

# Global Practical Authority. An Analysis Through the Case of WADA<sup>1</sup>

*Autoridad práctica global. Un análisis  
a través del caso de la AMA*

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**Abstract:** In the last decades, the global relevance of the World Anti-Doping Agency (WADA) has been steadily rising, through both the widespread global adoption of the WADA Code by sport organizations and public authorities and its role in establishing of adjudicatory mechanisms for decisions in individual cases. *Prima facie*, it seems that in this scenario there are some notes or features that could be considered as authoritative; WADA's specific characteris-

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tics, however, seem to make it difficult to claim that it is a (typical practical) authority. Does this suggest that WADA is not an authority—or something else? Here, we will argue that our theoretical frameworks might not be enough to account for cases as WADA—that is, cases of global (practical) authority. First, we will start by offering a starting theoretical framework for the analysis of authority (Section II). Then, we will consider Himma’s recent proposal related to the nature of practical authority as an example of contemporary theoretical framework, giving particular attention to the “existence conditions of practical authority” and the concomitant “Sanctions Thesis” (Section III). Second, we will test how this framework fares when applied in a transnational/global setting. We will analyze, in such settings, why—and to which extent—it is still preferable to talk about authority instead of governance (Section IV). Finally, we will consider the case of WADA as a case of what we call “global (practical) authority”, and how this analysis reveals some limitations of Himma’s framework to deal with—or to downright consider—such cases (Section V).

**Keywords:** reasons; global practical authority; global governance; authority; law.

**Resumen:** En las últimas décadas, la relevancia mundial de la Agencia Mundial Antidopaje (AMA por sus siglas en español y WADA por sus siglas en inglés) ha ido aumentando de forma constante, tanto por la adopción generalizada del Código Mundial Antidopaje por parte de las organizaciones deportivas y las autoridades públicas como por su papel en el establecimiento de mecanismos de resolución de decisiones en casos individuales. A primera vista, parece que en este escenario hay algunos aspectos o características que podrían considerarse autoritarios; sin embargo, las características específicas de la WADA parecen dificultar la afirmación de que se trata de una autoridad (típica en la práctica). ¿Significa esto que la WADA no es una autoridad, o es otra cosa? En este trabajo, argumentaremos que nuestros marcos teóricos podrían no ser suficientes para explicar casos como el de la WADA, es decir, casos de autoridad (práctica) global. En primer lugar, comenzaremos ofreciendo un marco teóri-

co inicial para el análisis de la autoridad (sección II). A continuación, consideraremos la reciente propuesta de Himma relacionada con la naturaleza de la autoridad práctica como ejemplo de marco teórico contemporáneo, prestando especial atención a las “condiciones de existencia de la autoridad práctica” y a la concomitante “tesis de las sanciones” (sección III). En segundo lugar, pondremos a prueba este marco cuando se aplica en un contexto transnacional/global. Analizaremos, en dichos contextos, por qué —y en qué medida— sigue siendo preferible hablar de autoridad en lugar de gobernanza (sección IV). Por último, consideraremos el caso de la WADA como un ejemplo de lo que denominamos “autoridad (práctica) global”, y cómo este análisis revela algunas limitaciones del marco de Himma para abordar —o incluso concebir— este tipo de casos (sección V). **Palabras clave:** razones; autoridad práctica global; gobernanza global; autoridad; derecho.

**Summary:** I. Introduction. II. Some Starting Points for a Theoretical Framework on Authority. III. On Practical Authority *stricto sensu*: Himma's Contemporary Framework. IV. The Case of Non-National Authority: “Global Governance” or “International Public Authority”? V. On Global Authority: The Case of WADA. VI. Final Remarks. VII. References.

## I. Introduction

On September 20, 2013, the then world No. 71 tennis player from Serbia, Viktor Troicki, wanted to watch a semifinal Davis Cup match between his national team and the Czech Republic. When trying to enter the Belgrade Arena to cheer for his squad colleagues and friends, Viktor was prevented from entering the stadium by the International Tennis Federation staff. According to his own words: “When trying to get into the arena, some people from the ITF told me I wasn’t allowed to get in. Initially, I thought it was a joke, then I realized they were being serious”.

This measure was considered part of the sanction of disqualification from the ATP Tour that was imposed on Troicki for refusing to take a drug test during a tournament, which is a violation pursuant to the World Anti-Doping Agency's code (Pasquariello, 2013). ITF is one of the more than 650 sports entities, including international sports federations, national anti-doping organizations, the International Olympic Committee, and the International Paralympic Committee, which adopted the WADA Code.

On January 8, 2025, however, the US White House Office of National Drug Control Policy (ONDCP) announced that it withheld its 2024 dues payment of 3.6 million US\$ from WADA. The US Anti-Doping Agency (USADA) stated that it "fully supports this decision [...] as the only right choice to protect athletes' rights, accountability, and fair competition [...] due to] WADA's failed handling of the 23 Chinese swimmers' positive tests" (USADA, 2025). In response to WADA's decision not to appeal the China Anti-Doping Agency's "no-fault" finding, the Federal Bureau of Investigation and the Justice Department have opened their criminal investigation under the Rodchenkov Anti-Doping Act of 2019 (2020). This controversial law allows US prosecutors to bring criminal charges against non-athlete personnel—coaches, agents, nutritionists, therapists, or other individuals—involved in a doping conspiracy connected to a major international sports event, even when they occur outside the United States, as long as there is a connection to American athletes, broadcasters, or sponsors participating in the event.<sup>2</sup> WADA rejected the allegations of misconduct and expressed disappointment with the US-led investigation.<sup>3</sup> After the cancelled contribution to WADA's 2024 budget, the US representatives' qual-

<sup>2</sup> In section 2(3), the Rodchenkov Anti-Doping Act of 2019 (2020) incorporates the WADA Code as the source of anti-doping rules and principles.

<sup>3</sup> In its statement, WADA (2024a) says that it "reviewed the Chinese swimmer case file diligently, consulted with scientific and legal experts, and ultimately determined that it was in no position to challenge the contamination scenario, such that an appeal was not warranted. Guided by science and expert consultations, we stand by that good-faith determination in the face of the incomplete and misleading news reports on which this investigation appears to be based".

ifications on the WADA Executive Committee have been automatically revoked as of January 1, 2025. This has sparked a new round of disputes about who has the ultimate authority in anti-doping issues in international sports.<sup>4</sup>

The preceding episodes are illustrative enough of a specific context at a level beyond the nation-state, where different authority relationships are evolving. One may immediately challenge our focus on WADA. In a complex setting of different actors of the global governance regime,<sup>5</sup> it would be difficult to claim that WADA is a typical (global) authority. Yet, it is at least “emblematic of the emergence of the new forms of hybrid public-private governance mechanism in the global sphere” (Casini, 2009, p. 424), and as such, worthy of analysis.

In the first part of the paper, we will offer a starting theoretical framework for the analysis of authority. We will lay down some conceptual distinctions that will be useful for the subsequent analysis, as well as an introduction to several kinds of authority in contemporary discourses (Section II). Then, we will consider Himma’s recent proposal related to the nature of practical authority, giving particular attention to the “existence conditions of practical authority” and the concomitant “Sanctions Thesis” (Section III). In the second part of the paper, we will test how this framework fares when applied in a transnational/global setting. We will analyze, in such settings, why—and to which extent—it is still preferable to talk about authority instead of governance (Section IV). Then, we will consid-

<sup>4</sup> In the heat of the dispute, the International Olympic Committee announced that it had awarded the 2034 Winter Games to Salt Lake City, but with an important termination condition. Namely, it insisted on the right to rescind the decision if the United States continues to take actions “where the supreme authority of the World Anti-Doping Agency in the fight against doping is not fully respected or if the application of the World Anti-Doping Code is hindered or undermined”. WADA’s president welcomed the thus formulated decision (WADA, 2024b).

<sup>5</sup> Benvenisti (2014, chap. 2), for instance, differentiates between the traditional international treaty-based International Governmental organizations (IGOs), Governmental InGOs (that is, informal intergovernmental co-ordination, also known as “intergovernmental networks”), Public/private institutions (PPIs) (as joint ventures of governments and private actors), and fully Private institutions, i.e., NGOs.

er the case of WADA as a case of what we call “global (practical) authority”, and how this analysis reveals some limitations of Himma’s framework to deal with—or to downright consider—such cases (Section V).

## II. Some Starting Points for a Theoretical Framework on Authority

There are several conceptual distinctions that will serve us in the following analysis, and that can be understood as part of a conceptual and methodological toolkit to analyze discourses on authority.<sup>6</sup> These distinctions can be considered as four pairs: factual and normative concepts; practical and non-practical concepts; relative and non-relative concepts; and relational and non-relational concepts. Here, the last two distinctions will be most relevant.<sup>7</sup>

A *relative concept of authority* is the one expressed by statements such as “X is an/has authority in accordance with *s*, where *s* is a system of norms”. In turn, a *non-relative concept of authority* is the one expressed by statements such as “X is an/has authority”. The difference between the two types seems clear. According to the first, being or having authority is something relative to the content (existence, validity, effectiveness) of a particular system of rules, for example, a legal system. This is the paradigmatic case of what we can call “delegated authorities” or “intra-system authorities”: subjects that have been granted a certain power by the system’s power-conferring rules. According to the second, being or having authority is not something relative to any system of rules. What exactly might it be relative to, in the sense of what exactly are the conditions for being or having authority, is here left open.<sup>8</sup>

<sup>6</sup> A further elaboration of this can be found in Rabanos (2025a, esp. chap. I, 2025b).

