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Keeping private governance private: Is FIFA blackmailing national governments?

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Abstract

Governance by non-state actors has received increased attention. However, it is still controversial to what extent private governance regimes operate in an effective 'shadow of hierarchy'. We focus on international football where a private governance regime actively claiming autonomy from public authorities has been established since 1904. We provide comparative case study evidence that FIFA as football's global regulator has been able to force national governments and regulators to abandon interference in football's matters even in case of blatant failures of private governance. Research supports the claim that private regimes providing unique governance contributions represent an institutional equilibrium able to resist challenges. Moreover, private governance arrangements that generate positive feedbacks for political stakeholders can shape their political environment. FIFA's victories are highly problematic since they discourage national governments to fight misconduct in sport while it can be doubted that private governance alone can deal with the regulatory problems at stake.

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Introduction

Over the last two decades governance by non-state actors has received increasing attention (Peters and Pierre 1998; Cutler, Haufler and Porter 1999). While private governance can be highly beneficial even under conditions of limited statehood (Börzel and Risse 2010), research has become more skeptical about prospects that non-state actors might generally compensate for ‘state failure’ and has questioned the legitimacy of private governance (Cashore 2003).

However, some scholars assume that private governance operates within the ‘shadow of hierarchy’ implying that blatant governance failures in the private sector will provoke correcting interventions by state authorities (Mayntz and Scharpf 1995, 28). Whereas such claims are at odds with insights on the power of transnational corporations (TNCs) over national governments resulting from opportunities for ‘regime-shopping’ (Koenig-Archiburi 2004), research presented here provides evidence that even private governance regimes that mainly allocate symbolic goods can ‘dwarf’ the ‘shadow of hierarchy’. Therefore, this paper examines the hardly studied private governance of international football (soccer).

Global private governance is often regarded as a rather new phenomenon connected to neo-liberal globalization (Dingwerth 2008). However both, the International Olympic Committee (IOC) founded in 1894 and the International Federation of Association Football (FIFA) founded in 1904, are older than most intergovernmental institutions. Moreover, international sport represents a highly sophisticated governance regime that has long claimed its ‘autonomy’ from state law and public authorities (Chappelet 2010). The character of global sports law as transnational autonomous order created by the private global institutions has inspired legal scholars to compare the *lex sportiva* to the *lex mercatoria* (Foster 2003, 2).

Since FIFA has succeeded in defending its autonomy *vis-à-vis* legitimately and democratically elected national governments, international football touches upon debates on the extent to which public policy is allowed or capable to regulate civil society or private governance. The governance of international football supports two basic insights: First, private governance regimes providing unique governance contributions represent an institutional equilibrium able to resist challenges. Second, private governance arrangements that generate positive feedbacks for external

political stakeholders can effectively shape their political environment. While FIFA has been transformed from a non-governmental organization (NGO) into a large-scale TNC, FIFA continued to provide national governments with symbolic benefits for which there is no substitute. Thus, even in cases where political interventions tackled serious misconduct in sport, FIFA managed to force state authorities to revoke legislation perceived as interfering into the sport's autonomy.

The paper starts with a short overview over the complex debate on private governance and develops some basic hypotheses. Second, the development of international football governance is traced in order to explain how FIFA has acquired a unique power position. Third, we analyze three case studies where FIFA has successfully confronted national governments.

DRAFT

Private governance

Since the seminal work of James Rosenau and Ernst-Otto Czempiel (1992), governance by non-state actors has increasingly occupied the attention of scholars. According to Rosenau (2002, 72), global governance refers to 'social functions or processes that can be performed or implemented in a variety of ways at different times and places'. More specifically, Doris Fuchs (2002, 11) has claimed that 'the core of the global governance argument concerns the acquisition of authoritative decision-making capacity by non-state and supra-state actors.' Researchers have investigated more varied forms of private coordination and argued that problem solving in economic and political life can be provided through a plethora of governance arrangements (Ronit 2001, 573). Examples of such new non-state authority include private interfirm regimes regulating entire markets, private standard-setting cooperations, transnational advocacy networks and illicit authorities (Dingwerth and Pattberg 2008, 193).

According to Claire Cutler, Virginia Haufler, and Tony Porter (1999), several factors account for the alleged rise of private authority or of non-state governance. First, private authority may be seen as an agent of public authority due to the explicit delegation of certain functions by the state. Implicit delegation in the form of state failures to provide public goods may similarly legitimate private authority, as can the recognition of special expertise, the impartial provision of demanded authority or tradition. Finally, neoliberal ideology might explain both the demand for private authority and compliance based on the perception that it is legitimate.

