since 2008,⁸⁶² already considering the complementarity of public action and sports action, Thomas Bach promoted the concept of “responsible autonomy” of the sporting movement before the General Assembly of the United Nations, during the adoption of the Olympic Truce for the Olympic Games in Sochi in March 2014.⁸⁶³ This concept, as formulated in this context, precisely takes into consideration the fact that sport cannot evolve in a space freed from any legal constraint, and that it must instead comply with State rules, since these do not have the sole purpose of interfering with the legitimate sphere of freedom enjoyed by the sporting movement.⁸⁶⁴ In other words, the concept of responsible autonomy seems to reconnect with the origins of the Olympic philosophy that focused solely on the political independence of sports organisations, but added that the latter stand ready to shoulder the responsibilities that must now be theirs.

Although often overused, the requirement of good governance of sports organisations could help substantify this notion of responsible autonomy, if it can be strictly defined around principles relating to management accountability, the transparency in decision-making processes, the sound management of resources of the organisation, the participation of all stakeholders, or the respect of basic freedoms.⁸⁶⁵

⁸⁶⁰ See É. LAGRANGE *Droit des organisations internationales*, chapitre 2, L. DUBIN, M.-C. RUNAVOT (dir.), *Le phénomène institutionnel dans tous ses états*, Pedone, 2014; É. LAGRANGE, *Mélanges Verhoeven*; *infra*, Part 3, Title 3, Chapter 3, Section 2, “Common principles to all Stakeholders”.

⁸⁶¹ *Lutte contre la corruption et les matchs truqués dans le sport*. Report of the Federal Council in response to postulate 11.3754 filed 28 June 2011 by the Commission of Science, Education and Culture of the Council of States.

⁸⁶² The “Basic Universal Principles of Good Governance of the Olympic and Sports Movement” adopted by the IOC (11-12 February 2008) emphasise the convergence of goals and the complementarity of the missions of sports institutions and public institutions and identify as good methods to preserve their autonomy the consultation, coordination and cooperation with the government. See Part 2, Title 3, Chapter 1, Section 3.

⁸⁶³ Press release of the UNGA, GA/11449, Sixty-eighth session, 44th and 45th plenary sessions, 6 November 2013

⁸⁶⁴ Speech of IOC President on the occasion of the adoption of the resolution of the General Assembly, “Building a peaceful and better world through sport and the Olympic ideal”, 6 November 2013.

⁸⁶⁵ On the notion of good governance in general, and when applied to the sporting movement in particular, see *supra*, this Part, this Title, Chapter 1, Section 3, “Apprehension of stakes in the fight against the manipulation of sports competitions by sports institutions in terms of governance”.

Sports Ministers of UNESCO have also affirmed, on the occasion of the Berlin Declaration of May 2013 that "the autonomy of the sporting movement is closely linked to its primary responsibility concerning sport integrity and compliance with international norms and general principles of good governance". Similarly, the Parliamentary Assembly of the Council of Europe, in its resolution 1875 *Good governance and ethics in sport* (2012) requires States to strengthen good governance in sports institutions, in order to support the fight against the principal abuses in sport.⁸⁶⁶

In part, sports institutions began, in this sense, to understand the constraints on the exercise of their powers. The IOC, as well as some international federations, have thus undertaken an extensive process of reforming their internal organisation to take account of this requirement of good governance.⁸⁶⁷ Many sports organisations have also included in their repressive mechanism the respect of certain fundamental rights, including procedural safeguards to ensure that disciplinary proceedings are conducted independently and impartially.⁸⁶⁸ This process owes much to the CAS, which in respect of the consolidation of the *lex sportiva*, has already secured in sports law, many general principles of law, directly inspired by national and international legal systems.⁸⁶⁹ These initiatives still need to be strengthened in order to reinforce the legitimacy of the actions of sports organisations and ensure their legality.

Ultimately, the adoption and effective implementation of the principle of "responsible autonomy" of the sporting movement would formalise the awareness of sports institutions in this manner of "law of nature" according to which an "increased power or authority sometimes inevitably calls for a corresponding increase in review" (M. Bedjaoui).