<sup>7</sup> For the distinction between factual and normative concepts, see e.g. Scarpelli (1958, pp. 68-ff.). For the distinction between practical and non-practical concepts, see e.g. Raz (1979, p. 10).

<sup>8</sup> This distinction seems incompatible with the idea that all authority is always grounded

A *relational* concept of authority is expressed by statements such as “X is an/has authority over/in relation to Z”. In turn, a *non-relational* concept of authority is expressed by statements such as “X is an/has authority”. Again, the difference between the two types seems clear. According to the first, being or having authority is limited: at least, in relation to whom (personal element) and/or<sup>9</sup> in relation to what (content elements). Naturally, this minimal does not preclude that additional elements are present in the relationship: for example, in relation to when (temporal element) or where (spatial element).<sup>10</sup> According to the second, in turn, being or having authority is not limited: it is over every agent, about every topic, at any time, in any place, etc.

Moreover, it is usual to recognize that there are several kinds or types of authority, based on different criteria, although there is neither a true widespread agreement on a clear taxonomy nor on the very specifics of each kind.<sup>11</sup> Different contemporary discours-

on—or stems out in some way from—some sort of system of norms, notwithstanding the origin of those norms (be it social, moral, legal, and so on). If this is so, there would be no possibility of non-relative authority, at least as per definition. However, in our view, the distinction is not only plausible but also important for several reasons. The first is that, even if we commit to the idea that all (normative) authority is grounded on some kind of (power-conferring) norm, this norm does not necessarily need to belong to any specific system (or set). This norm could very well be, for example, a norm of the form “X counts as an authority” or “X is permitted to utter authoritative directives” arising from a complex net of collective acceptance or recognition of such contents by a mass of relevant actors. The second reason goes one step further: the distinction allows for not necessarily committing to the very idea that all authority is grounded on some kind of “norm”. This includes non-normative authority within the scope of the analysis and discussion, as well as the possibility of different criteria for conditions of authority that do not directly include norms, in specific recognition of those theoretical discourses that endeavor to provide descriptive accounts or empirically driven explanations.

<sup>9</sup> We will see below why this might not be a mere conjunction, in particular when we consider different types of authority. Here, suffice to say this (at least, within a relative concept of authority): practical authority, widely considered, is always in relation to whom and to what; if epistemic authority is considered as a type of practical authority, then it will also be in relation to what and to whom. However, if epistemic authority is not considered as a type of practical authority, then it could be conceived in relation to only what.

<sup>10</sup> For a formulation of what I call here “elements of authoritative relation”, but as “spheres of validity (of norms)”, see Kelsen (1991, chaps. 36 (spatial and temporal spheres) and 37 (personal and material spheres)).

<sup>11</sup> There are also controversies related to whether, in some cases, we are dealing with types and subtypes or different types altogether; and how (if any) different taxonomies can

es have advanced or endorsed the idea that our concept of authority—that is, our conceptual practices—involve the recognition of at least two main pairs of kinds based on two specific criteria: [1] whether an existent “claim of legitimacy” is true or false,<sup>12</sup> and [2] what types of reasons an authority provides—or purports to provide—to the agents. For our present purposes, a third set of kinds can be added based on a further criterion, related to [3] what does it mean for a specific norm or directive to “exist”.

Regarding [1], it is now commonplace—following Raz—to conceive the concept of authority as intrinsically related to a “claim of legitimacy”: in a nutshell, the claim to possess a moral right to enact directives with binding force and the existence of a correlative moral duty of obedience by their addressees. We will leave here unattended the details regarding what exactly “binding force” and “obedience” might mean, as we will come back to it later. It suffices here to work with this very broad definition, as this property of the “claim of legitimacy” is a criterion to distinguish between two pairs of notions: (1) brute or naked power and authority (presence or absence of the claim) and (2) legitimate authority and *de facto* authority (truth or falsity of the existence claim).

Regarding [2], it is also commonplace to conceive the concept of authority as intrinsically related to “reasons”: that is, that authorities—their utterances—provide or purport to provide a certain kind of reasons to the addressees. In this regard, the first great distinction has been made based on distinguishing between two types of reasons: reasons for belief (epistemic reasons) and reasons for action (practical reasons). Epistemic reasons can be conceived as reasons for believing in the truth of a certain assertion or about what

correlate or connect to each other. See e.g. Rabanos (2025a, chap. I). Another complication arises from the changing picture of the authority landscape, which now requires to consider further axes to make further distinctions, such as national/transnational/international jurisdictions or physical/non-physical jurisdictions, or the status of the agents of the alleged authoritative relations as they might not be constituted or backed up by natural people.

<sup>12</sup> The presence or absence of this “claim of legitimacy” may be also counted as a criterion related to the distinguishing between (brute, naked) power and authority. We will see this below.

one ought to believe in certain contexts, while practical reasons are reasons for acting in a certain way or about what one ought to do in a certain context. On this basis, the main distinction is drawn between epistemic or theoretical authority (that provides reasons for belief) and practical authority (that provides reasons for action).

Even if this distinction seems clear-cut and commonplace among contemporary discourses on authority,<sup>13</sup> there is no such agreement either regarding the exact extent and content of the distinction between these two kinds or about the relationship between them.<sup>14</sup> One point of controversy is whether both epistemic and practical authorities, as defined before, are to be understood as being overall practical authorities in the sense of providing normative reasons to do something (either believing in the truth of certain propositions or performing certain specific actions)—thus, both as part of practical reason. This point introduces a second category of distinctions between types of reasons: normative reasons (that justify behavior) and motivational reasons (that motivate and explain behavior).<sup>15</sup>

Another two points of controversy are interconnected. The first is whether authorities—as defined before—through their utterances provide reasons to believe or to act that are dependent or independent of the content of those utterances. This point introduces a third category of distinctions between types of reasons:

<sup>13</sup> For an argument about an exception on this, see e.g. Jovanović & Mandić (*forthcoming*).

<sup>14</sup> For a way to introduce the discussion, see e.g. Spaić (2021, in particular pp. 178-ff).

<sup>15</sup> Two caveats here. On the one hand, there is a possibility of considering that justificatory and motivational are not *tertium non datur*, and that the distinction is to be drawn between justificatory, explanatory, and motivational. For an argument, within the context of reasons for action or practical reasons, see e.g. Álvarez & Way (2024). On the other hand, sometimes there is oscillation regarding the terminology used when referring to reasons, in particular depending on what different authors consider a “reason” to be—and their positions regarding the debates on externalism-internalism, objectivism-subjectivism, realism-antirealism, cognitivism-non-cognitivism, among others. That is why sometimes the opposition is found as justificatory-motivational, sometimes “normative” is used to imply both justificatory and motivational, sometimes “explanatory” is implied by “normative”, and sometimes it does not have a specific relation. Unfortunately, we cannot go in-depth here about this point. Suffice to say, for our present purposes, that all this is behind the apparent, clear-cut distinctions between types of reasons that are being taken into consideration.

content-independent reasons and content-dependent reasons. In the first case, the reason for believing or doing is the fact that an authority has uttered the proposition or the directive (i.e., is the source of the utterance). In the second case, the reason is the content itself of the proposition or the directive (i.e., is the content of the utterance).<sup>16</sup> The second is whether authorities —as defined before— through their utterances provide reasons to believe or act, provide reasons to exclude certain beliefs or actions, or both. This point introduces a fourth category of distinctions between types of reasons: first-order reasons (reasons in favor of believing or acting) and second-order reasons (reasons in favor of considering or excluding first-order reasons).<sup>17</sup> Using these notions, Raz argued that authorities—through their utterances—claim to provide protected, content-independent reasons with pre-emptive force.<sup>18</sup> Protected reasons, as a systematic combination of a first-order reason to act and a negative second-order (exclusionary) reason not to act for certain first-order reasons. Content-independent reasons, as the reason to act is the existence of an utterance from a certain source. With pre-emptive force, as the utterance would displace or replace all excluded reasons in the practical reasoning of the addressee. This proposal has been both wholly accepted and the object of heated and on-going debate in practically every part of the proposal.<sup>19</sup> One clear example of rejection can be found in Himma's approach, which will be considered in the next section.

Finally, regarding [3], it is less commonplace—but nevertheless relevant to our purposes here—to consider a distinction among types of authority related to the different senses in which a norm

<sup>16</sup> This distinction has originally introduced by Hart (1982a, 1982b).

<sup>17</sup> This distinction was originally introduced by Raz (1999).

<sup>18</sup> Raz (1999, p. 27) also indicated that authoritative directives are not absolute reasons, in the sense that they can be ultimately (1) displaced or defeated by non-excluded first-order reasons or by a weightier second-order reason, or (2) cancelled by a cancelling condition. We will not consider this here.

