



**TRANSCRIPT**

**The International Legal Framework for Fighting Doping in Sport**

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1. Hello, my name is David Pavot. I am a Professor of Law and holder of the Research Chair on Responsible Sport at the University of Sherbrooke in Canada.

2. It's a great pleasure for me to talk today for the Audiovisual Library of the United Nations about the international anti-doping regime in sport.

3. This issue may seem specialized, even technical, yet it touches fundamental concerns like public health, integrity of sport, the protection of athletes' rights, but more broadly, the relationship between States' sovereignty, transnational governance, and universal values.

4. Doping is not only a sporting fraud. It is an international issue since it involves cross-border flows of substances, engages government responsibility, in case of State sponsored doping for example, and requires global cooperation to harmonize rules. It constitutes a laboratory of global regulation where norms arising from the sports movement and from public international intersect.

5. For a long time, sport and international law formed what Mohammed Bedjaoui called a "singular couple" – two universes evolving in parallel. Sports was perceived as an internal matter for the Olympic movement and international federation, but this vision has totally changed since the 1990s, even more so after the doping scandal of Ben Johnson during the Seoul Olympics of 1988, and the Tour de France 1998 with the "Festina Scandal", the international community has taken hold of the issue. The creation of the World Anti-

Doping Agency (WADA) in 1999, followed by the adoption of the UNESCO Convention against Doping in Sports six years later, marked a new stage. Doping is now a full-fledged issue of international law.

6. Today, almost every State in the world has ratified the UNESCO Convention and the World Anti-Doping Agency plays a unique normative and institutional role. Some authors speak of a spatial field of international law of sports of which doping is the most advanced manifestation, but this construction is highly fragile. It is contested by some States, by some sports organizations, and even by athletes who sometimes denounce a system that seems too severe, ineffective, inefficient, too lenient, and often lacking transparency. The multiplication of disputes before the Court of Arbitration for Sports (CAS) or tension between certain governments and WADA regarding its governance and funding are contemporary examples.

7. In this lecture, I propose to analyze this in four stages: first, the genesis and historical evolution of anti-doping in order to understand how we moved from a purely private sporting regulation to an international public framework; the subject and actors of international anti-doping law to understand their plurality; the sources of international anti-doping law to focusing on the Conventions and the World Anti-Doping Code; and finally, the settlement of disputes mechanism, and contemporary challenges which will reflect both the limits and potential of this particular field of international law.

8. Together, we will see that international anti-doping law is both a model of universal cooperation and a field of political and legal tension where the great questions of our times – sovereignty, human rights, fairness, and global governance – play out.

9. So, let's step now to the first chapter of our lecture dealing with the genesis and the history of anti-doping law. To understand this regime, one must first go back to its history since doping is an ancient phenomenon but one whose legal framework is really recent. Already in ancient sources, one finds practice comparable to doping: Greek athletes consumed animal or plant preparations to believe to increase strength and endurance. But

these practices were not perceived as problematic given the lack of scientific knowledge and clear medical rules.

10. The very term “doping” is more much recent. It is derived from the Zulu language word “dop” referring to the alcoholic drink given to give warriors courage. The word migrated into Dutch, then into English where it first referred to alcohol given to reluctant sailors, then to the administration of substances to race horses. It was only in the XXth century that the term entered in the dictionary.

11. Moreover, it was in the XXth century that the practice became problematic as sporting performance was increasingly sacralized. We had examples more than one century ago at the Saint Louis Olympic Games where an emblematic case occurred – the marathon runner Thomas Hicks received a mixture of strychnine and brandy to finish the race. But it was two especially tragic deaths of cyclists Knut Enemark Jensen during the Rome Olympics of 1960 and Tom Simpson during the 1967 Tour de France that provoked international awareness.

12. Faced with these tragedies, the International Olympic Committee (the IOC) introduced medical measures and started, in 1967, testing. The rationale was the protection of health. However, these measures remain fragmented. Each federation adopted its own rules without harmonization. Furthermore, in the context of the cold war, certain States implemented structured doping programs. Doping was not therefore only an individual issue. It became a State matter.

13. The 1976 Olympic Charter marked a turning point by allowing the withdrawal of a medal in the event of doping. The major scandal occurred during the Seoul Olympic Games in 1988 when Canadian sprinter Ben Johnson tested positive after 100 meters victory – it was the time when the public took conscious of the phenomenon and of its political dimension.