Conclusions of Chapter 3

1) Combating the manipulation of sports competitions can only be done if the sporting movement takes account of the degree of autonomy that is compatible with the requisites of the rule of law on the one hand, and the protection of its own interests on the other hand. This autonomy is neither primary nor plenary (complete).

⁸⁶⁶ See also Recommendation Rec(2005)8 of the Committee of Ministers to States Members relating to principles of good governance in sport, dated 20 April 2005.

⁸⁶⁷ The IOC undertook this reform following the scandal of awarding the 2002 Olympics to Salt Lake City which uncovered a true "culture of corruption" among many officials responsible for appointing host cities of the Games. See A. JENNINGS, "IOC, 1999: chronicle of an announced scandal", in: J.-C. BASSON, *Sport et ordre public*, Paris, La Documentation française, 2001, pp. 271 *et seq.* As for FIFA, it has been the subject of much criticism, in particular within the Council of Europe, following the many corruption scandals. In its resolution number 1875, the Parliamentary Assembly of the Council of Europe strongly encouraged FIFA to improve its devices of good governance. Since then, FIFA adopted a series of measures in this direction. In particular, it can be noted that since 2003, the International Federation presents its consolidated annual accounts in accordance with the International Financial Reporting Standards (IFRS) that are addressed, in principle, to companies. For other examples see *supra*, this Part, this Title, Chapter 1, Section 3, "Apprehension of stakes in the fight against the manipulation of sports competitions by sports institutions in terms of governance".

⁸⁶⁸ See *infra* Part 3, Title 3, Chapter 3, Section 2, "Common principles to all stakeholders in the fight against manipulation of sports competitions".

⁸⁶⁹ See *supra* this Part, this Title, Chapter 1, Section 2, "Building a sports public policy and the combat against manipulation of sports competitions (jurisprudential approach)".

2) Autonomy is necessary and allowed but limited, on one side by the indispensable mobilisation of the resources used by public authorities to deal with the manipulation of sports competitions, and on the other by the respect due to the fundamental principles of (national and international) legal systems in which the sporting movement and its devices against the manipulation of sports competitions are active. In other words, governments and the sporting movement have shared responsibilities and obligations.

3) The sporting movement has recognised this by outlining a principle of "responsible autonomy".

Conclusion of Title 3

The study of the understanding of the manipulation of sports competitions by stakeholders with regulatory powers allows us to identify and describe the process that led to making the preservation of integrity a priority for both sports institutions and public authorities.

The phases and modalities of this process are evidently specific to each of the two.

While the sporting movement, which has worked to consolidate the core values that shape its identity through the construction, in particular, of a sports public order was confronted quite early with questions of integrity, the at once practical and normative concretisation of tools to serve sporting integrity, particularly in the fight against manipulation of competitions, took place only in a second phase. In addition to the CAS activity whose precedents play a crucial role in this regard, the governance of sports institutions appears today as an essential condition to continued progress, in terms of integrity: governance thus means both the good governance of sports institutions and the systematic instruments and strategies for the prevention and suppression of the manipulation of sports competitions.

As for public authorities, they seized more recently the issue of integrity. Established as a matter of international public interest, it is at the heart of several initiatives that remain improvable. Already, this international agenda has impacted national agendas; several States have initiated the process of revising their legal systems in order to better regulate the market for sports bets, better combat illegal bets and/or better combat manipulation of sports competitions. If the results of this training effect are also improved, this dialectic and this cooperation between international and national levels are essential as sports competitions and sports bets currently have a transnational dimension.

Conclusions of Part 2

In a positive way, this second part enabled us, by trying to describe the logic of actors who, directly or indirectly, in one way or another, had a connection, regardless of its nature, with the manipulation of sports competitions, to "unmask" them.

Behind the official discourse of the sporting movement, public authorities, operators and even bettors, the true nature of the interests of the different stakeholders was unveiled. Some statements were placed in context. Now remains the consideration of the instruments for combating the manipulation of sports competitions.

