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11

The Accountability Response of the Global Anti-doping Regime to the Russian Doping Scandal (2015-2020)

Slobodan Tomic and Rebecca Schmidt

11.1 INTRODUCTION

This chapter looks into the response of the global, public–private regime of anti-doping regulation in sports to the Russian doping scandal from late 2014,[1] which revealed a state-sponsored doping scheme that enabled Russian athletes to take prohibited doping substances during their preparation for and participation at several international tournaments. The scandal highlighted the inadequacy of the system's regulatory framework and raised multiple accountability issues relating both to the "field level" and the governing level. The former includes actors involved in the operational aspect of the anti-doping policy, namely athletes, local anti-doping agencies, and testing laboratories, and the latter includes the governing body of the sports governance regime, the International Olympic Committee (IOC) and its anti-doping regulator, the World Anti-Doping Agency (WADA).

The scandal put enormous pressure on the IOC and WADA to demonstrate a strong accountability response. In this chapter, we explore the resilience of the regime by examining whether and to what extent it has been responsive to accountability calls. We look into two key aspects of the regime's response: Its ad hoc accountability measures as well as systemic changes to its accountability framework. This is to address both notions of accountability – "as a virtue" and "as a mechanism."[2] The former refers to the normative dimension of accountability and focuses on whether an actor takes measures that others see as signs of responsible conduct. The latter refers to the prescriptive-legal dimension of accountability and analyzes whether appropriate accountability provisions are set out in the regime's legal framework.

[1] The timeframe for the analysis is until 2020. It is possible that, between 2020 and the time of reading, further developments and changes within the antidoping and Olympic regime occurred, but they go beyond the timeframe of the analysis.

[2] M. Bovens, Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism (2010) 33 *West European Politics* 946.

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The anti-doping regime is an interesting case for the study of organizational resilience and adaptability because, at the time of the scandal outbreak, it lacked an accountability mechanism for its governing organizations – the IOC and WADA. Neither of them was subject to the formal scrutiny of stakeholders, their performance indicators were not defined, and they could not bear any consequences for their potential failures or underperformance.

Prior to 2015, the Olympic regime's legal framework and related statutory documents, such as the Olympic Charter and World Anti-Doping Code, defined none of Mashaw's five parameters of accountability: To whom, how, for what, in accordance with what standards, and with what consequences its governing organizations are accountable.[3] Furthermore, the regime has featured a favorable political economy for non-responsiveness to stakeholders, as athletes from around the world and other regime stakeholders, such as sponsors, sports clubs, and sports federations, could not defect to or create a competing international sporting regime. This has rendered the IOC and the wider sports governing regime a "hard case" for the pursuit of accountability.

Given this constellation, the Russian doping scandal has posed a curious empirical puzzle: On the one hand, the regime has found itself under enormous legitimacy pressure. A theoretical expectation is that, in such situations, regimes seek to demonstrate a strong accountability response. The exercise of accountability is crucial for repairing lost legitimacy,[4] and legitimacy represents a critical "ingredient" for regimes' survival. On the other hand, the regime's "foreclosed" political economy has afforded it a position from which it could demonstrate little responsiveness to stakeholders' concerns at almost no cost to the formal position and power of its governing organizations.[5] What, then, has the regime's accountability response been in this constellation featuring two contrasting forces, namely soaring legitimacy pressures versus a "foreclosing" structure?

11.2 THE PRACTICE AND SYSTEMS OF ACCOUNTABILITY IN TRANSNATIONAL REGIMES

11.2.1 *Defining and Conceptualizing Accountability*

The pursuit of accountability is a process in which one actor is justifying its own conduct to another actor, or a group of actors, with the possibility of bearing

[3] J. L. Mashaw, Accountability and Institutional Design: Some Thoughts on the Grammar of Governance, Yale Law School, Public Law Working Paper No. 116, in *Public Accountability: Designs, Dilemmas and Experiences* (M. W. Dowdle ed., 2006), at 115.

[4] J. Black, Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes (2008) 2 *Regulation & Governance* 137, at 146.

[5] There are sanctions such as a reprimand and suspension for a specific period that the IOC Session, Executive Board or disciplinary commission can take against individual members of the IOC that have violated "Olympic Charter, the World Anti-Doping Code, the Olympic Movement Code on the Prevention of Manipulation of Competitions or any other decision or applicable regulation issued by the IOC". (see Olympic Charter 2021, s 59).

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sanctions for this conduct.[6] The pursuit of accountability can be part of a formalized process, but it can equally be less institutionalized – accountability can be sought and demonstrated without a formal obligation. Alongside a controlling function, accountability has a learning function, too.[7] It can help the regime's authorities to identify and remove failings that have been plaguing regime constituents/users. Addressing such failings will increase the regime's resilience[8] making it fit for purpose. As such, the regime would continue operating without a breakdown or demise.

While some authors have discussed accountability referring to arguably equivalent concepts such as responsibility,[9] others see accountability as a unique concept, often understood as comprising multiple dimensions. One of the most prominent multidimensional frameworks that deconstructs the meaning of accountability is that by Koppell, which points to five conceptions of accountability: transparency, liability, controllability, responsibility, and responsiveness.[10] To map out the accountability response of the global anti-doping regime to the Russian scandal, we have deployed Koppell's framework, questioning to what extent the regime has demonstrated each of its five conceptions (Table 11.1).

TABLE 11.1. *The five dimensions of accountability*[a]

Conception of accountability	Key determination
Transparency	Did the organisation reveal the facts of its performance?
Liability	Did the organisation face consequences for its performance?
Controllability	Did the organisation do what the principal desired?
Responsibility	Did the organisation follow the rules?
Responsiveness	Did the organisation fulfil the substantive expectation (demand/need)?

[a] Koppell, Pathologies of Accountability, at 96.

11.2.2 *Accountability and Legitimacy in Transnational Regulatory Regimes*

Legitimacy is a key factor for motivating regulatees' compliance and stakeholders' support,[11] and it is the pursuit of accountability that enables the building,

[6] M. Bovens, Analysing and Assessing Accountability: A Conceptual Framework (2007) 13 *European Law Journal* 447, at 451.

[7] Ibid, at 464.

[8] P. Delimatsis, The Resilience of Private Authority in Times of Crisis: A Theory of Free-Riding of Private Ordering, in *The Evolution of Transnational Private Rule-makers: Understanding Drivers and Dynamics* (P. Delimatsis ed., 2021).

[9] Bovens, *supra* note 5.

[10] J. G. S. Koppell, Pathologies of Accountability: ICANN and the Challenge of "Multiple Accountabilities Disorder" (2005) 65 *Public Administration Review* 94, at 96.

