1

The Intersection between Law and Tennis

ILIAS BANTEKAS AND MARKO BEGOVIĆ

1 Introduction

This chapter endeavors to identify the place of professional tennis in the realms of domestic, transnational and international law. It serves as a background platform to all subsequent chapters. As the reader will come to appreciate in this and subsequent chapters, the key protagonists in professional tennis, namely, the International Tennis Federation (ITF), the Women's Tennis Association (WTA) and the Association of Tennis Professionals (ATP), rely on contracts in order to interact and communicate with third parties within their sphere of activities. Given the transnational nature of tennis, with tournaments and outreach throughout the globe, it is only natural that these contracts are equally transnational in nature, whatever this might mean. This also explains the legal personality of these entities. Even so, because all of these entities must by necessity be headquartered or incorporated in at least one jurisdiction, they are subject to the domestic laws of the forum. In this sense, the regulatory dimension of tennis becomes entangled with the transnational character of the ITF, the WTA and the ATP and their capacity to enter into transnational contracts and dispute resolution mechanisms. It is no wonder, therefore, that all of these entities are headquartered in liberal jurisdictions that are both arbitration-friendly and amenable to transnational legal processes. At the same time, it should be emphasized that professional tennis is also an integral part of public international law. The three aforementioned entities, as well as the association of the ITF with the International Olympic Committee (IOC), renders them akin to global non-governmental organizations (NGOs) or multinational corporations (MNCs) and by extension the expanding body of soft law applicable thereto.[1] This is particularly true

[1] See Ilias Bantekas, "Corporate Social Responsibility in International Law" (2004) 22 Bost U Int LJ 309; Ilias Bantekas, "The Emerging UN Business and Human Rights Treaty and Its Codification of International Norms" (2021) 12 Geo Mas Int LJ 1.

https://doi.org/10.1017/9781009597616.002 Published online by Cambridge University Press

of the ITF which is incorporated as a commercial company with activities throughout the globe. In equal measure, it is now clear that international human rights law governs the operation of non-state actors, even if ultimately the obligation burdens the state and its institutions. Moreover, there is little doubt that the ITF, at least, satisfies the criterion of foreign investment in several bilateral investment treaties (BITs), although it has not officially claimed such a status. Overall, the purpose of this chapter and the book as a whole is to bring to light the patchy set of rules (institutional or otherwise) and norms that govern professional tennis and highlight their relevance.

2 The Regulation of Professional Tennis by Transnational Law

Strictly speaking, professional tennis is not "regulated" by transnational legal processes. Rather, the structures under which it is organized benefit from such transnational processes. A key illustration is the organization of the ITF as a corporate entity under the laws of the Bahamas, yet headquartered in London. This allows it to contract in its own name and not on behalf of a state entity or on the behest of one or more governments. Its Board of Directors dictates its corporate agenda, while at the same time it benefits from membership in the IOC and likewise its own members/shareholders consist of national tennis federations, the majority of which retain some kind of public dimension, whether through funding, legal personality or other association.

One of the key profit-making activities of the ITF, the ATP and the WTA is the organization of tennis tournaments in professional and amateur circuits, as well as attendant media and image rights. Although any entity is free to organize tournaments, these three entities have placed themselves in a position to dominate prizes, media coverage, branding and the trust of the top players.[2] Generally speaking, the organization and allocation of tennis tournaments is not excluded from domestic and transnational anti-trust laws[3] and all three entities must tread carefully to avoid accountability.

[2] See *Deutscher Tennis Bund* v. *ATP Tour Inc.*, 610 F.3d 820 (3d Cir. 2010), *cert. denied*, 562 US 1064, 131, which confirmed that the ATP can re-organize professional tournaments and relegate one or another to a lower tier without breaching anti-trust rules (in this case the Hamburg and Qatar tournaments).

[3] See George A. Metanias, Thomas J. Cryan and David W. Johnson, "A Critical Look at Professional Tennis under Anti-Trust Law" (1987) 4 U Miami Ent & Sports L Rev 57; equally, *Volvo North America Corp.* v. *Men's International Professional Tennis Council*, 857 F.2d 55 (2d Cir. 1988), one of the earlier cases concerning whether an international tennis federation is susceptible to the Sherman Act, 15 USC § 1 (1982).

All three entities and their attendant members, as transnational corporate actors, are subject to an increasing body of regulation. As a matter of unilateral state practice, extra-territorial laws regulating particular aspects of corporate conduct are on the rise, chief among these being the United Kingdom's Modern Slavery Act of 2015[4] and the Australian Modern Slavery Act of 2018.[5] Section 54 of the United Kingdom's Act requires commercial entities with a turnover of £36 million, irrespective of their place of incorporation, but which undertake even a part of their business in the United Kingdom, to prepare annual slavery and trafficking audits.[6] The ITF has issued a policy statement in implementation of the Act.[7] Significantly, such liability is not limited to tort, particularly given the public nature and importance of the violated rights involved, the gravity of their breach, the impact on the domestic and global rights objectives, and the need to deter subsequent breaches.[8] English courts have held that the extra-territorial reach of such laws concern specific conduct and do not encompass the impact of MNCs on human rights.[9] These extra-territorial laws were preceded by the introduction of human rights impact assessments (HRIAs) and due diligence requirements by international financial institutions (IFIs), UN bodies[10] and the European Union,[11] among others.