PART TWO. STAKEHOLDER LOGIC AND THE MANIPULATION OF SPORTS COMPETITIONS	6
Title 1. Understanding the Manipulation of Sports Competitions through the Economic Rationality of the Stakeholders	7
Chapter 1. Identifying the Stakeholders, their Interests and their Risks	7
Section 1. Description of the Stakeholders	7
§ 1. The Operators	7
§ 2. The Bettors	8
§ 3. Sports Entities	11
§ 4. The Sports Betting Markets	15
§ 5. The Authorities	16
Section 2. Identifying the Victims of Fraud and Evaluating the Consequences of Fraud by Victim Type	17
§ 1. The Punishment of Cheaters	17
§ 2. The Losses of Bettors	18
A. Redistribution of the Losers' Bets	18
B. The Final Payor	20
C. The Stability of the System	20
§ 3. The Collapse of an Economic Model (league collapse)	20
A. Definitions	21
B. Approach through the Sources of Revenue of Federations	21
1. Broadcasting Rights and the Introduction of a Replacement Market (see <i>supra</i> Figure 2)	23
2. Stadium Attendance (see <i>supra</i> Figure 2).....	24
Chapter 2. Identifying the Economic Rationality of Stakeholders	27
Section 1. Bet Fixing and Fraudulent Sports Bets: Environment and Mechanisms	27
§ 1. Stakeholders and Types of Fixing	27
A. Classification According to the Type of Actors of Fraud	27
B. Classification According to the Motives of Fraud	28
§ 2. Match-fixing – Managing a Criminal Plan and the Analytical Framework	29
§ 3. Types of Fixing related to Bets	31
§ 4. Criminal Targeting Policy and the Factors of the Demand for Fixing	33
§ 5. Factors of Match-Fixing Offer by Participants in Sports Competitions .	34
Section 2. Analysis of Sporting Fraud according to the "Economics of Crime" Theory	35
§ 1. The Canonical Model	36
§ 2. An Explanatory Model but with Unobservable Parameters	37
Section 3. Renewal of Analysis: Interactions between Fraudulent Sporting Bets and Legal Sporting Bets	41
§ 1 Analytical Framework	41
§ 2. Determinants of Supply and Demand in Both Markets	45

A. Supply and Demand for Match-Fixing	45
B. The Sports Betting Market	48
C. Effect on the Match-Fixing Market	51
§ 3. Interpretive Model	53
A. The Rupture in the 1960s in Great Britain	53
B. Contemporary Economy of Fixed Bets	54
Chapter 3. Recommendations Based on the Analysis of the Economic Rationality of Stakeholders	56
Section 1. The "Economics of Crime" Point of View	57
§ 1. The "Economics of Crime" Theory: a Microeconomic Perspective on the Offer of Match-Fixing	57
§ 2. Elements for the Risk Management of Sports Bets	60
A. Risks Related to the Nature of Matches	60
1. Collusion – Risk Factors and <i>Contest Design</i>	60
2. MFFB – Risk Factors	62
B. Risks Related to the Nature of the Betting Formulas	63
Section 2. Renewal of the Economic Analysis	67
§ 1. Statement of the issues: Conflicting Interests	67
§ 2. The traditional Instruments of Regulation and Optimum	71
§ 3. Taxation and Property Rights	74
A. Taxation	74
B. The Property Rights Approach	76
§ 4. The Internationalisation of Sport Integrity	77
A. A Unifying Model	78
B. The Dilemma of Regulation	81
Section 3: The Optimum of a Sporting Community	82
§ 1 The Stakeholders and the Options	82
§ 2. Regulation Theory	87
§ 3. The Optimal Use of Instruments	89
A. Recommendations for Public Authorities	89
B. Recommendations for Bettors	90
C. Recommendation for Sports Entities	91
D. Recommendation for Operators	92
§ 4. The Agency Theory and the Principal-Agent Relationship	92
A. Loss of Information, the Four Scenarios	94
B. Questions about the Observed Timing	95
§ 5. International Cooperation	97
Title 2. Understanding the Ethical Challenges of the Manipulation of Sports Competitions by the World Public Opinion	100
Chapter 1. Identifying Ethical Issues	100
Section 1: Sports Ethics, from General Principles to the Call for Rules: Methodological Aspects	105
A. Establishing Sports Institutions for Everyone, a Shared Responsibility	106