<sup>19</sup> For the acceptance of the categories of exclusionary (and protected) reasons and their use to build different theoretical frameworks, and their connection to pre-emption, see e.g. Green (1988, pp. 36-ff), Finnis (2011, esp. chap. IX (among many others)). For their rejection, see e.g. Moore (1989); Perry (1989); Bayón (1991) (also among many others).

can “exist”. The first is existence as belonging to (being a member of) a set or a system; the second is existence as being in force or being efficacious; the third one is existence as binding force.<sup>20</sup> Following this, we can distinguish between legal authority, effective authority, and legitimate authority.<sup>21</sup>

There are two conditions necessary for a norm N1 to *belong* to a legal system LS: 1) that a linguistic act of promulgation is performed by a subject or institution X, and 2) that X is a *prima facie* competent subject in accordance with a norm of competence NC belonging to a legal system LS to carry out that act of promulgation. Thus, any N1 norm that is promulgated by subject X, competent in accordance with an NC norm that in turn belongs to LS, belongs to LS. The kind of authority involved here is *legal authority*.

The necessary conditions for an N1 norm to be *effective* or *efficacious* are different: 1) that a linguistic act of promulgation is performed by a subject or institution X; 1') that the linguistic act includes<sup>22</sup> a “claim to authority”: the claim that the addressees

<sup>20</sup> See Caracciolo (2009, p. 101-ff), which we will follow closely here. Note that this senses of “existence” are not completely mutually exclusive: a norm can be legal, efficacious and binding at the same time, as well as just legal, efficacious or binding, and so on. In the same vein, the types of related authority are also not completely mutually exclusive: the same subject can be a legal, effective and legitimate authority, or just legal, or effective, or legitimate, and so on. We will leave open here the question of to which extent, if any, a legitimate (political) authority needs to also be an effective (political) authority.

<sup>21</sup> Three caveats regarding this specific distinction. The first is that it concentrates on the “existence” of norms in situations where a certain linguistic act by a certain subject has been performed; as such, it leaves aside the consideration of cases where such certain linguistic act has either not been performed or not by a certain subject (e.g. the cases of customs). The second is that—at least *prima facie*—it only considers legal norms of competence (or power-conferring rules), leaving out norms of competence of non-legal and non-systemic source. This seems to leave out non-institutional (in the sense of formal) authority. However, other norms of competence such as informal social norms or moral norms might be considered to play a part—under a certain interpretation—within the notions of effective and legitimate authority. The third is that here the notion of “binding force” is linked to genuine or moral duties and associated with legitimacy of the source of the directive. As such, in principle it excludes other conceptions of binding force—for example, those focused on prudential reasons or on psychological constriction—and it leaves open the discussion whether it is to be taken in a “all-things-considered” or “*prima facie*” matter.

<sup>22</sup> Here, “included” accounts for the question whether this claim needs to be explicit and/or sincere, and the possibility of it being neither—that is, e.g., the claim being just a propositional attitude attributable to certain agents in the context of the utterance of certain

obey and/or recognize the authority of X, and 2) that X is generally obeyed by the addressees of N1 or, in other words, that the addressees of N1 recognize the authority of X. The kind of authority involved here is *effective authority*.

Finally, the necessary conditions for a norm N1 to have *binding force* are also different: 1) that a linguistic act of promulgation is performed by a subject or institution X; 1') that the linguistic act includes a "claim to (legitimate) authority": the claim to be a moral authority, for which X seeks recognition as such; 2) that X's claim to legitimate authority is justified: i.e. that it is true that X has legitimacy (the moral right to command), and 2') that there is justified recognition on the part of the recipients of N1 (i.e. that the belief in the existence of reasons justifying the exercise of power by X is justified).<sup>23</sup> The kind of authority involved here is *legitimate authority*.

### III. On Practical Authority *stricto sensu*: Himma's Contemporary Framework

Within well-known contemporary discourses on authority, one of the most recent examples of endeavoring to offer a comprehensive theoretical account of authority—or, in other words, "a comprehensive theory of the nature of authoritative guidance"—has been made by Kenneth E. Himma (2024) in *The Nature of Authority*. Based on his methodological commitment to modest conceptual analysis,<sup>24</sup> Himma aims to find the constitutive properties of the

statements (in particular, those that can be understood as imperatives) or an overall pragmatic presupposition. For explicit discussion of the latter possibility, focusing on Raz's theoretical framework, see Spector (2019). For a brief introduction to the question, see e.g. Rabanos (2025a, pp. 88-91).

<sup>23</sup> Note here that this is compatible with the claim that these are necessary but not sufficient conditions for a norm to have binding force, thus allowing for the possibility that a further requirement is needed to achieve binding force if it is considered under an "all-things-considered" conception.

<sup>24</sup> This methodological commitment is already present in his previous works, e.g. in Himma (2020, esp. chap. 2). For a critical review of this methodological approach, see Jovanović (2021).

kind “authority” according to our conceptual practices and purposes to focus exclusively on descriptive conceptual claims regarding these properties and not on—as it happens with several other well-known discourses—normative issues (Himma, 2024, pp. 6-8). In this sense, his approach focuses on (empirically grounded) explanation rather than justification; and at least *prima facie*, seems to be more interested in motivation than in justification.

Our conceptual practices, Himma (2024, p. 10) maintains, differentiate between two main kinds of authority: epistemic authority and practical authority. The former prescribes what ought to be believed and creates reasons to believe in the content of its assertions, while the latter prescribes what ought to be done and creates reasons to fulfil the content of its utterances. As such, Himma seemingly endorses the idea that all authorities are ultimately practical authorities (in a wider sense): all of them are “practical” insofar as they provide “normative reasons” to the addressees—always reasons to *do* something, albeit of a different kind (*believe* or *accept* certain assertive contents, *perform* certain actions).<sup>25</sup>

These two kinds of authority are “logically independent”, Himma claims, as each kind has at least one constitutive property that the other kind lacks: *expertise*, in the case of epistemic authority; *efficacy*, in the case of practical authority. Having epistemic authority depends on having expertise but not on being efficacious, while having practical authority depends on being efficacious but not on having expertise. In other words, expertise is a necessary condition for epistemic authority but not for practical authority, and efficacy is a necessary condition for practical authority but not for epistemic authority (Himma, 2024, p. 10).

For his analysis, Himma moves from the constitutive properties of “authority” to those of “authoritative telling”—that is, utteranc-

<sup>25</sup> In this sense, it could be said that Himma seems to assume a unitary concept of both “reason” and “authority”, and that he endorses the thesis of the unity of practical reasoning. Interestingly, this does not exclude the fact that his approach does not focus on “normative issues” but on conceptual descriptive claims, and the fact that he explicitly and vehemently argues for a focus on prudential reasons instead of moral reasons within his approach.

es that count as authoritative. In his view, there are several claims related to these constitutive properties that state “conceptual truisms” about the nature of practical authorities (Himma, 2024, p. 14).<sup>26</sup> In particular, Himma recognizes seven claims that together form a closed set that exhausts the constitutive properties of authoritative tellings. Following this, for Himma, a telling counts as an authoritative telling if:

- 1) It tells subjects what to do.
- 2) It creates reasons to comply.
- 3) It is issued by personal beings and governs actions of personal beings.
- 4) It is issued by rationally competent beings and governs the actions of rationally competent beings.
- 5) It is issued under a “claim of right” that counts as plausible in virtue of being grounded in a system that subjects at least acquiesce to.
- 6) It is issued by beings with a power to impose their will on subjects with respect to what they do; *and*
- 7) It creates obligations to comply.

We will consider some of these claims in-depth when applying this framework to analyze one specific kind of real authority.<sup>27</sup> Here, to finish its overall picture, suffices to note two other relevant features of the framework. The first is that Himma rejects other claims as constitutive properties, such as the well-known Razian claim (as we saw in the previous section) that authoritative tellings provide exclusionary reasons for action.<sup>28</sup> The second is that, connected to this set of claims, Himma (2024, p. 14) maintains that only a tell-

<sup>26</sup> Here, Himma seemingly concentrates on practical authority, but *prima facie* is ambiguous whether that practical authority is the practical authority he defined before (thus completely leaving out epistemic authority from his analysis) or practical authority in the sense of authority that offers normative reasons to its subjects (thus considering epistemic authority, in the ought to believe interpretation, within the analysis). We will return to this point afterwards.

<sup>27</sup> See § V.

<sup>28</sup> Briefly, Himma (2024, pp. 56-60) maintains that this “Exclusionary Thesis” is not a con-

ing backed by a sanction can count as authoritative and advances what he calls a “Sanctions Thesis”. This thesis is not independent but can be inferred from all the constitutive claims (except the third one), in the sense that it uniquely explains them. Thus, that a telling is backed by a sanction explains in which sense a telling creates reasons and obligations to comply (2 and 7), what the content of a “power to impose their will” might be (6), etc.