Notwithstanding the multitude of non-state governance regimes it is often assumed that such modes are embedded in hierarchical structures for which Renate Mayntz and Fritz Scharpf (1995) have coined the term 'shadow of hierarchy'. According to Tanja Börzel and Thomas Risse (2010, 116), the shadow of hierarchy 'means that the state threatens [...] to impose binding rules or laws on private actors in order to change their cost-benefit calculations in favor of a voluntary agreement closer to the common good rather than to particularistic self-interests'. However, this idea is at odds with the claim that the rise of powerful non-state actors in world politics might be challenging the authority of sovereign states (Sneding and Neumeier 2008, 654). Moreover, scholars have long argued that increasing

opportunities for ‘regime shopping’ have enabled TNCs to impose their own rules on state governments (Biersteker 1980, Koenig-Archbugi 2004). Thus, it is far from clear to what extent governmental authorities can still exert some form of hierarchy over non-state actors. The case of football as a sector of major cultural and economic importance casts further doubts on the ‘shadow of hierarchy’.

Assumed that persistent international private governance regimes represent an institutional equilibrium whose stability results from the absence of Pareto-improving alternatives (Calvert 1995a, b), the efficacy of the ‘shadow of hierarchy’ diminishes when private governance provides goods for which there is no adequate substitute by state authorities. Moreover, in ‘any moderately complex social context’, institutional change requires considerable efforts (Dixit 2009, 19). Thus, international football governance supports the following theoretical proposition:

Proposition #1: Private governance regimes are likely to avoid the shadow of hierarchy if they provide governance solutions that are difficult to substitute.

Emphasizing the equilibrium aspect of persistent institutions does not imply denying the incoherent and coercive character of institutions (Crouch 2005; Schneiberg 2006). The role of power relations, social compromises and other contingent results of social interactions for institutional design (Streeck and Thelen 2005) is particularly evident in sport governance (Meier 2008). However, governance regimes contribute also to power balances within political systems (Hall and Thelen 2009, 13). Hence, if private governance regimes manage to create increasing returns for political stakeholders, they become able to resist political interventions. Thus, positive feedback processes can secure institutional persistence (Pierson 2004):

Proposition #2: Private governance regimes can influence their political environment if they create positive feedback effects for political stakeholders. Thus, the shadow of hierarchy is further dwarfed.

The emphasis on equilibrium aspects certainly risks to over-predict stability of institutions at the expense of their dynamic character (Thelen 2009, 473; Streeck and Thelen 2005a, 8). However, FIFA’s history supports the idea that positive feedback enables governance regimes to survive institutional dynamics such as a changed coalition of supporters or partial goal displacement.

In order to explore the merits of these propositions, the very nature of FIFA's governance contribution and FIFA's increased political importance need to be analyzed before three cases are examined where FIFA was effectively able to resist attempts of governmental interventions into its governance regime.

Development of international football governance

FIFA's unique governance position results partially from the desirability of monopoly structures in sports. Most stakeholders of international sport, that is, athletes, sport federations, consumers, public authorities and commercial interests, gain the highest utility from 'meaningful' competitions (Neale 1964). Meaningful competitions require clear and consistent rules and regulations (Scully 1995), which are best provided by a regulatory monopoly. Moreover, due to stakeholders' interest in uncontested winners, there is also a need for monopoly structures in competitions. Thus, the unique contribution of international private governance regimes in sport consists of providing a 'definitional monopoly' for meaningful competitions. While the tasks of regulating and organizing competitions do not have to be bundled, FIFA acts as both global sport regulator and competition organizer giving FIFA total control over access to international football.

Two trends have raised the profile of international sport bodies, such as FIFA, considerably. First, the politicization of elite sport has amplified the public interest in international sport events and competitions. Second, the commercialization of professional sport has enabled the organizers of the most lucrative competitions to exert bargaining power *vis-à-vis* a number of stakeholders.

The Politicization of International Sports

Sport is prone to politicization because it can serve as symbol of cohesion and exclusion due to its dramatic and antagonist qualities (Giulianotti, 1999). Symbolic gains for national governments can be reaped from victories as well as from hosting sporting events as Mussolini's propaganda use of Italy's win of the FIFA World Cup in 1934 or the Nazi Olympics of 1936 illustrate. Although with very different connotations, this holds still true nowadays. Poland and Ukraine experienced a boost

of national pride from hosting the 2012 Football European Championships, the United Kingdom benefitted from a feel good factor provided by the 2012 London Olympic and Paralympic Games. Similarly, Qatar is using its staging of the 2022 World Cup to rise in the international political and business scene (Amara 2012). Thus, deliberate attempts to use sport as vehicle of identity politics have substantially intensified (Tomlinson and Young 2006).

First of all, international sport became a symbolic arena for the cold war after the Soviet government abandoned its resistance against 'bourgeois' sport and decided to participate in the Helsinki Olympics of 1952 in order to broadcast the message of communist superiority (Washburn 1956, Riordan 1978, Hunt 2007). Neutral and autonomous 'bourgeois' sport bodies such as IOC and FIFA proved to be a more attractive venues than political bodies such as the communist Red Sport International (Allison and Monnington 2002).