14. It was not until the late 1990s that a truly international framework arose. The Festina scandal during the 1998 Tour de France provoked an unprecedented crisis of confidence. Under pressure from the media, public opinion, and government, the IOC

convened a World Antidoping Conference in Lausanne in 1999. From this conference, was born the World Antidoping Agency (WADA), a Swiss private law foundation, but co-financed and co-managed by governments and the sport movement. This was a pretty unique case in insular, a hybrid organization whose function is entrusted by a treaty.

15. To provide the legal basis by rules adopted by WADA, States negotiated an International Convention against Doping in Sports, adopted under the aegis of UNESCO in 2005. In a record time, it was ratified by almost all UN Member States – today 192 Member States parties.

16. An important point: this Convention does not create new anti-doping rules, but it obliges States to recognize and implement the World Anti-Doping Code developed by WADA whose mission is acknowledged. Also, public international law placed itself at the service of transnational anti-doping law giving a private instrument a quasi-universal value.

17. Let's move right now to the second chapter of this lecture dealing with the subjects and actors of international anti-doping law. The ecosystem of anti-doping relies on the plurality of actors and subjects – both public and private – who, together, form a hybrid system of global governance, unlike classical international law where States occupied central position, here it was often private sport bodies that first initiated the dynamics before international organizations and governments took them up.

18. As we said, the IOC – the leader of the international sports movement – was the first to act. As early as 1967, the IOC established anti-doping controls followed by international federations like FIFA or World Athletics. But this initiative remained fragmented, heterogeneous, and often motivated by a concern to preserve the image of sport than by a genuine will to protect athletes.

19. They were also limited in that they originated from private entities. Indeed, both international sports federations and IOC are international NGOs, they do not have the same powers as intergovernmental organizations.

20. This is why the turning point is the 1990s, marked by spectacular scandals. And those scandals led to the creation of an unprecedented actor: the World Anti-Doping Agency (WADA), founded in 1999 after the Festina scandal. WADA is a Swiss private law foundation within its main office in Montreal, Canada. Its governance is equally shared between governments and the sport movement. Its funding is also balanced – half public, half private. This dual nature explains why it is a hybrid – it is neither a classic international organization, nor a simple NGO. Furthermore, as we have already introduced, its mission is enshrined in the International Convention against Doping in Sports. These characteristics make WADA one of the hybrid organizations whose role is recognized in an international treaty. It makes it one of the few non-governmental international organizations.

21. From a functional standpoint, WADA is today the core of the system. It drafts the World Anti-Doping Code, accredits laboratories, monitors compliance by stakeholders and by States, and ensures the enforcement of sanctions.

22. States have not remained spectators. They have ratified the Convention, supported the implementation of the obligation, and sometimes even the World Anti-Doping Code to which they are not directly linked.

23. At this level, two major models are in opposition. One, inspired by the common law, delegated the national organization of the anti-doping system to private, non-profit organizations that transpose the World Anti-Doping Code into a private instrument. The other, coming from civil law, established quasi-public authorities regulating anti-doping organized by law or decree, which transposes the World Anti-Doping Code.

24. Those differences are not without causing misunderstandings, in particular with WADA compliance. Some States even go as far as to criminalize certain practices. For example, Italy, which since 2000, has criminalized the administration of doping products to athletes.

25. Among international organizations, UNESCO plays a crucial role. Of course, it was the forum for the negotiations and the adoption of the International Convention Against

Doping in Sports. But its role is not limited to the treaty. UNESCO oversees its implementation through a specific institution – the Conference of Party, which is also called the “COP Doping”. This body brings together the States every two years to evaluate the implementation, adopt amendments, and coordinate public policies.

26. Under Article 31 of the Convention, States must submit biennial reports on their national measures. The compliance verification, which is made through a mechanism called “AD logic”, is sometimes criticized as being too lenient since the COP examines the reports and adopts recommendations.

27. The COP has also the possibility to vote on resolution among annexes and notably the list of prohibited substances, and also clearly work with WADA, which remains a technical body. In practice, UNESCO plays an institutional role of supervision and legitimation, giving private norms – those of WADA – a quasi-universal value.