It is important to point out here, as it will be relevant to the next sections, that Himma (2024) is working with a very specific notion of “sanction”, linked to what he calls “detriment”:

It should be noted that the term sanction, for my purposes, has a broader application than is customary in legal philosophy. There is no requirement that detriment be punitive or as severe as the penalties of the criminal law to count as a sanction; even the threat of a failing grade satisfies the Sanctions Thesis to the extent it enables a teacher to evaluate her students’ performance. It is enough, then, to constitute detriment as a sanction, for my ends, that it is reasonably likely, and therefore reasonably contrived, to minimally achieve the authority’s ends—no matter how mild the detriment might be and regardless of whether it is intended to deter noncompliance. If a slice of detriment is minimally equipped to do this job, then it counts for my purposes as a sanction. (p. 15)

Himma’s framework does not include an explicit reference to—or development of—different contexts in which practical authority might appear, in particular those of national and non-national jurisdictions, nor is he particularly interested in exploring the specifics of whether the framework he advances applies in the same way in those different contexts. Indeed, Himma seems to defend that this framework accounts in the same way for every instance of practical authority in every possible context—within, of course, the conceptual limits established by the methodological choices of the au-

stitutive property of authoritative tellings, that it cannot be inferred from the “power to impose their will” claim, and that in any case it is generally false. We will not discuss this here.

thor (Himma, 2024, section 1, and number 19 of this essay). This framework seems especially applicable to analyze person-to-person authoritative relations, as well as—albeit with quite more complexity—some institution-to-person authoritative relations, such as state-to-citizens ones.

Some doubts arise when thinking about institution-to-person authoritative relations in non-national contexts, as well as institution-to-institution ones. For example: in which sense is it possible to talk about a telling issued by “personal beings” that governs actions of “personal beings”? In which sense, we could still talk about “rationally competent beings”? What type of obligations are being created where—behind the alleged authority—there seems not be a clear normative system with power-conferring rules? Who the relevant “acquiesce” is about when the simple and direct authority-to-subject relationship is in fact a complex network of several subjects and several other (alleged kinds of) authorities within different, overlapping contexts and matters? In which sense or to what extent is it possible to conceive of a “power to impose their will” on which subjects, and what its contents might be?

In other words, a main doubt arises: can we use this framework of practical authority to analyze the case of authority beyond the nation-state, or non-national (institutional) authority? And in particular: can we use it to analyze the case of a global governing actor such as WADA? Let us explore the possibility, first analyzing some of the very specific characteristics of non-national phenomena that might tempt us to not qualify them as cases of “authority” or “authoritative”, and then delving in-depth in the analysis of WADA as a very specific kind of authority.

#### **IV. The Case of Non-National Authority: “Global Governance Authority” or “International Public Authority”?**

Mainstream contemporary accounts of authority operate on the basis of some set of presumed empirical facts. Consider, for example,

Raz's well-known theory.<sup>29</sup> There are some empirical observations upon which he builds the central case of authority. First, *claiming the right to be obeyed*. Raz (1986, p. 27) says that we can imagine a society in which those issuing some rules do not raise this claim, and yet “the population does acquiesce in their rule”. Not only is it highly unlikely that such a society ever existed, but even if it were to exist, “we would not regard it as being governed by authority,” because such institutions would be too remote from what we in our conceptual practices “normally regard as authorities” (Raz, 1986, p. 27). Second, *authoritative utterances are deliberately imposed on us by another*. Raz says that the moral problem of authority relations stems from the fact that an agent does not set limits on her own freedom, but that such limitations are deliberately imposed on her, in the form of a directive, by another agent that is normally conceived as an authority. This leads Raz (2006, p. 1040) to conclude that “consent-based explanations” of authority “fly in the face of reality”. Finally, *authority relations are relations of superordination and subordination*. Raz (2006) notes that “it is not part of our normal understanding of authority that its actions are the actions of its subjects. On the contrary, the normal understanding is that authority involves a hierarchical relationship” (p. 1043).

In providing an analytical elucidation of the concept of international law, Jovanović (2019) has shown that, at the international level, underlying empirical premises are different than those envisaged by Raz. Typically, there are no specially designed institutions for imposing rules; actors who create, execute, and are subject to rules are, normally, one and the same; hierarchy and subordination are not regular states of affairs; conflict-resolution institutions normally operate upon prior consent, even the consent of an actor being charged with breaking a rule, etc. And yet, this does not prevent us—and our conceptual practices—from referring to institutions op-

<sup>29</sup> For an analysis of other contemporary discourses on authority that also operate on this basis, and that will not be discussed here, see e.g. Rabanos (2025a).

erating beyond the nation-state as “international authorities”, or to international legal instruments as “authoritative”.<sup>30</sup>

There are situations beyond the nation-state that are even messier than the typical ones regulated by international law. As early as 1956, Jessup famously labelled them “transnational situations”, which “may involve individuals, corporations, states, organizations of states, or other groups” (Jessup, 1956, p. 3). In the preceding decades, we have witnessed the proliferation of such situations due to the process of increasing interconnectedness and interdependence of world affairs, i.e., globalization. As pointed out by Koskenniemi (2004), “globalization invokes not government, but *governance*, a spontaneous process, pushed by private interests and actors in a thoroughly pragmatic process, accountable to no functional equivalent of a public realm but to an amorphous aggregate of stakeholders” (p. 243).<sup>31</sup>

One of the important developments undermining the capacity of traditional international law to provide an adequate form of governance concerns “*deformalization*, the increasing management of the world’s affairs by flexible and informal, non-territorial networks within which decisions can be made rapidly and effectively” (Koskenniemi, 2004, p. 243). Although global governance activities are by no means all legal in nature (Jovanović, 2018; 2020), one may certainly speak of “globalization of law [which] creates a multitude of decentred law-making processes”. These global law manifestations concern technical standardization, professional rule production, intra-organizational regulation in multinational companies, various forms of *lex mercatoria*, etc. (Teubner, 1997, xiii).

In addressing the concept of authority at the level beyond the nation-state, von Bogdandy, Dann and Goldmann (2010) sum-

<sup>30</sup> For a conceptual analysis of the authority of international law, see e.g. Çali (2015).

<sup>31</sup> In a seminal report, the Commission on Global Governance (1995) defined this concept as “the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest” (pp. 3-4).

marize the discussion on “global governance” and note four of its important features. *First*, it is not solely an affair of public actors, but also of private and hybrid ones. *Second*, it invokes informality, thereby escaping the grasp of traditional legal concepts. *Third*, thinking in terms of global governance implies shifting the focus from actors to structures and procedures. *Finally*, it stresses the multilevel character of governance activities, thus overcoming the neat division between international, supranational, and national phenomena (von Bogdandy et al., 2010, p. 7). However, these authors are not fully satisfied with the proposed conceptual framework. In their opinion, it “flattens the difference between public and private phenomena, as well as between formal and informal ones,” and in doing so, “it does not enable the identification of those acts which are critical because they constitute a unilateral exercise of authority” (von Bogdandy et al., 2010, p. 10).

As an alternative, von Bogdandy, Dann, and Goldmann (2010) propose an “international public authority” approach, whose starting point “is to ask whether the respective activities amount to an exercise of unilateral, i.e. public authority” (p. 9). They define authority “as the legal capacity to *determine* others and to reduce their freedom, i.e. to unilaterally shape their legal or factual situation”. The authority is exercised through the issuing of “standard instruments such as decisions and regulations, but also by the dissemination of information, like rankings”. Moreover, “[t]he determination may or may not be legally binding” (von Bogdandy et al., 2010, p. 11). Determination is binding “if an act *modifies the legal situation* of a different legal subject without its consent”. A modification is considered complete if a subsequent action that violates the act is deemed illegal (von Bogdandy et al., 2010, p. 12). In contrast, determination is non-binding if an act “only *conditions* another legal subject”. This happens when an act “builds up pressure for another legal subject to follow its impetus”, either by safeguarding that the benefits of following the act outweigh the disadvantages of disobeying it, or by providing mechanisms

of indirect positive or negative sanctioning (von Bogdandy et al., 2010, p. 12).

Von Bogdandy, Dann, and Goldmann specify that not every act of exercising authority at the level beyond the nation-state can be qualified as “international” and “public”. This designation is reserved only for an “authority exercised on the basis of a competence instituted by a common international act of public authorities, mostly states, to further a goal which they define, and are authorized to define, as a public interest”. Hence, both qualifications of the authority depend in the last instance on the “legal basis” (von Bogdandy et al., 2010, p. 13). They, nonetheless, acknowledge that one of the most important findings of “global governance” approach is that there are private law-based or hybrid institutions, lacking a relevant delegation of authority, but carrying out activities that “can be regarded as a functional equivalent to an activity on a public legal basis”. A typical instance of such authority activity would be “any governance activity which directly affects public goods, by which global infrastructures are managed, or which unfolds in a situation where the collision of fundamental interests of different social groups has to be dealt with” (von Bogdandy et al., 2010, p. 14).

Von Bogdandy, Dann, and Goldmann’s rejection of a “global governance” is grounded in the claim that this approach “flattens” important distinctions and treats various, seemingly authoritative activities as part of an undistinguishable continuum.<sup>32</sup> Instead, they propose a strict criterial approach, which introduces the contradicting binary categories: legal vs. non-legal; binding vs. non-binding; public law-based vs. private law-based acts; institutional vs. informal; and superordinated vs. subordinated actors. In doing so, they purport to distinguish activities of an “international public authority” based on the first-mentioned qualities.