Moreover, during the twentieth century being eligible for international competitions came to equal being recognized as sovereign state. Thus, East Germany used athletes as 'diplomats in training suits' for gaining diplomatic recognition (Balbier 2005) and China perceived any appearance of Taiwan in international sport as infringement of its sovereignty (Chan 1985, Homburg 2006). Since international sport became significant for nationalist ideology, it occupied a central symbolic role in the struggle for independence during decolonialization (Darby 2002). Thus, international sport bodies have been often among the first international organizations the new national states aim to join (Sugden and Tomlinson 1998a, 305).

Politicization has benefited the position of international sport bodies because the symbolic benefits they provide were increasingly valued. By now, international sport represents a last bastion for evoking heroic images of nation states in a globalized world where sovereignty is at stake. Moreover, incumbent international sport bodies have enjoyed first mover advantages for providing these symbolic benefits because any communist or commercial alternative such as Ted Turner's Goodwill Games failed (see Perrine 1999).

The Commercialization of International Sport.

As FIFA's transformation from a global regulator into a TNC shows, politicization and commercialization of sport have reinforced each other in a way further increasing the power of international sport bodies.

FIFA's transformation was facilitated by decolonialization that created a multitude of new FIFA members late 1950s and 1960s. Due to FIFA's one-vote-per-nation principle (Eisenberg 2006a), the new members became a key electoral constituency demanding a more equal distribution of World Cup places and host locations as well as an increase in FIFA subsidies for football development (Darby 2003). Since the European Football Associations (FAs) supported by the then FIFA president, Stanley Rous, did not respond adequately to these demands, Brazilian IOC member and business magnate João Havelange managed to challenge Rous and take-over the governing body's presidency by promising the new FIFA members an increase in World Cup Finals places and financial and technical aid (Tomlinson 1994; Sugden and Tomlinson 1998a, b). Havelange's campaign was heavily supported by TNCs because his agenda implied a commercialization of international football, (Sugden and Tomlinson 1998b).¹

Havelange's victory initiated the commercial exploitation of the World Cup and all related property rights and a centralization of FIFA's control over revenues. Since then, in order to even-out revenue streams, FIFA entered long-term contracts with TNCs such as McDonalds, Coca-Cola or Adidas (Eisenberg 2006a; Homburg 2008). FIFA's agenda became increasingly shaped by commercial interests (Sugden and Tomlinson 1997; Sugden 2002; Murray 1999; Jennings 2010). This has become particular evident with the World Cups where a small network of profit-maximizing sponsoring TNCs defines strict parameters for host authorities (Cornelissen 2010).

Moreover, the 'principle of reciprocity' came to dominate FIFA's politics (Darby 2003, 14). The increased revenues from the commercialization of the World Cup meant that FIFA's finances were no longer dependent of the monetary contributions of member FAs. Consequently, FIFA's executive is now capable of organizing majorities among the FAs by employing distributional policies (Eisenberg 2006a; Giulianotti and Robertson 2012) or even by resorting to 'vote buying' (Tomlinson 2007). Thus, FIFA's stunning business success has been accompanied by mismanagement, illegal business practices, bribery and corruption (Homburg 2008).

However, commercialization has further increased FIFA's importance as an arena of identity politics. Not only has FIFA's membership experienced a massive growth; improved revenues have also enabled FIFA to grant substantial development aid (Eisenberg 2006a, 2000b). Yet, commercialization has also increased FIFA's demand for autonomy as it is one of the defining principles of FIFA's policy to maintain concentrated control over international football and its profits (Madeira 2007, 288).

Defending private governance

The article moves now to examine three case studies where FIFA has been involved in conflicts about political intervention into the autonomy of national FAs. All cases examined (Greece, Spain and Poland) involve states that the VOCASPORT Research Group (2004) has classified as belonging to the 'bureaucratic configuration' of sport policy-making. Here, public authorities take a very active regulating role, which is often reflected in a state law on sport. Public authorities do not necessarily negotiate much with other stakeholders:

'The voluntary sports movement acts by "delegation", social partners are often non-existent, and users/consumers and private entrepreneurs have a low impact on the implementation of a sports policy' (VOCASPORT Research Group 2004, 53).

Public sector organizations act as agents for delivering government specified requirements. Thus, sport policy focuses on regulating processes of delegation of tasks by the state to, for example, national sport federations and on the monitoring of standards and systems, so that those bodies are accountable to the state (Henry and Ko 2009, 30-35; Henry 2009). Obviously, such a statist configuration is incompatible with FIFA's claim for autonomy.

Within football's multilevel governance exist institutional mechanisms allowing national FAs to 'move up' conflicts with their national governments. FIFA's statutes demand independence from any third parties as a pre-requisite for national FA's membership (Panagiotopoulos and Mourniakis 2006a). The membership of any national FA not deemed to 'manage their affairs independently and ensure that their own affairs are not influenced by any third parties' (FIFA 2012:

Article 13.1 g) might be suspended by decision of the FIFA Executive Committee or the Congress (FIFA 2012, Article 14). The FIFA statutes clearly underline that member FAs shall ‘comply fully with the Statutes, regulations, directives and decisions of FIFA bodies’ (FIFA 2012, article 13.1 a). Therefore, FIFA could intervene into ‘local’ regulatory battles between national public authorities and their FAs and prove to be the ‘true’ location of power.