[11] M. C. Suchman, Managing Legitimacy: Strategic and Institutional Approaches (1995) 20 *Academy of Management Review* 571.

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maintaining, and repairing of legitimacy.[12] Regimes enjoying low legitimacy can hardly prevent stakeholders' defection to or creation of competing regimes. It has been argued that the adoption of a robust accountability framework is an important strategy for repairing legitimacy particularly during crisis times.[13]

Outside the context of nation-states, developing accountability systems is far from a standardized and predictable process. In the context of transnational governance, there is no democratic legitimation, and the regime complex can involve multiple actors and interdependencies.[14] Allocating power within and across stakeholder groups can be difficult and deciding who should be accountable, to whom, for what, and under which standards[15] is not straightforward. Further, accountability processes can be hindered by an ongoing power dynamic among the regime actors, particularly where there is one or more predominant "veto-player" actor. That is the case with the International Olympic Committee, which, before the creation of the hybrid (public–private) anti-doping regime and its regulator WADA in 1999, had been building for about a century its supreme authority as the (sole) owner of the private transnational system of Olympic governance.

11.3 THE SETUP OF THE ANTI-DOPING REGIME PRIOR TO THE SCANDAL OUTBREAK

The anti-doping regime is a hybrid, polycentric regime, nested within the global system of sports governance.[16] It is comprised of several actors who come from two main communities, namely the sporting and anti-doping communities (See Figure 11.1).

At the uppermost level is the IOC, which is the supreme authority of the global sports governance system. The IOC is a nongovernmental sports organization based in Switzerland, created in 1894, responsible for promotion of the Olympic movement and organizing of the Summer and Winter Olympic Games.[17] At a lower, medium level of the governing tier of the regime, is WADA, the global anti-doping regulator whose task is to develop and oversee the implementation of the anti-doping policy in international sports. WADA was established in 1999[18] after a group of

[12] Black, *supra* note 3. R. Mulgan, "Accountability": An Ever-Expanding Concept? (2000) 78 *Public Administration* 555.
[13] Black, *supra* note 3, at 146–147.
[14] C. Scott, F. Cafaggi, and L. Senden, The Conceptual and Constitutional Challenge of Transnational Private Regulation (2011) 38 *Journal of Law and Society* 1.
[15] Mashaw, *supra* note 2.
[16] L. Casini, Global Hybrid Public–Private Bodies: The World Anti-doping Agency (WADA) (2009) 6 *International Organizations Law Review* 421.
[17] R. Bartlett, C. Gratton, and G. Christer, *Encyclopedia of International Sports Studies* (2012), at 678.
[18] WADA is registered as "a Swiss private law, not-for-profit Foundation." See WADA, Governance: Overview of WADA's Governance, www.wada-ama.org/en/governance.

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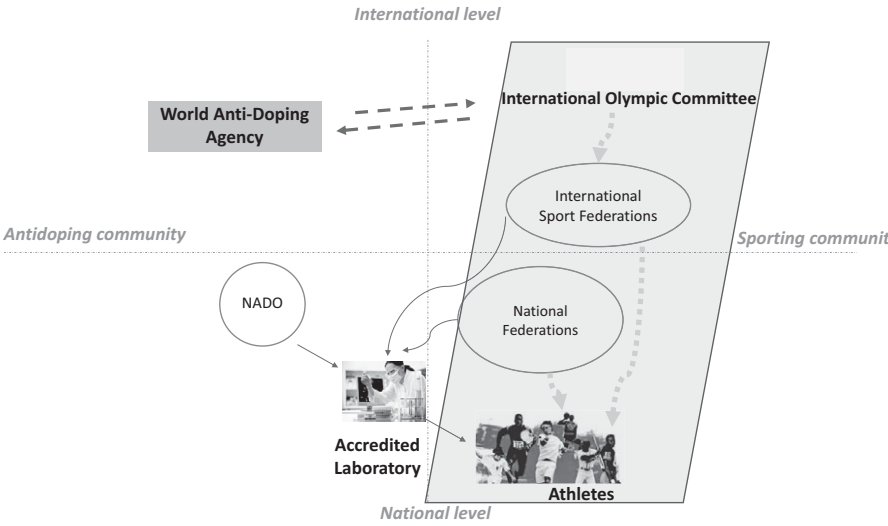

FIGURE 11.1. The structure of the anti-doping regime as a regime nested within the broad international system of sports governance

governments put pressure on the IOC to create a specialized anti-doping regulator as a response to the doping scandal in cycling.[19]

WADA's mission is to direct and monitor the work of specialized anti-doping organizations. Its tasks include research, education, development of anti-doping capacities, and monitoring of how the World Anti-Doping Code (henceforth, Code) is enforced by anti-doping organizations and by members of the Olympic system.[20] WADA's work is governed by the regime's statute and the Code, whose provisions have been incorporated into international legislation through UNESCO provisions and the Council of Europe Convention on Sports.[21] The Code is globally harmonized, having been adopted by a large number of Code signatories, including the IOC, the vast majority of international and national sports federations, national and regional anti-doping organizations, local anti-doping laboratories, and other actors.

Although it is a stand-alone regulator, WADA, by institutional design, enjoys low institutional autonomy[22] from the IOC. Since its creation, WADA has been run (and funded) in equal proportions by IOC representatives and representatives of

[19] D. V. Hanstad, A. Smith, and I. Waddington, The Establishment of the World Anti-doping Agency: A Study of the Management of Organizational Change and Unplanned Outcomes (2008) 43 *International Review for the Sociology of Sport* 227.

[20] World Anti-Doping Code 2021, pt 1.

[21] Hanstad et al., *supra* note 18.

[22] K. Verhoest, B. G. Peters, G. Bouckaert, and B. Verschuere, The Study of Organisational Autonomy: A Conceptual Review (2004) 24 *Public Administration and Development: The International Journal of Management Research and Practice* 101.

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national governments, who each nominate eighteen members[23] out of the maximum thirty-eight of the WADA Foundation Board. Similarly, the Executive Board of WADA, a twelve-member body elected by the Foundation Board, comprises an equal number of government and IOC delegates.[24] Despite this parity, in practice, the IOC's influence over WADA is perceived as greater because its members, both on the WADA Executive Committee and on the Foundation Board, make for a more homogenous bloc and mobilize more easily.[25] A WADA director general is not allowed to hold dual roles, although all of WADA's presidents in their prior career had served as IOC members (most of them coming from a prior governing role in an international or national sports federation).