<sup>32</sup> “[G]lobal governance is understood as a continuous structure or process, rather than a batch of acts of specific, identifiable actors causing specific, identifiable effects” (von Bogdandy et al., 2010, p. 10).

It transpires, however, that by the end of the day, von Bogdandy, Dann, and Goldmann loosened all the introduced distinctions. Hence, they admit that their approach should also include patently non-legal activities, such as issuing “instruments without deontic operators (e.g. statistical data contained in PISA reports)” (von Bogdandy et al., 2010, p. 12); that non-binding acts of “conditioning” are apt for producing the very same effects as binding acts, because “[t]he freedom not to obey a conditioning act is often purely fictional” (von Bogdandy et al., 2010, p. 12); that a private law-based activity may count as a “functional equivalent” of a public law-based one (e.g. the activity of the Internet Corporation for Assigned Names and Numbers [ICANN], which manages a global infrastructure by assigning Internet domain names) (von Bogdandy et al., 2010, p.14); that “international public authority” can be exercised not only by formally structured institutions with legal personality, but also by various “informal entities” (e.g. G8) that qualify for the status of “institutions” only “in the sense of organizational sociology” (von Bogdandy et al., 2010, p.15); that the authoritative-ness of some act is not necessarily grounded in a hierarchical relation, but may depend on the consent of norm-subjects, such as in the case of FAO Code of Conduct for Responsible Fisheries (von Bogdandy et al., 2010, p. 12), which explicitly states in its opening paragraph that it “is voluntary” (FAO, 1995).

All this, then, raises doubts as to whether a “global governance” approach should be abandoned in the first place. Von Bogdandy, Dann, and Goldmann’s “public international authority” approach rests on the idea that no public authority may be exercised that is not based on and controlled by public law, because this body of law provides both a constitutive and a limiting function (von Bogdandy et al., 2010, p. 10). However, Kadelbach (2009) rightly points out that this suggestion is grounded in a misconceived understanding of “publicness” at the level beyond the nation-state. Modern, post-Westphalian international law is built on the concepts of states’ equality, sovereign will, and treaty as a main source of law, thereby clearly drawing inspiration from private law (Lau-

terpacht, 1927). Therefore, “[t]he «publicness» of classical public international law resulted from nothing more than the fact that the actors were states, but did not presuppose any legal hierarchy between them”. To think in public law terms about authority relations at the international plane “suggests that there are superiors and entities or individuals who are their subjects” (Kadelbach, 2009, p. 44). However, this assumption is not fully warranted, and it is even less so in genuine “transnational situations”.

The next problem in von Bogdandy, Dann, and Goldmann’s (2010) approach stems from the premise that “authority needs a legal basis” (pp. 12-20). It is patently clear that there may be authorities that are not legally grounded. In fact, the authors themselves provide an important example of some such authority. OECD’s Programme for International Student Assessment (PISA) is an activity of measuring 15-year-olds’ ability to use their reading, mathematics, and science knowledge and skills to meet real-life challenges. Eighty-one countries participated in the 2022 assessment, which focused on mathematics, and the statistical data were released in the following year (OECD, n.d.). In von Bogdandy, Dann, and Goldmann’s words, even the PISA final report with statistical data can “condition” states as recipient subjects, because it is apt for “building up communicative power which the addressee can only avoid at some cost, be it reputational, economic, or other”. They add that “such communicative power needs to reach a certain minimum threshold,” reflected in an instrument’s capacity to affect the addressees’ behavior. In the case of the OECD PISA program, “the reports are rendered effective through country rankings and repeated testing” (von Bogdandy et al., 2010, p. 12).

Finally, the employment of the adjective “international” is hardly justifiable as well. To begin with, introducing the phrase “international public law/authority” risks confusion with the traditional label “public international law”, despite the former’s ambition to encompass not only conceptual but also normative issues, i.e., legitimacy. Moreover, since von Bogdandy, Dann, and Goldmann (2010) acknowledge that “the vast majority of activities under consideration

in this project could be considered administrative in a heuristic sense” (p. 16), there is a further danger of mixing their approach with “international administrative law”.<sup>33</sup>

For all the stated reasons, and particularly because von Bogdandy, Dann, and Goldman’s project itself effectively highlights all the aforementioned features of “global governance”, we should stick to the terminology that has been firmly rooted in the relevant contemporary scholarship. It most successfully depicts “a broad, dynamic, complex process of interactive decision-making that is constantly evolving and responding to changing circumstances” (Commission on Global Governance, 1995, p. 4). It “now addresses almost all areas of public and private life, from the disarmament of weapons of mass destruction to setting food safety standards” (Benvenisti, 2014, p. 66). Therefore, “global governance” seems an adequate heuristic framework for analyzing the concept of “global authority”.

## V. On Global Governance Authority: The Case of WADA

### 1. A possible limit of Himma’s theoretical framework?

Zoller (1995) says that “[g]overnance means setting priorities and using power to attain them. It can take many forms, such as setting rules and regulations, providing incentives and support, promising rewards, or threatening punishments” (p. 124). Although at the lev-

<sup>33</sup> This designation is controversial enough, insofar as “[d]epending on the background, time and place, (*internationales Verwaltungsrecht, diritto internazionale amministrativo, droit international administratif*), the meaning of the concept varies greatly” (Ago, 2021, p. 90). Thus, it is often understood as a branch of law “depict[ing] an important aspect of the legal relationship between international organizations and their employees” (Ago, 2021, pp. 88-89). However, in the German legal doctrine, for instance, this label denotes “domestic administrative acts with a foreign dimension or the cooperation of national administrative authorities”, such as enforcement of foreign administrative acts (e.g., tax assessments or sanctions), or recognition and enforcement of foreign administrative decisions (e.g., in the area of driver licensing or residence rights), or cross-border environmental administrative proceedings, etc. See MTR Legal (2025).

el beyond the nation-state it takes a specific form of “governance without government” (Rosenau & Czempiel, 1992), it nonetheless implies the creation of *authority relations*. Mainstream, state-centered theories tend to portray this relational, i.e., “interpersonal” aspect of authority in straightforward terms. Hence, Green (1988) says that “[o]ne person has authority over another only if he or she can make, vary, or extinguish binding commitments for that person” (p. 40). In that respect, authority implies “a triadic social relation among a superior, a subject, and a range of action” (Green, 1988, p. 42).<sup>34</sup> The discussion so far, however, has already demonstrated that “transnational situations” involve a myriad of actors, often in horizontal relationships, that the issued instruments are not necessarily of commanding nature, that the consent of would-be norm-subjects is at times crucial, etc. Despite all this, we may trace clear elements of the authoritative relations. Thus, it can be argued that serious consideration of these situations has clear implications for the mainstream concept of authority, as espoused in Himma’s recent theoretical framework.

We have provided a brief overview of this framework above (see *supra* Section III). For our purposes here, it suffices to focus on several key “constitutive conditions of authoritative tellings” conditions, which are, in any case, connected in a comprehensive conceptual picture of authority. Out of Himma’s seven conditions, for this discussion we shall put aside the first four features of an authoritative telling, that it: tells subjects what to do; creates reasons to comply; is issued by and governs actions of personal beings; and is issued by and governs the actions of rationally competent beings. We shall instead focus on the other three conditions, which

<sup>34</sup> It could be said that this applies to all authorities, and not only those such as the state. Here Green can be understood as expounding the idea that all (practical) authority is *relational* authority with a personal element (over a subject) and a content element (related to a certain range of action). The quality of being *relational* is indeed not privative to authorities such as the state, nor to a specific kind of authority, even if the exact conformation and scope of the relation-links and the elements might very well be the ones allowing for differentiating different kinds of authorities, in particular those in national contexts and in non-national contexts.

are neatly connected to the Sanctions Thesis (ST) and, at the same time, can shed light on some important aspects of the set-aside features, such as the nature of authoritative reasons for action.

For Himma, one of the most distinguishable features of authoritative tellings in comparison to those that are only seemingly so (e.g., a robber's threatening request "money or life!"), is that they are issued under a *plausible* "claim of right". He argues that the plausibility of the authority's constitutive claim of right is determined by

the following social facts: (1) the claim of right is grounded in public norms that are knowable (and usually understood in broad outlines) by members of the relevant group; (2) members converge in accepting or acquiescing to it, thereby manifesting a disposition to comply that enables the authority to minimally achieve the ends she wishes to achieve by directing their behavior; and (3) each member is aware that all the others accept or acquiesce to it, thereby manifesting the conceptually requisite disposition that enables the authority to minimally achieve her ends. (Himma, 2024, p. 47)

Himma (2024) adds that the "[c]reation of a special permission to direct behavior in the form of a right to do so is the only mechanism by which a system can confer something that counts, on our conceptual practices, as practical authority" (p. 47).

Another feature of the authoritative telling is that it is issued by the actor with the power to impose her will on subjects with respect to what they do. Himma argues "that *only* the Sanctions Thesis explains practical authority's constitutive power of will-imposition". More specifically, since the sole method of compelling someone to act without direct physical force involves some measure of coercion, it follows that the ST distinctively accounts for authority's inherent capacity to impose its will (Himma, 2024, p. 40).