B. Differentiating Ethical Norms from Legal Norms.....	107
C. The Sporting Culture and Tradition.....	108
D. Sports, a Miniature Social Life?.....	109
E. The Essential Reference to Play	110
F. The Integration of Sport into the City and into Education.....	110
G. Sports Ethics against Opportunism	111
H. Several Kinds of Rules in Sport.....	113
I. The Individual, the Institution, and Responsibility	114
J. The Institutional Dimension of Sports Ethics	115
§ 2. The Debate on the “Values of Sport”	116
A. Values in Sport.....	116
B. Rationality of Values, Instrumental Rationality and Questioning of Values....	118
C. Some Examples of Persisting Evocation of Sports Values	119
1. The Educational Project of Pierre de Coubertin.....	120
2. Sports in Totalitarian Countries	121
3. The Raised Fist of Smith and Carlos	121
D. Criticism of Sports and Questioning its Values	122
E. Challenging the "Intrinsic Values" of Sport	124
§ 3 Ethics, Between Criticism and Advice	125
A. Research in Sport Ethics, Critical Research	125
B. The Ethics Board in its Institutional Dimension	127
C. Ethical Bearings and Historical Evolution	128
D. The Interests of individuals and the Development of an Ethical Framework..	130
Section 2. Sport Ethics: Practical Problems and Conflicts of Values	132
§ 1. Problems Caused by Competition	132
A. Sports, Rules and Social Recognition	132
B. "Anything Goes"	134
C. Individual Values and Collective Rules	135
D. Problematic Coherence and Contradictory Objectives: the Paths of Transgression	137
E. Compliance with the Rules, Deviance and Responsibility	139
F. Margins of Transgression	140
G. Fair Play and Supererogatory Actions in Competitions.....	141
§ 2. Problems of Integrating Sports in Social Life.....	143
A. Problems with Peripheral Activities	143
B. Sports, Collective Tension, and Violence Control.....	144
C. Collective Tensions and the Dynamics of Rules in Games.....	145
D. On Sport and Violence	147
E. Ethics and the Interest of the Game.....	148
§ 3. Sports and Evolving Societal Values	150
A. Ethical Problems linked to the Performance Culture.....	150
B. Sports, Education, and Setting an Example.....	151
C. The Unexpected and Professionalisation	152
D. The Ambiguity of the Exemplarity in the Era of Media	154
E. The Relationship to Changes in Society.....	155
F. Sports Norms and Parity.....	156
G. Equal Access: Economic Aspect.....	158
H. Towards a Conflict of Values?	158
1. Values of Amateur Sport and Professional Sport.....	158
2. Values of <i>Common</i> Sports and <i>Aristocratic</i> Sports	159
3. Catholic Values and Certain Sporting Values.....	159