At the lowest operational level of the anti-doping regime are specialized anti-doping bodies and sport governing organisations. These specialized bodies include regional and national anti-doping organizations (RADOs/NADOs) and testing laboratories. Sport governing bodies include international sports federations (IFs, of which there are more than fifty globally, one for each sport in the Olympic realm). While WADA sets the anti-doping policy, develops doping standards, and monitors their implementation, these standards are in practice implemented by the RADOs and NADOs, whose mission is to develop strategies that set out when and which athletes will be tested. RADOs and NADOs direct and execute the testing of athletes, and when they discover that an athlete has violated the Code by taking a prohibited substance, they are supposed to inform the athlete's sports organization, which then determines the sanction (within the statutory prescribed range). The appellate body for doping-related sanctions is the Swiss-based Court for Arbitration in Sports (CAS).[26] The work of RADOs and NADOs is overseen by WADA.[27]

11.3.1 *A 'Void Accountability Mechanism' for the Governing Bodies and a Weak Accountability Framework at the Operational Level*

When the Russian doping scandal hit, WADA and IOC were widely perceived as the foremost responsible entities for the anti-doping policy. However, at that point, neither was subject to the usual mechanisms of accountability, such as, for instance, dismissal of functionaries, ex-post reporting, and other sorts of performance audit and sanctions. The Code, like the Olympic Charter, did not designate WADA as answerable for the anti-doping policy to external forums, the IOC included. Like the Olympic Charter, the Code did not specify performance benchmarks, sanctions, or

[23] WADA Constitutive Instrument of Foundation 2016, Article 6.

[24] Ibid., Article 11.

[25] B. Houlihan and D. V. Hanstad, The Effectiveness of the World Anti-Doping Agency: Developing a Framework for Analysis (2019) 11 *International Journal of Sport Policy and Politics* 203, at 210.

[26] Olympic Charter 2021, s 61, at 108.

[27] World Anti-doping Code 2021, Article 25.1, at 157.

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means through which sanctions shall take place (in cases of policy failure and underachievement).

The effectiveness of RADOs and NADOs is crucial for preventing and suppressing doping among athletes. However, in the period preceding the scandal, WADA had lacked the necessary capacity and authority to adequately monitor them and to make sure their conduct was within the prescribed standards. WADA's lack of ability to exert strong control over the sporting and specialized anti-doping organizations operating at the local level directly impacted the prospects of accountability for the doping athletes. Further, the system's design, prior to the scandal, featured various in-built conflicts of interest. For instance, the sanctions for athletes who were caught doping were decided by national and international sports federations, whose commercial and sport promotion interests could prevail over anti-doping efforts.[28] This could lead them to abstain from imposing (harsh) punishments[29] or to avoid them altogether.[30] Also, domestic authorities could collude with the NADO or national laboratories to produce deliberately ineffective targeting strategies for athlete testing or to tamper with or misreport evidence in potential discoveries of doping.

The result of the weak control framework at the operational level was that the system of anti-doping was ineffective, as indicated by recurring low rates of positive tests. In 2016, out of about 300,000 tests conducted worldwide, only 4,822 were adverse findings,[31] amounting to a catching rate of only 1.6 percent. Based on their anonymous survey of elite athletes, Ulrich and colleagues[32] estimate a 30–31 percent prevalence of doping among athletes at the world championships level. The targeting strategies by NADOs were thus suboptimal, and "dopers" enjoyed an advantage over the authorities in the use of the latest medical technology.

The monitoring framework was sporadically tightened through measures such as the introduction of the "whereabouts rule," which mandated athletes to report their whereabouts for one hour each day and to make themselves available every day for

[28] D. Read, J. Skinner, D. Lock, and B. Houlihan Legitimacy Driven Change at the World Anti-Doping Agency (2019) 11 *International Journal of Sport Policy and Politics* 233, at 241.

[29] R. W. Pound, The Russian Doping Scandal: Some Reflections on Responsibility in Sport Governance (2020) 1 *Journal of Olympic Studies* 3, at 8–9.

[30] A notable example is a Russian athlete who was fined in 2009 by the IAAF after repetitive indications in blood markers of such extreme levels of red blood cells that a heart attack was a possibility. See House of Commons Digital, Culture, Media and Sport Committee, Combatting Doping in Sport: Fourth Report of Session 2017–19 (February 27, 2018), para 18, at 8.

[31] WADA, 2016 Anti-doping Testing Figures (2016), www.wada-ama.org/sites/default/files/resources/files/2016_anti-doping_testing_figures.pdf, at 1.

[32] R. Ulrich, H. G. Pope, L. Cléret, A. Petróczi, T. Nepusz, J. Schaffer, G. Kanayama, R. D. Comstock, and P. Simon, Doping in Two Elite Athletics Competitions Assessed by Randomized-Response Surveys (2018) 48 *Sports Medicine* 211. The estimates were based on surveys conducted at the IAAF World Championships in Athletics in 2011.

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a potential no-notice drug test.[33] Another examples was the introduction of so-called Athlete Biological Passports – a WADA database of athletes' testing results that enables cross-time tracing of athletes' markers and identification of suspicious sample patterns even when they are within the prescribed limits. However, despite the progress that these measures allowed for, the system could still be "cheated" on the ground. As the investigation into the Russian doping scandal revealed, state authorities were able to obstruct the control process by pressing the RUSADA (the national Russian NADO) to under-target expected cheaters or misreport the sample analysis[34] during their preparations for international competitions such as the London Summer Olympics 2012,[35] or, in the case of the Russian hosting of the Winter Olympics in Sochi 2014, by coercing on site, at the Olympic village, the lab staff to tamper with the collected samples.

Overall, the regulatory system that was in place prior to the outbreak of the Russian doping scandal suffered from two major accountability deficits. First, at the governing level, its main organizations – IOC and WADA – were not subject to any formal accountability obligations. Second, WADA's capacity to monitor the enforcement of its policies through a network of local anti-doping bodies was weak. This increased the possibilities for athletes to dope with impunity, reducing accountability prospects for this "target" population.

11.3.2 *The Role of the State*

While, back in 1999, the anti-doping regime emerged due to pressure by nation-states, whose representatives have since co-participated in the running of WADA, the state has generally had limited capacity to intervene in the regime's mechanics within the wider context of the IOC's ownership and running of the global Olympic regime. It is one of the rare transnational regimes that originated "organically" as a private actor, through "entrepreneurial development of authority"[36] (the regime was created in the late nineteenth century, by Pierre de Coubertin)[37] rather than through delegation by the state.[38] Over time, it has independently developed its expertise, and reinforced its position as the sole possible owner of a global sports competition. Due to the regime's monopolistic position in running Olympic Games, creating a competing transnational regime has de facto not been viable. Historically, the IOC did not need the state's recognition and support to obtain

[33] World Anti-doping Code 2015, Articles 2, 4, and 5.
[34] House of Commons Digital, Culture, Media and Sport Committee, *supra* note 29, at 10.
[35] Ibid, at 8.
[36] S. Eckert, *Corporate Power and Regulation* (2019), at 7.
[37] https://olympics.com/ioc/pierre-de-coubertin#:~:text=Pierre%20de%20Coubertin%3A%20Visionary%20and%20Founder%20of%20the%20Modern%20Olympics&text=International%20Olympic%20Committee.
[38] J. F. Green, Transnational Delegation in Global Environmental Governance: When Do Non-state Actors Govern? (2018) 12 *Regulation & Governance*, at 263–276.