FIFA vs. Greece, a Long Standing Conflict

The ‘battles’ between FIFA and the Greek government are illustrative of FIFA’s ability to get a regulatory exception for its governance domain. The Greek case is further interesting because, first, the Greek government and FIFA have clashed over a particular piece of legislation, the Greek national sports act, whose adoption falls within the prerogatives of the Greek parliament and government. Second, these disputes have prolonged over time since 1990. Finally, FIFA resorted to formally suspending the Hellenic Football Federation’s (HFF) membership of FIFA because of government interference (FIFA 2006a) although the decision was reversed just a week after (FIFA 2006b).

Early Conflicts Between FIFA and Greece. The governance framework of modern football in Greece was created in 1979, with the adoption of Law 789/1979, aimed at professionalizing sport structures. The law laid down clear structural guidelines for the governance of football and its intention was to ‘reconcile public interest in footballing activities with commercial and professional requirements’ (Anagnostopoulos 2011, 211). The legislation was adopted at the time with no opposition from the football sector, as it also granted public funding (Anagnostopoulos 2011, 212; Dimitropoulos 2006, 56-57; 2010, 7-9). In the early 1990s the Greek government deemed it necessary to update structures in the face of the massive commercialization and several scandals related to match fixing. Hence, in 1993 the government proposed legislation to overhaul the nomination of referees for league and cup matches and the composition of sport disciplinary courts (Panagiotopoulos and Mourniakis 2006a, 8; 2006b, 190). The HFF did not accept the

proposed measures and decided to involve FIFA. Thus, HFF called on FIFA to formally suspend HFF in order to ‘persuade’ the Greek government not to pursue their legislative proposals. FIFA threatened to suspend the HFF on the grounds of excessive state intervention, which would have led to the exclusion of Greece from the 1994 World Cup. The threat did not need to materialize since the government decided not to go ahead with the proposed legislation (Panagiotopoulos and Mourniakis 2006a, 8).

Second Attempt to Regulate Greek Football Governance. In 1999 the Greek government again decided that professional sport was in need of a tighter regulatory framework, hence proposing a National Sports Act (Law 2725/1999) amending the older legislation (Panagiotopoulos and Mourniakis 2006a, 8). The National Sports Act intended to give the state a greater oversight in governance structures of professional sports (Dimitropoulos 2010). The proposed legislation included, among others, detailed provisions on the composition of disciplinary committees, the election and dismissal procedures of members to the board of the HFF, as well as a regime of incompatibilities for board members (Panagiotopoulos and Mourniakis 2006a, 8-9).

Once again, the HFF complained to FIFA, which adopted a stronger stance than in 1993. After FIFA vice-president David H. Will had visited Athens FIFA concluded that there was ‘ample proof of past and ongoing governmental interference’ in HFF’s affairs (FIFA 2001a). On 19 March 2001, FIFA sent a letter to HFF demanding the Greek government to ‘immediately refrain from interfering with the affairs of the HFF’ (FIFA 2001a). Moreover, FIFA – formally a private entity with headquarters in Zurich – defined a strict deadline:

This undertaking has to be made by the Greek government not later than 30 March 2001. Furthermore, FIFA requests that the required provisions or amendments to Greek sports legislation should be carried out and be in place by 25 April 2001. (FIFA 2001a)

The ‘request’ involved a massive threat since FIFA announced to ‘*be forced to suspend the Hellenic Football Federation with immediate effect from all international football activities*’ (FIFA 2001a, italics by authors), which would have

included suspending Greek clubs from participating in European club competitions and an exclusion of Greece from the upcoming 2002 FIFA World Cup.

The Greek government responded swiftly, which resulted in a meeting in FIFA's Zurich headquarters chaired by President Joseph Blatter and attended by the Greek Secretary of State for Sport and the HFF Chairman (FIFA 2001b). The parties agreed to a roadmap for the reform of the Greek Sports Act and signed a joint declaration where they committed to negotiate a solution in good faith within three months. FIFA became the negotiations' agenda-setter, as the joint declaration stipulated that the working group should act 'on basis of an action plan proposed by FIFA'. The negotiations aimed 'to bring the Greek FA's legal scope of action into line with the FIFA Statutes while at the same time taking into account the guidelines of the Greek Government for national sports policies' (FIFA 2001b). Thus, FIFA decided to put any sanctions against HFF on hold for three months (FIFA 2001b).