4. Original Values and Modern Values of Physical Education.....	159
I. Sports, the Answer to the Tensions Threatening Social Cohesion?.....	162
J. Health Promotion: a Stable Point of Reference	164
Section 3. Responsibility and Institutions: The Search for Remedies.....	165
§ 1 The Individual and the Collective Aspects of Sports.....	165
A. Dimensions of Responsibility	166
B. Practical Aspects: Organisations and Issues of Responsibility	167
C. Recognition of Collective Breaches of Sports Ethics	169
D. Ethics and Role Specificity	171
E. The Collective Goal of Remedying Deficiencies in Sports Ethics	171
F. Sports and Violence: a Collective Responsibility?	172
§ 2. Sports and the Ethical Challenges of Organisation.....	173
A. Dynamic Aspects: the Transformation of Sports Practices by Rules	173
B. Challenges resulting from Sports-Related Activities	174
C. The Plurality of Sports Institutions Producing Norms.....	175
D. Diversity in Norms	175
E. Conflicts of Interest and Equity in Bets.....	176
F. Renewing the Governance of Sports?.....	179
Chapter 2. Construction of Discourse on Sports Ethics	183
Section 1. Production of Ethical Statements in Sports (around 1945 – 1975)	194
§ 1. 1950. The French (then International) Pierre de Coubertin Committee	194
A. Founding	197
B. The Differentiation of Physical Activity and the Differentiation of Ethos	198
§ 3. 1960-1963: Olympic Solidarity	200
§ 4. 1964-1973: International Fair Play Committee (and French Committee), and later the International Committee Against Violence in Sport.....	202
§ 5. 1980-81: The French Association for Sport without Violence and for Fair Play	204
§ 6. Declarations of Ethical Principles under the Cover of Other Critical Themes.....	205
Section 2. Biographical Research on the Dispositions and Stances of Ethical Producers and “Carriers”	206
§ 1. Method	206
A. A Selection of Biographies.....	206
B. Nomenclature of Biographical Information.....	207
§ 2. Stakeholders and their Resources.....	207
§ 3. A Code of Bad Conduct? The Moral of "Victory at all Costs"	214
Section 3: The Relationship between the Bodies Spreading Ethical Principles and the Governing Sport Institutions	216
§ 1. The Organisation of the Fight for Values in Sport.....	217
§ 2. Structural Coalitions and Divisions in the Sports Space.....	218
A. The Split between Physical Education and Sport.....	218

B. Educational/Competition Divergence and Tension between States and Private Organisations.....	219
C. Political Divergence between Sports of Capitalist Countries and Socialist Countries (Communist)	219
D. Divergence between Confessional Movements and Secular Movements (in Education and Sports).....	220
§ 3. A Cycle of Moralisation of the Game?	221
2. Role of the Periphery in the Call for an Ethical Refoundation of Sports.....	223
3. Ethical Differential between Groups	223
4. Spiritual Powers and Temporal Powers (Cultural Capital v. Economic Capital)	224
Chapter 3. Understanding the Semiotic Discourse on Sports Ethics	225
§ 1. IOC Idealism	226
§ 2. The opposition of competition/rules and profit	228
§ 3. The Codes of Ethics and Conduct of Institutional Actors	228
A. The Notions of Ethics and Morals	228
B. The Contents of the Codes of Ethics and Conduct: UEFA, FIFA, IOC.....	229
C. The Virtues of the Promotion of Ethics.....	229
§ 4. Possible Reactions to the Contents of Codes of Ethics or Morals	230
§ 5. Political Exploitation	230
§ 6. The Spectacle and Sport	233
Chapter 4. Expertise in Sports: A Major Ethical Stake; from Lobbying to Citizen Defence	233
§ 1. Centres of Studies Founded by International Sports Institutions	234
§ 2. Private Sports Research Entities	235
§ 3. The “Play the Game” Conferences: An Example of Independent Research	236
§ 4. The Rise in Power of Citizen Associations on Sports Defence	237
Title 3. Understanding the Manipulation of Sports Competitions by Stakeholders with Regulatory Power	240
Chapter 1. Sports Institutions Faced with the Challenge of the Manipulation of Sports Competitions	240
Section 1. History of Sports Institutions and Sports Ethics	240
§ 1. Sports Rules and Fair Play, Chivalry of Sport and Olympic Revival	241
A. Rules, Handicaps, Pools	242
B. Fair Play and Amateurism	243
C. Chivalry in Sport.....	245
D. The Revival of the Olympic Games and International Peace through Sport..	245
§ 2. Olympism, the IOC, the Olympic Movement	247
A. From the Invention of Olympism to Neutralism during the Cold War	248
1. Olympism: An Invented Ethical Tradition	248
a. The First Games under the Threat of States and of Commercial Exhibitions .	249
b. Olympism: An Illuminated and Misogynistic Elitism.....	250
c. The Female Athletes Prohibited from the Olympic Games and Women’s Sport under the Control of Men.....	251
2. Amateurism and the Olympic Oath during the <i>Belle Époque</i>	252