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legitimacy. Today, despite the state's presence in WADA the IOC still has a crucial say over what the anti-doping regime will look like. As such, it has enjoyed better preconditions for resilience than the majority of other transnational private regimes and has been less dependent on the state for survival, including with regards to financial and operational considerations.

So far, the state has mainly acted as a disruptor, that is, an underminer of the current regime, rather than as a facilitator of its resilience and survival. As will be seen in the review of the Russian doping scandal, the state has the possibility to obstruct the anti-doping system of controls on the ground.[39]

11.4 THE OUTBREAK OF THE SCANDAL AND THE REGIME'S ACCOUNTABILITY REACTIONS

News of the Russian doping scandal broke in 2015 after German TV channel ARD released a documentary in which two Russian whistleblowers – a medal-winning runner and her coach – confessed that the Russian authorities had orchestrated a doping scheme in order to maximize the achievement of Russian athletes at international competitions.[40] The scheme had been going on for several years, enabling a number of Russian athletes to compete doped at several major international competitions, including the 2012 Olympic Games in London and the 2014 Winter Olympics in Sochi. About a year later, a Russian doctor, Grigory Rodchenkov, who had defected to the United States from the Moscow Anti-Doping Center (Russia's laboratory), confirmed the scheme in an interview with the *New York Times* in which he revealed further details of Russian public authorities' involvement.[41]

As the scandal gained public traction, WADA decided to investigate it. Thus, within a year (November 2015–December 2016), WADA undertook two investigations that resulted in three reports, all finding considerable evidence of a state-orchestrated doping scheme.

The first investigation, led by the former WADA President Richard Pound, found evidence that, both voluntarily and under pressure, athletes were taking doping substances in order to improve their individual and team performances.[42] The report

[39] Other states, such as those belonging to the "Western bloc," have often acted from an "enlightened self-interest" position when calling for reform of the anti-doping system, as a fair and doping-free competition would arguably them to capitalize on their allegedly superior recruitment and work with sport talent.

[40] H. Suppelt, Top Secret Doping: How Russia Makes Its Winners (December 3, 2014), www.imdb.com/title/tt5922854.

[41] R. R. Ruiz, J. Macur, and I. Austin, Even with Confession of Cheating, World's Doping Watchdog Did Nothing, *The New York Times* (June 15, 2016).

[42] Independent Commission, The Independent Commission Report #1: Final Report, (WADA, November 9, 2015), at 11.

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also found that the cheating was facilitated and covered up by doctors, coaches, and laboratory personnel, indicating "a deeply rooted culture of cheating" in the Russian Olympic team.[43] In some sports, such as athletics, cheating was further facilitated through corruption at the international federation level, where intermittent reports of possible doping were ignored or covered up.[44]

The second investigation, led by Richard McLaren, a Canadian attorney and a former president of WADA, focused on the 2014 Winter Olympics. This investigation resulted in two successive reports. The first report, published prior to the Rio Olympics in July 2016, drew on witness testimony, analysis of thousands of documents, forensic analysis of seized hard drives, urine samples, and laboratory results.[45] The report found, beyond reasonable doubt, that there had been an orchestrated doping scheme during the Sochi Olympics, which was perpetuated through a so-called disappearing positive (test) methodology at the testing premises, where state intelligence agents were swapping dirty urine samples with pre-supplied clean samples at the lab, located in the Olympic Village.[46] From a tiny fraction of reexamined samples that were declared clean following the initial laboratory analysis, the investigation found that as many as 643 were, in fact, positive.[47] The full scale of the cheating could not be determined though, since the vast majority of the samples were still being withheld by Russian authorities.[48]

The second McLaren report was published after the Rio Olympics in December 2016. It discovered more than 1,000 new positive samples of Russian athletes[49] relating to prior competitions. Based on this, the report concluded that the scheme had been in place for several years at least, and that, over time, particularly prior to and during the 2012 London Olympics and the Winter Olympics in Sochi, it was further refined.

Overall, the WADA investigations found that the doping scheme involved over 1,000 Russian athletes in more than 30 sports who were assisted or pressured by their medical staff to take doping substances. These findings put pressure on the anti-doping regime to act in two main directions: (a) to sanction the perpetrators of the scheme and those actors whose omissions, or complicity, allowed the scheme to continue until the scandal broke and (b) to improve the governance structure of the anti-doping regime in order to reduce opportunities for athletes to dope with impunity.

[43] Ibid., at 10.
[44] Ibid., at 11–12.
[45] R. H. McLaren, The Independent Person Report: WADA Investigation of Sochi Allegations (July 16, 2016), at 5.
[46] Ibid., at 67–72.
[47] Ibid., at 36.
[48] Ibid., at 39.
[49] R. H. McLaren, The Independent Person 2nd Report: WADA Investigation of Sochi Allegations (December 9, 2016), at 57.

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11.5 ANALYZING THE REGIME'S RESILIENCE THROUGH ITS ACCOUNTABILITY RESPONSE

This section analyses the anti-doping regime's response in the five years after the scandal, looking across the five dimensions of accountability set out by Koppell.[50]

11.5.1 *Transparency*

Transparency is the component where the regime's accountability response throughout the observed period (2015–2020) was the strongest, although this increase in transparency was mostly based on ad hoc responses rather than the institutionalization of transparency mechanisms. Furthermore, there are still objections from stakeholders that, in some mechanisms, transparency needs to be further strengthened, primarily within the governing tier of the regime, where calls have been made for the adoption of permanent transparency measures.

It is WADA that spearheaded the regime's efforts to respond to the scandal with increased transparency and, subsequently, with building new transparency mechanisms into the regulatory system. The IOC was making pledges during the observed period to enhance its transparency level as well, but in practice it adopted fewer transparency measures than WADA.

WADA's publication of the three investigation reports could in itself be seen as a significant measure of ad hoc transparency, although a previously leaked memo revealed that its president instructed its staff to monitor public reaction before deciding whether to start an investigation, a detail that indicates WADA's opportunism.[51] Nonetheless, the significance of the WADA investigations into the Russian doping scheme was paramount for the regime's later developments in accountability. The resulting investigation reports brought to light a number of key facts and findings in relation to the suspected doping scheme. They not only confirmed that the scheme happened but also highlighted the weak spots in the regulatory system. The findings increased the initially dismissive IOC to take more than a symbolic action in response to the scandal. They also reduced the credibility of early denials of other organizations from the sports movement that the doping scheme claims are fabricated or ill-intentioned. As WADA's investigation reports revealed, new details and evidence of the doping scheme, the IOC could no longer resist taking stronger accountability measures and could hardly oppose the reform initiatives launched by WADA.