[4] Modern Slavery Act 2015 (c. 30) (UK).
[5] Modern Slavery Act 2018 (No. 153/2018) (Austl.).
[6] Modern Slavery Act 2015 (c. 30) (UK).
[7] ITF, Modern Slavery and Human Trafficking Statement, available at: www.itftennis.com/en/about-us/modern-slavery/, which is consistent with the United Kingdom's Modern Slavery Act 2015, to which it is bound given its seat in London.
[8] Ibid. See equally *Vedanta Resources Plc and Another* v. *Lungowe and Others* (2019) UKSC 20, at 45–6, 92, which unlike other cases did find a duty of care arising from a company's overseas business operations.
[9] See e.g. *AAA* v. *Unilever Plc* [2018] EWCA Civ 1532 (QB) (holding no duty of care by a UK parent company in respect of third parties harmed by the business conduct of a foreign subsidiary); equally, *Kalma* v. *African Minerals Ltd* [2020] EWCA Civ 144 (QB) (deciding that there was no liability for a UK company's operations in Sierra Leone mired by police abuse).
[10] See Guiding Principles on Human Rights Impact Assessment for Trade and Investment Agreements, UN Doc. A/HRC/19/59/Add.5 (December 19, 2011); Guiding Principles on extreme poverty and human rights, UN Doc. A/HRC/21/39 (July 18, 2012); Committee on Economic, Social and Cultural Rights, General Comment No. 24 (August 10, 2017), paras 17, 21–2; Committee on the Rights of the Child, General Comment 19, UN Doc. CRC/CG/19 (July 10, 2016), para. 47.
[11] EU Commission Working Paper Operational Guidance on taking account of fundamental rights in Commission impact assessments, SEC(2011) 567 Final (May 6, 2011). The Court of Justice of the European Union has, in fact, emphasized the importance of such HRIAs in the adoption of primary and secondary EU legislation. See *Schecke and Eifert* v. *Land Hessen*, Joined Cases C-92/09 and C-93/09 [2010] ECR-I-11063. HRIAs are also required through two EU instruments, namely: the Directive on Public Procurement and

Crucially, the ITF, the WTA and the ATP interact with third parties through the medium of contract. Although contract law is quintessentially national in character, there is an ever-growing consensus and state practice whereby certain principles, practices and wholesale legal systems are given prominence and authority as a matter of transnational governing laws. This is true, for example, as regards the UNIDROIT Principles of Transnational Commercial Contracts as well as English contract law, the latter serving as governing law for several specialized transnational commercial contracts.[12] Hence, none of the three tennis entities is bound to operate within the narrow confines of the contract laws of their headquarters or place of incorporation and given that contracts are the only form of interaction with third entities throughout the globe, the existence and recognition of uniform and harmonized contractual practices significantly minimizes all transaction costs.

2.1 *Professional Tennis as Part of the Transnational* Lex Sportiva

The game of tennis is situated within a complex and interrelated set of regimes that consists of both legislative and institutional (internal) elements, all of which are governed by the ITF. The universality of contemporary tennis has been achieved primarily through formalization of the rules of the game that includes matters such as the size of tennis courts and types of balls, as well as specific match or competition formats. Cumulatively, this rather rigid structure of rules serves to maintain legislative and organizational transnationality, along with the dominant role of the ITF and the two professional tennis associations, namely, the WTA and the ATP. The ITF develops the rules that effectively define the game of tennis at both the amateur and professional levels, while together with the WTA and ATP, they serve to regulate the organization of competitions under their aegis. The allocation of tournaments as major competition formats is subjected to a number of requirements to which host federations or organizers are bound to adhere. As a result, all of these stakeholders adopt and implement these rules and standards as part of the broader *lex*

the Directive on Non-Financial Information Disclosure. Under the latter, companies with over 500 employees are required to disclose information on policies, risks and results as regards their respect for human rights.

[12] See, in particular, Stefan Vogenauer (ed.), *Commentary on the UNIDROIT Principles of International Commercial Contracts* (Oxford University Press, 2015); Michael J. Bonell (ed.), *The UNIDROIT Principles in Practice* (Brill, 2006).

sportiva. These rules, policies and standards trickle down to national tennis federations who go on to adopt and enforce them within their domestic sphere of authority, whether as a matter of law (infrequent) or institutional prowess, in their capacity as primary units of the ITF.

At the same time, the institutional law of the Olympic Movement, including the Olympic Charter, is binding on the ITF because of its institutional relationship with the IOC. As part of the Olympic structure, the IOC exercises authority over members of the Olympic Movement (including all international sports federations). This in turn entails that all IOC-related commitments, such as those arising from the World Anti-Doping Agency's (WADA) anti-doping regulations, are binding on the ITF and its direct stakeholders. With the establishment of the WADA, the adoption of the World Anti-Doping Code (WADC)[13] has become an inextricable part of the professional tennis ecosystem, especially since the enforcement of the WADC falls under the jurisdiction of the Court of Arbitration for Sport (CAS).

2.2 The Transnational Character of Dispute Resolution of Professional Tennis

The ITF – and to a lesser degree the WTA and ATP – has followed the example of other international sports federations[14] by setting up internal dispute resolution and disciplinary mechanisms, rather than opting for general commercial arbitration or litigation. All of these specialized sports arbitral mechanisms are related by reason of agreement (which is reflected in their constitutions or other internal instruments) to the CAS, which broadly speaking serves either as an appellate forum for disputes already adjudicated by these specialist institutions or as first instance arbitral recourse.[15] The type of arbitral and quasi-judicial mechanisms envisaged in ITF-related instruments constitute an exception to the general rule that all private disputes are subject to the jurisdiction of

[13] Available at: www.wada-ama.org/sites/default/files/resources/files/2021_wada_code.pdf.

[14] A good example is offered by FIBA's Basketball Arbitral Tribunal (BAT). See Dirk R. Martens, "Basketball Arbitral Tribunal: An Innovative System for Resolving Disputes in Sport (Only in Sport?)" (2011) 1 Int Sports LJ 54.