a. The Two Stakes of an Olympic Definition of Amateurism	253
b. The First Athlete to be Disqualified as an Example: American-Indian Jim Thorpe	254
c. The Olympic Oath and Ceremony	255
3. Peace through Sport & Olympism in the Context of the First World War	256
a. Pierre de Coubertin: A Frustrated Patriot	257
b. Coubertinian Sport: A Brutalisation of Youth before the War?	258
c. The Contribution of Sports Victory and the Thwarting of Revolutionaries	259
d. An “Olympiad of War” as a Prologue to Peace	260
4. The First Olympic Charters and the Difficult Defence of Amateurism in the Interwar Period	262
a. The Regulations of 1920-1921 and the Charter of 1924: the First Signs of Sporting Law	263
b. The 1927 and 1938 Charters	264
c. The Secession of ISFs: The Cases of Football and Tennis	265
5. The IOC Confronted with Nazism	266
a. The Nazi Orchestration of the Berlin Games in 1936	267
b. The IOC and the Boycott Issue	268
c. The Blindness of Pierre de Coubertin	269
d. The First Signs of Purification	271
6. Olympic Neutralism in the Context of the Cold War	272
a. The Proclaimed Neutrality of the IOC and its Anchorage in the West	272
b. In Case of Partition, Which State to Recognise? The Cases of Germany, China and Korea	273
c. The Soviet Brotherhood’s Attack on Olympism	275
d. The Helplessness of the IOC against Boycotts	276
A. The Reinvention of Olympism in the Commercial Era	278
1. The End of Amateurism in the Olympic Games and the New Olympic Charters	279
a. From Brundage to Killanin: A Slow and Chaotic Transition Towards Professionalism	279
b. The Commercialisation of Games and the Olympic Cold War	280
c. The Olympic Programme (TOP): The Financial Autonomy of the IOC Negotiated by ISL	281
d. Geopolitical Contingencies and Commercial Pressures on the IOC	281
2. The IOC and the Conquest of the UN	282
a. The Olympic Truce Integrated in the UN Millennium Declaration	283
b. Olympic Support for United Nations Bodies	284
c. Sustainable Games?	284
3. The New Olympic Ethics: From the Salt Lake City Scandal (1998) to the Election of Jacques Rogge (2001)	285
a. The Established Corruption of Twenty IOC Members	285
b. Ethics to the Rescue of the Olympic Crisis	286
c. Jacques Rogge: A Candidate for Putting a Term to a Trust Crisis	288
§ 3. The ISFs and the IOC: An Intertwined History	289
A. ISF Efforts to Gain their Independence until 1945	290
1. Sports Internationalism against Olympism	290
2. ISFs and the League of Nations against the IOC during the Inter-War Period	294
3. The Imperial Nations Sharing the World of Sports	295
4. Alternative Sporting Internationalisms: Women’s Games, Popular Games	296
B. World Championships and Headquarters of the ISFs: Europe in Command	298
1. The Belated Establishment of World Championships	298

2. An Incomplete Globalisation in 2014: Overwhelmingly European Headquarters and Presidents	299
C. The Shared Struggles for the Preservation of the Integrity of Sport against Doping.....	304
1. The " <i>Festina</i> Affair" and the Creation of the World Anti-Doping Agency (1999)	304
a. The Original Lack of Involvement of States.....	304
b. An International Institution Established Modelled as a Swiss Law Foundation with a Paritarian Management System.....	305
c. Insufficiently Binding Statutes.....	306
2. The "Armstrong case" (2012): USADA against WADA.....	307
a. The WADA's Weaknesses	307
b. The WADA's Failure in the Armstrong Affair	308
c. The Necessary Reform of WADA.....	309
E. The Tensions Revealed by the Creation of SportAccord (2009)	309
1. From GAISFS to SportAccord	310
2. A Pragmatic and Limitless Definition of the Concept of Sport	311
3. The End of the Olympic Monopoly?	312