Finally, an authoritative telling creates an obligation to comply. Himma (2024) specifies this constitutive feature of authority by pointing out that "authoritative tellings, unlike those of someone with only a power, create obligations to comply of *the same type*

as the norms conferring authority on the teller” (p. 49). Himma follows in Hart’s footsteps by claiming that being under an obligation is not the same as experiencing feelings of compulsion or pressure, even though “rules of obligation are generally supported by serious social pressure” (Hart, 2012, p. 88). Hence, the mechanism of how an obligation binds us is objective, rather than subjective. In Himma’s (2024) words, “obligations bind by creating liabilities in the form of potential exposure to detriment that subjects prefer to avoid, all else being equal, as a descriptive matter of fact, because they should prefer to avoid it, all else being equal, as a matter of practical reasoning” (p. 51). And again, the ST can “be inferred as the best explanation of how authoritative tellings necessarily give rise to obligations to comply” (Himma, 2024, p. 55).

One may, thus, conclude that under Himma’s account, the authoritativeness of a normative telling is premised on a) *membership* in the existing normative order; b) *publicness*; c) *systemic nature*; and d) *effectiveness* of the normative order from which it stems. An accompanying ST elucidates the will-imposing capacity of an authoritative telling, as well as how it binds norm-subjects by obliging them to do or refrain from doing something. As we mentioned before, it is hard to escape the impression that Himma’s account, albeit focusing on the concept of practical authority, in many details resembles that of Kelsen (2006, p. 181) when speaking about the “juristic concept of State”. Thus, it is fair to say that Himma’s concept of authority depicts features that are characteristic of the well-functioning state-legal order.

## 2. *The Case of WADA: A History of the Global Anti-Doping Governance Regime*

So, how does WADA’s purported authority fare in light of Himma’s theoretical framework? The discussion so far has already revealed that, as with several other actors in the global arena, the situation is far messier than with classical state-legal orders that are already in place. To begin with, the real issue with most actors that purport

to coordinate and regulate relations at the level beyond the nation-state is how to translate the kick-off moment of claiming authority into a stable authority relationship, especially in the absence of clear authorization for such a course of action.<sup>35</sup> The history of anti-doping and the eventual establishment of WADA is, in that respect, illustrative enough.

One may say that the rapid rise of the problem of doping dates from the post-World War II period.<sup>36</sup> In the first decades, most governments and sports international federations lacked either the firm intention to confront the issue or the scientific, logistical, and economic support for a sustained policy measure against doping. However, “[b]y the late 1980s, anti-doping policy had reached a turning point which led, albeit very gradually, to a more concerted policy” (Houlihan, 2001, p. 125).<sup>37</sup> The next decade was marked by the shift in policy initiative and leadership from sports bodies to governments and governmental organizations. As a reaction to that trend, the International Olympic Committee (IOC) announced that it would

<sup>35</sup> Probably the most striking example are completely private based, non-profit organizations that managed to assume global authority over certain issues, such as the Internet Corporation for Assigned Names and Numbers. Hartwig (2010) emphasizes this: “Under the standard model of international law an international organization or an international authority may set rules only after having been empowered to this end by states. ICANN, however, has never been vested with such powers by any international treaty. Further, international actors are usually bound by the rules established by an international organization or authority only by accepting such an obligation through international treaties and agreements. The rules set by ICANN, however, are accepted and implemented without any such international legal instrument having been concluded. Nevertheless, ICANN establishes rules which are of greater importance than most acts of international organizations and they are more widely and more strictly accepted and respected than binding decisions of most international organizations” (p. 576).

<sup>36</sup> “Prior to the 1940s, drug use in sport was crude, relying on a variety of natural products and their derivatives, with alcohol and the opiates being the most common” (Houlihan, 2001, p. 125).

<sup>37</sup> Several factors contributed to this development. First, the greater involvement of governments and governmental organizations, as well as the Council of Europe. Second, as a reaction, the IOC started to deal with the issue as well. Third, the elite athletes were increasingly inaccessible to the local authorities due to their global mobility. Finally, they were ready to challenge the imposed sanctions by local anti-doping authorities, and most of the challenges “were based on faults in the administration of urine collection or testing rather than the positive test result”. All this “emphasized the need for closer co-operation between anti-doping authorities” (Houlihan, 2001, p. 129).

convene a World Anti-Doping Conference in Lausanne in February 1999. The most challenging issue at the Conference “was that of the accountability of the proposed agency” (Houlihan, 2001, p. 136). While governments were strongly against the idea that the new body be under any direct influence of the IOC, sports federations and the IOC equally did not want to cede too much power to governments. Finally, there was also an issue of how much authority sports federations were willing to transfer to a new agency. At that moment, some major federations, such as Fédération Internationale de Football Association (FIFA) and Union Cycliste Internationale (UCI), opposed the IOC-proposed benchmark minimum penalty for steroid use of two years, while the International Amateur Athletic Federation (now known as World Athletics) stated that it did not intend to recognize the Court of Arbitration for Sport (CAS) as superior to its own arbitration panel. In short, the central issue at the Conference “was not whether there should be an international anti-doping body, but who would control it” (Houlihan, 2001, p. 137), in the absence of any clear authorization rules for its establishment.

Eventually, WADA was established in November 1999. According to its website, WADA is “an international independent agency to lead a collaborative worldwide movement for doping-free sport” (WADA, n.d.a). Behind this label, which seemingly fits von Bogdandy, Dann, and Goldman’s concept of “international public authority”, one nonetheless finds an organization that “is a Swiss private law, not-for-profit Foundation”, with its seat in Lausanne, Switzerland, and headquarters in Montreal, Canada (WADA, n.d.b). The private-law basis of WADA is explicitly confirmed in an important decision of the CAS to which WADA has a right of appeal for doping cases. The CAS stated that “[t]he rules of a Swiss private law entity should comply with Swiss law. If they do not do so, there is a risk that the Swiss Courts will declare them to be non-compliant”.<sup>38</sup>

<sup>38</sup> See CAS 2006/A/1025, *Mariano Puerta v. International Tennis Federation* (“ITF”), §10.7.

The reason why WADA and nearly fifty other international sports governing bodies are based in Switzerland lies in the broad associational freedom guaranteed by local legislation. Namely, associations are neither obliged to register with the state nor to publish their accounts. They are granted tax breaks and flexible legal terms that allow them to govern their own affairs and are generally exempt from Swiss anti-corruption laws.<sup>39</sup> Moreover, there are only “a few mandatory rules, which have an impact on the autonomy of sports organizations” (Valloni & Pachmann, 2011, p. 45),<sup>40</sup> none of which prevents an organization from stating broad aspirational goals. Hence, it becomes possible for WADA (n.d.a) to state as its vision nothing less than “[a] world where all athletes can compete in a doping-free sporting environment”. To be sure, such a bold statement would be meaningless if WADA were not established the way it was—under a broad policy initiative of the IOC, with the political support and participation of intergovernmental organizations, governments, public authorities, and other public and private bodies fighting doping in sport.

WADA’s aspiration as a Swiss private law-based organization to exercise global regulatory authority in the field of doping control was strengthened by the unanimous adoption of the International Convention against Doping in Sport by the 33rd UNESCO General Conference on October 19, 2005.<sup>41</sup> The international legal basis of WADA’s authority was deemed a necessary step so that the Code would become a legally binding instrument for govern-

<sup>39</sup> However, recent corruption scandals in FIFA triggered the adoption of a legislative act (Lex FIFA) pursuant to which leaders of sports organizations in Switzerland will be designated as so-called “politically exposed persons” subject to corruption investigations (Gütling, 2017).

<sup>40</sup> More specifically, “a sports federation is required to act in accordance with (1) mandatory provisions of association law; (2) the “general boundaries of the legal order” (*Allgemeine Schranken der Rechtsordnung*), in particular public policy, general mandatory law, *bona mores*, and protection of personality rights and (3) general principles of law, in particular equal treatment of members, good faith, prohibition of abuse of rights, and due process in the decision-making process” (Morgan, 2013, p. 3).

<sup>41</sup> “Entered into force on 1 February 2007 —becoming the most successful convention in the history of UNESCO in terms of rhythm of ratification after adoption— the Convention is now the second most ratified of all UNESCO treaties”.

ments (Marriott-Lloyd, 2010). And yet, the Code itself was never meant to bind states as such. As explained in the Introduction of the Code, its provisions “are mandatory in substance and must be followed as applicable by each *Anti-Doping Organization* and *Athlete* or other *Person*” (WADA Code, 2021, p. 16). In that respect, for the kick off of the authority relationship in the field of anti-doping, it was far more important that the Code was assented to by the IOC, International Paralympic Committee, and virtually all international sports federations and organizations. In virtue of this explicit consent, WADA acquired the authority not only to regulate and control anti-doping in sports, but also to sanction individual athletes and persons who are found in violation of the Code (WADA Code, 2021, Art. 10). As the introductory story demonstrates, states, nonetheless, remain important pieces of the authority puzzle, insofar as WADA relies heavily on their funding.