[15] According to Art. 57 of the FIFA Statutes, FIFA recognizes the independent CAS with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents. Strictly speaking, CAS comprises an ordinary arbitration division, an anti-doping division and an appellate arbitration division. See CAS Code of Sports-Related Arbitration (2022), S3.

the courts. No doubt, preference for such internal mechanisms is dictated by several factors, including: speed, confidentiality (although awards and decisions are made public), cost and ultimately authority over the process. Moreover, given that sporting disputes generally engage issues that are the same or similar across all sports,[16] the case law of the CAS has assumed a universal value that is consistently applied as precedent before domestic courts as well as sports arbitral institutions.[17] The only notable exception that has been identified as such by the ITF Independent Tribunal concerns the application of sanctions.[18] Hence, an underlying consensus in favor of solidifying and expanding the so-called *lex sportiva* is essential in understanding both the adoption and complexity of internal dispute mechanisms by the ITF, WTA and ATP and other international sporting federations.

Within this context, the ITF has set up its own distinct organs for the resolution of disputes arising from tennis. The ambit of these organs excludes contractual disputes, such as those between players and agents,[19] or between the ITF and tournament organizers. All three sporting entities have promulgated discreet tournament rules, as have also national tennis federations, which further provide for penalties and sanctions.[20] Finally, the ITF has instituted an Ethics Commission that has

[16] By way of illustration, the ITF is a signatory to the WADA Anti-Doping Code and as part of its commitment thereof it has issued the Tennis Anti-Doping Program (TADP), which establishes the WADA Code-compliant Anti-Doping Rules for professional tennis. In particular, the ITF contracts International Doping Tests & Management (IDTM) to collect samples from players under the TADP so that they can be tested for the presence of prohibited substances under the WADA Code.

[17] See Johan Lindholm, "A Legit Supreme Court of World Sports? The CAS(e) for Reform?" (2021) 21 Int Sports LJ 1 (who argues that the concept of judicialization and the related models of arbitration can help us understand the Court of Arbitration for Sport and its role in the development of a transnational legal order in sports).

[18] In *Ilie Nastase* v. *ITF*, Independent Tribunal Decision, SR/913/2017, at para. 101, the Independent Tribunal held that the applicable principle concerning sanctions is that of "correctness trumps consistency," as referred to in previous sports decisions. Hence, "if a sanction granted in another similar matter – although, as was just said, there is no such case that the Tribunal is aware of – is greater or smaller than the one imposed by the [Panel or Tribunal], this should not bind the Tribunal and prevent it from electing the sanction which it determines to be the fairest in light of all the circumstances of the case."

[19] *Zverev* v. *Ace Group International Ltd* [2020] EWHC 3513 (Ch) (which effectively concerned a restraint of trade claim before English courts, but which was ultimately settled to the benefit of the tennis player).

[20] For fines imposed by tournament organizers, see Jimmy Hascup, "Australian Tennis Player Gets Fined $56,100 for Failing to Meet 'Professional Standard' in Wimbledon Loss," *USA Today* (July 5, 2019), available at: www.usatoday.com/story/sports/tennis/wimb/2019/07/05/wimbledon-2019-bernard-tomic-fined-prize-money-lackluster-effort/

authority to investigate ethical infractions attributed to ITF officials, as well as monitor the electoral process for the ITF Board of Directors.[21] This is more fully explored in Chapter 13 of this volume.

2.3 The Relationship between the ITF, the WTA and the ATP

The organizational structure of the world of tennis is an expression of the evolution of the game towards commercialization and professionalization. The ITF was created more than a century ago as a major governing body for the world of tennis. The changes that led to its current status were shaped with the abolition of the long-standing rule that only amateur athletes can compete in the Olympics and the introduction of tennis as part of the Olympic program, which culminated in the elimination of the distinction between professional and amateur tennis. Further transformation took place through the struggle for gender equality, whereby Billie Jean King founded the WTA as a global stakeholder for women's tennis. Both associations, the WTA and the ATP, were created to quintessentially safeguard players' rights. These new institutional regimes led to the creation of a new ranking system and fairer allocation of funds. Further development unfolded on the basis of the institutional cooperation between players' associations and tournament organizers. However, the major shift occurred in the 1990s, whereby the ATP announced the development of a new format that would revolutionize the game, focusing on the business ecosystem structured around sponsors, media and other related organizations and institutions. The ITF remains the coordinating authority of the Grand Slam tournaments (Australian Open, Roland Garros, Wimbledon Championships and US Open), future tournaments and ITF junior circuit tournaments, while, as already explained, the ATP is in charge of two categories of tournaments: (1) ATP Tour tournaments (ATP Tour Finals singles/doubles, United Cup, ATP Tour Masters

1655166001/. In practice, national tennis federations promulgate their own rules, which include conduct obligations and the imposition of fines. See US Tennis Association (USTA), Handbook of Rules and Regulations (2022), available at: www.usta.com/content/dam/usta/2022-pdfs/2022%20Friend%20at%20Court.pdf, Chapter IV.C(1), which stipulates that: "The Chair of any tournament may withhold all or part of any prize money or expenses payable to any player charged by the Chair or by the Referee of the tournament with conduct inconsistent with the principles in USTA Regulation IV.C., provided a written grievance is filed in accordance with USTA Regulation V.B. and Bylaw 43. Any prize money or expenses so withheld shall be withheld until a final determination of the charges in the grievance has been made. Immediately after the final determination, the funds withheld, less the amount of any fine, shall be promptly paid to the player."

[21] ITF Code of Ethics, available at: www.itftennis.com/media/7246/2023-itf-code-of-ethics-english.pdf.

https://doi.org/10.1017/9781009597616.002 Published online by Cambridge University Press

1000, ATP Tour 500, ATP Tour 250); and (2) ATP Challenger Tour tournaments. The WTA, in turn, under the terms of the WTA Tour, enjoys authority for the organization of two categories of events: (1) WTA Tour tournaments (WTA 250, WTA 500, WTA 1000 and Finals); and (2) WTA Challenger Tour tournaments.

