Lex Sportiva:
What is Sports Law?
Series Information

Books in the ASSER International Sports Law Series chart and comment upon the legal and policy developments in European and international sports law. The books contain materials on interstate organisations and the international sports governing bodies, and will serve as comprehensive and relevant reference tools for all those involved in the area on a professional basis.

The Series is developed, edited and published by the ASSER International Sports Law Centre in The Hague. The Centre’s mission is to provide a centre of excellence in particular by providing high-quality research, services and products to the sporting world at large (sports ministries, international—intergovernmental—organisations, sports associations and federations, the professional sports industry, etc.) on both a national and an international basis. The Centre is the co-founder and coordinator of the Hague International Sports Law Academy (HISLA), the purpose of which is the organisation of academic conferences and workshops of international excellence which are held in various parts of the world. Apart from the Series, the Centre edits and publishes The International Sports Law Journal.

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Foreword and Introduction

I am pleased and, indeed, very proud to write the Foreword to this timely book on “Lex Sportiva: What is Sports Law?”, on which vexed question opinion is traditionally divided amongst academics and practitioners.

In this context an international Conference was held in Djakarta, in September 2010, on “The Concept of Lex Sportiva Revisited”. This Conference was organized by Pelita Harap University (UPH) in cooperation with the Indonesia Lex Sportiva Instituta and the ASSER International Sports Law Centre. It was supported by the Office of the Minister of Youth and Sport of the Republic of Indonesia, the National Olympic Committee, and the Indonesian Professional Football League. At the conclusion of this Conference, the “Jakarta Declaration on Lex Sportiva” was adopted and signed on behalf of the newly-established Hague International Sports Law Academy (HISLAC). The Djakarta Conference was, in fact, the first initiative taken by the Academy whose primary ambition is to organize and/or contribute to workshops, seminars and conferences on international law, of excellence. The “Djakarta Declaration on Lex Sportiva”, as well as the Opening Address by Mr. Janez Kocijančič, on behalf the Academy, at the Djakarta Conference are included in this book.

In this context, it is worth setting out here the HISLAC’s explanatory note to the Conference, which *inter alia* reads as follows:

In international academic literature and at international meetings and conferences concerning themes in the area of “sport and the law”, the question is historically discussed whether a separate discipline of “(international) sports law” actually exists, and if so which criteria should be used to identify it and what belongs to it, what it involves. So far, the debate has not run along any structured lines, meaning that different points of view and angles have never been systematically compared amongst experts so as to attempt to possibly reach pertinent conclusions on that basis. This is not only important for the identification and positioning of “sports and the law” or “international sports law” from a purely academic perspective: such a delimitation of the field could also be a practical aid in determining learning materials of such a legal subject or focal area to be taught at universities and elsewhere. The Conference serves to bring together several prominent authors on the subject in order to exchange views with each other and with the Conference participants.
In addition to the papers of the Djakarta Conference, a selection of most relevant English-language articles on the subject of “Lex Sportiva: What is Sports Law?” are included in the book, the final contribution being the inaugural lecture delivered by Professor Robert Siekmann at his accession of the newly-established Chair of International and European Sports Law in the Erasmus University Rotterdam (EUR), in June 2011.

This book is not only an important contribution to the debate on whether there is such a thing as “Sports Law”, but will also stimulate further discussion amongst sports lawyers, academics and researchers on this fascinating and engaging subject. For all of them, this book, I would submit, is essential reading. I, therefore, warmly commend this book to all those with an interest in sport and the continually evolving interface and interaction that exists between sport and the law, as well as the different ways in which they influence one another. And I would also heartily congratulate the editors on publishing it!

Djakarta, Autumn 2011

Hinca I. P. Pandjaitan SH MH ACCS
Executive Director
Indonesia Lex Sportiva Instituta
Honorary Member of HISLAC
1. Opening Address on Behalf of the Hague International Sports Law Academy (HISLAC)\(^1\)

Janez Kocijančič\(^2\)

Dear colleague Dr. Rita Subowo, Chairperson of the Indonesian Olympic Committee, esteemed Rector Professor Jonaan Parapak, esteemed Professor Bintan R. Saragih, ladies and gentlemen, distinguished guests,

I have been given a difficult task to deliver the opening address on behalf of The Hague International Sports Law Academy (HISLAC\(^2\)). Although it is hard to speak to such experts as some of you are, allow me, nevertheless, to go through some basic issues of sports and law:

Sport is a very important phenomenon of the modern society

1. It strengthens some basic human values, it establishes sports ethics and it enhances social cohesion and solidarity. It is beneficial for the public health and I would even say it constitutes an element of democracy.
2. It brings people, especially young people, together, regardless of the social, religious, political, gender and other differences. Moreover, it helps them to overcome these differences.
3. It increasingly represents an important economic activity.
4. In the EU (White book on sport of EU Commission) 2006—sport represents 3.7 % of EU GDP (in my country Slovenia 2.7% in comparison with 2.2% GDP coming from agriculture)
5. It is an important employer: for example, in the EU it employs 5.4% of the entire European workforce; that is 15 million workers.
6. It gradually narrows the division between developed and developing countries, or better said, emerging countries. This boundary is disappearing in sports and

\(^{2}\) President of the National Olympic Committee of Slovenia.
belongs more and more to the past. Just look at the extraordinary sports
achievements of China, Caribbean and some African countries, just take into
the account the choice of the next organizer of the summer Olympic Games in
Rio de Janeiro of Brazil.

There is no doubt that sport is subject to the rule of law. But at the same time
sport is an area which belongs to the civil society and should, therefore, enjoy
large autonomy, including essential self-regulation, which consequently results in
the creation of numerous autonomous rules (e.g. rules of the game, organizational
rules, etc.)

This international conference is going to explore the difficult question of the
so-called “lex sportiva”. The basic theoretical problem of the legal science in sport
is to define the specificity of sport. That means that we have to define what the
particular characteristics of sports are, i.e. the typical features which compared to
other social substructures (like culture or science) allow a set of specific sports
rules, or in other words, which allow even the sport exception or immunity,
complete or partially, with many theoretical and practical legal problems involved.
In short, we have to examine what is so important in sporting problems and
relations that it could command different legal treatment.

In addition to the principle of specificity, our special attention should also be
given to the autonomy of sport, although this principle is less disputed. It is more
than logical and largely accepted that the state and political authorities should not
intervene in the organizational structure of sports.

When we discussed these problems in the Executive committee of European
Olympic Committees we came to the conclusion that the application of “speci-
cficity” and “autonomy” of sport so far, is still not regarded as the guiding prin-
ciples for the relationship between the public sector and civil society. That is why
legal certainly is still missing.

Besides that, financial resources for a sport funding program in Europe remain
doubtful.

These are not only the questions for the lawmakers, politicians and sports
leaders. Before they act it would be advisable that they know the results of the
analysis, the positions and the advice of the sports legal science. Before they or we
act we should use our critical and analytical minds.

This is why a small group of sport lawyers, enthusiasts and scientists, who met
on different occasions and at some congresses of the International association of
the sports law, came to the conclusion that we have to join our forces and do
everything needed to bring the sports legal science to a higher level. We are aware
that high standards of sports legal science exist in some countries, at some
universities and in some institutes, we know of some brilliant scholars, but the
international exchange of views, the international circulation of knowledge and the
high level of scientific dialogue is still missing.

Therefore, a small group of us, Professor Robert Siekmann, Professor Klaus
Vieweg, Professor James Nafziger and myself decided to found The Hague
International Sports Law Academy. You are aware that The Hague is supposed to
be the legal capital of the world and that is the reason why we think that our Academy belongs there, especially also because the famous Asser Institute is located in The Hague. We are planning to organize the activities and legal events all over the world. With great pleasure I am announcing that this meeting in Jakarta is our first activity and we are going to continue this way.

Let me, at the end, tell you that our wish to found the academy has never been a reflection of an ambition to form and run yet another parallel institution and that we do not consider ourselves to be competing with other present organizations in the field of legal science. Our aim is not competition and not quantity; on the contrary, we would like to direct our efforts to the quality. With this in mind, I wish the Dean Professor Bintan R. Saragih and all the participants fruitful deliberations and challenging exchange of views.
2. The Declaration on Lex Sportiva

**DECLARATION ON LEX SPORTIVA**

Jakarta, Indonesia
September 22, 2010

*Meeting* in Jakarta, the capital of Indonesia, to confer on the fertile concept of *Lex Sportiva* in its many manifestations;

*Recognizing* the public and private dimensions of *Lex Sportiva* as well as the significance of both national and international perspectives in defining this concept;