Section 2: Construction of a Sports Public Order and the Fight Against the Manipulation of Sports Competitions (Jurisprudential Approach)..... 314

§ 1. Public Policy, Public Policies and Sport Public Policy	314
A. The Concept of Public Policy	314
1. The General Concept of Public Policy	314
2. The Concept of Sports Public Policy	316
B. The Central Role of the Court of Arbitration for Sport	317
§ 2. Strengthening the <i>Lex Sportiva</i> by Revealing the General Principles Applicable to Sport Disputes	318
A. The Nature of General Principles Applicable to Sporting Disputes	318
1. The General Principles Identified by the CAS	319
2. The General Principle of Integrity.....	321
B. The Function of the General Principles Applicable to Sporting Disputes.....	322
§ 3. The Contribution to the Emergence of a Sports Public Policy.....	323
A. The Rules Constituting Public Policy	324
B. The Concurrence of Public Policies	324

Section 3. Understanding the Stakes of Combating the Manipulation of Sports Competitions by Sports Institutions in Terms of Governance..... 327

§ 1. Links between Governance and Combating the Manipulation of Sports Competitions	327
A. Definitions of Governance and Good Governance	328
B. Main Correlations between Sporting Governance and Integrity	333
§ 2 Evaluation of the Instruments Developed by Sports Institutions to Preserve the Integrity of Sport against Manipulation of Sports Competitions	334
A. Summary of Responses and Initiatives of Sporting Institutions Faced with the Manipulation of Sports Competitions	334
1. Presentation of IOC Initiatives	335
a. Concerning the governance of sporting institutions: the Basic Universal Principles of Good Governance of the Olympic and Sports Movement.....	335
b. In the Fight against the Manipulation of Sports Competitions.....	336
i. The Adoption and the Revisions of the Code of Ethics.....	336

ii. The Establishment of a Joint Inspection Unit since the London Olympics.....	338
iii. Other On-Going IOC Initiatives	339
2. Presentation of the Initiatives of International Sports Federations	340
a. In the Framework of the Fight against the Manipulation of Sports Competitions	340
i. Classification of Sports on the Basis of Risks of Manipulation.....	341
ii. The Taking into Account of Sports Integrity and Competition Manipulation in the Statutes, Objectives and Regulations of International Federations.....	342
iii. The Scope of Sports Regulations and the Level of Penalties Imposed	343
iv. Procedures in Cases of Established or Suspected Violations of Sports Ethics (manipulation, sporting bets, doping, etc.).....	345
v. Human and Financial Resources Directly Linked to the Protection of the Integrity of Sport.....	346
vi. Availability of Tools Capable of Protecting Sport Integrity against the Manipulation of Sports Competitions	347
b. Concerning the Improvement of Governance.....	353
i. The FIFA's Planned Reform	353
ii. Switzerland's Planned Reform	355
3. Summary of Governance Issues and Outline of Solutions	355
a. Potential Improvements of Good Practices in Combating the Manipulation of Sports Competitions.....	355
i. Good Practices	356
ii. Potential Improvement Directions.....	356
b. Potential Improvements of the Institutional Governance in the Interest of Combating the Manipulation of Sports Competitions	358
B. Regional Particularities: UEFA, CONMEBOL, and CONCACAF Attempts at Raising Awareness and Adaptation	361
1. UEFA.....	361
a. Financial Fair-Play According to the Rules of the UEFA.....	361
b. Adaptation of the Disciplinary Regulations.....	367
2. South American Football Confederation (CONMEBOL)	369
3. Confederation of North, Central American and Caribbean Association (CONCACAF)	370
C. Recommendations.....	373
Chapter 2 - Public Authorities in the Face of the Challenge of Manipulations of Sports Competitions	380
Section 1 - The Universal Awareness of the Stakes of the Manipulation of Sports Competitions	381
§ 1. Establishment of the Manipulation of Sports Competitions as an Issue of Universal Public Interest.....	381
A. Sectorial Contributions (UN, UNESCO, UNODC, UNICRI, World Bank, FATF, Interpol)	381
1. In the United Nations System	381
2. Outside the United Nations System	384
B. The Synthetic Contribution of the Council of Europe through the Convention against the Manipulation of Sports Competitions.....	386
1. A Multi-Party and Synthetic Approach.....	387
a. Progress and Completion of the Works	387
b. Principles and Difficulties of Negotiation	388
2. The Contribution of the Sorbonne-ICSS Research Programme on Ethics and Sport Security	389