Therefore, the current organizational structure is complex as two professional entities and the main governing body are in charge of organizing a series of professional, and at times competing or overlapping, tennis events. Some of these events are organized jointly between the ATP and the WTA in order to maximize media attractiveness, visibility, sponsorship and the sport's fan base. That said, the relationship between these stakeholders is complex as all of them are entitled to organize events and deal with athletes in respect of tournaments and events under their respective authority. This complexity requires the adoption of separate rules by each entity that entails a significant degree of coordination and delineation of competencies and responsibilities. The Grand Slam Rules adopted by the Grand Slam Board include the Grand Slam Tournament Regulations and the Grand Slam Code of Conduct.[22] The aim of these rules is to structure the organization of the four Grand Slam Tournaments, to maintain organizational standards, and to ensure that the conduct of both players and organizers contributes to safeguarding the integrity of the world of tennis. The Grand Slam Board is responsible for coordinating and governing activities associated with the Grand Slam Tournaments. Besides adopting rules, the Grand Slam Board is engaged in officiating, drafting tournament calendars and maintaining contractual relationships with other stakeholders from the world of tennis or third parties. As global governing bodies for men's and women's professional tennis, the ATP and the WTA adopt rulebooks, a specific set of rules for each competitive year aimed at regulating the organization of tournaments, their financial, branding, personnel, facilities-related aspects, as well as set out a code of conduct, dispute resolution and anti-corruption mechanisms.[23] Both professional tennis bodies have gone on to establish a governing authority – the Board of Directors – in charge of implementing policies and maintaining a contractual relationship between players and tournament organizers.[24]

[22] 2023 Official Grand Slam Rulebook, available at: www.itftennis.com/media/5986/grand-slam-rulebook-2023-f.pdf.

[23] 2023 ATP Official Rulebook, available at: www.atptour.com/en/corporate/rulebook.

[24] 2023 WTA Official Rulebook, available at: https://photoresources.wtatennis.com/wta/document/2023/05/04/181c679e-d187-4e7a-a7b2-25677d3eeec4/2023-WTA-Rulebook-5-4-2023-.pdf.

The current strategy for planning and coordinating activities aims to eliminate potential overlaps with a view to maximizing the income generated from the organization of these events.

3 Professional Tennis and Domestic Law

While a large part of professional tennis is regulated under transnational law, domestic laws are hugely relevant to a variety of stakeholders. The following sections will only touch on governance and labor laws. Domestic laws dictate all aspects of national tennis federations and their members, as well as the distinct relationships between players, academies, coaches and agents. Domestic laws and institutions are responsible for professional tennis policies, such as the state's relationship with the ITF and the IOC. Finally, all issues related to tournaments, whether criminal or administrative, are subject to the laws of the host state and the jurisdiction of its courts.[25]

3.1 Tennis Governance

Although the governance of transnational tennis entities may be perceived as a matter suitable to transnational regulation, every corporate or other entity must be set up and registered under the laws of a single state. If such corporate entity desires to establish "subsidiaries" in other states, it can only do so through new and distinct legal persons under the laws of that third state. The only link between the mother entity and its foreign "subsidiaries" is that of intra-shareholding. It is difficult to fully understand the complexity of governance among the various international tennis entities without a solid foundation of the modern history of the game. The majority of fans do not fully comprehend the existence of several entities, nor the nuanced rivalry between players, organizers and to some degree also the ITF. While such rivalries are not uncommon in team sports, such as football and basketball,[26] the creation of bifurcated –

[25] As was the case with the immigration/visa status of Novak Djokovic and his deportation for his refusal to be vaccinated ahead of the Australian Open. *Djokovic* v. *Minister for Immigration, Citizenship, Migrant Services & Multicultural Affairs* [2022] FedCFamC2G 7. See Vasilije Markovic, "The Djoković Case: The Limits of God-Like Power of Australia's Immigration Minister," available at: www.cirsd.org/en/expert-analysis/the-djokovic-case–the-limits-of-god-like-power-of-australias-immigration-minister.

[26] E.g. the dispute between FIBA and ULEB (Union of European Leagues of Basketball) which ultimately culminated in an agreement in 2004, but was reignited again in 2015, concerning the hosting of Europe's most significant tournament, the Euroleague.

yet to some degree synergetic – structures is highly unusual. Professional tennis is organized under a complex contractual and intra-regulatory web. To understand the role of the ITF in this complex web, one must first appreciate the interests of the various stakeholders that make up the world of professional tennis.

A brief look at the most recent history is pertinent. The ATP[27] was set up in 1972 and the Men's International Professional Tennis Council (MIPTC), also known as the Men's Tennis Council (MTC), was set up in 1974 as the governing body of men's professional tennis. Its composition consisted of ITF and ATP representatives. By 1988, the ATP had become frustrated with the way the sport was managed and its lack of influence and so it withdrew from the MIPTC, setting up a distinct ATP tour in 1990. The MIPTC now had no reason for existence and was disbanded in 1989.[28] Professional tennis is a confusing array of several transnational entities, each controlling certain fragments of the game. By way of illustration, the ATP, which is organized as a non-profit entity, is the governing body of only some men's professional circuits, namely, the ATP Tour, the ATP Challenger Tour and the ATP Champions Tour. The ATP is governed by a Board of Directors, consisting of tournament members, player members and a Chairman/President.[29] The relationship between the ATP and the ITF can be characterized as both synergetic and contentious. The ITF organizes the four Grand Slams,[30] and on behalf of the IOC it also administers the Davis Cup and the Olympic tennis tournament.[31] The ITF's role in professional tennis is paramount. It functions as organizer of three major events (Grand Slam, Davis Cup and Olympic tennis tournament) and several less publicized ones. This allows it to generate significant income as well as yield authority. Its authority stems from the fact that as the mother of all national tennis federations,[32] these are dependent

[27] Available at: www.atptour.com.

[28] See Robert Lake (ed.), *Routledge Handbook of Tennis: History, Culture and Politics* (Routledge, 2019).

[29] ITF Constitution (2022), Art. 19, available at: www.itftennis.com/media/2431/the-constitution-of-the-itf-2024-web.pdf.