### 3. *Is WADA a Practical Authority?*

Let us now test whether WADA passes the test of Himma’s framework of practical authority. WADA’s authoritative tellings can be found in its Code. The Code’s rules only partially and mostly indirectly draw their validity from *membership* in the existing *public* normative orders —the Swiss law and public international law. It would be more accurate to say that the WADA Code belongs to those

forms of rule-making by “private governments” which... claim worldwide validity independently of the law of the nation-states and in relative distance to the rules of international public law. They have come into existence not by formal acts of nation-states but by strange acts of self-validation. (Teubner, 1997)

In fact, it is possible to argue that the WADA Code is a distinctive *global/transnational source of law*, independent of national and international legal instruments from which it directly and indirectly draws its authorization (Jovanović, 2020).

The WADA case persuasively demonstrates what Walker calls the “global appeal” of global/transnational rules. There is “a double sense of the global *appeal* of global law”. In the first sense, “the global scale of global law is indicated by its destination rather than its source”. That is, it “purports to cover all actors and activities relevant to its remit across the globe” (Walker, 2015, p. 21). In the second sense, global law makes a global appeal insofar as it claims or assumes “a universal or globally pervasive justification for its application”. That is, it

is, or should be, applicable to all who might be covered by its material terms regardless of location or association with a particular polity, because it is justifiable to all who might be covered by those material terms, or so it is claimed or assumed. (Walker, 2015, p. 22)

The personal scope of validity of the Code rules and WADA decisions is truly global. Hence, WADA belongs to an increasing group of global governance actors, which “may be understood as functionally differentiated communities organized for mutual benefit for specific objectives” (Backer, 2007). In their authoritative relations with the norm-subjects, “functional (subject matter)” is “opposed to territorial logics” (Shaffer & Coye, 2020).

WADA rules, particularly in the material sense of the regulated subject matter, are not drawn from some larger system of norms. However, can one speak of the *systemic nature* of the nascent global anti-doping regime? There are some clear signs that this regime is acquiring a systemic nature. WADA may be considered the main, but by no means the sole authority within this regime. WADA Code, in Part Three, provides for the regulation of the responsibilities of different actors, from the IOC, over international federations (IFs) and national anti-doping organizations (NADOs) to governments. With some of them, such as NADOs, the relationship is of a quite “one-way street” nature. In the words of one NADO official, “We do not have any decision power; we just have to respect WADA’s demands” (Zubizarreta & Demeslay, 2021). On the other

hand, IFs have their own area of authority. They are “to vigorously pursue all potential anti-doping rule violations within their authority”, as well as “to ensure proper enforcement of Consequences”, i.e., sanctions (WADA Code, 2021, §20.3.12). Finally, relations with governments are far more complex, as illustrated in the introductory story of the US challenge to the WADA authority. An equal threat to authority came with the discovery of a systemic, state-sponsored doping system in Russia in 2014-2015, established with the alleged collaboration of the Russian Anti-Doping Agency (RUSADA). WADA’s Executive Committee unanimously endorsed in December 2019 the recommendation made by the independent Compliance Review Committee that RUSADA be declared non-compliant with the Code for a period of four years, which included a palette of sanctions for the Russian governmental and sports officials, including athletes.<sup>42</sup> In the appellate procedure, the CAS decided to cut this suspension for a period of two years.<sup>43</sup> As a follow-up to this major scandal, the IOC proposed that an independent testing system, under the supervision of WADA, be created in the area of anti-doping. This led in 2018 to the establishment of the International Testing Agency (ITA), to which more than seventy IFs and Major Event Organizers have delegated their anti-doping programs (ITA, 2026).

An important piece of the complete authority puzzle, as envisaged by Himma’s (2024, p. 52-ff) framework, concerns the existence of an associated adjudicative mechanism for holding an actor liable for deviating from the issued authoritative acts. WADA Code provides for a three-tier trial mechanism, with the CAS as the final arbiter in doping cases. This adjudicative body is widely referred to as “the sport’s supreme court”. This is, however, a somewhat erroneous label, for neither is it a “court” in the public law sense of the term, nor is it really “supreme”, insofar as its decisions can be challenged at the Swiss Federal Tribunal and at the European Court of Human Rights (Goh & Anderson, 2022, p. 233). Moreover, in a

<sup>42</sup> The full list of sanctions is available at WADA (2019).

<sup>43</sup> See CAS 2020/O/6689, *World Anti-Doping Agency v. Russian Anti-Doping Agency*.

very recent judgment, the Court of Justice of the European Union (CJEU) has ruled that, to ensure effective judicial protection for athletes, clubs, and other individuals who might be affected as a result of pursuing a sports-related economic activity within the European Union, the awards made by the CAS must be amenable to effective judicial review by both national courts and CJEU.<sup>44</sup>

This competition for the ultimate adjudicative authority in sports matters, including doping, may be seen as a challenge to the overall *effectiveness* of the global anti-doping regime led by WADA. For Himma (2024, pp. 10, 36, 55-56), minimal efficacy of a normative order is a key condition for the plausibility of the authority's constitutive claim of right to issue authoritative tellings. That is, norm-subjects of the given order must converge in accepting or acquiescing to it, thereby manifesting a disposition to comply with and treat tellings as authoritative, i.e., binding. Unlike some other global governance actors, which explicitly acknowledge that they do not purport to issue binding legal rules, and yet manage to govern affairs very efficiently,<sup>45</sup> the WADA Code (2021) clearly states that a decision of any of the adjudicative bodies of the three-tier mechanism "shall, after the parties to the proceeding are notified, automatically be binding beyond the parties to the proceeding upon every *Signatory* in every sport" (§15.1.1). Despite the mentioned challenges to the WADA authority, the episode with the imposition of serious sanctions on relevant norm-subjects of a powerful state, such as Russia, demonstrates that the global anti-doping regime is overall effective. It is so, despite the lack of some institutional apparatus for enforcing rules and sanctioning measures. This is possible due to the capacity of this global governance regime to generate strong social pressure for conformity to its norms of self-regulation.<sup>46</sup> Simply put, opting out of such a regime, particularly for professional athletes, would be too costly, because

<sup>44</sup> See Case C-600/23, *Royal FC Seraing v. FIFA et al.* (August 1, 2025).

<sup>45</sup> See, for example, Jovanović's (2018) discussion of Basel banking regulations (pp. 246-248).

<sup>46</sup> And for Hart (2012), "rules are conceived and spoken of as imposing obligations when

they would be essentially forced to change their vocation.<sup>47</sup> All this certainly makes it likely that authoritative tellings by WADA, or any of its associate bodies, will be taken as binding in the foreseeable future.

However, as already noted, the real question is how WADA managed in the first place to make a credible claim of the right to globally regulate doping affairs. The aforementioned brief historical tour<sup>48</sup> through the intricate “transnational situation” in doping matters demonstrates the relevance of what Roughan coined as “reasons for decision”, namely, “reasons about *how to decide how to act*”, that is, whether action should be determined by one’s own judgment and preferences, by flipping a coin, acquiescing to some established convention, or by following authority. For her, “[r]easons for decision pertain to the question raised by Raz’s independence condition: whether a matter is a matter for (an) authority or for independence” (Roughan, 2023, p. 190).<sup>49</sup>

In a complex situation, in which each of the involved actors—governments, IFs, IOC—may have pursued a separate path and independently dealt with doping affairs, the raised awareness of the fact that doping in sport was a matter of global concern, which necessitated a concerted action, an independent regulatory body with a global appeal was recognized as an actor that may credibly claim the right to regulate those affairs. In other words: sever-

the general demand for conformity is insistent and the social pressure brought to bear upon those who deviate or threaten to deviate is great” (p. 86).

<sup>47</sup> Raz invokes the same idea when discussing the UN authority over individual states. He notices that the UN is “organisation comprehensive in membership”, and thus, “[o]pting out of it would be very isolating. Remaining in it is as free as remaining in your home country. You can emigrate (sometimes) but it is a life-changing decision. And in the case of the UN, there is no alternative to go to. The alternative is more like going to a desert island. How difficult it is for a country to leave the UN depends on its situation, but it is a very high-cost decision for any country” (2017, p. 152).

<sup>48</sup> See § V.2 of this essay.

<sup>49</sup> Raz (2006) himself seems to acknowledge the same by stating that “in following authority, just as in following advice, or being guided by any of the technical devices, one’s ultimate self-reliance is preserved, for it is one’s own judgment which directs one to recognize the authority of another, just as it directs one to keep one’s promises, follow advice, use technical devices and the like” (p. 1018).

al relevant actors started to converge on the idea that there was a goal to be achieved; that the goal was common and shared among them; that the goal was achievable only by coordinated action; and that the adequate means for achieving that coordinated action was (1) to have a certain body with certain characteristics producing certain tellings of a certain kind and (2) to recognize that body and those tellings a certain specific status within a certain specific setting. As we saw, the answer to (1) was a global (beyond national jurisdictions) non-governmental, but government-supported (beyond governmental control) and independent (beyond other anti-doping national and non-national bodies) governance authority producing both general norms and individual decisions on the matter of, and within the scope of, anti-doping matters and cases; and the answer to (2) was to recognize that this global governance authority and its tellings are authoritative for a majority of the involved original actors and for a whole class of not-involved actors (any forthcoming athlete or related person).