c. Note on the Exchange of Information, 12 June 2013.....	412
d. Second General Commentary on the Draft Convention, 25 September 2013	412
3. The Essential Adoption of Complementary Instruments	418
§ 2. Unequal Regional Mobilisation	419
§ 3. Stakes and Priorities of the Fight against the Manipulation of Sports Competitions for Public Authorities	425
A. Protecting Public Order, Fighting against Transnational Organised Crime and Money Laundering	425
1. Threats to Public Order.....	425
a. Illegal Bets	426
b. Betting Formulas Attracting Criminals	426
c. The Volumes of Bets Placed on a Sporting Event, the Main Attractiveness Factor for Criminals.....	426
d. The Severability of the Sporting Result from the Betting Result Represents a Major Risk Factor	427
e. Money Laundering Opportunities	427
2. Mobilisation and Results: an Undeniable Correlation	427
B. The Preservation of the Ethics and Values of Sport.....	428
1. The Affirmation of a Priority Concern: Preserving the Value of Ethical Excellence in Sport.....	428
2. The Emergence of a Corollary Concern: The Governance of Sports Institutions	429
Section 2. Impact of the International Agenda on National Agendas	432
§ 1. The Role of Precursor of Certain States	432
A. Italy	432
B. France	434
C. Belgium	435
§ 2. An Acceleration of Legislative Reforms Regarding Manipulation of Sports Competitions and Sports Bets	437
A. Some Examples	437
1. Australia.....	437
2. New Zealand	440
3. India	440
4. Russia	441
5. The United States of America.....	444
6. Greece.....	445
7. The European Union	446
8. Switzerland	447
C. Other Recent Initiatives.....	448
Chapter 3. The Sharing of Responsibilities between Sports Institutions and Public Authorities in the Fight against the Manipulation of Sports Competitions	452
Section 1: Origin, Scope, and Nature of the “Principle” of the Autonomy of the Sporting Movement	453
§ 1. Political Origins of the “Principle”	454
§ 2. Extension of the Claimed Autonomy	454
§ 3. Manifestation of the Claim to Legal Autonomy	456
A. Establishment of a “Sports Legal System”	457
B. Autonomy in terms of Standards	458
1. Definition of the <i>Lex Sportiva</i>	458

2. Substance of the <i>Lex Sportiva</i>	460
C. Autonomy in Terms of Dispute Settlement	462
D. Derogatory Regime during the Organisation of Major Sporting Events.....	464
§ 4. Nature of the “Principle” of Autonomy of the Sporting Movement Deduced from its Acceptance by Public Authorities	465
A. Recurring Mentions of the “Principle”	465
B. Self-Restraint of Public Authorities instead of Autonomy Originating from the Sporting Movement.....	467
C. Submission of the Sports Law to the National Legal Systems	469
1. Sport as a Discipline in itself	470
2. Sport as an Economic Activity	470
3. The Social Dimension of Sport	471
4. Submission to Fundamental Rights.....	472
Section 2: Definition of the Autonomy of the Sporting Movement is in the Context of Combating the Manipulation of Sports Competitions	474
§ 1. Convergence of the Essential Interests of the Sporting Movement and Public Authorities Regarding the Protection of the Integrity of Sport	475
A. Protection of the Good Sporting Order and the Good National and International Public Policy	475
B. The Complementarity of the Responsibilities of the Sporting Movement and the Public Authorities.....	475
§ 2. Development of a Concept of "Responsible Autonomy" to Ensure the Convergence of the Action of Public Authorities and Sports Authorities ..	477