[30] The four Grand Slams (Australian Open, French Open, Wimbledon and US Open) as well as the Davis Cup are regulated by the ITF. There is agreement between the Grand Slams and ATP as to the use of ATP entry and ranking systems for qualification and ultimate ranking, save for Wimbledon. which in addition to the ATP formula applies its own rules.

[31] ITF Bylaws, Art. 2.2(2)(a).

[32] National tennis federations are tiered members and shareholders of the ITF corporate vehicle. See ITF Constitution, Art. 2 (2025).

on the ITF for admission into its tournament calendars and organization of national team events.

While national and sub-national federations may organize their own tournaments, if these are not part of the ITF tours and hence do not generate ATP/WTA ranking points, it is unlikely that any top names will ever agree to take part, particularly since the ITF/ATP/WTA calendar is already loaded with tournaments. It is worth noting that the ITF is organized and registered as a limited liability company under the laws of the Commonwealth of the Bahamas,[33] albeit its headquarters are in London. A key reason for incorporating in the Bahamas is the country's preferential tax regime.[34] The United Kingdom, in turn, finds the ITF an attractive commercial enterprise because it generates employment opportunities and uses other UK companies to sub-contract with. It is no surprise, therefore, that during the Covid-19 crisis, the UK tax authorities offered a tax credit of £455,000 to the ITF for income generated in the United Kingdom.[35]

One of the oddities of professional tennis is that the organization of the women's game is the domain of an entity that is distinct from that of the men's game. The WTA,[36] founded in 1973, governs the WTA Tour, but not the Grand Slam, the Davis Cup or the Olympic tennis tournament, all of which are organized in the same manner as the men's game by the ITF. In all other respects, the WTA and ATP are similar in nature, function and organization.

3.2 The Relationship between National Tennis Federations and the ITF

The historical dominance of particular national tennis federations remains vibrant to the present day, subject to minor variations. The world of tennis as governed by the ITF encompasses 213 national tennis

[33] ITF Constitution, Art. 1.

[34] Until 2018, companies registered in the Bahamas but operating exclusively outside of the country, as was the case with the ITF (which is headquartered in London and without any events in the Bahamas), were entitled to preferential exemptions from taxes in accordance with the International Business Companies Act (Ch. 309); the Exempted Limited Partnership Act (Ch. 312); the Investment Condominium Act, 2014 (No. 38 of 2014); and the Executive Entities Act, 2011 (the "Preferential Exemption Acts"). Under pressure from the Organisation for Economic Co-operation and Development, such laws had to be scrapped and in 2018 they were replaced by the Removal of Preferential Exemptions Act.

[35] Available at: www.insidethegames.biz/articles/1110765/strict-financial-discipline-to-be-main.

[36] Available at: www.wtatennis.com.

federations as members, from which 160 enjoy voting rights. According to the ITF Constitution, voting rights are divided into two classes, namely, Class B and Class C. The ITF Constitution recognizes "exclusive voting rights" for Class B members.[37] The leading five national federations (Australia, Great Britain, France, Germany and the United States) possess twelve votes. Another set of fourteen countries enjoy nine votes. Within the Class B category there are groups of members with seven, five, three and one votes. There are fifty-three members within Class C without voting rights. There are six continental federations operating with the framework of the ITF:

- Asian Tennis Federation;
- Central American and Caribbean Tennis Confederation;
- Confederation of African Tennis;
- Oceania Tennis Federation;
- South America Tennis Confederation; and
- Tennis Europe.

Application for membership to the ITF by a national tennis federation presupposes a capacity to effectively operate in the territory where it is established. Both elements must conform to the laws in place in the country in question. According to the ITF's criteria, the national federation will be granted membership status within two existing classes by the Council's resolution at the Annual General Meeting (AGM). The ITF's Council may take action against a member federation (suspension or expulsion) in accordance with Article 4.g of the ITF Constitution, where in its opinion the actions of a national federation damage the reputation of tennis or fail to comply with the rules stipulated by the ITF. The participation of national federations in the decision-making work of the ITF through its AGM, however, is rather limited since only a few members possess voting rights.

3.3 The Labor Status of Professional Tennis Players

In the context of individual sports, such as tennis, there exists a certain level of specificity, and contrary to professional team sports, tennis players are generally viewed as independent contractors. While in some professional sports athletes are capable of arranging collective bargaining agreements between themselves and competition organizers, chiefly through appropriate representation in the form of unions or players' associations, this is not the

[37] See ITF Constitution, Art. 11.

case in the world of tennis. Functionally, professional tennis players remain under the control of the ATP/WTA in the form of independent contractors lacking collective bargaining agreements or other institutional rules for articulating or safeguarding labor rights. As a result, professional tennis players are exempted from a number of benefits, such as health insurance or pension plans, as well as the possibility of setting up professional unions.

The complexity of the governing structure between the ITF and the ATP and WTA, especially with the latter two serving as intermediaries between players and tournament organizers, reflects players' labor status. In practice, professional tennis players are self-employed, while ATP/WTA are currently organized as bodies reflecting the interests of different stakeholders, where players have more consultative rather than executive roles. Both the WTA and the ATP are governed by an executive body, namely, a Board of Directors that is comprised of three player representatives, tournament representatives and the President of the ATP; or, in the case of the WTA, the WTA CEO. Their interests are often opposing or conflicting and generally fail to adequately articulate or protect players' rights. This is particularly evident with regard to profit-sharing because players do not possess sufficient institutional power to influence player-based allocation of proceeds. Such labor ambiguity is exacerbated by the decisions of national tennis federations in their selection of players for Davis/Fed Cup/Olympics tournaments or any other selection procedure as none of these may be challenged before national courts.[38] As a result, professional tennis players are exempt from any institutional or legal protection in respect of their labor rights. As will be explained Chapter 6, there is a growing unionization between professional players, chiefly through the Professional Tennis Players Association (PTPA).[39] Another way that