The initial deadline of April 2001 was not met but a final agreement was finally signed early in August 2001. According to FIFA, the negotiations had resulted in an agreement normalizing 'the relations between Greek football and the country's governmental authorities *in line with the FIFA Statutes and regulations*' (FIFA 2001c, italics by authors). The government was given a strict deadline to adapt the legislation by mid January 2002. In response, the government modified its legislative draft. According to experts in Greek sports law, most of the initial proposals by the government were watered down and the structures of the HFF remained mostly unchanged (Panagiotopoulos and Mourniakis 2006a, b).

Third Round: FIFA Finally Suspends Greece. Peace did not prevail for long. After the conservative party New Democracy (ND) reaped power in spring 2004 – just months before the Athens 2004 Olympics – sport became a top issue in Greek politics as Prime Minister Costas Karamanlis 'took personal charge of the preparations for the Olympic Games', seizing at the same time control of the culture ministry (responsible for sport) and appointing personal allies in key positions within the public sports sector (Carr 2004).

While the government aimed mainly at ensuring a smooth organization of the 2004 Athens Olympics it also took the occasion to propose new changes to the National Sports Act. As Anagnostopoulos (2011, 212) points out, the minister

responsible for sport, Giorgios Orfanos, intended to intervene in the affairs of the FA by changing the system to elect the president. The sport federations were given six months to amend their statutes, including election systems, which should be then authorized by the responsible minister after checking for compliance (Panagiotopoulos and Mourniakakis 2006b, 190). The proposed changes were not well received by the HFF, not least because incumbent chairman, Vasilios Gagatsis, felt that the amendments reduced his chances for reelection. Actually, the press assumed that the minister was trying to help a candidate from his conservative party to reap HFF presidency from Gagatsis, who was associated with the political opposition (Anagnostopoulos 2011, 212). After elections to the HFF were finally held without changes in the electoral system, the Greek minister for sport withhold all state funding of the HFF. In response, HFF complained to FIFA about the governmental intervention (Anagnostopoulos 2011, 212-3).

The FIFA executive committee meeting in September 2005 gave Greece a deadline of 15 July 2006 to amend the legislation (FIFA 2005; FIFA 2006a). Moreover, governmental interference became an top issue of FIFA's agenda. FIFA was determined to take a strong stance and set-up a Task Force up 'to tackle the problematic issues being faced in football today', which included 'political interference'. The objective of the Task Force was to 'come up with appropriate solutions to fortify the Associations on a long-term basis' (FIFA 2005).

When the Greek government failed to meet the required deadline, FIFA formally suspended the HFF and all its members with immediate effect in July 2006 because 'the commitment expressed by Greek government representatives to amend the law on sport to irrevocably recognize that football matters can only be decided by the HFF and its subordinated football structures has not been respected' (FIFA 2006a)

Thus, faced with a 'rebel' government that insisted on regulating governance structures, FIFA resorted to a level of higher pressure in order to protect its governance domain. The Greek sports minister, Giorgios Orfanos, defended the governmental right to intervene in football governance structures stressing the fact that the HFF received state subsidies and that the government aimed at more democratic voting rules (BBC Sport 2006). However, the suspension and the following overwhelming social and political pressure to comply with FIFA's

demands prompted the Prime Minister to intervene personally (Anagnostopoulos 2011, 214). Just eight days after FIFA decided to suspend Greece, the parliament voted an amendment to the National Sports Act:

Specifically, for the sport of football, all the subjects of functioning and organisation of the sport, the Hellenic Football Federation and its members are self-governed by the HFF and its bodies, according to its statutes and regulations, as well as those that are determined by the Union des Associations Européennes de Football (UEFA) and the Fédération Internationale de Football Association (FIFA), even if different regulations are provided in the law 2725/1999, as it is in effect in the athletic legislation. Subjects of audit for the subsidies that the HFF receives from the state, control of legality, public order and safety are subject to the exclusive competence of the state. (FIFA 2006b)

Once the amendment to the Greek Sports Act was passed, FIFA lifted the suspension (FIFA 2006b). In result, FIFA had obtained from the Greek state an amendment to the National Sports Act that fully exempted HFF from the most important piece of legislation that regulates the sport sector. This unrestricted exemption indicates FIFA's bargaining power *vis-à-vis* the legislature.

FIFA vs. Spain: Persuasion Through the Press

The second case study concerns a conflict between FIFA, the Spanish FA and the Spanish government. In Spain, sport policy-making is a legislative responsibility of the central and regional governments, whilst much of the implementation is delegated to local councils. Thus, the regulation of the sports sector including the governance of modern football is laid down in the Spanish Sports Act of 1990 (Law 10/1990), which is complemented with subsequent regional sports acts, as well as with reasoned decisions, ministerial orders or decrees (Puig, Martínez and García 2010). The Spanish Sports Act has very specific provisions regulating the governing structures of professional sport (García, Palomar and Pérez 2011). Such an 'intrusive' legislative framework made it very likely that FIFA clashed with the Spanish government over the regulation of the Spanish Football Federation (SFF) sooner or later.