Within this setting, it is not difficult to see why WADA, upon creation, managed to make an initially credible claim of right. On the one hand, WADA fits all—if not, most—elements of criterion (1); on the other hand, and this might be the most important thing, there was convergence in the recognition of WADA—as a body fitting criterion (1)—and its tellings as authoritative by the original relevant actors. WADA emerged in a context where the relevant actors had already decided that a decision by authority, as opposed to something like a decision by unanimity or convention, was needed to resolve coordination problems related to anti-doping matters and cases. And WADA came to be with the characteristics the relevant actors understood as necessary for a body to have in order to be fit for that role. So, WADA's characteristics within this particular factual context of recognition might be the element that gave initial credibility or *plausibility* to its "claim of right": a permission to globally regulate anti-doping matters and cases paired with an obligation of noninterference owed by those same relevant actors (and other further subjects) (Himma, 2024, pp. 43-45).

Does this fit Himma's framework on this point? It seems so. Recall that Himma claims that the standards of plausibility are social, and that the plausibility of such a claim is determined by social facts such as (1) the claim being grounded in public norms knowable by members of the relevant group, (2) member's convergence in acceptance or acquiescing to the claim, thus manifesting a disposition to comply (which enables authority to minimally achieve her set goals by directing their behavior); and (3) member's awareness of all the others' acceptance or acquiescing, thus manifesting the "conceptually requisite disposition" which enables authority to minimally achieve her set goals. (Himma, 2024, p. 47).

(2) and (3) seem fulfilled. However, in WADA's case, there might be a problem with (1): is there a set or system of public norms that could ground such "claim of right"? In other words, is there a set or system of norms conferring a permission to WADA to do something that counts as directing the behavior of others within its jurisdiction and thus entailing that others have an obligation not to interfere with WADA's doing? Remember what we mentioned at the beginning of the section: WADA rules do not draw from some larger system of norms and they come into being by acts that seem, at least *prima facie*, self-validating. Looking at the system within which WADA was constituted as a legal person—the Swiss national legal system—also does not offer help on this point, and not only because WADA's presumably jurisdiction goes beyond, and is not related to, national territories or citizenship. Looking at the adoption of the 2005 *International Convention against Doping in Sport*—in which WADA was openly recognized and the States Parties consented to "support" its "important mission", as well as recognizing some of WADA's technical standards documents as valid and in force—it could certainly not be taken as an act of retroactive authorization of WADA's establishment, when in fact it served as a vehicle for solidification of its authority.<sup>50</sup> Let us recall here some concep-

<sup>50</sup> Art. 4(1) of the Convention says that "States Parties commit themselves to the principles of the Code as the basis" for the measures to achieve the objectives of the Convention, that is, prevention, fighting against and elimination of doping in sport.

tual distinctions we made at the beginning of this paper: between relative and non-relative authority and relational/non-relational authority. A *relative* concept of authority is the one expressed by statements such as “X is an/has authority in accordance with *s*, where *s* is a system of norms”. The search for this set or system of public norms might be related to this: in this sense, in the case of WADA, as we struggle to find such system, we might also struggle to conceive WADA as an authority. However, a *non-relative* concept of authority, the one expressed by statements such as “X is an/has authority”, does not necessarily require the existence of such a system. It leaves open the question about the criteria in accordance with, if any, it is the case that X is or has authority. In this sense, in the case of WADA, we might still conceive it as an authority. However, in which sense could we do so?

The second conceptual distinction is useful here. A *relational* concept of authority is expressed by statements such as “X is an/has authority over/in relation to *Z*”, and implies that being or having authority is limited—at least regarding matters and subjects. A *non-relational* concept of authority is expressed by statements such as “X is an/has authority” and implies that there are no relevant limits at play. Leaving aside the latter, the former provides us with an insight regarding how to answer our question. This is so because, if an agent A is an authority in relation to a subject S over matters M (relational concept), the attitude of S might be the relevant criterion to determine that A is an authority (non-relative concept). And this attitude of S can be thought as acceptance or recognition of A as an authority—or, in any case, the recognition of A’s “claim of right” as plausible or true (and what follows from that).

Finally, let us also recall a relevant distinction between kinds of authority. We saw that we could distinguish between legal, effective or efficacious, and legitimate authorities. A legal authority, in its narrowest and *stricto sensu* meaning, is an agent explicitly competent in accordance with a power-conferring norm belonging to a certain legal system to carry out normative acts. This is clearly in consonance with the relative concept of authority discussed be-

fore. An effective or efficacious authority is an agent who has carried out an act, including a “claim to authority”, and by and large is recognized as an authority by the addressees or the relevant group. This is clearly in consonance with the non-relative, relational concept discussed before. Finally, a legitimate authority is an agent who has carried out an act, including a “claim to authority”, this claim is true, and thus the eventual recognition as an authority by the addressees or the relevant group is justified. This is also in consonance with the non-relative concept discussed before, as well as with the relational concept—even if the role of recognition here is, at least, different.

According to this, WADA can be generally understood as a practical authority in relation to certain subjects over matters of anti-doping (relational concept) whose authority stems from the fact that those subjects *recognize or accept* WADA as a practical authority (non-relative concept). It is not a legal authority, in the aforementioned narrowest sense of the word, but at least an effective authority.<sup>51</sup> In this, it diverges from other agents or bodies that might be considered as authorities according to some clear system of rules (relative concept), but are not recognized as authorities (non-relative concept) by their subjects (relational concept),<sup>52</sup> or agents or bodies that cannot be considered as authorities,

<sup>51</sup> We will leave aside the question whether it might be considered as a “legitimate authority”, as we are not dealing here with justificatory discourses, and Himma’s proposal does not require justificatory considerations. However, under a legitimation principle based on coordination-solving, it might be straightforward here to consider WADA as some kind of legitimate authority in anti-doping-related matters over certain classes of people defined by their connection to sports.

<sup>52</sup> Such is the case with the World Health Organization (WHO), whose founding document is entitled “Constitution”, even though, formally speaking, it is an international treaty, concluded pursuant to the international rules of treaty-making. See Jovanović (2018, pp. 243-ff). Despite clear power-confirming rules for establishing its legal authority, WADA’s practical authority was heavily challenged during the COVID pandemic by its addressees-states. In a recent comprehensive review of criticisms directed at WHO, it is stated: “In terms of trust and transparency, the review highlights how opaque decision-making processes and perceived political interference have eroded public confidence in the WHO”. Hence, the authors conclude that “[t]o rebuild public and institutional trust, the WHO needs to adopt a comprehensive approach rooted in transparency, accountability, and inclusivity”. See Nour, Kisa & Kisa (2025, p. 10).

in terms of some power-conferring rule, but just advisory agents according to some clear system of rules (relative concept), but are nevertheless recognized as authorities (non-relative concept) by the advisees (relational concept).<sup>53</sup>

Moreover, WADA did not get an initial credible or plausible “claim of right” grounded in public norms from a set or system of norms of a certain jurisdiction. It did get it through a complex network of attitudes and practices of recognition by an original group of relevant actors related, first, to having reasons to achieve a certain common goal, to decide-by-authority as the means to achieve it, and to have an independent (outsider) party as that authority; second, to understand WADA as fitting the requirements to be such an authority (to the extent that it had certain characteristics, all the other relevant actors also recognized WADA as fitting, all the relevant actors were aware of that recognition, and so on.) Subsequent attempts to give WADA (and its tellings) some kind of authoritative status, through norms indirectly recognizing it as such, can be seen as making explicit—or securing—a situation that was already created and in force. Even the fact that WADA now has a wider reach over subjects that were originally not part of this complex network, or just very indirectly (through their citizenship to involved states, for instance), can be seen as solidifying a situation already in force by providing them—now that WADA has acquired more or less full efficacy—with a more plausible “claim of right” and with a more plausible threat of sanction backing its tellings.

## VI. Final Remarks

In the last decades, the authority landscape as we traditionally conceived it has been changing steadily, in part due to the increasing complexity of contemporary political and legal phenomena.

<sup>53</sup> Take the case of the Venice Commission, which is, according to its own definition, an “advisory body” that, nonetheless, manages to acquire the status of a recognized practical authority in matters of constitutional law drafting. See Jovanović & Mandić (*forthcoming*).

The case of WADA is a representative case, among many others, of authority (and authoritative phenomena) that has been constituted purely beyond national borders and whose functions are tied to having a global reach. And, as we tried to show in this essay, the case of WADA reveals that contemporary frameworks for understanding practical authority—such as the very recent one advanced by Himma—are of limited use when confronted with transnational or global contexts.

Such a conclusion is of utmost importance in a context where global governance is in clear expansion and these new forms of authority (and authoritative phenomena) become increasingly central to the regulation of global, international, and transnational domains related to the most heterogeneous things: anti-doping, public health, data protection, environmental standards, normalization of quality standards, and so on. This context calls for theoretical frameworks capable of account for authority as a dynamic, relational, and socially constituted phenomenon beyond nation-states: and, in particular, for theoretical frameworks where cases like WADA—cases of global practical authority—are not conceived as merely exceptional or marginal cases.

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