[38] *Washington* v. *USTA*, No. 99-CV-5148IJG, 2002 WL 1732801 (EDNY, July 22, 2002) (the court used the "agency test" to decide whether Washington was an employee of the USTA. Because, however, the USTA had no control over the "manner and means" of how Washington did his job (of playing tennis), he could not be considered an employee of USTA); see Elizabeth Priest, "Working toward Breaking Point: Professional Tennis and the Growing Problem with Employee and Independent Contractor Misclassifications" (2022) 75 SMU L Rev 343 (who argues in favor of a single ABC test for the employment purposes of professional tennis players, rather than their incorrect classification as independent contractors); equally Collin R. Flake, "Note, Getting to Deuce: Professional Tennis and the Need for Expanding Coverage of Federal Antidiscrimination Laws" (2014) 16 Tex Rev Ent & Sports L 51, 62.

[39] See Simon Cambers, "Vasek Pospisil Exclusive: Why Time Was Right to Form the PTPA (Professional Tennis Players' Association)," ATP (September 20, 2020), available at: www.tennismajors.com/atp/vasek-pospisil-exclusive-ptpa-interview-289067.html/amp?__twitter_impression=true.

athletes may claim a higher percentage and better working conditions (including access to health care) and cover their cost of training and travel, as well as make a decent living, is by collective bargaining agreements.[40] In the field of tennis, the ATP, through some of its most famous members such as Novak Djokovic, have made significant strides in their collective bargaining agreements.[41] Even so, such agreements are limited in scope and number, covering only a fraction of athletes, and do not encompass mid- and lower-tier athletes.

4 The Relevance of International Law

International law regulates the relationship between states and their subdivisions, and it is only since the end of World War II that it has taken a keen interest in the treatment of people within the borders of a state as a matter of international obligation. From the perspective of professional tennis, the chapter confines itself to the pursuit of human rights objectives by the ITF, as well as the investment capacity of the three transnational tennis entities. Whether and to what degree they may be considered as foreign investors[42] in countries other than their headquarters or place of incorporation and whether their activities constitute investments under applicable BITs and host state laws is a matter of investigation.[43] The general nature of this chapter does not allow us to elaborate on the foreign investment dimension of professional tennis. The ITF has shown significant reluctance to engage with human rights issues, unlike other international sports federations, albeit it is clear that all three entities can play a significant role in the promotion of human rights throughout the world. In Section 2.2, we discussed developments

[40] Ibid.; see also "Collective Labor Agreements in the Sports Sector," available at: www.fnv.nl/getmedia/144f6021-8e2d-41f9-8cee-d3a92c140403/341-sport-cao-english-2016-2018.pdf.

[41] See Priest, "Working toward Break Point."

[42] For instance, Art. 3 of the 2008 Germany Model BIT defines an "investor" as any legal entity and any commercial organization or association with or without legal personality as the owner, possessor or shareholder of an investment within the jurisdiction of another contracting state; equally, Art. 13(a)(iii) of the Multilateral Investment Guarantee Agency Convention. For a fuller exposition, see Ilias Bantekas and Hakan Sahin, "Non-Profit Entities as Foreign Investors: The Case of International Sport Governing Bodies" (2023) 60 Stanford J Int L 70.

[43] See generally Ilias Bantekas, *Introduction to International Arbitration* (Cambridge University Press, 2015), 285–92.

pertaining to human rights commitments of corporate entities, chiefly in the European Union. These apply to the ITF and readers should consult that section for a fuller analysis. The following section examines the role of professional tennis in the IOC.

4.1 Professional Tennis as Part of the Olympic Movement

Tennis and the Olympic Movement have a long and complex history as tennis was on the program of the First Olympic Games in 1896. During these Games, only men were allowed to compete, while four years later this was extended to women tennis players. Due to the frictions between the IOC and the ITF (at that time, the International Lawn Tennis Federation, ILTF) that was associated with the monopolistic position of the IOC and exclusion of the tennis governing body, tennis was removed from the Olympics in 1924. These frictions reflected not only a conservative orientation of the IOC in respect of the status of professional athletes, but also an inadequate organization of the particular Olympic event during the Games in Antwerp in 1920. In an attempt to resolve this situation, the IOC proposed that during the Olympic year, all major events in tennis should be cancelled, including the Davis Cup.[44] The leading national tennis federations, in particular the Lawn Tennis Association (LTA), refused this proposal and demanded more active representation for the tennis governing body in decision-making processes. The IOC Executive Board's decision to remove tennis was approved by the twenty-seventh IOC Session in 1928.[45] In 1956, the formal request for tennis to be reinstated by the ILTF was not welcomed, primarily due to integrity issues associated with tennis and the fear that professionalism would effectively eliminate amateurism. It was reinstated in 1968 under the guise of a demonstration sport and as part of the gradual changes to the notion of amateurism. In 1973, the rigid interpretation of amateurism under a variety of influences within the IOC and the world of tennis was toned down, chiefly because the IOC was under financial pressure as a result of geopolitical dynamics. In 1981, during the eighty-fourth IOC Session, the decision for major changes included the status of tennis as an Olympic event, as demonstration sports ceased to exist. Under the Samaranch

[44] See Matthew P. Llewellyn and Robert J. Lake, "'The Old Days of Amateurism Are Over': The Samaranch Revolution and the Return of Olympic Tennis" (2017) 37 Sport Hist 4.

[45] See History of Tennis at the Olympic Games, available at: https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Factsheets-Reference-Documents/Games/OG/History-of-sports/Reference-document-Tennis-History-at-the-OG.pdf.

doctrine and broader commercialization of professional sport, tennis became once again part of the Olympic program in 1988. The Games in Los Angeles played a crucial role, since that event represented a blueprint for the commercialization of sports.