28. Since 2014, in the Sochi Olympic Doping Scandal, several attempts to revise the convention have failed, and a high-level expert group is currently working on new amendments on a new additional Protocol. The Council of Europe is also a pioneer with its 1989 anti-doping Convention, followed by an additional Protocol certain years later.

29. Even if COP is regional, it laid the foundations for a structuring intergovernmental cooperation.

30. Finally, the United Nations intervenes more diffusively. In particular, when we look at the General Assembly resolutions on the integrity on sports, which reinforce the political legitimacy of the regime.

31. Finally, there are several technical organizations to complement this system. One of the most important is the so-called International Testing Agency (the ITA) created in 2018, which carries out testing on behalf of the Federation and the IOC to avoid conflict of interest.

32. And finally, we got also approximately 30 laboratories accredited by WADA to ensure the scientific reliability of the system.

33. So, the framework of the fight against doping is heterogeneous, and several actors cooperate together – a private federation, a hybrid organization, WADA, sovereign States, International Organizations such as the UNESCO and the Council of Europe, technical agencies, and laboratories.

34. So, right now, we'll talk about the third chapter of this lecture dealing with the sources of international anti-doping law. The sources of this law reflect the hybrid nature of the regime. They include both international treaties and private transnational norms. The UNESCO International Convention against Doping in Sport today is the cornerstone of global public governance and regulation in anti-doping.

35. As we said, we got 192 States parties to this treaty, making it one of the most universal legal instruments in the sporting field. I think the most – not one of – the most. This speed and breadth reflect the political will to consolidate the normative role of the World Anti-Doping Code, until then a plurally private instrument developed by WADA by giving it a foundation in public international law, and it's really important.

36. Article 1 of the Convention sets out the general objective to promote the prevention of doping and its complete elimination. The objective is specified in Article 5, which requires State parties to adopt legislative, regulatory, or administrative measures to incorporate the provision of the World of Anti-Doping Code into their domestic law.

37. The Convention is also structured into several blocks. Articles 7 to 12 establish national control and sanctioning authorities. Articles 19 to 23 emphasis on prevention and education, recognizing that the logic, the rationale of anti-doping cannot be solely repressive and must include raising awareness, and especially among young athletes, which is something really important. And Articles 24 to 27 encourage State to develop scientific research and cooperation. And finally, Articles 33 and 34 establish amendment mechanisms, particularly for updating annexes such as the prohibited list, for example.

38. The Convention also created an institutional architecture to support its implementation. We say that the core body, the most important body, is the Conference of

Parties – the COP Doping. We have already talked about the COP, but it periodically brings together all States parties to monitor, in particular, the application of the Convention, but also exchange good practices and strengthen cooperation. The COP is the multilateral forum where the evolution of anti-doping regime is debated.

39. UNESCO also set up an International Fund for the elimination of doping in sports, financed by voluntary contributions from States parties. This fund supports national or regional project, in particular in developing countries, to strengthen institutional capacities, promote education, and finance research.

40. A monitoring mechanism also exists. It's based on regular national reports. These reports help to assess the implementation, identify gaps, and encourage harmonization. However, the mechanism is essentially consultative – no sanction for non-compliance, which limits its coercive force.

41. Despite its importance, the UNESCO Convention has several weaknesses and structural weaknesses. It relies mainly on obligation of means. States – and I quote – “undertake to take appropriate measures”, but UNESCO has no binding power to compel them. Implementation varies widely, for example, between developed countries and developing countries, because the fight against doping costs a lot of money.

42. In sum, the UNESCO Convention was a decisive step in universalizing the anti-doping regime and providing the World Anti-Doping Code with international legitimacy. But its lack of binding mechanism and persistent tension with human rights explain current critics.

43. Another institution – and also source – is the Council of Europe Anti-Doping Convention. The Convention was adopted in 1989, and it was a historic cornerstone and a major precedent in the internationalization of anti-doping. It was the first treaty specifically dedicated to the fight against doping. It requires States to adopt measures of prevention, of control, and sanction, covering both domestic legislation, but also national institutional

framework. A key contribution of the Convention was also to promote the scientific cooperation and the scientific research.

44. A Protocol was added to the Convention by introducing the mutual recognition of doping tests. So, it means that a test conducted in one State party is valid in another. So, the objective is to reinforce harmonization. But the Convention had a direct influence on the drafting of the UNESCO Convention, as many elements were transposed globally. The Council of Europe served as a regional laboratory for mechanisms later extended worldwide.