*Expressing* gratitude for the initiative by the Universitas Pelita Harapan and the Indonesia Lex Sportiva Instituta in Jakarta, as supported by the Indonesia Ministry of Youth and Sport, the National Olympic Committee of Indonesia, and the Indonesian League of Football Association;

*Noting* the official establishment today in Jakarta of the Hague International Sports Law Academy;

*Emphasizing* the crucial role of the rule of law and justice to govern the organization of sports and sports activity on the playing field as a cornerstone of civil society;

*Commending* the participants in this Conference for the variety and depth of their insights and outlooks concerning the concept of *Lex Sportiva*;

*Concluding* with the expectation of further international collaboration in the study and progressive development of international sports law in its broadest sense:

We, the undersigned, declare that the success of this initiative today provides a solid foundation for our shared commitment as lawyers and legal scholars from around the world to work together in the interest of the global sports community and public.
Prof. Dr. Robert CR Siekmann  
Director of International Sports Law Center, TMC ASSER Institut, Den Haag, The Netherlands

Prof. Dr. Bintan R. Saragih, SH  
Dean of Faculty of Law, Universitas Pelita Harapan, Tangerang, Indonesia

Prof. Dr. Klaus Vieweg  
Faculty of Law, Friedrich-Alexander University Erlangen Nuremberg, Germany

Dr. Janez Kočičanec  
President of the National Olympic Committee of Slovenia

Prof. Dr. Franck Letty  
Law Faculty of Clermont-Ferrand, University of Auvergne, France

Prof. Dr. James Naftziger  
Thomas B. Stool Professor of Law, Willamette University College of Law, Salem, Oregon, USA

Hinca IP Pandjaitan SH MH ACCS  
Director of Indonesia Lex Sportiva Instituta, Jakarta, Indonesia