Currently, there are two men's and two women's events – in addition, one mixed (doubles) event – at the Olympic Games. The tennis tournament in the Olympic Games is managed by the ITF. The ITF adopts Regulations on Eligibility for the Olympic Tennis event in accordance with the Olympic Charter (Rule 41) related to nationality. Further, the age limit is set at 14 years and above, with a mandatory provision that a player "must be in good standing with his/her" national federation and the ITF, in addition to satisfying the eligibility criteria of the ITF Davis Cup Regulations and the ITF Billie Jean King Cup Regulations. This provision on eligibility represents an agreement between the IOC and the ITF, pushed by the latter to maintain its monopoly in the world of tennis. Besides this, the ITF's Independent Panel may, under the following circumstances, exercise discretionary powers concerning the composition of the Olympic event: injury, newcomer, strength of nation and player's prior results.[46] The significance of professional tennis for further development of the Olympic Movement was notable, particularly because of its exposure to commercialization, broadening of the sport's fan base and media attractiveness. Following the example of tennis, the door for other professional sports in the Olympic Games became a reality, and four years later the US basketball Dream Team came to the forefront. Consequently, the rule on amateurism in the Olympic Charter was abolished.

5 The Human Rights Standard-Setting Role of Transnational Tennis Entities

There is no tennis-specific human rights regime. Professional tennis is subject to the same set of human rights rules, principles and fundamental guarantees as all other sporting activities and phenomena. In the realm of professional tennis, there exist interactions and relationships between private actors alone (e.g. WTA and female athletes), as well as relationships between public and private actors (e.g. criminal sanctions against an athlete by a state organ, stripping an athlete from state

[46] See Regulation on Eligibility for the Olympic Tennis Event, available at: www.itftennis.com/media/7241/olympic-tennis-event-eligibility-rule-paris-2024.pdf.

funding as a result of a doping violation or awarding a tournament to a state). In the first scenario, the parties' relationship is contractual, and the obligations owed by the WTA and its female athlete members is of a contractual nature. Any violation of their mutual obligations amounts to a breach thereof, which if found to be sufficiently gross entitles the aggrieved party to terminate the contract. In the event of loss, the breaching party is also liable to the payment of damages. In the exercise of its activities, the ITF interacts with third parties (e.g. contractors, tournament organizers) and hence must necessarily adopt human rights policies to deal with such third parties, as part of its supply chain due diligence obligations.[47] Moreover, in the event that the ITF's dispute resolution processes[48] fail to satisfy all pertinent fair trial requirements, the state is obliged to offer access to the courts or force the ITF mechanism in question to apply particular guarantees, lest the outcome be annulled.[49] The European Court of Human Rights (ECtHR) has made it clear that private dispute resolution mechanisms must satisfy fundamental fair trial guarantees.[50]

Sports diplomacy is a significant driving force for human rights standard-setting and promotion of human rights more generally. The vast majority of labor reforms in Qatar in the last decade can and have been directly attributed to its hosting of the 2022 FIFA World Cup.[51] The ITF, WTA and ATP

[47] See e.g. the ITF's Modern Slavery and Human Trafficking Statement, available at: www.itftennis.com/en/about-us/modern-slavery/, which is consistent with the United Kingdom's Modern Slavery Act 2015, to which it is bound given its seat in London.

[48] See Chapter 4 of this volume.

[49] On the right to fair trial before specialized sporting judicial and quasi-judicial entities, see *Mutu and Pechstein* v. *Switzerland*, App. Nos. 40575/10 and 67474/10, Judgment of 2 October 2018, where the ECtHR held that CAS proceedings amounted to compulsory arbitration, which in turn was obliged to provide all the procedural safeguards enunciated in Art. 6 of the European Convention on Human Rights (ECHR), including the right to a public hearing. See more recently the ongoing case of *Semenya* v. *Switzerland*, App. No. 10934/21, (2023) ECHR 219, which challenged a CAS award on procedural and substantive grounds. The ECtHR found that the applicant had not been afforded sufficient institutional and procedural safeguards in Switzerland to allow her to have her complaints examined effectively, especially since her complaints concerned substantiated and credible claims of discrimination. It was immaterial for the Court that the Regulations in question were agreed to by all national track-and-field federations.

[50] Ibid. See also *Riva, Akal and Others* v. *Turkey*, App. Nos. 30226/10, 17880/11, 17887/11, 17891/11 and 5506/16, where the ECtHR found a violation of Art. 6(1) ECHR on the ground that the Arbitration Committee of the Turkish Football Federation suffered from structural deficiencies, such that allowed external influence and lack of full independence in its decision-making capacity.

[51] Andrew Spalding, *A New Mega-Sport Legacy: Host Country Human Rights and Anti-Corruption* (Oxford University Press, 2021).

can play a positive role in advancing particular human rights in countries that violate these, as well as sensitize people about those rights. This is possible because these entities control the allocation of tennis tournaments. Non-state actors have been criticized not only for failing to exert their influence over governments with which they are in close collaboration, but also for undermining the realization of rights and the environment by "exerting undue influence over domestic and international decision-makers and public institutions." This phenomenon is known as corporate capture. The exertion of influence and defiance of arbitrary laws and practices by powerful non-state actors has been found to give them a reputational advantage in the global consumer market. Consumer pressure is a significant aspect in the voluntary human rights policies and public pledges of MNCs and to a large degree has helped shape these policies.[52] It is no wonder that several models of corporate responsibility have been suggested by reference to corporate involvement in structural injustice. Iris Young's social connection model of responsibility, for example, posits that all agents who contribute by their actions to the structural processes that produce injustice have responsibilities to work to remedy these injustices.[53] The ITF in particular has been severely criticized for its handling of the deprivation of liberty of the Chinese female tennis professional Peng Shuai. When Shuai spoke publicly about a high-ranking official of the Chinese Communist Party who she alleged was sexually abusing her, she disappeared from the professional circuit. Yet, the ITF failed to exert pressure on the Chinese government, nor did it suspend tournaments and activities taking place in China.[54] On the contrary, the WTA has called for an independent investigation and threatened to pull out of all tournaments in China.[55]

[52] A study conducted in 2002 by Cone revealed that of US consumers aware of a corporation's negative corporate social responsibility practice, 91 percent would most probably prefer another firm, 85 percent would disseminate this information to family or friends, 83 percent would refuse to invest in that company, 80 percent would refuse to work at that company and 76 percent would boycott its products. Opinion Research Corporation International, *2002 Cone Corporate Citizenship Study*.