44. The third, the last but not the least, source of international anti-doping law: the World Anti-Doping Code. Elaborated by WADA, the World Anti-Doping Code is the backbone of the anti-doping system. It defines violation, establishes sanctions, and regulates testing. Around it, gravitates international standards detailing laboratory work, biological passport, education, reserve management, data protection, for example.

45. The whole documents are thousands of pages. So, they face criticism about the difficulty to understand the rules when you have thousands of pages to read to understand clearly the rules.

46. What makes the Code unique? Its hybrid nature. It is not only adopted by Sports Federation, but it is also incorporated into the UNESCO Convention, which commits States to implement it domestically.

47. It is interesting because the Code is a sport and an institutional instrument. So, at the first time, for nearly all the elite athletes in the world, regardless of country and discipline, are subject to the same rules.

48. The Code is also evolving. Since its first version, it has been reviewed three times, and another revision is planned for 2027. The revisions, for example, increased flexibility, changed sanctions for intentional violation, or added anti-doping rights act and stronger proportionality of sanction. These revisions rely on global consultation, but critics note athletes, researchers, and civil society remain underrepresented.

49. The list of prohibited substances is also evolving as scientific knowledge advances. It raised legal questions. In a ruling on May 29, 2018, the European Court of Human Rights considers that infringement on the athletes' human rights were justified by the protection of health. However, in order to be on the list of prohibited substance and methods, two of the three following criteria must be met: first, risk to health; second, risk to the fairness of competition; third, violation of the spirit of sport. It is clear that protection of health is not a mandatory question and mandatory criterion, especially when a vast majority of prohibited substances are freely available for sale. It means that the rationale behind the fight against doping and with all the regime remains fragile and is heavily criticized by legal scholars.

50. Compliance is also ensured by a monitoring program created in 2018, including audits and sites visits. Consequences for non-compliance can be severe. National agencies have been placed under supervision, and States have seen their athletes barred from competing under their flag or national anthem. So, the consequences are dealing directly with State diplomacy.

51. Despite its normative power, the Code faces criticism. Strict liability is seen as disproportionate, obligation of whereabouts and biological monitoring as privacy violation, WADA's governance as insufficiently transparent or inclusive.

52. In short, the Code is fundamental but contested. It embodies both the greatest harmonization effort in sport and ensuring tension between efficiency, right protection, and government legitimacy.

53. Chapter 4 – dispute resolution and anti-doping justice. Another fundamental element of the international anti-doping law concerns dispute resolution. Indeed, when an athlete is accused of committing an anti-doping rule violation, or when a State or a federation contests a decision, there must be a body to adjudicate. And the central question that becomes, who delivers justice in the anti-doping system? The main actor is the Court of Arbitration for Sports (CAS) created in 1984 in Lausanne by the IOC.

54. The initial idea was to create an internal body within the sport movement, designed to resolve disputes quickly and discreetly. It has gradually asserted itself as the global reference jurisdiction for sports-related disputes. And this evolution accelerated with the World Anti-Doping Code, and the adoption of the Code gave to the CAS a monopoly on the appeals on doping matters. Of course, CAS applied the World Anti-Doping Code and the regulation of federations, but it's not in itself confined to them. It also draws upon general principle, and by this way, international law – maybe not enough, but it can – as well as its off body of precedent.

55. Its decisions, known as arbitral awards, are binding and. In practice, an athlete sanctioned by the CAS can almost never escape enforcement of the decision, except demonstrating serious violation of this right, of course, before the Swiss federal tribunal, which exercised a limited control over the CAS.

56. This central role led the Swiss federal tribunal in the *Lazutina* ruling to describe the CAS as the Supreme Court of sports, and it's true. However, this dominant position has not silenced any criticism. Several landmark cases highlighted the structural limitation of the jurisdiction. In 2018, the case of the German skater, Claudia Pechstein, who challenged before the European Court of Human Rights the lack of independence and impartiality of the CAS marked a turning point, by exposing deficit of transparency in the appointment of arbitrators. Adding to this, the high cost of proceedings, which constitutes a barrier for many athletes, as well as inequalities in access to justice between athletes from research risk systems and those from weaker sporting infrastructures.

57. Another recurring criticism concerns the compulsory nature of CAS arbitration. Athletes are not free to choose to bring their dispute to this body. They are compelled with the Statute of internal federation and anti-doping regulations, which impose CAS as the sole appellate body.