Alexandre Miguel Mestre  
PLMJ, Sociedade de Advogados, Lisbon, Portugal
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<tr>
<td>AAA</td>
<td>American Arbitration Association</td>
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<tr>
<td>AALS</td>
<td>The Association of American Law Schools</td>
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<td>ADA</td>
<td>Americans with Disabilities Act</td>
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<td>AIBA</td>
<td>International Boxing Association</td>
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<td>AIGCP</td>
<td>Association Internationale des Groupes Cyclistes Professionnels</td>
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<td>AIWF</td>
<td>Winter Olympic International Federations</td>
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<td>ALR</td>
<td>American Law Reports</td>
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<td>ANOC</td>
<td>National Olympic Committees</td>
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<td>ANZSLA</td>
<td>Australian and New Zealand Sports Law Association</td>
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<td>AOC</td>
<td>Australian Olympic Committee</td>
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<td>ASOIF</td>
<td>Summer Olympic International Federations</td>
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<td>ATP</td>
<td>Association of Tennis Professionals</td>
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<td>BALCO</td>
<td>Bay Area Laboratory Co-operative</td>
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<td>BCCA</td>
<td>British Cyclo-Cross Association</td>
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<td>BGE</td>
<td>Swiss Federal Court</td>
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<td>BITs</td>
<td>Bilateral Investment Treaties</td>
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<tr>
<td>C.M.L.R.</td>
<td>Common Market Law Report</td>
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<tr>
<td>Cal. Rptr.</td>
<td>California Reporter (West)</td>
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<tr>
<td>CAS</td>
<td>Court of Arbitration for Sport</td>
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<td>CBA</td>
<td>Collective bargaining agreement</td>
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<tr>
<td>CIO</td>
<td>International Olympic Committee</td>
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<tr>
<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<td>CLR</td>
<td>Commonwealth Law Reports (Australian’s High Court law reporter)</td>
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<td>CONI</td>
<td>Italian Olympic Committee</td>
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<tr>
<td>CPA</td>
<td>Cyclistes Professionnels Associés</td>
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<tr>
<td>DRC</td>
<td>FIFA Dispute Resolution Chamber</td>
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<tr>
<td>E.D. Pa.</td>
<td>District Court Eastern District of Pennsylvania</td>
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<tr>
<td>ECJ</td>
<td>European Court of Justice</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>ECR</td>
<td>European Court Reports</td>
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<tr>
<td>EFFC</td>
<td>European Federation of Professional Football Clubs</td>
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<tr>
<td>EPCT</td>
<td>International Professional Cycling Teams</td>
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<tr>
<td>EPFL</td>
<td>European Professional Football Leagues</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FAT</td>
<td>FIBA Arbitral Tribunal</td>
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<tr>
<td>FEI</td>
<td>International Federation for Equestrian sport</td>
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<tr>
<td>FFTri</td>
<td>Fédération Française de Triathlon</td>
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<tr>
<td>FIBA</td>
<td>International Basketball Federation</td>
</tr>
<tr>
<td>FIBT</td>
<td>International Bobsleigh and Tobogganining Federation</td>
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<tr>
<td>FIFA</td>
<td>International Federation of Association Football</td>
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<tr>
<td>FIFPro</td>
<td>Fédération Internationale des Associations de Footballeurs Professionnels</td>
</tr>
<tr>
<td>FIG</td>
<td>International Gymnastics Federation</td>
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<tr>
<td>FILA</td>
<td>Fédération Internationale de Luttes Associées</td>
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<tr>
<td>FIM</td>
<td>Fédération Internationale de Motocyclisme</td>
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<tr>
<td>FINA</td>
<td>International Swimming Federation</td>
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<tr>
<td>GSLTR</td>
<td>Global Sports Law and Taxation Reports</td>
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<tr>
<td>I.S.L.R.</td>
<td>International Sports Law Review</td>
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<tr>
<td>IAAF</td>
<td>International Association of Athletics Federations</td>
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<tr>
<td>IADA</td>
<td>International Anti-Doping Arrangement</td>
</tr>
<tr>
<td>IBA</td>
<td>International Baseball Association</td>
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<tr>
<td>ICANN</td>
<td>Internet Corporation for Assigned Names and Numbers</td>
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<tr>
<td>ICAS</td>
<td>International Council of Arbitration for Sport</td>
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<tr>
<td>ICSID</td>
<td>International Centre for the Settlement of the Investment Disputes</td>
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<tr>
<td>IF</td>
<td>International Federation</td>
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<tr>
<td>IILJ</td>
<td>Institute for International Law and Justice</td>
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<tr>
<td>IJF</td>
<td>International Judo Federation</td>
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<tr>
<td>IOC</td>
<td>International Olympic Committee</td>
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<tr>
<td>ISLJ</td>
<td>The International Sports Law Journal</td>
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<tr>
<td>ITU</td>
<td>International Triathlon Union</td>
</tr>
<tr>
<td>IWF</td>
<td>International Wrestling Federation</td>
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<tr>
<td>Law &amp; Soc. Rev.</td>
<td>Law &amp; Society Review: Journal Information</td>
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<tr>
<td>LGDJ</td>
<td>La Guilde Des Joueurs (The Guild of Players)</td>
</tr>
<tr>
<td>MHSAA</td>
<td>Michigan High School Athletic Association</td>
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<tr>
<td>MLB</td>
<td>Major League Baseball</td>
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<tr>
<td>NCAAA</td>
<td>National Collegiate Athletic Association</td>
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<tr>
<td>NFL</td>
<td>National Football League</td>
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<tr>
<td>NOC</td>
<td>National Olympic Committee</td>
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<tr>
<td>NWBA</td>
<td>National Wheelchair Basketball Association</td>
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<tr>
<td>OG</td>
<td>Olympic Games</td>
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<tr>
<td>PGA</td>
<td>Professional Golfers’ Association</td>
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<td>PIL</td>
<td>Swiss Federal Code on Private International Law</td>
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PIL Act  Swiss Private International Law Act  
S. Tex. L. Rev.  South Texas Law Review  
S.D.N.Y.  District Court for the Southern District of New York  
SLOC  Salt Lake Olympic Committee  
SOCOG  Sydney Organising Committee for the Olympic Games  
T.L.R.  Texas Law Review  
TEU  Treaty on European Union  
TFEU  Treaty on the Functioning of the European Union  
UCI  Union Cycliste Internationale (International Cycling Union)  
UDRP  Uniform Domain Name Dispute Resolution Policy  
UEFA  Union des Associations Européennes de Football  
UIT  Union Internationale de Tir  
UNESCO  United Nations Educational, Scientific, and Cultural Organization  
UPH  Pelita Harapan Universitas  
USATF  USA Track and Field  
USOC  United States Olympic Committee  
Val. U. L. Rev.  Valparaiso University Law Review  
W. D. Mich.  District Court for the Western District of Michigan  
W.L.R.  Weekly Law Reports (UK)  
WADA  World Anti-Doping Agency  
WADC  World Anti-Doping Code  
WTO  World Trade Organization