The Regulation of Football Governance in Spain. The National Sports Act of 1990 was especially aimed at creating a suitable regulatory framework for professional sport with the objective to ‘establish a model of legal and financial responsibility’ (Law 10/1990, recital). The Act defines the roles of professional clubs, leagues and federations and mandated the transformation of professional clubs into the plc format. As pointed out by Borja García, Alberto Palomar and Carmen Pérez (2011), the consequences of the Spanish National Sports Act for football governance were (i) the creation of an independent professional league, (ii) the privatization of football clubs and (iii) the loss of power of the SFF *vis-à-vis* the league and the clubs.

The Act defines very specifically the roles and responsibilities of sport federations. Federations are described as private entities that act by delegation of the state (Law 10/1990, Article 30). Articles 30 to 40 of the Act prescribe in quite a detailed way the functioning and structures of Spanish sport federations. Among others, the legislation lists the functions and responsibilities attributed to sport federations (article 33), it demands the implementation of good governance principles (article 31), allows only one federation per sport and states that it is the government’s prerogative to regulate the conditions upon which sport federations can be created (articles 34 and 40). The Act demands also the statutes, composition of internal bodies and other governance structures of sport federations to respect the provisions established in the Sports Act and any future regulation (article 31). Moreover, a supervisory body has been established overseeing electoral processes to the federations’ boards and other governing committees (article 38). Thus, Spanish sports law is quite interventionist. Ultimately, conflicts with FIFA arose in spring of 2008 when the Spanish national team was already qualified for the European football championships of 2008.

Electoral Processes in the Spanish Football Federation. The conflict originated about the regulation of the elections to the presidency of the Spanish Football Federation. In December 2007 the Spanish government adopted a ministerial order that required all national sport federations to seek final approval of the Ministry for Sport when designing their electoral processes (Ministerial Order 2007, article 3). However, the real cornerstone of the conflict was the very detailed provisions on the timing of

elections to the presidency of sport federations. Accordingly, the sport federations shall elect their decision making bodies every four years:

Elections will be made to coincide with the year of celebration of the Summer Olympic Games, and must start within the first quarter of this year. However, the Spanish sports federations that participate in the Summer Olympics shall begin their elections within two months from the end of the Olympic Games (Ministerial Order 2007, article 2).

With Spanish football not qualified for the 2008 Olympics, the ministerial order required the SFF to hold elections to the presidency during the first trimester of 2008 (Expósito 2008a), however the incumbent president of the Spanish FA, Angel Villar, wanted to organize the elections in the autumn of 2008 (Mateo 2008a).

FIFA's Threat to the Spanish Government. Up until February 2008, the SFF was not willing to accept the provisions of the ministerial order. At that moment, FIFA President Joseph Blatter decided to intervene. On occasion of a visit to Madrid to pay tribute to football legend Alfredo Di Stéfano, Blatter gave a press conference and sent the Spanish government a clear message:

This situation in Spain is incomprehensible. We fully support the federation and hope that the government understands the risk; FIFA's Emergency Committee could meet in just six hours by phone or electronically to suspend the federation (quoted in Mateo 2008a).

Blatter deemed the ministerial order an 'unacceptable intervention in football matters' and indicated possible consequences: 'It seems as if the Spanish government does not want its national team and its clubs to participate in international competitions' (quoted in Expósito 2008a). Since Blatter referred to the suspension of Greece in 2006 and characterized Spain as a similar case (Expósito 2008a; Mateo 2008a), he gave an informal but robust warning to the Spanish government.

The Spanish Secretary of State for Sport was initially adamant that the SFF shall comply with the legislation: 'I defend the sovereignty of the Spanish state and

the rule of law; we shall respect and enforce the law, and Spanish sport shall be governed in Spain' (quoted in Expósito 2008b). Similar statements were made by the Spanish Prime Minister José Luis Rodríguez Zapatero (El País 2008).

The Spanish FA, however, persisted and in March 2008 the Annual General Assembly (AGM) decided the presidential election would be held in November that year (Carbajosa 2008). The AGM also removed from the statutes a reference stating that the FA would always act 'within the Spanish legal framework' and adopted a clause stating that electoral processes would be regulated by FIFA's code of conduct (Carbajosa 2008; see also Ávila 2008).

These moves represented a clear challenge to the Spanish government (Carbajosa 2008) by demonstrating the supremacy of the *lex sportiva* over the public regulatory framework. Legally, the Spanish FA cannot simply proclaim itself to be outside the regulatory framework of the state. Actually, attempts of the Spanish FA to challenge the Ministerial Order before the Spanish courts failed at every instance (Iusport 2012). Ultimately, the Spanish Supreme Court recognized the government's right to regulate internal processes of sport federations. However, when the Supreme Court ruled the case in 2012 the issue at stake had long passed.

Once the Spanish FA's AGM had formally decided to stage the presidential elections after the 2008 Olympics, the FIFA Executive Committee met in Zurich to express its formal support for the Spanish FA (Mateo 2008b). Blatter sent again a very clear message:

If [the Spanish government] take[s] any decision against the Spanish FA we will have to intervene, and I really do not want to do it. I hope that will not be the case' (quoted in Mateo 2008b).

