
The Intersection between Law and Tennis

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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.

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 laws³ 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 2015⁴ 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 bodies¹⁰ 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 federations¹⁴ 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.

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://photorresources.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 ATP²⁷ 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).