[50] Koppell, *supra* note 9.

[51] For instance, on August 4, 2015, Lord Coe, then a vice-president of the International Athletics Federation (IAAF), described the doping scheme stories published by journalists in the United Kingdom, and Germany as "a declaration of war on our sport." See House of Commons Digital, Culture, Media and Sport Committee, *supra* note 29, at 7.

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Regarding its internal governance, over the last few years WADA adopted several rules, including the one on publication of all details related to the work of its bodies, from the Foundation Board to various commissions and other units. Note, though, that the Executive Committee has been a partial exception to this positive transparency trend. As critics observed, instead of verbatim minutes, edited minutes – in third person – were published for meetings of the Executive Committee; those minutes were often published late, several months or even more than a year after a meeting.[52] Recently, the US Anti-Doping Agency and Olympic & Paralympic Committee required WADA to make all Executive Committee and Foundation Board decisions publicly available.[53]

WADA also started producing and publishing annual compliance reports,[54] which present detailed information about the activities undertaken in the previous year to advance anti-doping efforts and their effects. It also introduced external audits to strengthen "outside" monitoring of its work. These measures could be seen as including two accountability dimensions, namely transparency and controllability. Still, WADA also adopted a rule to move the promulgation of actors' noncompliance with the Code from the Foundation Board's to the Executive Committee's remit. This was criticized by the athletes as a measure that reduces transparency, given that the work of the Executive Committee was not open to the public and the athletes could not get real-time updates regarding the promulgation of actors' noncompliance with the Code.

At the operational level of the regulatory system, WADA's reform of the monitoring framework has led to the adoption of several instruments that have helped the collection of information on developments in the field. These instruments include the Code Compliance Questionnaire (CCQ), which every NADO/RADO are obliged to fill in on an annual basis. CCQ include reports of all relevant information related to the NADOs'/RADOs' work environment and developments on the ground, starting from their capacities, through challenges that might pertain to their specific environment, to other details that could affect the anti-doping fight. CCQ are followed by physical audit visits of WADA inspectors.

In its response to the scandal, the IOC demonstrated much less ad hoc transparency, contributing little to WADA's early efforts to investigate the doping allegations. In a later development, the IOC visibly intensified its public communication, however, it has not implemented any new major mechanism to make it obligatory

[52] A. Brown, Athletes: WADA Continues to Mislead You, The Sports Integrity Initiative (London, September 23, 2020), www.sportsintegrityinitiative.com/athletes-wada-continues-to-mislead-you.

[53] USOPC Athletes' Advisory Council and U.S. Anti-doping Agency, Joint Statement from USOPC AAC and USADA on WADA Reform (March 29, 2021), www.usada.org/statement/joint-statement-usopc-aac-usada-wada-reform.

[54] WADA, WADA Publishes First Code Compliance Annual Report (March 26, 2020), www.wada-ama.org/en/media/news/2020-03/wada-publishes-first-code-compliance-annual-report.

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for its governing bodies to release all important details related to their work and the decision-making process. This was despite the fact that, previously, IOC had set out and has worked on an Olympic 2020 Agenda, which highlighted increased transparency as one of its pledges[55].

11.5.2 *Liability*

Liability, the second aspect of the "accountability bundle," is about consequences of one's own actions, which could be imposed both for a rule violation or for performance failure. In our case study, liability has both reactive and proactive aspects. The reactive aspect concerns the imposition of sanctions for a discovered instance of cheating; the proactive form of liability is being realized when an organization adopts stronger liability measures for its future operation.

Regarding the reactive aspect, we have seen that only limited sanctions have been imposed for the discovered cheating scheme. Instead of imposing immediate and wholesale sanctions against the Russian team, the IOC prioritized "individual responsibility." Under this "route," an individual ban request is directed to the Court of Arbitration for Sport (CAS) for every Russian athlete for whom a review of the prior test samples had indicated the presence of prohibited substances.[56] For the then fast approaching Rio 2016 Olympics, the IOC delegated the process of sanctioning to the IFs rather than making a binding and harmonized decision itself (the latter was a statutory possibility). Some IFs, such as the IF of athletics (then IAAF, now World Athletics), imposed a wholesale ban on the Russian team, but others did not. The result was that one-third of the Russian Olympic team was allowed to compete.[57] This led to growing pressure and criticism of the IOC during and after the 2016 Rio Olympics.[58] Later on, as the criticism of the IOC's handling of sanctions of Russian athletes increased, it decided to impose a wholesale ban on the Russian Olympic team ahead of the 2018 PyeongChang Winter Olympics, in which, according to the ban, Russian athletes could only compete under a neutral flag, that is, as individuals rather than representatives of their country.[59]

[55] IOC, Olympic Agenda 2020: Closing Report (2020), https://stillmedab.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Olympic-agenda/Olympic-Agenda-2020-Closing-report.pdf#_ga=2.160713853.1322075367.1617398607-1394957741.1617230692.

[56] IOC, Decision of the IOC Executive Board concerning the Participation of Russian Athletes in the Olympic Games Rio 2016 (July 24, 2016), www.olympic.org/news/decision-of-the-ioc-executive-board-concerning-the-participation-of-russian-athletes-in-the-olympic-games-rio-2016.

[57] BBC, Rio Olympics 2016: Which Russian Athletes Have Been Cleared to Compete? (August 6, 2016), www.bbc.co.uk/sport/olympics/36881326.

[58] Pound, *supra* note 28, at 12.

[59] R. R. Ruiz and T. Panja, Russia Banned from Winter Olympics by I.O.C., *The New York Times* (December 5, 2021), www.nytimes.com/2017/12/05/sports/olympics/ioc-russia-winter-olympics.html.

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The sanctioning situation was further complicated from 2018 onwards, after a series of doping-related suspensions of Russian athletes were overturned by CAS.[60]

The IOC and WADA also suspended the Moscow laboratory; however, a later decision by the IOC to open talks about the laboratory's relaunch and WADA's work on readmission of the Russian Anti-Doping Agency (RUSADA) were criticized by a group of NADOs and stakeholders as too lenient and a sign of tolerance. In 2019 and 2020, these processes came to a halt and/or were reversed due to Russia's ongoing non-compliance with the Code. As a result, Russia continued to be prevented from hosting international events, and it was repeatedly contested whether Russian athletes could participate under the Russian flag.[61]

The governing organizations themselves – IOC and WADA – were not subject to any form of liability for their failures to create a more effective system and for the fact that the anti-doping regime had allowed such a large-scale doping operation for years.[62] The investigations into the scandal discovered that WADA was ignoring repeated reports of doping. The two whistle-blowers mentioned above, who triggered the scandal, had filed a large number of reports to WADA before appearing in the German documentary, but WADA did not act on the information, instead passing the reports to the IAAF for verification.