However, the Spanish government did not give in quickly. The Spanish ministry of sport even suggested that administrative sanctions would be imposed upon the Spanish FA and its president (Suárez 2008a). An attempt of the Spanish Olympic Committee to mediate between the two sides also failed (Suárez 2008a). There were, however, no formal proceedings or sanctions but much public talk through the press, which sufficed to reach a solution in mid-April 2008.

Formally, the Spanish FA presented a written submission to the government in April 2008, simply informing of its decision to hold elections in November (Iríbar 2008). There is no clear trace of evidence as to how this solution was engineered or who mediated, but there are mentions of a ‘semantic pact’ between the FA President and the Secretary of State for Sport (Suárez 2008b). In any case, the Spanish FA elections took place in November. The government, however, was surprisingly at ease with that decision as stated by the State Secretary for Sport and claimed that the postponed election was complying with the ministerial order: ‘Those who think that this delay is not complying with our own ministerial order are wrong’ (quoted in González-Martín 2008).

Thus, the football organizations managed to get their own way when faced with the regulatory interventions of the national governments. The presidential elections to the Spanish FA were held on 24 November 2008 and the incumbent President, Angel Villar was re-elected without any opposition (Suárez 2008c). Whereas Villar has kept his position since then, his political rival, Secretary of State for Sport, Jaime Lissavetzky, had to leave office in 2011 when the Spanish Socialist Party lost the elections.

FIFA vs. Poland: Protecting Incapable Governance

Our third case study involves Poland. the Polish case shows substantial similarities with the Greek case and is well reported (Bunikowski 2008, Kędzior and Szczepanik 2011, Włoch 2012). Thus, it will be reported briefly. As typical for a bureaucratic configuration, there is a legislative framework for professional sport in Poland. Thus, the Bill on Physical Education of 1998 introduced a special ‘sport plc’ format for professional clubs and banned multiple club ownership (Kędzior and Szczepanik 2011, 205). The Law on Qualified Sport of 2005 granted the Minister of Sport substantial supervising powers over sport associations (Radke 2009). Certain contracts including the management of associations’ assets required ministerial approval in case the association received public funding. Moreover, in case of violations of the law the Minister of Sport could suspend the authorities of the association, withdraw its consent for the creation of an association or file a motion for a resolution of an association to a relevant Polish court (cf. Szwed 2011, 63).

Corruption has been an endemic problem within Polish football. The problem's magnitude was revealed after the Polish penal code included a notion on 'sporting bribery' for persecuting corruption in sport on 1 July 2003. After state prosecutors started addressing match fixing and corruption several hundred people including some top officials of the Polish Football Association (PFA) have been charged (Kędzior and Szczepanik 2011, Włoch 2012).

First Round: Responding to Governance Failures. Since the Polish FA took a rather hesitant stance to sanction bribery in football and to relegate clubs involved in match fixing, the government felt obliged to intervene. Thus, in January 2007 the Polish minister of sport suspended the board of the PFA and assumed interim management until the election of a new board. The incumbent board depicted the measure as a violation of the autonomy of sport and was supported by UEFA and FIFA, which demanded the removal of the government's supervisors. FIFA declared that the Polish government would risk not only a suspension of the PFA and all its members but also a denial to access FIFA's Financial Assistance Programme payments. FIFA demanded that the 'internationally recognized administration' of the Polish FA should be allowed to organize elections under the supervision of UEFA and FIFA (FIFA, 2007). In addition, the Polish government was sent signals that Poland's candidature for the Euro 2012 might not be considered. Therefore, the government gave in and removed the supervisor (Kędzior and Szczepanik 2011, 211).

Second Round: Intervening with Support from Polish Sport: Eighteen months later, the Polish government tried again to intervene in the affairs of the PFA after public authorities had become convinced that the PFA leadership knew about match fixing. Moreover, an investigation had detected serious mismanagement in the PFA (Włoch 2012). The government had waited to make its move after UEFA had decided to award the Euro 2012 to Poland and Ukraine. It intervened on 29 September 2008 just one day before candidates for the PFA board were to be nominated (Infotuba 2008). Moreover, the government asked the Polish National Olympic Committee (NOC) to nominate a supervisor. Obviously, the move aimed to present the suspensions as legitimized by a sporting body, hence not as violating the autonomy of sport.

Actually, the NOC deemed the government's request justified and named a supervisor.