[53] See Iris M. Young, "Responsibility and Global Justice: A Social Connection Model" (2006) 23 Social Philosophy & Policy 102.

[54] See Helen Davidson, "Peng Shuai: International Tennis Federation Does Not Want to Punish 1.4bn People with a China Boycott," *The Guardian* (December 6, 2021), available at: www.theguardian.com/sport/2021/dec/06/peng-shuai-international-tennis-federation-does-not-want-to-punish-14bn-people-with-a-china-boycott.

[55] See "WTA's Stance on Peng Has Made It Human Rights Champion, Says Former U.S. Official," CNN (November 24, 2021), available at: https://edition.cnn.com/2021/11/24/tennis/peng-shuai-wta-spt-intl/index.html.

A survey of ITF rules and instruments exhibits two policy commitments to human rights. The first is Article 1 of its Constitution, whereby it pledges to abide with the fundamental principles of the Olympic Charter,[56] but without directly setting out a firm commitment to human rights. It is no surprise, therefore, that there is nothing in the membership requirements of the ITF Constitution requiring adherence to human rights by any of its existing or aspiring members. The second and most concrete manifestation of human rights commitment can be found in Article 2.1 of the 2023 ITF Code of Ethics. It states that all ITF officials must:

2.1.1. act in accordance with the highest standards of honesty and integrity in all of their activities as Officials;
2.1.2. respect human rights that may be impacted in their actions as Officials, including:
    2.1.2.1. respect human dignity;
    2.1.2.2. not discriminate improperly against or denigrating anyone on grounds of race, colour, sex, gender, sexual orientation, language, religion, political or other opinion, national or social origin, disability, or any other unlawful ground.

Although this is a powerful statement, it simply dictates what is required of ITF employees and does not seek to spell out a human rights policy for the ITF as an organization.[57]

The ITF is engaged in numerous initiatives to influence national human rights policies at the domestic level, albeit it is not clear that these constitute definitive conditions for the granting of tournament rights or for retaining tournaments. One such initiative is the WeThe15, the aim of which is to sensitize people and governments about disability rights and make diversity work in practice[58] by

[56] Art. 2 of the Olympic Charter, which sets out the mission and role of the IOC, does not specifically mention human rights as a goal or policy objective. The IOC website suggests that principles 1, 2, 4 and 6 of its Fundamental Principles and Art. 2 of the IOC Charter enshrine human rights; these authors suggest that this is hardly the case.

[57] This is evident, for example, in the ITF Ethics Commission's Decision in the case of Evgeniy Zukin (February 25, 2022) (*ITF Ethics Commission* v. *Zukin*), available at: www.itftennis.com/media/8735/itf-ethics-commission-decision-zukin-25-july-2022-publication.pdf, which relied on Art. 2.1 of the Code of Ethics in respect of a personal act of assault and battery by an ITF official.

[58] See ITF, "WETHE15: ITF Marks Launch of Movement for Persons with Disabilities," available at: www.itftennis.com/en/news-and-media/articles/wethe15-itf-marks-launch-of-human-rights-movement-for-persons-with-disabilities/.

effectively implementing the key standards set out in the UN Convention on the Rights of Persons with Disabilities (CRPD). In the same manner, the ITF has been content to take a soft approach to the participation of Russian athletes in the aftermath of the Russian invasion of Ukraine, allowing them to participate under condition that they do not represent their country and make no political statements.[59]

A more preferable strategy would have been for the ITF to adopt a concrete human rights policy through the adoption of a policy statement, such that would allow its stakeholders to fully understand its stance against entities that violate human rights. Its modern slavery statement is merely a reflection of its otherwise statutory obligations under the laws of England. Such a policy would allow all future contracting to undergo a human rights impact assessment, with specific human rights requirements demanded of tournament organizers and other entities with which it has a commercial or other relationship. In fact, the ITF should emulate the IOC and adopt similar policy documents in respect of its suppliers[60] and its corporate stance in the field of human rights, as well as its human rights position regarding tournaments under its aegis.[61]

[59] See ITF Statement, "Russian and Belarusian Athletes Entry in UK Events" (March 31, 2023), available at: www.itftennis.com/en/news-and-media/articles/itf-statement-russian-and-belarusian-athletes-entry-into-uk-events/; equally, "ITF Suspends Russia and Belarus from Its ITF Membership and Team Competitions," available at: www.itftennis.com/en/news-and-media/articles/itf-statement-itf-suspends-russia-and-belarus-from-itf-membership-and-international-team-competition/.

[60] IOC Supplier Code, available at: https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/IOC/What-We-Do/celebrate-olympic-games/Sustainability/Spheres/IOC-Supplier-Code-Final.pdf?_ga=2.113239940.1862512609.1685599548-642320309.1674043337.

[61] IOC Olympic Agenda 2020+5, available at: https://stillmedab.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Olympic-agenda/Olympic-Agenda-2020-5-15-recommendations.pdf, which suggests adopting an overarching IOC human rights strategic framework with specific action plans for each of the IOC's three different spheres of responsibility; linking the overarching IOC human rights strategic framework to various existing or forthcoming IOC strategies; amending the Olympic Charter and the "Basic Universal Principles of Good Governance" of the Olympic and Sports Movement to better articulate human rights responsibilities; and enabling the newly created IOC Human Rights unit to develop the IOC's internal capacity with regard to human rights.