Neither the IOC nor WADA were of the opinion that they needed to take responsibility for these failures. True, the rules that governed the legal framework of the system did not oblige them to do so. Yet there have not been instances of "moral accountability,"[63] in which individuals would resign to take the blame for the discovered failure.[64] This contrasts with some prior examples where sports officials, for instance, Iranian weightlifting official Abdullah Falahatinejad, had resigned to demonstrate "moral accountability."[65]

[60] CAS fist overturned in 2018 the ban on twenty-eight Russian athletes who were banned from Rio 2016. See: S. Ingle, IOC Dismayed after Doping Bans on 28 Russian Athletes Overturned by CAS, *The Guardian* (February 1, 2018), www.theguardian.com/sport/2018/feb/01/russian-doping-scandal-athletes-bans-overturned-courts-of-arbitration-for-sport-athletics. Later, in 2020, CAS overturned the life bans for three Russian athletes for their doping in the Winter Olympics in Sochi 2014. See N. Gillen, CAS Overturn Life Bans of Three Russian Athletes Convicted on Evidence of Grigory Rodchenkov, *Inside the Games* (September 24, 2020), www.insidethegames.biz/articles/1098790/cas-overturns-biathletes-life-bans.

[61] WADA, WADA Provisionally Suspends Approved Status of Moscow Laboratory (January 22, 2020), www.wada-ama.org/en/media/news/2020-01/wada-provisionally-suspends-approved-status-of-moscow-laboratory.

[62] Read et al., *supra* note 27, at 238.

[63] D. F. Thompson, Moral Responsibility of Public Officials: The Problem of Many Hands (1980) 74 *American Political Science Review* 905.

[64] The investigation showed, for instance, that, prior to the release of the documentary on the ART television, WADA had received more than 200 emails form the two Russian runners–whistle-blowers but had not acted on those emails accordingly to launch raise the alarm and launch an investigation. See S. Ingle, Athletes "Have Lost Faith" in IOC and WADA over Russia Failures, *The Guardian* (June 14, 2016).

[65] Associated Press, Iranian Official Resigns in Wake of Doping Scandal (November 13, 2006), www.espn.co.uk/olympics/news/story?id=2659618.

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In terms of proactive liability measures, over the last five years, the regime adopted stricter sanctions for athletes for future doping discoveries. At the level of enforcement, a whole range of measures was introduced, from the adoption of stricter certification codes and audit standards for laboratories, through the provision of training to doping enforcement officers, to the introduction of private anti-doping organisations, thanks to which the prospects of athletes being doped without being discovered have significantly reduced.[66]

At the level of governing organizations, no performance or procedure-related changes have been introduced to institute sanctions for IOC and WADA members for the regime's ineffectiveness. Their transparency has increased to an extent, as discussed earlier, but their liability has not. For the principle of accountability to be realized, increased transparency in itself will not suffice if there are no consequences for the observed breaches or failures.[67]

Overall, the observed developments in the five years after the scandal indicate that the liability response has been limited and certainly much less present than the transparency response. In terms of sanctioning, there has been a mixed reaction, which sent similarly mixed messages and did not conclusively demonstrate the IOC's immediate resolve to impose adequate sanctions against the doping scheme's perpetrators. In terms of the proactive aspect of liability, considerable progress has been made at the lowest level of the hierarchy, namely in the operational aspect, but not as much in the ad hoc and systemic liability among the governing organizations.

11.5.3 *Controllability*

Controllability refers to whether actors within a system are subject to control by other actors.[68] Several levels of controllability can be distinguished in our case. One is the way in which WADA controls the actors operating at the lowest level of the system such as the NADOs, domestic laboratories, and sporting federations. As a group, they constitute the weakest link within the regulatory system, whose failures or complicity enabled the doping scheme to continue for a longer period.

Over the observed five years, controllability from WADA downwards has significantly improved.[69] WADA has adopted a number of governance changes that have tightened sanctioning and monitoring standards. It introduced a system of graded sanctions and adopted rules to clarify the sanctioning framework, specifying

[66] WADA, Progress of the Anti-doping System in Light of the Russian Doping Crisis (2018), www.wada-ama.org/sites/default/files/20180920_progress_of_anti-doping_system_exco.pdf.
[67] Koppell, *supra* note 9.
[68] Ibid.
[69] A full review of the WADA's measures that are listed in the current paragraph can be found at WADA, *supra* note 60.

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responsibilities of signatories.[70] The result is that sporting federations can no longer use their discretion to interpret Code ambiguities in ways that would enable doped athletes to avoid (major) sanctions.

WADA has also adopted new certification standards for laboratories.[71] Further, as mentioned, WADA has introduced external audit visits to local NADOs, as a method of verifying the information received through the CC. In practice, though, representatives of local NADOs find WADA audits a rigid "one-size-fits-all" instrument that does not encourage the staff in local anti-doping communities to tailor their approaches to the local context.[72] An Independent Testing Authority (ITA) has been formed too, following a joint decision by WADA and the IOC, to manage anti-doping programs for international sporting federations, organizers of international competitions, and other organizations requiring support.[73] ITA is supposed to reduce commercial conflicts of interests among those preparing testing strategies and carrying out athlete testing in the field.

Controllability is not always, and in every aspect, a positive feature that contributes to stronger accountability of a regime. At the higher, governing level of a regime, stronger inter-organizational controllability could be a negative occurrence, if it comes at the expense of the autonomy of its key organizations. In our specific case, WADA's autonomy vis-à-vis IOC has remained low throughout the observed period, and this has not played into the efforts to strengthen WADA's position vis-à-vis the sporting community whose conduct it is supposed to regulate. The fact that IOC is reluctant to grant WADA fuller autonomy – and thus leadership in the anti-doping regime – encourages sporting organizations, particularly the richest ones, to drag their heels in observing the Code.[74]

In 2016, the IOC indicated that it is ready to reduce its presence in WADA and thus make it more independent,[75] but, to date, the IOC continues to retain significant appointment and funding powers over WADA. It has enabled the adoption of provisions that define that WADA should have an independent president and vice-president, appointed without the IOC's nomination, but, even so, IOC has remained the most powerful stakeholder in its internal work, where, de facto, IOC representatives have stronger impact on WADA's decisions than the government representatives.