58. Unlike traditional arbitrations, which rest on the voluntary consent of parties, the anti-doping system is built on monetary arbitration that restricts the athlete freedom to

submit their disputes to ordinary courts. And while this constraint is justified by the desire to inform university and speed of decisions, it raises serious question of access to independent justice.

59. The CAS remains at the heart of a paradox. It is the guardian of the global uniformity in the application of the anti-doping rules, and the symbol of sporting justice, sometimes perceived as distant from the athletes it judges. On the other hand, it still must demonstrate that it can combine efficiency, independence, equal access, and true arbitral consent to meet growing demand.

60. Second point, the limits of international justice. A major paradox persists. Despite the existence of an international treaty dedicated to the fight against doping, there is no international judicial mechanism to sanction State violations. First, when a country establishes a State doping system, there is no clear path to bring the matter before the International Court of Justice or any other international tribunal.

61. The litigation remains confined to the arbitral or disciplinary level before the CAS or within compliance mechanism implemented by the World Anti-Doping Agency. This situation is highly problematic because State-sponsored doping is not merely a doping fraud or a sporting fraud, it directly engages State's responsibility, its international responsibility, and it endangers the integrity of competition, public health, and collective trust in the system.

62. The orders have shown that this gap stems from the nature of the UNESCO International Convention against Doping in Sports, which is primarily based on cooperation, good faith, and voluntary implementation by States. It contains neither monetary sanction mechanism nor binding judicial recourse in case of dispute between parties.

63. Unlike other treaties, it does not establish an international tribunal. And this lacuna considerably weakens its normative scope. The anti-doping system is therefore based on a hybrid governance. On the one hand, a claim to universality embodied in the World Anti-Doping Code and the UNESCO Convention. On the other hand, the absence of a

real international tribunal which limits international community to respond to in case of systemic failure. This gap has concrete consequences. The doping scandal arising from Sochi 2014 Olympics had come through collective sanctions decided by WADA and validated by the CAS, but without any binding international procedure to legally characterize State-sponsored doping as a violation of international law.

64. This situation maintains an imbalance. Athletes and federation can be sanctioned before arbitral bodies while States escape judicial responsibility. These issues have led UNESCO, since 2015, to consider amending or proposing an additional Protocol to the anti-doping Convention. But so far without success.

65. In face of these challenges, several avenues have been proposed in the academic debate. At the disciplinary level, some authors advocate straightening the transparency and independence of the CAS, notably in the process of appointing arbitrators. At the international level, suggestions include a referral of State-doping cases to the International Court of Justice, even in an advisory opinion, as imagined in the fictitious case submitted to the Charles Rousseau Moot Court in 2023. Others suggest creating a tribunal or resorting to mediation systems. Finally, some argue for a better alignment between the anti-doping regime and the international human rights standards.

66. In sum, anti-doping justice rests primarily on the CAS, which ensures the uniformity of decisions but faces challenge. The absence of an international tribunal combined with tensions between efficiency and fundamental rights shows that dispute resolution in doping matters remains a work in progress.

67. Ultimately, international anti-doping law has become one of the most developed and ambitious systems of sports governance – maybe the most ambitious and the most developed. The World Anti-Doping Code embedded in the UNESCO Convention has succeeded in unifying the rules applicable to athletes worldwide. Yet, its effectiveness is now tested by major challenges.

68. State-sponsored doping and its resurgence, which exposes the absence of binding intergovernmental mechanism, tensions linked to WADA governance and funding, the difficulty of reconciling health protection and sporting fairness with the respect of fundamental rights, and finally, the system ability to keep pace with the rapid evolution of scientific and technological practices.

69. Nevertheless, these challenges should not overshadow the progress achieved. The global anti-doping system has managed to build itself by unifying diverse legal traditions, combining international domestic law and private sports law. Its future depends on a dual imperative: reinforcing its effectiveness in the face of news threats, while consolidating its legal and democratic legitimacy.

70. The growing integration of human rights into anti-doping through the jurisprudence of national and international bodies shows that change is already underway. The true challenge in the years to come will be to reconcile rigor and fairness, efficiency and justice, so that anti-doping remains not only an instrument of sports regulation but also an example of international legal innovation in the service of a more responsible sport.

71. Thank you for your attention.