

# GLOBAL LAW AND THE NATION STATE IN A WORLD SOCIETY – THE COMPLICATED PROCESS OF IMPLEMENTING INTERNATIONAL ANTI- DOPING RULES

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## Abstract

### Aim of Abstract

The purpose of this analysis is to explore how the World Anti-Doping Code (WADC) is implemented in national legislation, discuss why this translation process is complicated and finally outline some critical implications for democratic policy-making.

Doping scandals in 1998 revealed that sport organizations, the IOC in particular, no longer were able to combat doping without political interference. The World Anti-Doping Agency, created in 1999, is described as a partnership between sport and politics. In order to implement the Code various governments in 2005 agreed upon the UNESCO International Convention Against Doping in Sport enabling them to make the Code content the basis for national legislation. Thus, rules formulated by politicians and by the international sport movement representatives emerged on a supranational level and subsequently had to be transformed to and implemented at a national policy level. Despite efforts to create a common harmonized set of rules on a global scale we still witness dissimilarities, lacking efforts to implement to Code content and national counter activities (Hanstad et al., 2010)

### Theoretical background

This study adopts understandings of world society found in new institutional sociology and autopoietic systems theory. Meyer et al. (1997) claim that many features of nation states derive from a world society culture. In addition, Teubner (2002) argues that in contemporary society laws emerging beyond the state deconstruct the hitherto existing structural coupling between law and politics. Like this, additional discourses are allowed to intervene the process of establishing laws. In this World Society understanding International Non-Governmental Organizations play a vital role in defining policy (Boli & Thomas, 1997). Despite governmental involvement in

WADA the agency can be termed an International Non-Governmental Organization. Nonetheless, a critical assessment of World Society theory is that the institutionalization process (from world society to nation state level) is not merely a top-down process leading to isomorphism. Policy outlined at the world society level is confronted with existing national structures which by Campbell is termed 'translation' (2004). This understanding might explain the heterogeneity when we observe how the Code is implemented.

### Methodology

The creation of the WADC is explored by scrutinizing textual document referring to the open hearing process prior to the creation of the Code (2003; 2007). Discourses emerging from world society are outlined and their impact is discussed.

Based on policy papers, anti-doping laws and government statements four cases of the national implementation of the Code are analyzed and compared: Denmark, Germany, USA and Russia. Thus two European as well as the two former rivals of the Cold War-era are selected. Binary variables (yes/no) derived from reading the WADAs Models for Best Practice (ver. 7.0) based upon the 2009 WADC enable a qualitative comparative set-up which sheds light upon differences and similarities of the code implementation process.

### Results, discussion and implications/conclusions

Although the study represents preliminary work-in-progress first indications show that:

- During the process of creating the Code non-political organizations had huge influence on the final content of the rules. This correlates with the assumption prompted by Teubner, that law-like structures created beyond the nation state are open for additional world society discourses, thus undermining the traditional structural coupling between politics and law.
- Despite the purpose of creating common rules and harmonized anti-doping efforts, national dissimilarities occur, e.g. recently Denmark amended their anti-doping law in order to encompass fitness doping, but still with a reference to WADC which basically deals with elite sport, and prior to the 2008 Olympic Games Russian track- and field athletics faced positive findings which indicated the existence of decoupling tactics in Russia as the formal support for the WADC wasn't followed by the implementation of proportionate national anti-doping measures.

One of the purposes of creating WADA was to give politics a central role in the anti-doping campaign. This process, however, has given the sport federations huge influence on law-making processes thus undermining the political control which potentially can become a democratic problem in so far as it allows non-elected representatives of sport a key role in defining policies. In particular because sport federations, contrary to nation states, operate on a global scale they seem to benefit from laws created beyond the nation states. From a public management perspective the contradictions between globalised sport organizations and political organizations primarily operating at nation state levels seem to be the crucial obstacle for a successful anti-doping harmonization. This indicates the need for a more realistic understanding

of the possibilities as well as constraints of adopting global policies at national policy levels.

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