[70] Read et al., *supra* note 27, at 242.

[71] WADA, *supra* note 60.

[72] E. Zubizarreta and J. Demeslay, Power Relationships between the WADA and NADOs and Their Effects on Anti-Doping (2021) 8 *Performance Enhancement & Health* 1, at 8–9.

[73] IOC, International Testing Agency (ITA) Moves Closer to Being Operational (January 23, 2018), www.olympic.org/news/international-testing-agency-ita-moves-closer-to-being-operational. ITA, About Us, https://ita.sport/about-us.

[74] Houlihan and Hanstad, *supra* note 24, at 209.

[75] R. Axon, IOC Seeks to Give WADA More Independence in Anti-Doping Efforts, *USA Today Sports* (October 8, 2016), https://eu.usatoday.com/story/sports/olympics/2016/10/08/ioc-wada-anti-doping-summit/91783618.

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11.5.4 *Responsibility*

Responsibility is a broad notion that can mean various things in the context of accountability, including adherence to rules, adherence to professional standards, or adherence to internal standards of behavior and performance.[76] Translating the principle of responsibility into observable implications in our case study is not a straightforward endeavor, not least because some of the interpretations of responsibility overlap with other dimensions of accountability, such as transparency, controllability, or liability.

If responsibility is contextualized as the adoption of professional and wider integrity standards, then, again, WADA has demonstrated significant activity in its response to the crisis, and the IOC slightly less so. As mentioned in the discussion of the various aspects of accountability above, WADA has instituted a range of integrity and certification standards related both to the work of the "lower tier" actors whose work it monitors and to its internal standards. These have served to remove a number of embedded conflicts of interest that had existed in the network of local anti-doping organizations and sports federations and to enhance the procedural decision-making and performance integrity of WADA itself. CAS restructured itself, too, creating a separate specialized unit to deal with anti-doping cases. This was in line with the principle of specialization and autonomization, a measure that removed some conflicts of interest embedded within the institution when deciding on cases.

Responsibility can also be understood as increasing external monitoring capacities over an actor. In the last five years, we could observe significant increases in the prospects of a wider stakeholders' community to follow WADA's work and sometime make interventions, in event of misconduct. WADA has made a number of changes that have led to increased effectiveness and transparency in the monitoring of its internal wrongdoings. It has enhanced the system for discovering violations within its own organization, by setting up an external ombudsman, to deal with complaints in relation to the failure to act or abuse of powers by its officials, and has set up an internal whistle-blower unit.[77]

11.5.5 *Responsiveness*

Responsiveness refers to two aspects: whether a regime attends to the demands of its constituencies/stakeholders and whether it attends to their needs as implied by the proclaimed mission.[78] It is worth noting that the anti-doping regime's audiences are diverse. Some stakeholder groups were louder in imposing their demands than

[76] Koppell, *supra* note 9, at 98.
[77] Read et al., *supra* note 27, at 242.
[78] Koppell, *supra* note 9, at 99 .

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others (e.g., the Western-bloc headed by the American NADO – USADA),[79] and the solutions that they required of the IOC and WADA might not have all been shared by other athletes, anti-doping organizations and other stakeholders. But there were common directions of change that were widely considered as being shared by the sporting and anti-doping stakeholder communities: more robust sanctioning, governance reforms to strengthen the regime's capacity to remove conflicts of interest and monitor compliance, and greater independence for WADA.

The expectations of more robust sanctioning were partially met. As mentioned, the IOC showed a protracted and patchy response in banning the Russian Olympic team, Russian federations' hosting of international sporting events, and the suspension and reintroduction of the Moscow lab. This response was severely criticized in the years following the 2016 Rio Olympics by athletes, representatives of national anti-doping agencies, and WADA.

Yet, over time, as the pressure from those groups increased, the IOC attended to some of their expectations of adopting a total ban on the Russian team (for the 2018 Winter Olympics). At the same time, it allowed the reinstatement of the Moscow lab as well as some of the Russian federations under looser criteria than was being demanded. Similarly, the IOC did not grant the level of independence to WADA that some of the loudest stakeholders required. Conversely, WADA undertook a range of reform measures that were praised by the broader stakeholder communities as steps in the right direction, that is, toward removing some of the long-standing conflicts of interest within the system and toward ensuring stronger compliance monitoring.

In terms of improving systems to gauge and attend to stakeholders' needs, both WADA and the IOC increased opportunities for athletes' representation, whether through newly formed dedicated commissions run by athletes' representatives or through increases in quotas to these representatives who sit on their governing bodies.[80] However, athletes and other stakeholders have found this to be insufficient. Recently, a growing number of voices from the athlete community could be heard complaining about "voice suppression" tactics both in the IOC and WADA, the result of which has arguably been a marginalization of athletes' influence on institutional decision-making.[81] Thus, limited progress has been made. Formal institutional co-optation of athletes into the IOC and WADA has not been matched by a notable increase in their influence over the decision-making in these organizations.

[79] See, for example, Houlihan and Hanstad, *supra* note 24, at 209.

[80] L. Jørgensen, Global Athlete: "We are Noticed," Play the Game (November 20, 2019), www.playthegame.org/news/news-articles/2019/0634_global-athlete-we-are-noticed.

[81] Ibid. L. Morgan, Exclusive: WADA and IOC Athlete Representatives Clash over Participants at Global Athlete Forum, *Inside the Games* (June 6, 2018), www.insidethegames.biz/articles/1065917/exclusive-wada-and-ioc-athlete-representatives-clash-over-participants-at-global-athlete-forum.

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11.6 DISCUSSION

Reflecting on the regime's response across the five accountability dimensions, several observations can be made.

First, the anti-doping regime has, overall, demonstrated in the five years after the scandal some degree of accountability in its response to the Russian doping scandal, certainly more than it was mandated to do by the formal legal framework. Accountability can, therefore, be pursued as a virtue even when accountability as a mechanism does not exist.[82]

Second, the levels of demonstrated accountability vary across its different dimensions. It is not possible to compare with precision whether the extent of accountability is greater, and how much, in one dimension rather than another, so any attempt to "weigh them" up against each other would be a rough approximation. Still, it seems safe to say that the regime's response in the transparency and controllability dimensions has been stronger than in the other three dimensions. Liability was partially demonstrated in both the reactive and proactive aspect. We have also seen only partial responsiveness to stakeholders' demands and needs, although the level of responsiveness was somewhat greater in WADA than the IOC.