UEFA as well as FIFA took a very strong stance and refused to recognize the supervisor. They also contacted the IOC 'to assess the situation of the Polish NOC and the violation of fundamental principles of the Olympic and sporting movement, such as the principle of the autonomy of sports federations' (UEFA 2008). Furthermore, FIFA threatened Poland with exclusion from the 2010 World Cup and announced to cancel upcoming qualification matches (FIFA, 2008, WPROST 2008b). Initially, the Polish Sport Minister, Miroslaw Drzewiecki was confident to convince UEFA and FIFA that violations of the law within the PFA justified the measure (Infotuba 2008a, WPROST 2008a). However, FIFA refused to accept these arguments (WPROST 2008c). According to Kędzior and Szczepanik (2012, 212) UEFA also threatened to withdraw Poland from hosting the 2012 EURO, which would have created an economic disaster for Poland.

In a letter to the Polish Prime Minister, Donald Tusk, and Minister Drzewiecki FIFA defined a clear deadline 'of Monday 6 October at noon' to remove the supervisor (FIFA 2008). The Polish government tried, however, to save its face. Minister Drzewiecki demanded that the PFA had to respect the law and claimed that 'you cannot supervise the fight against corruption and hooliganism if you break the law yourself' (WPROST 2008d). Nevertheless, Drzewiecki negotiated with the incumbent PFA board. Finally, FIFA accepted a compromise according to which the government would remove the supervisor once the independent election committee of the PFA with participation of the Sport Ministry, FIFA and UEFA started preparing the general assembly meeting. In addition, incumbent PFA general secretary Zdzisława Kręciny admitted that violations of law had been the cause for the government's intervention (WPROST 2008e). Thus, the government removed the supervisor on 10 October 2008.

Nevertheless, the new PFA board tried to suspend all further investigation into corruption within Polish football in June 2009. Although the PFA's general assembly voted the proposal down, the PFA appointed officials who seem not keen to tackle corruption (Kędzior and Szczepanik 2011, 212).

Discussion and conclusion

Unquestionable, FIFA has been able to defend the autonomy of football governance against public authorities. FIFA was not only very effective in 'keeping private governance private', it even forced governments to deviate from national paths of sport policy that involved a more active regulatory role for the state and that were completely legitimate as deliberately established in the Spanish case. In Greece, FIFA obtained for the HFF an opt-out from active legislation indicating FIFA's bargaining power. In Poland, the government was more or less forced to accept a hesitant stance towards misconduct in sport. However, the private governance of football provides some more general insights:

Football makes evident that international multilevel private governance can develop efficient escalation mechanism allowing to 'move-up' local conflicts so that national governments face the whole power of a global monopoly regulator. National FAs chose to escalate conflicts by calling on FIFA to suspend them. Given the fact that a suspension would first harm the national FAs, their willingness to escalate indicates their confidence in FIFA's assertiveness. The cases proved this calculus valid.

FIFA's power over national governments results from its total control over access to international football. Denying access implies severe economic consequences for national football industries. FAs and clubs would lose revenues from international football and clubs would suffer from the emigration of top players as their most valuable assets. However, these effects would mainly concern national football industries themselves. Only the threat to suspend Poland as host of the EURO 2012 would have constituted a direct major economic disaster for the Polish government.

Thus, it seems that the governments do not primarily respond to the economic implications of a suspension but to the socio-cultural significance of the football sector. States are willing to waive some of their sovereignty because they are afraid that FIFA's sanctions might mobilize the electorate against the government. Probably no politician wants to be remembered as the one that prevented the national team from participating in the FIFA World Cup or the continental championships. Thus, football's outstanding popularity and role as vehicle of identity politics represents a

major power resource for FIFA. Moreover, civil society does not help to maintain a 'shadow of hierarchy' over private actors. Even when governments aimed to fight corruption, they did not trust their ability to gain voters' support for their policies if these implied short-term drawbacks such as exclusion from international football. However, the surrender of public authorities might also result either from the general low strategic importance of sport or from the lower relative importance of fighting misconduct in comparison with aims of identity politics.

Thus, FIFA represents the paradoxical case of private governance that manages to undermine the sovereignty of national states by providing one of the last venues for national identity politics. Since pluralistic societies are at pains to create images of cohesion, there is no substitute for FIFA's governance contributions. Thus, international football governance represents an institutional equilibrium. Furthermore, politicization and commercialization of international sport have served to increase the political profile of international sport allowing FIFA to shape its political environment.

However, institutions are never static. Although a short-term erosion of FIFA's power seems unlikely, the outcomes of FIFA's political victories appear problematic since some of the governmental interventions which national FAs and FIFA mitigated were intended to mitigate serious governance failures, notably corruption and match fixing (Włoch 2012). Corruption represents an endemic problem for hardly accountable sport bodies experiencing an influx of money. Global betting markets turn match fixing into a large-scale regulatory challenge. Given the failures of anti-doping policies it can be assumed that the capacities of private governance regimes will not suffice to mitigate such large-scale problems and that effective action will probably require cooperation between public and private authorities. Thus, FIFA's deterrence of national governments to fight misconduct in sport could in the long-run serve to destabilize FIFA's private governance.

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¹ Ultimately, however, Havelange's victory in 1974 was made possible by Rous' 'neutral' stance towards Apartheid in South African football (Darby 2006, 2008).