What does this variation across these five conceptions of accountability tells us regarding a regime's resilience? It could be the case that increasing transparency is the easiest response to a legitimacy crisis. It could also be that the immediate response is first demonstrated as a virtue, and thereafter it can set in motion a process of further institutionalization, that is, the establishment of accountability as a mechanism.[83] "Giving in" to other aspects of accountability might be less opportune, that is, more threatening to a regime's or an organization's power; increasing transparency could be seen as the least "sacrificing" accountability measure. A strong transparency response is also in line with commonly observed post-scandal organizational behavior where, often, one of the first responses that an affected organization takes is to increase its transparency, with the aim of restoring the stakeholders' trust.

Further, we could see that, following the scandal, some degree of institutionalization of the regime's accountability framework has occurred. Five years after the crisis, the anti-doping regime has formalized certain accountability parameters, both at the enforcement and governing level. That was not always the case in the previous history of the regime. During the first fifteen years, from WADA's creation in 1999 to 2015, the regime did not take measures that would lead to the institutionalization of its accountability framework, despite occasional calls for this and intermittent voices of discontent with the regime's performance.[84]

[82] Bovens, *supra* note 5.
[83] Ibid.
[84] See, for example, Read et al., *supra* note 27, at 234.

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Why has the regime's accountability response differed this time then? It is possible that the severity of the crisis played a role. Unlike prior calls for a stronger accountability response, the Russian doping scandal has the features of a 'focusing event," which, as observed in the literature on policy dynamics, can precipitate major change after long-standing inertia and long periods of stasis.[85] The noninstitutionalized accountability framework has set in motion a strong "negative feedback" dynamic, which for a long time helped the regime deflect pressures for change and resist major reform. If we look into the institutionalization of the regime's accountability framework over a wider period of twenty years, the model it has developed conforms to the punctuated-equilibrium model of institutional change,[86] rather than an incremental one. This suggests that systems with noninstitutionalized accountability frameworks might "push" regimes toward rarer yet more intense episodes of institutionalization. In systems that have some form of institutionalization from their outset, it is likely that changes to the system will be more frequent and probably less comprehensive, as its governing actors will be more responsive to demands for change.

Third, the extent of undertaken accountability response was strongest at the lowest, operational level, and it decreased as one moves up the hierarchy. At the top, WADA regime's gave strong accountability responses in some respects – fewer than it forced at the lowest operational level, and the IOC showed accountability response in even fewer aspects than WADA.

The institutionalization of the accountability framework varies across the regime's tiers. As one moves up the hierarchy of the accountability framework system, the degree of institutionalization decreases. As Table 11.2 indicates, this institutionalization is stronger at the bottom, the enforcement tier of the system, than at the upper tier, the governing tier. The differences between WADA and the IOC could be indicative too.

This suggests that the observed model is one of "nested institutionalization." What does this model indicate? Two observations can be made. First, that the limits to how extensive one's accountability response will be were probably conditioned by the regime's initial noninstitutionalized framework. Its "void accountability" did not oblige the governing organizations to be fully responsive to wider expectations. This afforded them the "luxury" to attend to calls for accountability only to a certain point. Second, the extent to which the IOC resisted an extensive accountability response, as opposed to WADA, was probably mediated by the power dynamic between them. The legal organizational framework gave the IOC a comfortable "starting position." As mentioned, before the crisis, the IOC enjoyed the position of the regime's supreme authority, under a constellation where its stakeholders did not

[85] F. R. Baumgartner and B. D. Jones, *Agendas and Instability in American Politics*, 2nd ed. (2010).
[86] Ibid.

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TABLE 11.2. *Observed accountability responses within the anti-doping system between 2015 and 2020, across the five dimensions of accountability*

	Transparency	Liability	Controllability	Responsibility	Responsiveness
IOC	✓	x	x	✓	x
WADA	✓	x	x (no autonomy from IOC) ✓ (overall operational level)	✓	✓
Operational level	✓	✓	✓	✓	N/A

Note: The bigger the "tick signs" in a cell – the greater the extent to which the given aspect of accountability has been demonstrated by the actor in question.

have "exit" possibilities. From a political economy perspective, this means that the cost of limited accountability response is nonexistent or lower than in other transnational regimes.

Of course, the observed period of five years, while long enough to cover more than a full Olympic cycle, could at the same time be viewed as only a snapshot of a longer transformative period. Thus, one could argue that the regime's accountability development is still "in flux" and that the framework that has emerged so far is not yet consolidated. It is difficult to predict whether the extant accountability process will "accelerate," "slow," or "halt" in the coming period. Still, an interesting question that could be raised is whether WADA's ongoing progress in accountability institutionalization will have any implications for the internal regime's power play. Will WADA's stronger accountability response give it an opportunity to profile itself as an "accountability champion" within the anti-doping community – specifically when juxtaposed to the IOC – and, if so, will this have any implications for the regime's future transformation? As WADA potentially increases its legitimacy within the system,[87] this could build momentum to force the IOC to change its own accountability structure, too. Currently, the IOC still enjoys supreme authority in the system, primarily because of the present institutional design according to which its members and leadership cannot be changed externally or be subjected to external accountability forums. This might keep eroding its reputation within the system and increase pressures to institutionalize its own accountability, but at the same time the IOC will still have a strong institutional basis to keep its position of superior authority. In any case, it will be interesting to see how their respective pursuit of accountability will shape future development of power-play between the IOC and WADA.

[87] Read at al., *supra* note 27.

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11.7 CONCLUSION

In this chapter, we analyzed, from an accountability perspective, the response of the global sports anti-doping regime to the Russian doping scandal. We have asked two questions. First, could legitimacy pressures force the pursuit of "accountability as a virtue" even when formal "accountability as a mechanism" is nonexistent? Second, can legitimacy pressure lead to an institutionalization of a regime's accountability framework?

The analysis yielded three main findings, which contribute to our understanding of the drivers of the evolution and resilience of transnational private regulation organizations amidst a crisis:

First, in the face of major legitimacy pressure, which in our case occurred-following a "system shock," there will be a pursuit of accountability as a virtue despite the nonexistent accountability mechanism. Put differently, the normative can overcome the formal-legal (design).

Second, noninstitutionalized frameworks can evolve into institutionalized ones; and partially institutionalized frameworks can evolve into more fully institutionalized frameworks. There are limits to the "negative feedback" potential that a noninstitutionalized framework will have in retaining the status quo. Strong legitimacy pressures can catalyze institutionalization, even in the most unfavorable structural environment.

Third, although legitimacy pressure can be a catalyst of a regime's institutionalization of accountability, at the same time this will be limited by the regime's prior structure. Legitimacy can "bend" even the most "resistant" structure, but the more resistant the structure is, the less range this bending will have. The extent of accountability demonstration will be shaped by power struggles, and where the prior structure accords one governing actor the position of supreme authority, the accountability institutionalization will be most pronounced in the "lower tiers" of the system.

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